

(1994) 12 MAD CK 0066
In the Madras High Court

Subbanna Gounder and Another

APPELLANT

Vs

Mohan Raj represented by next friend mother Kaliammal and
Others

RESPONDENT

Date of Decision : 12-12-1994

Acts Referred:

Hindu Succession Act, 1956 — Section 6
Transfer of Property Act, 1882 — Section 19

Citation : (1995) 2 MLJ 73

Hon'ble Judges : Abdul Hadi, J

Bench : Division Bench

Judgement

Abdul Hadi, J.—Defendants 1 and 2 are the appellants in this first appeal against the preliminary decree granted in the partition suit O.S. No. 154 of 1981 on the file of the Subordinate Judge, Namakkal. The said decree, (1) directs division of plaintiffs' 2/3rd share in the suit A Schedule properties, after the death of the life interest holder of the said properties, the 4th defendant 4th respondent; (2) declares that the suit B schedule properties absolutely belong to the 1st defendant and 6th defendant- 6th respondent and directs division of the said properties among the heirs of defendants 1 and 6 and (3) directs division of plaintiffs' 5/12th share in the suit C and D schedule properties. The said decree also observes that accounting relief shall be decided in final decree proceedings.

2. The suit arose on the death of one Thangavelu, who died on 12.1.1977, the 2nd plaintiff being his wife. According to the plaintiffs the 1st plaintiff is the posthumous son of Thangavelu, having been born on 14.8.1977. Admittedly, the original ancestor is one Karuppanna Gounder, who died in 1964. The 4th defendant is his second wife, while defendants 6 and 5 are his son and daughter respectively, through the first wife, who is no more. Defendants 6 and 5 are respondents 6 and 5 respectively. The 1st defendant is his son through the 4th defendant. The 2nd defendant is the wife of the 1st defendant. The abovesaid deceased Thangavelu and the 3rd defendant- 3rd respondent are the sons of defendants 1 and 2. But, the 3rd defendant was born subsequent to the death of

Thangavelu, that is, on 12.11.1977. Defendants 7 and 8 are usufructuary mortgagees of item 2 of suit C schedule properties. Defendants 4 to 8 remained ex parts in the court below. In this Court, the only contesting respondents are the plaintiffs, while defendants 3 to 8 respondents 3 to 8 remain ex parte.

3. The material allegations in the plaint may now be summarised as follows:

(i) The marriage between Thangavelu and the 2nd plaintiff took place in September, 1976. The 1st plaintiff was in the womb at the time of death of his father. The suit properties are the joint family properties of the abovesaid family of Karuppanna Gounder.

(ii) He executed a registered settlement deed in respect of A Schedule properties on 23.12.1959 in favour of the abovesaid Thangavelu absolutely subject to life interest in the said property to the 4th defendant. The said settlement deed also provided that in case Thangavelu died heirless, the properties shall revert to Karuppanna Gounder's son, the 1st defendant. Since the 1st plaintiff was in the womb of the 2nd plaintiff at the time of the death of Thangavelu the 1st plaintiff has acquired a vested right in the said properties and it cannot be divested in law, by any condition imposed by the settlor, restricting the devolution. Therefore, it has to be declared that the 1st plaintiff is entitled to the A Schedule properties absolutely after the death of the 4th defendant.

(iii) The said Karuppanna Gounder executed the registered settlement deed dated 4.12.1953 in favour of the 5th defendant in respect of the suit B schedule properties, giving her life interest, and after her life time, the said properties should revert to his sons (that is to defendants 1 and 6). The 5th defendant lost her husband even before 1959 and she was without sufficient means of maintaining herself. After the death of the 1st defendant, the 1st plaintiff is one of his heirs. Therefore, it should be declared that the 1st plaintiff is entitled to a share in the B schedule properties after the death of defendants 5 and 1.

(iv) The 1st defendant inherited item 1 in the C schedule properties from his father Karuppanna Gounder and the entire properties (C schedule) are joint family properties. From out of the income from items 1 and 2 of C schedule properties he (1st defendant) purchased the house site, over which a terraced house has been constructed, which is described in D schedule (1st item). The 1st defendant had no other source of income. Therefore, C and D Schedule properties are joint family properties of the 1st defendant and Thangavelu and the 1st plaintiff.

