
(2006) 02 MAD CK 0067

In the Madras High Court

Case No : Second Appeal No"s. 752 and 753 of 1994

Saraswathi Ammal

APPELLANT

Vs

Ponninatha Nainar

RESPONDENT

Date of Decision : 28-02-2006

Acts Referred:

Hindu Succession Act, 1956 — Section 14, 14(1), 14(2)

Citation : (2006) 3 LW 86 : (2006) 3 MLJ 272

Hon'ble Judges : S. Ashok Kumar, J

Bench : Single Bench

Advocate : V. Raghavachari, for the Appellant; T.R. Rajaraman, S.C., for the Respondent

Final Decision : Dismissed

Judgement

S. Ashok Kumar, J.—The above two Second Appeals arise out of the two suits in O.S.Nos:14 of 1986 and 562 of 1989 on the file of the

Additional District Munsif Court, Arni. Saraswathi Ammal, the defendant in O.S. No. 14 of 1986 and plaintiff in O.S. No. 562 of 1989 are the

appellants herein.

2. O.S. No. 14 of 1986 has been filed by the Ponninatha Nainar for declaration and injunction of the suit properties in S. No. 26/3 for 41 cents

and in S. No. 26/11 for 39 cents. O.S. No. 562 of 1989 has been filed by Saraswathi Ammal for declaration and injunction of the suit properties

in S. No. 26/3 in respect of 9 cents and in S. No. 26/11 in respect of 19 1/2 cents.

3. The genealogical tree of the case for easy analysis of the relationship between the parties is set out hereunder:-

Manibadra Nainar

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Rajamathi(1st wife) 2nd Wife Marudevi (3rd wife)

Appandai Nainar (son) Ponninatha Baby Shanthi

| (plaintiff)

Saraswathi

(defendant)

4. The admitted facts are, Ponninatha Nainar, the respondent in the Second Appeals is the youngest son of Munibadhra Nainar through his 3rd

wife, Marudevi. Appandai Nainar is the eldest son of Munibadhra Nainar by his 1st wife. There was a partition between Munibadhra Nainar and

his two sons viz., Appandai Nainar and Ponninatha Nainar under Ex.B.5 dated 5.2.1937. Under Ex.B2, E-Schedule properties were allotted to

Marudevi for her life time for her maintenance and that after her lifetime, the properties were to be divided between Appandai Nainar and

Ponninatha Nainar. Marudevi died in 1975. She was in possession and enjoyment of the said properties till her death. Ex.A.3 is the patta for Fasli

1369. Ex.A4 is the patta pass book standing in her name.

5. According to Ponninatha Nainar, after the death of Marudevi, the suit properties in O.S. No. 14 of 1986 which form part of E Schedule

belonged to Marudevi absolutely, and that, after her death, it belonged to her heirs, viz., himself and his two sisters and that in a family arrangement

dated 27.5.1978, the suit properties were allotted to him and that he was in possession and enjoyment of the same, that the defendant had

purchased 9 cents in S. No. 26/3 and 191/2 cents in S. No. 26/11 from Appandai Nainar under Ex.B.6, dated 17.5.1979, and that she has no

right or title for the same. The plaintiff also had set up a plea of adverse possession.

6. The defendant pleaded that as per the terms of Ex.B.5 partition deed, the E schedule properties, after the death of Marudevi, have to be divided

between Appandai Nainar and Marudevi Nainar, that after the death of Marudevi, both Appandai Nainar and Ponninatha Nainar divided the E

Schedule properties orally, that Appandai Nainar got 9 cents in S. No. 26/3 and 191/2 cents in S. No. 26/11 and that Appandai Nainar sold his

share to her under Ex.B.6 dated 17.4.1979 and she was in possession and enjoyment of the same and that the plaintiff after obtaining interim

injunction in O.S. No. 14 of 1986 had been preventing her from enjoying the properties. Hence the defendant filed the counter suit in O.S.No:562

of 1989 for declaration and possession of the properties purchased by her.

7. On the above pleadings and evidence, and on hearing the arguments of the learned counsel appearing on either side, both the courts below

concurrently held that the suit properties in O.S. No. 14 of 1986 which form part of E Schedule were allotted to Marudevi for her maintenance,

that after the Hindu Succession Act, 1956 came into force, the properties became her absolute properties u/s 14(1) that after her death in 1975,

that would go to her heirs, viz., Ponninatha Nainar and his sisters, that Appandai Nainar was not entitled to the same and he had no right or title to

sell the same to Saraswathi Ammal and that, consequently, Saraswathi Ammal had no title to the said properties. Accordingly the suit in O.S. No.

