
(2008) 06 MAD CK 0140
In the Madras High Court
Case No : S.A. No. 1673 of 1996

T.S. Ganesan

APPELLANT

Vs

Smt. Parvatham Ammal and S. Venkatesan

RESPONDENT

Date of Decision : 09-06-2008

Acts Referred:

Constitution of India, 1950 — Article 21

Hindu Succession Act, 1956 — Section 14, 14(1), 14(2), 30

Citation : (2008) 4 RCR(Civil) 156

Hon'ble Judges : M. Jaichandren, J

Bench : Single Bench

Advocate : T.V. Ramanujam, for Mr. C. Uma Shankar, for the Appellant; A. Muthu Kumar, for the Respondent

Judgement

M. Jaichandren, J.—The second appeal has been filed against the judgment and decree, dated 15.2.1996, made in A.S. No. 51 of 1994, on the file of the Additional Sub Judge, Mayiladuthurai, confirming the judgment and decree, dated 25.4.1994, made in O.S. No. 364 of 1986, on the file of the District Munsif, Mayiladuthurai. For the sake of convenience the parties in the appeal are referred to as they have been arrayed in the suit in O.S. No. 364 of 1986.

2. The plaintiff in the suit O.S. No. 364 of 1986 is the appellant in the present second appeal and the defendant in the said suit is the respondent in the second appeal. The plaintiff had filed the suit O.S. No. 364 of 1986, on the file of the District Munsif, Mayiladuthurai, praying for the relief of declaration to declare that the defendant in the suit had no right to alienate the suit property and for the relief of permanent injunction to restrain the defendant from executing any document in favour of any person.

3. It is the case of the plaintiff that he is the son of the defendant, namely, Parvatham Ammal. The plaintiff's father Sethurama Iyer had executed a Will, on 4.9.1979, bequeathing the properties he had got under the partition along with certain other properties. According to the recitals of the registered Will, the suit

house is to be enjoyed by the defendant during her life time and thereafter, it was to be enjoyed by the plaintiff, absolutely. Sethurama Iyer the father of the plaintiff had died and the plaintiff has been in enjoyment of the suit house in accordance with the recitals in the Will. Due to the misunderstandings that had arisen between the plaintiff and the defendant in respect of the issues relating to the properties certain Court proceedings are pending. While so, the defendant, with the wrongful intention of creating loss to the plaintiff, was attempting to settle the suit property in favour of her other son Venkatesan. The defendant has only a life interest in the suit property and therefore, she does not have any right to alienate the same. Even if it was found that the defendant had alienated the suit property before the filing of the present suit, it would be non est in law as it would be illegal. In such circumstances the suit had been filed praying for the relief of permanent injunction restraining the defendant from in any way alienating the suit property. The plaintiff had further prayed for the relief of declaration that even if the property had already been alienated it would not bind the plaintiff in any way.

4. In the written statement filed by the defendant it has been stated that the suit is not maintainable both in law and on facts. The suit has been filed with a view to get unlawful gain and it is speculative and vexatious. Though the relationship of the parties is admitted and the fact that the will had been executed by Sethurama Iyer, on 4.9.1979, is also admitted, the interpretation given by the plaintiff regarding the Will has been denied as incorrect. The house property belongs to the defendant, absolutely. As per the Hindu Succession Act, 1956, even if only a life interest has been conferred in accordance with the terms of the Will it would enlarge into a full estate. Hence, the defendant is competent to deal with the house property as she likes. The provisions of Section 25(d) of the Tamil Nadu Court Fee and Suits and Valuation Act, 1955, cannot be applied in the present case. The relief asked for by the plaintiff relates to an immovable property which was worth more than one lakh of rupees. The plaintiff's right and title in the suit property is denied. The plaintiff ought to have valued the suit according to the market value of the suit property. The description, door number and serial number of the suit property are all incorrect. The plaintiff has filed the suit only with the intention of taking away all the belongings of the defendant and to leave her in indigent circumstances. The suit is not properly valued and the proper Court fee has not been paid. The suit has not been framed properly and it has not been filed in the proper forum. There is no cause of action for the suit and the plaintiff is not entitled to get any relief as prayed for in the suit. Hence, the suit has to be dismissed in limini, with costs.