(v) The 1st defendant and Thangavelu had been living together and the 2nd plaintiff also was living with them. After the death of Thangavelu, the 2nd plaintiff lived for some time with the members of the family. The 1st defendant had been visiting the plaintiffs and looking after them for some time. But, after the birth of the 3rd defendant, defendants 1 and 2 absolutely neglected the plaintiffs. The 2nd plaintiff had been asking defendants 1 and 2 to effect partition of the joint family properties. But, the 1st defendant did not respond. On the

other hand to defraud the rights of the plaintiffs he had executed a registered settlement deed dated 4.8.1981, giving life interest to the 2nd defendant in D schedule properties (1st item) and the remainder to the 3rd defendant. The 1st defendant had absolutely no right to deal with the said D schedule properties as they are coparcenary properties belonging to the plaintiffs and the 1st defendant.

(vi) As C and D Schedule properties are coparcenary properties, the 1st defendant and Thangavelu are each entitled to half share in them. On the death of Thangavelu the 1st plaintiff having been conceived and born on 14.8.1977 is entitled to 1/3rd share, that is $\frac{1}{4} + \frac{1}{12}$. The 2nd plaintiff and 2nd defendant are each entitled to 1/12th share in the suit properties.

(vii) The 1st plaintiff is entitled to 1/3rd share of A and B schedule properties and the 2nd plaintiff is entitled to another 1/3rd thereof.

(viii) The income from the joint family properties would be about Rs. 60,000 per year and the expenses of maintaining and running the family would cost about Rs. 15,000 to Rs. 20,000. There is a net saving of more than Rs. 40,000 per year. The 1st defendant, is in the management of the entire properties belonging to the family and he is bound to account for the same from the date of the suit.

4. The material allegations in the written statement of the 1st defendant may be summarised as follows:

(i) It is true that the 1st plaintiff was born after the death of his father. But, the 1st defendant does not admit that the 1st plaintiff was in 2nd plaintiff's womb on the date of death of his father. The plaintiffs alone should prove it. It is true that the 3rd defendant is the second son of 1st defendant, but it is not correct to say that he was born on 12.11.1977. The 3rd defendant was in 2nd defendant's womb even when Thangavelu died.

(ii) Karuppanna Gounder had ancestral property only in 2/3rd share in the 2nd item to C schedule. The other 1/3rd share thereof belongs to the 1st defendant by virtue of a sale deed, in his favour, which is not joint family property. It was purchased by the 1st defendant, out of his own funds. Karuppanna Gounder purchased A schedule properties and 4/5th share in the 1st item of B Schedule properties out of the abovesaid properties in C schedule and out of joint efforts of the members of the family. A part of the 1st item of B schedule properties was purchased by the 1st defendant out of his own funds and, therefore, in it the plaintiffs have no right.

(iii) The abovesaid settlement deed relating to A schedule is true, but not valid. He has no right to settle the joint family properties. Even if the said deed is valid, after the death of 4th defendant and Thangavelu, the settled properties should go to the 1st defendant.

(iv) The settlement in relation to B schedule properties, though true, is not valid. Karuppanna Gounder, has no right to settle the family properties. Even assuming that he can settle in favour of the daughter, on her death, half share should go to

the 1st defendant. In the said B schedule properties the 1st plaintiff has no share.

(v) It is not true to say that all the C schedule properties belonged to karuppanna Gounder. (The further allegations in paragraph 8 of the written statement regarding the abovesaid C schedule properties are not at all intelligible. It is false to say that D schedule properties are joint family properties and the plaintiffs are entitled to a share therein. They are the 1st defendant's exclusive properties, purchased out of his own funds. They have been validly settled by the 1st defendant to the 2nd defendant. In it the 2nd defendant alone has right and not anybody else.