14 of 1986 was decreed and O.S. No. 562 of 1989 was dismissed. Aggrieved by the same, Saraswathi Ammal has filed the above second

appeals.

8. At the time of admission, this court framed the following questions of laws in both the Second Appeals:-

1. Whether the courts below are right in applying the principles of Section 14 of the Hindu Succession Act 1956 and whether they are right in

applying the judgment of the Supreme Court in 1979 SC page 993?

2. Whether the courts below should not have seen that Marudevi Ammal does not possess a preexisting right and has got a limited estate to the

property for the first time under Ex.B.5 and therefore should they not have seen that Section 14(2) of the Hindu Succession Act will wholly apply

to the facts of the case and whether its order to the contrary legally unsustainable?

3. Whether the orders of the courts below in ignoring Ex.B.1 is proper when the respondent had joined in execution of the sale deed with the

appellant's vendor and has admitted his title and ownership in and over the properties belonging to the family?

4. Whether the courts below should not have held that the partition as between the respondent and his sisters is a sham document and cannot

confer any title upon the parties to the document?

5. Whether the judgment and decree of the court of Sub-Judge, Arni in A.S. No. 77 of 1992, dated 10.11.1993 in confirming the judgment and

decree of the District Munsif, Arni in O.S. No. 562 of 1989 dated 26.8.1992 is not even otherwise illegal and in any event liable to be set aside

9. Learned Counsel appearing for the appellant submitted that as per the terms of Ex.B.5, partition deed, Marudevi had only a life interest in E

Schedule properties, and that after the death of Marudevi, the E schedule properties have to be divided between Appandai Nainar and Ponninatha

Nainar, that the case is governed by Section 14(2) of the Hindu Succession Act, 1956, that her life interest will not get enlarged into an absolute

interest, that Appandai Nainar was entitled to half share in the suit properties and he had every right to sell the same to her. Learned counsel for the

appellant further contended that both the brothers, after the death of Marudevi, have sold a portion of E Schedule properties under B1 dated

24.11.1976 to one Krishnamoorthy and that they have treated the properties as belonging to both and that there is no specific pleading in the plain

regarding the applicability of Section 14(1) of the Act. Learned counsel placed reliance on the judgment of the Supreme Court in Gulabrao

Balwantrao Shinde and Others Vs. Chhabubai Balwantrao Shinde and Others, wherein their Lordships have held that pleading claiming the benefit

u/s 14 of the Hindu Succession Act is essential. But in this case both the courts have dealt with the matter which was not even an issue and had

come to a wrong finding and that too against the case pleaded by Ponninatha Nainar.

10. According to the learned counsel for the appellant, as per the provisions of the Hindu Succession Act, 1956, there is no legal obligation on the

part of a Hindu step son to support his step mother independent of family property. There is no coparcenery after partition of the family property.

Therefore the property given to Marudevi Ammal could not enlarge under 1956 Act. The step mother is not a natural mother for the purpose of

law of inheritance.

11. According to the learned counsel for the appellant, Section 14(1) of the Act applies only when a Hindu woman has been conferred with a

limited estate in recognition of her pre existing right of maintenance and that

estate would enlarge into an absolute one. Section 14(2) of the Act is an exception to Section 14(1) and if the property is given by way of a devise, the former alone will prevail. In the present case, assuming the courts below were justified in dealing with the issue of section 14, still they have misapplied the law on this subject. It is obvious proposition of law that a Hindu woman should have a right of maintenance against those who are conferring right on her under a document or persons claiming through them and it would have no application as against a stranger. Appandai Nainar is a step son and Marudevi Ammal has no legal right both under the uncodified Hindu Law (Sastric Law) as well as under the provisions of the Hindu Adoption and Maintenance Act. Thus when there is no legal obligation to maintain Marudevi Ammal by Appandai Nainar, his share of the property that would ultimately come to him after the demise of Marudevi Ammal would not get enlarged. Thus both the courts have failed to see the essence of the provisions and its selective applicability only against those who are bound to maintain the Hindu woman, which proposition is well settled by the Supreme Court in *Kothi Satyanarayana Vs. Galla Sithayya and Others*, .