5. Based on the averments made in the plaint and in the written statement, the trial Court had framed the following issues for consideration:

- i) Is the plaintiff entitled to the relief of declaration and permanent injunction as prayed for in the suit?
- ii) Has the Court fee for the suit been paid properly and correctly?

iii) To what other reliefs the plaintiff is entitled to?

6. The plaintiff had examined himself as P.W. 1. Eight documents have been marked in favour of the plaintiff. The defendant had examined herself as D.W.I. No document has been marked on the side of the defendant.

7. Based on the averments of the plaintiff as well as the defendant and in view of the evidence available, the trial Court had found that certain facts were admitted by both the parties. The admitted facts are that Sethurama Iyer had two sons, namely, T.S.Ganesan, the plaintiff in the suit and the second respondent in the present second appeal. Sethurama Iyer had four daughters, apart from his two sons. Sethurama Iyer and his two sons had partitioned all the properties in the year 1973. By the said partition, no property was allotted, either to his wife Parvatham Ammal or to his daughters. After the said partition Sethurama Iyer had got some properties from her step mother Valambal under a settlement deed marked as Ex.A-2. By a Will, dated 4.9.1979, marked as Ex.A-1, Sethurama Iyer had bequeathed a life interest in the suit house to his wife Parvatham Ammal, the defendant in the suit.

8. The trial Court had found that Sethurama Iyer, the husband of the defendant Parvatham Ammal, had given the suit house to her for her occupation and enjoyment as part of her maintenance. Even though only a limited life interest has been created by Sethurama Iyer in favour of his wife Parvatham Ammal, as found in the Will executed by him, since the suit house has been given to the defendant as maintenance, the defendant would have absolute interest in the said property, in accordance with Section 14 of the Hindu Succession Act, 1956 and the cases decided by the Courts of law.

9. The trial Court was of the view that when a life interest is created in a residential property in favour of a woman as part of a preexisting right for her maintenance, the limited interest enlarges into an absolute interest in the said property. Thus, the trial Court had dismissed the suit by its judgment and decree, date 25.4.1994.

10. Aggrieved by the judgment and decree of the trial Court, the plaintiff had preferred an appeal on the file of the Additional Sub Court, Mayiladuthurai, in A.S. No. 51 of 1994. The First Appellate Court had framed the following points for consideration:

1) Whether the life interest given to the defendant over the suit property by way of the will, dated 4.9.1979, has become an absolute right, as per Section 14(1) of the Hindu Succession Act, 1956.

2) Whether the plaintiff is entitled to the reliefs of declaration and permanent injunction as prayed for in the suit?

3) What appropriate relief, the plaintiff/appellant is entitled to?

11. While confirming the conclusions arrived at by the trial Court, the First

Appellate Court had held that when a husband had got a property, whether as an ancestral or as an absolute property, his wife has a prior right of maintenance from such a property of her husband. From Ex.A-1, executed by Sethurama Iyer, it is clear that a life interest had been created in favour of the defendant. The said right had been converted into an absolute right by the operation of Section 14(1) of the Hindu Succession Act, 1956.

12. The First Appellate Court did not accept the contention of the plaintiff that Sethurama Iyer had conveyed only a life interest in the suit property in favour of the defendant and that it did not enlarge into an absolute interest in view of the fact that by Ex.A-1 some other properties were also given to the defendant, which were sufficient for her maintenance. Since there was a pre-existing right of maintenance the life interest created in the suit property in favour of the defendant had enlarged in accordance with Section 14(1) of the Hindu Succession Act, 1956. The customary rights of women which were existing prior to the enactment of the Hindu Succession Act, 1956, would mature into statutory rights after the Act had come into force. Thus, the First Appellate Court had confirmed the findings of the trial Court.

13. Aggrieved by the judgment and decree of the First Appellate Court, dated 15.2.1996, the present second appeal has been filed before this Court.

14. The substantial questions of law arising for consideration are as follows:

"(1) Whether the Courts below committed an error in holding that the suit property was bequeathed to Parvadam Ammal in lieu of her maintenance especially in the absence of any recital in the Will dated 4.9.79 and in the absence of any pleading to the effect that the property was given to Parvadam Ammal in lieu of maintenance?