(vii) After the death of Thangavelu, the plaintiffs were with the 1st defendant who looked after them well. Plaintiffs alone left the house in anger. The 2nd item of D schedule, a tractor was got by the 1st defendant by securing loan from the Government and he has also repaid the loan in six instalments. The tractor is his own property. It is not correct to say that after the birth of 3rd defendant, the 1st defendant did not look after the plaintiffs well. It is also not correct to say that the 1st defendant did not agree for partition. The 1st plaintiff has no right. Even if any share could be given to plaintiffs, they could get share only in 1st item of C schedule. In the second item of C schedule, if at all they can get only 2/3rd share. It is false to say that the income from the properties would be about Rs. 60,000 per year and the net income therefrom would be Rs. 40,000 per year.

5. The 2nd defendant stated in his written statement that the 3rd defendant was in her womb when Thangavelu died and that the settlement of 1st item of D schedule property in her favour by the 1st defendant is valid. The 2nd defendant has life interest as per the settlement.

6. The 3rd defendant, a minor filed his written statement through the court guardian. In his written statement it is stated that the plaintiffs alone have to prove the plaint allegations.

7. The 1st defendant also filed an additional written statement stating that C schedule items 1 and 2 are Karuppanna Gounder's self-acquired properties and that if so held, after Karuppanna Gounder, those properties were inherited only by his wife and children and not by Thangavelu. It also further stated that it is false to say that out of the income from the C schedule properties. D schedule properties were purchased. D schedule properties are self-acquired properties of the 1st defendant.

8. It must be stated that in some aspects, the pleadings are not clear. However, on the abovesaid pleadings, the court below framed the relevant issues and came to the following conclusions:

(i) The 1st plaintiff was born on 14.8.1977 and he was in the womb of the 2nd plaintiff when his father died.

(ii) The settlement deed Ex.A-5 dated 23.12.1959 relating to A schedule is valid and binding on the 1st defendant. After the death of 4th defendant, the plaintiffs

are entitled to 2/3rd share in A schedule properties.

(iii) Ex.A-6 settlement of Karuppanna Gounder, dated 4.12.1953 relating to B Schedule properties is valid and defendants 1 and 2 are entitled to suit properties after the life time of the 5th defendant. Plaintiffs are heirs to the 1st defendant. However, the said question has to be gone into after the lifetime of the 5th defendant.

(iv) D Schedule properties were purchased by the 1st defendant out of joint family funds. Ex. A-10 settlement deed dated 4.8.1981 by the 1st defendant is not valid. The 1st plaintiff has got right to get the family properties partitioned. The plaintiffs are entitled to partition of their 5/12th share in C and schedule properties, which are joint family properties.

(v) The question of accounting relating to the income of the suit properties has to be investigated at the time of the final decree proceedings.

9. The submission of learned Counsel for the appellants in relation to the abovesaid schedule properties are as follows:

(i) The abovesaid Ex.A-5 settlement is not valid since the properties given under the settlement are joint family properties as found by the court below and consequently Karuppanna Gounder had no right to settle the same, excepting his own interest therein.

(ii) Ex.A-5 recites that if Thangavelu dies, the properties should go to the 1st defendant. This recital would only mean that if Thangavelu predeceases Karuppanna Gounder, it should go to the 1st defendant. Therefore, since Thangavelu predeceased the 1st defendant, the said properties belong only to 1st defendant.

10. The submission of learned Counsel for the appellants in relation to B schedule properties are as follows;

(i) Here also, Ex.A-6 settlement in favour of the 5th defendant for life, and thereafter to defendants 1 and 6 by Karuppanna Gounder, is not valid beyond Karuppanna Gounder's share in the B schedule properties since they are joint family properties and so the balance has to be divided in accordance with law.

(ii) The second declaration granted by the court below that after defendants 1 and 6, B schedule properties are to be divided among their heirs, should not have been given.

11. Regarding C schedule properties, learned Counsel himself admits that paragraph 8 of the written statement of the 1st defendant is not clear. Any way, he submits vaguely that a portion of the said properties is the self acquired property of the 1st defendant, as against the finding of the court below that the entire C schedule properties are also joint family properties.

12. Regarding D schedule properties, as against the finding of the court below

that they are joint family properties, learned Counsel for the appellants submits that they were acquired out of the exclusive funds of the 1st defendant.