12. On the other hand, learned counsel appearing for the respondent contended that though there is no specific pleading regarding the applicability of Section 14(1) of the Act in the plaint, it is stated in the Plaint that Marudevi was the absolute owner of the suit properties and she was in possession and enjoyment of the same till her death. In the courts below both the parties have argued about the applicability of Section 14(1) and both the courts below have discussed the same and have given a finding. It is a pure question of law. The appellant has not taken this point and substantial question of law also has been framed about the applicability of Section 14(1) of the Act.

13. Learned counsel for the respondent further contended that Munibadhra Nainar and his two sons Appandai Nainar and Ponninatha Nainar constituted a joint Hindu Family and Munibadhra Nainar was the Kartha of the family. The joint family owned properties. Munibadhra Nainar as the Kartha of the family was bound to maintain the female members of the family out of the income from the properties. In the partition deed Ex.B.5, dated 5.2.1937, it is stated that all the three constituted a joint Hindu

Family and they have partitioned the properties. The properties were treated as joint family properties and E schedule properties were allotted to Marudevi towards her maintenance. Munibadhra Nainar as the

husband was also bound to maintain his wife, Maruevi personally and out of his propertise. She had a pre-existing right of maintenance. E

Schedule properties were allotted to Marudevi towards her maintenance. Whether it belonged to the joint family of Munibadhra Nainar or not

Marudevi Ammal was admittedly in possession and enjoyment of the same till her death in 1975. She was in possession and enjoyment of the suit

properties in pursuance of her pre-existing right to maintenance. Hence her limited interest became enlarged u/s 14(1) of the Act. She did not get

the properties towards her maintenance for the first time and hence Section 14(2) would not apply.

14. Learned counsel for the respondent further submitted that it is not correct to say that the properties were given to Marudevi Ammal by her step

son, Appandai Nainar. She got them under B.5 partition deed entered between her husband and his two sons. Whatever property acquired by her

towards maintenance under Ex.B.5 became her absolute properties by virtue of Section 14(1) of the Act as has been held by the Supreme Court

in Raghubar Singh and Others Vs. Gulab Singh and Others, . Hence the suit properties were the absolute properties of Marudevi Ammal and after

her death in 1975, their son Ponninatha Nainar and his two sisters as her legal heirs, inherited the same. In the family arrangement under Ex.A.2,

the suit properties were allotted to Ponninatha Nainar. Thus he alone is entitled to the suit properties and Appandai Nainar has no right to sell the

same under Ex.B.6 to the defendant. Hence the defendant has no right or title to the suit properties.

15. The main issue on which the learned counsel for the parties have addressed their arguments revolves around he interpretation of Section 14 of

the Act which reads as follows:-

14.(1) Any property possessed by a female Hindu, whether acquired before or after the commencement of this Act, shall be held by her as full

owner thereof and not as a limited owner.

Explanation: In this Sub section, `property" includes both moveable and immovable property acquired by a female Hindu in inheritance or devise,

or at a partition, or in lieu of maintenance or arrears of maintenance, or by gift from any person, whether a relative or not, before, at or after her

marriage, or by her own skill or exertion, or by purchase or by prescription, or in any other manner whatsoever, and also any such property held

by her as Stridhana immediately before the commencement of this Act.

(2) Nothing contained in sub section (1) shall apply to any property acquired by way of gift or under a Will or any other instrument or under a

decree or order of a civil court or under an award where the terms of the gift, Will or other instrument or the decree, order or award prescribe a

restricted estate in such property.

16. In *Raghubar Singh and Others Vs. Gulab Singh and Others*, , Their Lordships of the Supreme Court have held thus:-

12. ...we consider it appropriate to first examine the question whether the right of maintenance, as a pre-existing right of a Hindu widow, is

traceable only to the statutory provisions of the Hindu Women's Rights to Property Act, 1937 (which admittedly was not in force in Rewa State in

1946 when Manraj Singh died) as opined by the High Court or does it flow from Shastric Hindu law on account of the incidence of marriage itself

and that right received protection by the Act in 1956 through Section 14(1) of the Act.

13. The first question, requiring an answer, therefore, is:

What are the obligations of a Hindu husband towards the maintenance of his wife both during his lifetime and after his death

14. According to the old Shastric Hindu law, marriage between two Hindus is a sacrament - a religious ceremony which results in a sacred and a

holy union of man and wife by virtue of which the wife becomes a part and parcel of the body of the husband. She is, therefore, called ardhangani.