(2) Whether the Courts below committed an error in holding that in respect of the suit property the right of Parvadam Ammal got enlarged into an absolute estate?"

15. The learned counsel appearing for the appellant had contended that both the Courts below had wrongly proceeded on the footing that there was a pre-existing right of maintenance in the defendant and that the said right had enlarged into an absolute right in respect of the suit house. It was further contended that no such plea had been raised in the written statement and also that it has not been established by available evidence. No documents were marked on behalf of the defendant. The Will, dated 4.9.1979, marked as Ex.A-1, is also silent about this aspect.

16. The defendant, who is well acquainted with the legal position and status of the Will, dated 4.9.1979, had clearly admitted that she was given only a life interest in the property in question. It is also clear from the release deed, dated 29.01.1983, marked as Ex.A-8, through which she has released her life interest in the property in favour of her grand son. From Ex.A-8, it is clear that the life

interest created in the suit property in favour of the defendant is not in lieu of maintenance. Further, there is no pre-existing right of maintenance vested in the defendant. No such pre-existing right has been mentioned, either in the Will or in the written statement filed by the defendant. When the pre-existing right of maintenance is a question of fact, it should have been pleaded and proved in the manner known to law. Presumption of such a fact, not pleaded by the defendant, cannot be made.

17. The learned counsel for the appellant had contended that the decision of the Supreme court in *Vaddeboyina Tulasamma and others V. Vaddeoyina Sesha Reddi (dead) by LRs.* (AIR 1977 SC 1944 = (1977) 90 L.W. 89 S.N.) does not apply to the facts of the present case. There is no enlargement of the life interest, bequeathed to the defendant by the Will, dated 4.9.1979, into an absolute interest. Section 14(2) of the Hindu Succession Act, 1956, will be applicable to the facts of the present case. Section 14(1) of the Hindu Succession Act, 1956, would not be applicable since it would be applicable only when there was a pre-existing right in lieu of maintenance. Further, Section 14(2) of the Hindu Succession Act, 1956, did not prohibit any male Hindu to execute a Will with a limited interest or estate.

18. In the present case the property in question is the separate property of the step mother of Sethurama Iyer. She had settled the property by a settlement deed, marked as Ex.A-2, in the year 1975. The separate property of Sethurama Iyer, which is the property in question in the suit O.S. No. 364 of 1986, had been bequeathed to the defendant as a life interest and after her death it was to go to the plaintiff, absolutely. There is no ambiguity in the Will or in its interpretation. According to the Will, dated 4.9.1979, marked as Ex.A-1, the properties of Sethurama Iyer were given to three persons, namely, the plaintiff, T.S.Ganesan, Son of Sethurama Iyer, Parvatham Ammal, Wife of Sethurama Iyer, who is the defendant in the suit, and Srikanth, Son of Venkatesan and the grand son of Sethurama Iyer. Under the said Will, the defendant was given two coconut thopes and 1/3rd share of the income from the Mill. Thus, the defendant was well and sufficiently provided for leading a decent life. Through Ex.A-8, the defendant had released her 1/3rd share in the Mill in favour of her grandson Srikanth, son of Venkatesan. The second respondent, namely, Venkatesan, had created the situation in order to deprive the plaintiff from the benefits that had accrued to him through the Will, dated 4.9.1979, marked as Ex.A-1. In fact, the funeral of Valambal was performed by the plaintiff as per Hindu law as Sethurama Iyer had pre-deceased her. This fact was admitted by the defendant in her evidence. Thus, even as per the Hindu Law, the plaintiff had performed his duties.

19. It was also contended by the learned counsel for the appellant that the cases relied on by the learned counsel for the respondents relate to the facts arising before the enactment of the Hindu Succession Act, 1956, and they may not be applicable to the present case. Whereas the facts of the present case have arisen

after the passing of the said Act.

20. It was also contended that the Will, dated 4.9.1979, has been executed 13 years after the commencement of the Hindu Succession Act, 1956. The principles of social justice would not be relevant to the present case as Women's Rights were codified by a separate enactment, namely, The Hindu Adoption and Maintenance Act, 1956. Hence, the defendant who is the beneficiary under the Will, dated 4.9.1979, can have only a life interest in the suit property and after her demise the plaintiff, who is her son, has an absolute interest in the suit property.