13. He further submits that the 3rd defendant will get a share in all the suit properties and thereby the share of the plaintiffs will get reduced in view of the fact that the 3rd defendant is an "after born son", being not in the womb of the 2nd defendant on 12.1.1977 when Thangavelu died and there is no proof of 3rd defendant going away from the family after partition. So he submits that the trial court erred in holding that the 3rd defendant is not entitled to a share.

14. On the other hand, learned Counsel for the plaintiffs-respondents 1 and 2 submits as follows:

(i) All the suit properties are joint family properties. In this connection he also draws our attention to the decisions in *M. Girimallappa v. R. Yellappa Gouda* AIR 1959 S.C. 906 and *Mallesappa Bandeppa Desai and Others Vs. Desai Mallappa and Others*, .

(ii) When Thangavelu died on 12.1.1977, in view of the proviso to Section 6 of the Hindu Succession Act operating and in view of the fact that on that date, when the succession opened, the 3rd defendant was not even in the womb of his mother, the 2nd defendant, the 3rd defendant will have no share at all in the joint family properties. In this connection he relies on the decision in *Gurupad Khandappa Magdum Vs. Hirabai Khandappa Magdum and Others*, , *Karuppa Gounder and Others Vs. Palaniammal and Others*, and *State of Maharashtra Vs. Narayan Rao Sham Rao Deshmukh and Others*, .

(iii) Regarding Ex.A-5 settlement he points out that once absolute interest has been given to Thangavelu after the life time of the 4th defendant, it cannot be taken away. In this connection, he relies on the decision in *Raja Lal Bahadur v. Rajendra Narain* AIR 1934 Oudh 454 and also Section 19 of the Transfer of Property Act.

(iv) To a query put by the court, learned Counsel submits that the 6th defendant will have no share in the joint family properties since he had already gone away from the joint family after having effected partition.

(v) He also points out that the settlements effected by Karuppanna Gounder, even on the footing that they relate to joint family properties, are valid since, it should be construed that they are with the implied consent of other coparceners. In this connection, he draws our attention to the relevant passage in *Mulla's Law*, Sixteenth Edition, Section 258. He further submits that the judgment of the court below must be construed as having found that the 1st defendant is accountable to the plaintiffs for the income from the suit properties, and that only with reference to the determination of the actual quantum of the share of income due to the plaintiffs, the matter was relegated to final decree proceedings.

15. We have considered the rival submissions. First of all, regarding the nature of the suit properties, we have only to hold that all the suit properties are joint

family properties for the following reasons: At the very outset, we have to point out the admission of the 1st defendant as D.W. 1, which is as follows:

15-A. Further, in the written statement of the 1st defendant the following passage occurs in paragraph 5 thereof.:

The above settlement refers to A schedule properties under Ex.A-5 in favour of his wife, the 4th defendant for life and thereafter to Thangavelu absolutely. Even though in Ex.A. 5 Karuppanna Gounder describes properties settled as his own self-acquired properties, in the light of the abovesaid evidence it has only to be concluded that the said properties are also joint family properties.

16. Then, another passage in paragraph 7 of the written statement, relating to B schedule properties is as follows:

This passage relates to Ex. A-6 settlement in favour of Karuppanna Gounder's daughter, the 5th defendant for life and thereafter in favour of defendants 6 and 1 absolutely.

17. Even with reference to item 1 of D schedule properties it must be noted that though in the written statement, the 1st defendant only pleaded that out of his own funds, he purchased the said property and built the house in the evidence, he said differently, stating that he got the said property from the funds of his father-in-law quite contrary to the plea in the written statement. Even his wife, the 2nd defendant as D.W.2 has only deposed that her father's property was sold and she was given Rs. 50,000 from out of the sale proceeds, which she gave to her husband, the 1st defendant and out of it, he built the house and bought lands. Further she also deposed that within six months after she gave the abovesaid Rs. 50,000 her husband purchased the land and thereafter built the house. But, actually, the relevant sale deeds, whereby the 1st defendant's father-in-law sold his lands are Ex.B-8 to B-10 and even the last of the said deeds is only of the year 1963. But, the first item of B schedule was purchased under Exs.B-1 and B-2 dated 30.11.1968 and 6.7.1973 respectively. So, in the light of the abovesaid evidence of D.W. 2, the sale proceeds of Exs.B-8 to B-10 could not have been made use of for the purchases under Exs.B-1 and B-2 since the time gap between Ex.B-10 of the year 1963 and Ex.B-1 of the year 1968 itself is five years and not six months as deposed by D.W.2. Further even though D.W.2 deposed that the abovesaid Rs.50,000 got from her father was deposited in the bank, no documentary proof has been produced to show the same. On the whole, in this regard, the evidence of D.W.1 or D.W.2 cannot be believed.