It is on account of this status of a Hindu wife, under the Shastric Hindu law, that a husband was held to be under a personal obligation to maintain

his wife and where he dies possessed of properties, then his widow was entitled, as of right, to be maintained out of those properties. The right of a

Hindu widow to be maintained out of the properties of her deceased husband is, thus, a spiritual and moral right, which flows from the spiritual and

temporal relationship of husband and wife, though the right is available only so long as the wife continues to remain chaste and does not remarry.

15. Mulla in his classic work on Hindu Law, 14th Edn., dealing with the characteristic of the right of maintenance of a Hindu wife observes:

A wife is entitled to be maintained by her husband, whether he possesses property or not. When a man with his eyes open marries a girl

accustomed to a certain style of living, he undertakes the obligation of maintaining her in that style. The maintenance of a wife by her husband is a

matter of personal obligation arising from the very existence of the relationship, and quite independent of the possession by the husband of any

property, ancestral or self-acquired.

16. Mayne in his treatise on Hindu Law and Usage, 11th Edn., while tracing the history and origin of the right of maintenance of a Hindu wife says:

The maintenance of a wife by her husband is, of course, a matter of personal obligation, which attaches from the moment of marriage.

17. The obligations, under the Shastric Hindu law, to maintain a Hindu widow out of the properties of her deceased husband received a statutory

recognition with the coming into force of the Hindu Women's Rights to Property Act, 1937. The law on the subject was, thereafter, consolidated

and codified by the Hindu Married Women's Rights to Separate Residence and Maintenance Act, 1946 which came into force on 23-4-1946.

The right to maintenance of the Hindu widow, as a pre-existing right, was thus recognised by the two statutes referred to above but it was not

created for the first time by any of those statutes. Her right to maintenance existed under the Shastric Hindu law long before statutory enactments

came into force. After the attainment of independence, the need for emancipation of women from feudal bondage became even more imperative.

There was growing agitation by Hindu women for enlargement of their rights as provided by the Shastric Hindu law in various spheres. It was at

this juncture that Parliament stepped in and enacted various statutes like the Hindu Marriage Act, 1956, the Hindu Adoption and Maintenance Act,

1956, and the Hindu Succession Act, 1956 providing for intestate succession.

18. The Hindu Succession Act, 1956 made far-reaching changes in the structure of Hindu law by removing the traditional limitations on the powers

of a Hindu widow to deal with the property of her deceased husband in her possession in lieu of her right to maintenance and the Act made her an

absolute owner of the property, over which hitherto she had only a limited

right.

19. A most elaborate discussion about the rights of a female Hindu before and after the coming into force of the Hindu Succession Act, 1956 and

particularly the provisions of Section 14 of the Act, is contained in a three-Judge Bench judgment of this Court in *V. Tulasamma and Others Vs.*

Sesha Reddy (Dead) by Lrs., . Dealing with the provisions of the Hindu Succession Act, 1956, this Court in V. Tulasamma v. Sesha Reddy

observed: SCC p.116, para 23

The Act is a codifying enactment, and has made far-reaching changes in the structure of the Hindu law of inheritance, and succession. The Act

confers upon Hindu females full rights of inheritance, and sweeps away the traditional limitations on her powers of dispositions which were

regarded under the Hindu law as inherent in her estate....

20. Fazal Ali, J. in his exhaustive judgment, dealing with the question of the pre-existing right of a Hindu widow laid down: (SCC pp. 113-14, para

20)

20. Thus on a careful consideration and detailed analysis of the authorities mentioned above and the Shastric Hindu law on the subject, the

following propositions emerge with respect to the incidents and characteristics of a Hindu woman's right to maintenance:

(1) that a Hindu woman's right to maintenance is a personal obligation so far as the husband is concerned, and it is his duty to maintain her even if

he has no property. If the husband has property then the right of the widow to maintenance becomes an equitable charge on his property and any

person who succeeds to the property carries with it the legal obligation to maintain the widow;

(2) though the widow's right to maintenance is not a right to property but it is undoubtedly a pre-existing right in property, i.e., it is a *jus ad rem* not

jus in rem and it can be enforced by the widow who can get a charge created for her maintenance on the property either by an agreement or by

obtaining a decree from the civil court;

(3) that the right of maintenance is a matter of moment and is of such importance that even if the joint property is sold and the purchaser has notice

of the widow's right to maintenance, the purchaser is legally bound to provide for her maintenance;

(4) that the right to maintenance is undoubtedly a pre-existing right which existed in the Hindu law long before the passing of the Act of 1937 or the Act of 1946, and is, therefore, a pre-existing right;

(5) that the right to maintenance flows from the social and temporal relationship between the husband and the wife by virtue of which the wife

becomes a sort of co-owner in the property of her husband, though her co-ownership is of a subordinate nature; and

(6) that where a Hindu widow is in possession of the property of her husband, she is entitled to retain the possession in lieu of her maintenance

unless the person who succeeds to the property or purchases the same is in a position to make due arrangements for her maintenance.