21. The succession had opened only after the testator of the Will had died in the year 1980. The family circumstances of the parties to the suit would clearly show that the defendant was sufficiently provided for and that she was leading a decent life, till she died in the year 2000. The Will, dated 4.9.1979, was not executed in recognition of any pre-existing right or in lieu of maintenance. There is no ambiguity with regard to the terms of the Will and it is clear that only a life interest has been conferred on the defendant.

22. The decision of the Supreme Court in *Sadhu Singh Vs. Curdwara Sahib Narike and others* (2006(4) CTC 773 = 2007-2-L.W. 541) would be applicable to the present case. Thus, Section 14(1) of the Hindu Succession Act, 1956, will not be applicable to the present case. Only Section 14(2) of the said Act would apply. In such circumstances this Court ought to allow the Second appeal, setting aside the judgment and decree of the Courts below.

23. The learned counsel appearing on behalf of the respondents had contended that every Hindu female has got a right to maintenance against her husband. A Hindu male is under a legal obligation to maintain his wife even if he does not have any property. The right to maintenance is a pre-existing right and the suit property bequeathed by Sethurama Iyer to the defendant was in lieu of maintenance. The maintenance would include food, clothing, shelter, medical and other needs as well. The right to maintenance existed in the customary law and it has received a statutory recognition under the Hindu Adoption and Maintenance Act, 1956. Therefore, if a Hindu male gives a limited interest or a life estate in his dwelling house to his wife, either under a Will or by any other device, it should be taken to be a recognition of her pre-existing right of maintenance. In such circumstances, the limited interest or the life estate vested in her would blossom into an absolute estate, as per Section 14(1) of the Hindu Succession Act, 1956. This proposition has been recognised by the supreme Court in its decision rendered in *Mangat Mal (dead) and another Vs. Punni Devi (Smt) (Dead) and others* (1995(6) SCC 88 = 1996-1-L.W. 135), wherein it was held as follows:

"Maintenance, necessarily must encompass a provision for residence. Maintenance is given so that the lady can live in the manner, more or less, to which she was accustomed. The concept of maintenance must, therefore, include

provision for food and clothing and the like and take into account the basic need of a roof over the head. Provision for residence may be made either by giving a lump sum in money, or property in lieu thereof. It may also be made by providing, for the course of the lady's life, a residence and money for other necessary expenditure. Where provision is made in this manner, by giving a life interest in property for the purposes of residence, that provision is made in lieu of a pre-existing right to maintenance and the Hindu lady acquires far more than the vestige of title which is deemed sufficient to attract Section 14(1). The Hindu Adoption and Maintenance Act defines maintenance in Section 3(d) to include "(i) in all cases, provision for food, clothing, residence, education and medical attendance and treatment."

Thus a presumption can be drawn that when a Hindu male gives life interest in a property to his wife for her residence, it would necessarily enlarge into an absolute estate. The property of a Hindu male need not be an ancestral property to attract Section 14(1) of the Hindu Succession Act, 1956. The property given to the wife may be a self-acquired or a separate property of the husband as the word "property" mentioned in Section 14(1) of the Hindu Succession Act, 1956, includes all kinds of property as noted by the Supreme Court in *Vaddeboyina Tulasamma and others V. Vaddeoyina Sesha Reddi (dead) by L.Rs.* (AIR 1977 SC 1944), wherein it was held as follows:

".....the word "any property" even without any amplification large enough to cover any or every kind of property....."