17-A. Further, even regarding the second item of D Schedule the tractor, 1st defendant's evidence as D.W.1 is as follows:

The case of the 1st defendant is that the tractor was purchased by him by getting the abovesaid loan and even though the abovesaid evidence shows that there is document to that effect, no document has been produced.

18. Further, as already indicated there is also no evidence that the 1st defendant

had any independent source of income for purchasing any property. *M. Girimallappa v. R. Yellappa Gouda* AIR 1959 S.C. 906 has also held that where the manager of a joint Hindu family acquired certain properties in his own name and there was sufficient nucleus of joint family property out of which those properties might have been acquired and apart from those properties the manager had no other source of income, the presumption arises that the newly acquired properties were the properties of the joint family and that unless that presumption was rebutted, it must prevail. In the present case, certainly the presumption has not been rebutted. Further in *Mallesappa Bandeppa Desai and Others Vs. Desai Mallappa and Others*, , it has been held that where a manager claims that any immovable property has been acquired by him with his own separate funds and not with the help of the joint family funds, of which he was in possession and charge, it is for him to prove by clear and satisfactory evidence his plea that the purchase money proceeded from his separate fund and that the onus of proof must in such a case be placed on the manager and not on his coparceners. Therefore, there is no difficulty in holding that all the suit properties are joint family properties.

19. Then, though the 6th defendant remained *exparte* not only in the court below, but here also, we have to come to the conclusion that he has no share in the suit properties since he had already gone out of the family after effecting partition. This is borne out by the following evidence given by the 1st defendant himself:

Further, the 6th defendant has not chosen to file any appeal against the decree granted by the court below, holding that D-6 had separated from the family even before the death of Karuppanna Gounder (in 1964).

20. Then, regarding the question whether the 3rd defendant is entitled to any share in the suit properties, it is clear that the 3rd defendant was born on 12.11.1977. The trial court has also found so and the said finding is not assailed before us. So, it is clear that he could not have been conceived in the womb of his mother, the 2nd defendant on 12.1.1977, when Thangavelu died and the succession opened. Then pursuant to the proviso to Section 6 of the Hindu Succession Act and the fact that there was more than one female heir to Thangavelu coming under Class 1 heirs, the decisions cited by learned Counsel for the plaintiffs-respondents 1 and 2 do support his contention. Speaking about the legal fiction of notional partition employed in the proviso to Section 6 read with Explanation 1 therein the Supreme Court in *Gurupad Khandappa Magdum Vs. Hirabai Khandappa Magdum and Others*, , has observed thus:

All the consequences which flow from a real partition have to be logically worked out, which means that the share of the heirs must be ascertained on the basis that they had separated from one another and had received a share in the partition which had taken place during the life time of the deceased. The inevitable corollary of this position is that the heir will get his or her share in the interest which the deceased had in the coparcenary property at the time of his

death, in addition to the share which he or she received or must be deemed to have received in the notional partition.

In *State of Maharashtra Vs. Narayan Rao Sham Rao Deshmukh and Others*, also, the observation is as follows:

It is no doubt true that the right of a female heir to the interest inherited by her in the family property gets fixed on the death of a male member u/s 6 of the Act.