21. Dealing with the scope of Section 14 of the Act, the learned Judge opined that the provisions of the section must be liberally construed in order

to advance the object of the Act, which is "to enlarge the limited interest possessed by a Hindu widow" in "consonance with the changing temper of

the times" and observed: (SCC p.121, para 31)

3) that the Act of 1956 has made revolutionary and far-reaching changes in the Hindu society and every attempt should be made to carry out the

spirit of the Act which has undoubtedly supplied a long-felt need and tried to do away with the invidious distinction between a Hindu male and

female in matters of intestate succession;

The learned Judge then interpreted Section 14 thus: (SCC pp. 135-36, para 62)

(2) Section 14(1) and the Explanation thereto have been couched in the widest possible terms and must be liberally construed in favour of the

females so as to advance the object of the 1956 Act and promote the socio-economic ends sought to be achieved by this long-needed legislation.

(3) Sub-section (2) of Section 14 is in the nature of a proviso and has a field of its own without interfering with the operation of Section 14(1)

materially. The proviso should not be construed in a manner so as to destroy the effect of the main provision or the protection granted by Section

14(1) or in a way so as to become totally inconsistent with the main provision.

(4) Sub-section (2) of Section 14 applies to instruments, decrees, awards, gifts, etc., which create independent and new titles in favour of the

females for the first time and has no application where the instrument concerned merely seeks to confirm, endorse, declare or recognise pre-

existing rights. In such cases a restricted estate in favour of a female is legally permissible and Section 14(1) will not operate in this sphere. Where, however, an instrument merely declares or recognises a pre-existing right, such as a claim to maintenance or partition or share to which the female is entitled, the sub-section has absolutely no application and the female's limited interest would automatically be enlarged into an absolute one by force of Section 14(1) and the restrictions placed, if any, under the document would have to be ignored. Thus where a property is allotted or transferred to a female in lieu of maintenance or a share at partition, the instrument is taken out of the ambit of sub-section (2) and would be governed by Section 14(1) despite any restrictions placed on the powers of the transferee.

(5) The use of express terms like "property acquired by a female Hindu at a partition", "or in lieu of maintenance", "or arrears of maintenance", etc., in the Explanation to Section 14(1) clearly makes sub-section (2) inapplicable to these categories which have been expressly excepted from the operation of sub-section (2).

23. Thus, we find that there is enough authority for the proposition that the right to maintenance of a Hindu female is a pre-existing right, which

existed in the Hindu law long before the Act of 1937 or the Act of 1946 came into force and is not a creation of those statutes, which only

recognised that position. In the words of Fazal Ali, J. in *Tulasamma case*: (SCC p. 135, para 62)

(1) The Hindu female's right to maintenance is not an empty formality or an illusory claim being conceded as a matter of grace and generosity, but

is a tangible right against property which flows from the spiritual relationship between the husband and the wife and is recognised and enjoined by

pure Shastric Hindu law and has been strongly stressed even by the earlier Hindu jurists starting from *Yajnavalkya* to *Manu*. Such a right may not

be a right to property but it is a right against property and the husband has a personal obligation to maintain his wife and if he or the family has

property, the female has the legal right to be maintained therefrom. If a charge is created for the maintenance of a female, the said right becomes a

legally enforceable one. At any rate, even without a charge the claim for maintenance is doubtless a pre-existing right so that any transfer declaring

or recognising such a right does not confer any new title but merely endorses or confirms the pre-existing rights.

24. Accordingly, we hold that the right to maintenance of a Hindu female flows from the social and temporal relationship between the husband and

the wife and that right in the case of a widow is ""a pre-existing right"", which existed under the Shastric Hindu law long before the passing of the

1937 or the 1946 Acts. Those Acts merely recognised the position as was existing under the Shastric Hindu law and gave it a ""statutory"" backing.

Where a Hindu widow is in possession of the property of her husband, she has a right to be maintained out of it and she is entitled to retain the

possession of that property in lieu of her right to maintenance.