In *Karuppa Gounder and Others Vs. Palaniammal and Others*, also, the observation was that though factually no partition may have taken place, the quantum of the share of the female heir is effectively determined by Section 6 of the Hindu Succession Act and no curtailment of that share is permissible. In view of the abovesaid provision in the Hindu Succession Act and the abovesaid decisions, the argument of learned Counsel for the appellants cannot be accepted and it has to be held that the 3rd defendant is not entitled to any share in the suit properties as held by the court below. It may also be noted that neither the 3rd defendant has chosen to file an appeal, nor he has entered appearance in this appeal.

21. Then, in so far as C and D schedule properties are concerned, once they are held to be joint family properties, none disputes that the plaintiffs together will be entitled to 5/12th share. Therefore, in this regard also, the finding of the trial court has to be confirmed.

22. Regarding the settlement of A and B scheduled properties (Exs. A-5 and A-6) it has to be seen how far they are valid. As already held, the properties settled are also joint family properties. As stated in Section 226, at page 250 of Mulla's Hindu Law, sixteenth Edition. A Hindu father or other managing members has power to make a gift within reasonable limits of ancestral immovable property for "Pious purposes". No doubt, in such a case, the entire property, and not the coparcenary interest of the father or the managing member, would pass to the donee. But, in the present case, there is neither plea, nor proof that the above settlements of Karuppanna Gounder were for pious purpose or that the properties gifted were within the reasonable limits of the ancestral properties.

23. Then, excepting the abovesaid power to make gift, a Hindu coparcener has no other right to dispose of any specie of the immovable properties of the family. Then, the question is whether he can make a gift of his own co-parcenary interest in any or all of the family properties. The law on this subject is also succinctly stated in Section 258 of Mulla's Hindu Law, sixteenth Edition at page 294 thus:

According to the Mitakshara Law as applied in all the States, no coparcener can dispose of his undivided interest in coparcenary property by gift. He may, however, make a gift of his interest with the consent of the other coparceners.

This passage in Mulla's Hindu Law has also been quoted with approval by the Supreme Court in *Thamma Venkata Subbamma (Dead) by Lr Vs. Thamma*

Rattamma and Others, . The relevant observations of the Supreme Court in the said decision are as follows:

There is a long catena of decisions holding that a gift by a coparcener of his undivided interest in the coparcenary property is void.

The reason is, however, obvious. It has been already stated that an individual member of the joint Hindu family has no definite share in the coparcenary property. By an alienation of his undivided interest in the coparcenary property a coparcener cannot deprive the other coparceners of their right to the property. The object of this strict rule against alienation by way of gift is to maintain the jointness of ownership and possession of the coparceners property. It is true that there is no specific textual authority prohibiting an alienation by gift and the law in this regard has developed gradually, but that is for the purpose of preventing a joint Hindu family from being disintegrated. Therefore the personal law of the Hindu Law is that a coparcener can dispose of his undivided interest in the coparcenary property by a will, but he cannot make a gift of such interest. It is, however, a settled law that a coparcenary can make a gift of his undivided interest in the coparcenary property to another coparcener or to a stranger with the prior consent of all other coparceners. Such a gift would be quite legal and valid.

Out in the present case there is neither plea nor proof of such consent. While so, we are also unable to imply such consent.

24. In the abovesaid Supreme Court case, the settlement was by one R. of his coparcenary interest to his brother V. Reserving life interest to himself and also/ providing that after his death, brother V should maintain his (R's) wife. In that context, the Supreme Court construed the settlement made as renunciation or relinquishment of his coparcenary interest in favour of other coparcenary as a body and held that such renunciation was valid. In that context, the relevant observation of the Supreme Court is as follows:

Assuming that it is a renunciation in favour of one of the coparceners, namely, Veera Reddy, such renunciation enurek for the benefit of all other coparceners and not for the sole benefit of the coparcener in whose favour the renunciation was made. In our view, the gift made by Rami Reddy to Veera Reddy should be construed as renunciation of his undivided interest in the coparcenary in favour of Veera Reddy and his sons, who were the remaining coparceners. The first was, therefore, valid obstruing the same as renunciation or relinquishment by Rami Reddi of his interest in the coparcenary and, accordingly, the consent of other coparceners was immaterial.

About the abovesaid renunciation also, the Supreme Court approves the relevant passage in Mulla' s Hindu law. The said passage is as follows:

Section 264(1): Renunciation or relinquishment of his share. A coparcener may renounce his interest in the coparcenary property in favour of the other

coparceners as a body but not in favour of one or more of them.

[Emphasis supplied]

So, in the present case in our view, Exs.A-5 and A-6 could also be construed likewise, that is, as a renunciation or relinquishment by Karuppanna Gounder, of his coparcenary interest in the properties in question in favour of other coparceners as a body, If construed consent of other coparceners is immaterial. The result is Exs.A.5 and A-6 have to be held valid as per the abovesaid construction put on them. Thus, on and after the abovesaid respective dates of the abovesaid settlements, Karuppanna Gounder ceases to have interest in the settled properties, and other coparceners in the family alone continued to have interest.

24-A. No doubt, as already held, 6th defendant goes out of the family after effecting partition, after these settlements and even before the death of Karuppanna Gounder (In 1964). Once he goes out of the family, then his interest in the said properties settled, also will cease. No doubt, the settlement of the life interest under Ex.A-5 in favour of 4th defendant (wife of Karuppanna Gounder) and the settlement of life interest under Ex.A-6 in favour of the 5th defendant (daughter of Karuppanna Gounder) will have to be upheld. Since they were given only life interest in the respective properties for their maintenance, and the corpus of the properties as such, has not been transferred to them. In such a situation, those gifts of life interest could be construed as gift of usufructs of the corpus in other words as gift of movable. In Section 225 at page 250 of Mulla's Hindu Law, Sixteenth Edition, it is also stated thus:

"A" gift of affection, may be made to a wife, to a daughter, and even to a son. But the gift must be the property, within reasonable limits

There will be no difficulty in holding that the life interest to wife and daughter of Karuppanna Gounder was within reasonable limits. Among numerous properties in A to D Schedule. B Schedule properties are only 75 cents, in which life interest alone is given to the daughter, the 5th defendant who, even according to Ex.A-6 was already a widow. No doubt, A Schedule properties consist of three items, all put together measuring about 2 acres only. In that, life interest alone has been given.

25. So, when subsequently, Thangavelu dies on 12.1.1977, plaintiffs together would get 5/12th share in both A and B Schedule properties, just as they get from C and D Schedule properties. In view of this conclusion, in so far as C and D Schedule properties are concerned, the judgment and decree of the court below are hereby confirmed and in so far as A and B Schedule properties are concerned, the judgment and decree of the court below are modified granting 5/12th share to the plaintiffs (that is, 4/12th share for the 1st plaintiff and 1/12th share for the 2nd plaintiff).

26. Regarding the accounting relief, in respect of all the suit properties, the

allegation in paragraph 12 of the plaint, inter alia is as follows:

The 1st defendant is in the management of the entire properties belonging to the family and he is bound to account for the same from the date of filing of this suit.

As against this allegation there is only a general denial in this regard in paragraph 14 of the written statement of the 1st defendant stating that what is stated in the said paragraph in the plaint is not true. There is specific denial only with reference to the quantum of income from the suit properties. Even in the evidence given by D.W.1 in chief examination, he only deals with the abovesaid quantum of income and he does not say that the accounting relating to the profits from the properties cannot be asked for at all. Therefore, it is clear that the 1st defendant has to account, for the profits secured by him from the date of suit. The court below in its judgment should have specifically and expressly held that the 1st defendant is liable to so account. On the other hand, the relevant passage appearing in the judgment purports to say that the entire matter relating to accounting is relegated to final decree proceeding. No doubt, with reference to A and B Schedules since D-4 and D-5 have life interest in the relevant properties and enjoying the same. D-1 cannot be asked to account with reference to those properties. Thus it is made clear by us that the 1st defendant is liable to account to the plaintiffs for the profits from the suit C and D Schedule properties from the date of suit and the ascertainment of actual quantum of profits alone is relegated to the final decree proceedings. In this respect also, the judgment and decree granted by the court below are modified, as stated above.

27. In the result, the appeal is disposed of accordingly. In this process, we also add that we have also invoked the power of this court under Order 41, Rule 33, C.P.C. However, in the circumstances of the case, there will be no order as to costs.