25. Explaining the meaning of the expression ""possessed"" as used by the legislature in Section 14(1) of the 1956 Act in Tulasamma case this Court

held: (SCC p. 136, para 62)

(6) The words "possessed by" used by the legislature in Section 14(1) are of the widest possible amplitude and include the state of owning a

property even though the owner is not in actual or physical possession of the same. Thus, where a widow gets a share in the property under a

preliminary decree before or at the time when the 1956 Act had been passed but had not been given actual possession under a final decree, the

property would be deemed to be possessed by her and by force of Section 14(1) she would get absolute interest in the property. It is equally well

settled that the possession of the widow, however, must be under some vestige of a claim, right or title, because the section does not contemplate

the possession of any rank trespasser without any right or title.

26. It is by force of Section 14(1) of the Act, that the widow's limited interest gets automatically enlarged into an absolute right notwithstanding

any restriction placed under the document or the instrument. So far as sub-section (2) of Section 14 is concerned, it applies to instruments,

decrees, awards, gifts, etc., which create an independent or a new title in favour of the female for the first time. It has no application to cases where

the instrument/document either declares or recognises or confirms her share in the property or her ""pre-existing right to maintenance"" out of that

property. As held in Tulasamma case sub-section (2) of Section 14 is in the nature of a proviso and has a field of its own, without interfering with

the operation of Section 14(1) of the Act.

17. Taking into consideration of the present case, Manibadhra Nainar had three wives. The defendant has purchased property from Appandai

Nainar, who is son of the first wife. Ponninatha Nainar, the plaintiff is the son of the third wife Marudevi Ammal. The main question involved in this

matter is whether the said Marudevi Ammal had a pre-existing right of maintenance. The joint family had properties. From the reading of the above

judgment, which is an elaborate one, it is clear that Munibadhra Nainar as the husband/kartha of the family was bound to maintain the wives/female

members of the family out of the income from the properties. Accordingly in the partition deed Ex.B.5, dated 5.2.1937, E Schedule properties

were allotted to Marudevi towards her maintenance. Thus Marudevi Ammal had a pre-existing right of maintenance out of the joint family

properties and also Munibadhra Nainar as the husband was also bound to maintain her personally out of his properties. As rightly contended by

the learned counsel for the appellant, whether the properties are joint family properties or not, Munibadhra Nainar was admittedly in possession

and enjoyment of the same till his death and the suit properties were in possession and enjoyment of Marudevi Ammal till her death in 1975 in

pursuance of her pre existing right to maintenance. Hence, her limited interest became enlarged u/s 14(1) of the Act.

18. It is not correct to say that the properties were given to Marudevi Ammal by her step son, Appandai Nainar, but she acquired such right under

Ex.B.5 partition deed entered between her husband and his two sons. Thus the suit properties acquired by her towards maintenance under the

partition deed became her absolute properties by virtue of Section 14(1) and after her death in 1975, her son Ponninatha Nainar and his two

sisters as legal heirs inherit the same. In view of the family arrangement under Ex.A.2, the plaintiff Ponninatha Nainar alone is entitled to the suit

properties and Appandai Nainar, the vendor of the defendant has no right to sell the same under Ex.B.6 to the defendant Saraswathi Ammal.

Section 14(1) is very clear that "any property possessed by a female Hindu, whether acquired before or after the commencement of this Act, shall

be held by her as full owner thereof and not as a limited owner.". As provided in the Explanation to Section 14(1), Marudevi Ammal possessed of

the immovable property under Ex.B.5 partition deed in lieu of maintenance and it is not as if she gets the suit properties towards her maintenance

for the first time, in which case alone Section 14(2) would apply. But, in this case, Marudevi Ammal had a pre existing right and when once such

right has been established, Section 14(1) alone is attracted and therefore by virtue of the same, she is the absolute owner and after her death only

Ponninatha Nainar, the plaintiff is entitled to the same.

19. The umpteen number of decisions cited by the leaned counsel for the appellant are distinguishable and only relates to the factors under which

Section 14(2) of the Act can be applied and the said judgements cannot be applicable to the case on hand. Admittedly, before the courts below

both the parties have submitted arguments regarding applicability of Section 14(1) of the Act and hence technical objection that there is no

pleading to the said effect in the plaint cannot be countenanced. Therefore, both the courts have invoked the correct provision of law viz., Section

14(1) of the Hindu Succession Act and no interference is warranted with regard to the said concurrent findings of the courts below. For the

reasons stated above, all the questions of law are answered against the appellant and in favour of the respondent.

20. In the result, both the Second Appeals are dismissed. However, there is no order as to costs.