It was further held as follows:

"Sub-section (1) of Section 14 is large in its amplitude and covers every kind of acquisition of property by a female Hindu including acquisition in lieu of maintenance and where such property was possessed by her at the date of commencement of the Act or was subsequently acquired and possessed, she would become the full owner of the property. Sub-section (2) is more in the nature of a proviso or exception to sub-section (1). It excepts certain kinds of acquisition or property by a Hindu female from the operation of sub section (1) and being in the nature of an exception to a provision which is calculated to achieve a social purpose by bringing about change in the social and economic position of woman in Hindu society, it must be construed strictly so as to impinge as little as possible on the broad sweep of the ameliorative provision contained in sub-section (1). It cannot be interpreted in a manner which would rob sub-section (1) of its efficacy and deprive a Hindu female of the protection sought to be given to her by sub-section (1). Sub-section (2) must, therefore, be read in the context of sub-section (1) so as to leave as large a scope for operation as possible to subsection (1) and so read, it must be confined to cases where property is acquired by a female Hindu for the first time as a grant without any pre-existing right, under a gift will, instrument, decree, order or award, the terms of which pre-scribe a restricted estate in the property. Where, however, property is acquired by a Hindu female at a partition or in lieu of right of

maintenance, it is in virtue of a pre-existing right and such an acquisition would not be within the scope and ambit of sub-section (2), even if the instrument, decree, order or award allotting the property prescribes a restricted estate in the property."

A similar view has been expressed by the Supreme Court in *Mangat Mal (dead) and another Vs. Punni Devi (Smt) (Dead) and others* (1995(6) SCC 88). Thus, Section 14 (1) of the Hindu Succession Act, 1956, would apply not only to ancestral properties but also to separate and self-acquired properties.

24. The learned counsel for the respondents had also contended that the pre-existing right of maintenance has received the statutory recognition by the Hindu Adoption and Maintenance Act, 1956, as held by the Supreme Court in *C.Masilamani Mudaliar and others Vs. Idol of Sri Swaminathaswami swaminathaswami Thirukoil and others* (1996(8) SCC 525 = 1996-2- L.W.63), wherein it was held that Section 14 of the Hindu Succession Act, 1956, should be construed harmoniously, consistent with the constitutional goal of removing gender based discrimination and effectuating economic empowerment of Hindu females. Further, the object, scope and applicability of Section 14(1) of Hindu Succession Act, 1956, has been elaborately considered by the Supreme Court in *Vaddeboyina Tulasamma and others v. Vaddeoyina Sesha Reddi (dead)* by LR's. (AIR 1977 SC 1944).

25. It was also submitted by the learned counsel for the respondents that the contention of the appellant that there are no pleadings or recitals in Ex.A-1 and therefore, the life estate given to the defendant by her husband is not in recognition of her right to maintenance cannot be countenanced in view of the categorical pronouncement of the Courts below and the decisions rendered in *Thota Sesharathamma and another Vs. Thota Manikyamma (dead)* by LR's and others (1991(4) SCC 312 = 1992-1-L.W.601), *E.S.R.Packirisamy Pillai V. Vijayalakshmi and another* (1993(1) MLJ 105) and *M.Shanmugha Udayar V. Sivanandam and others* (AIR 1994 Madras 123 = 1993-2- L.W.72).

26. It was further submitted by the learned counsel for the respondents that the contention of the appellant that the defendant in the suit had not stated that the limited interest in the suit property was given to her in lieu of her maintenance and therefore, Section 14(1) of the Hindu Succession Act, 1956, has no application cannot be countenanced for the following reasons

i) If a Hindu male gives a life interest in the property to his wife there would be a presumption that it was given only for her maintenance, unless it is proved otherwise. Further, if a dwelling house is given to her for her residence, it would be presumed that the property was given only in lieu of maintenance.

ii) The defendant had specifically stated in paragraph-3 of the written statement that though only a life interest was given to the defendant under Ex.A-1, it had enlarged into an absolute estate as per the provisions of the Hindu Succession Act, 1956. Such a pleading by the defendant would be sufficient to claim her

absolute rights in the suit property.

iii) It is a well settled proposition that legal terminologies need not be used in the pleadings to claim the necessary reliefs. Further, it has been held by the Supreme Court in *Des Raj and others Vs. Bhagat Ram (dead) by LRs and others* (2007(2) CTC 838 = 2007-3-L.W.429) that mofussil pleadings are to be construed liberally and that the pleadings must be considered as a whole. Therefore, it was not necessary for the defendant to state in the written statement that the property was given to her in lieu of maintenance.

iv) When each of the parties had understood the case of the other and had adduced evidence to support their respective claims, it is not open to allege that certain pleadings with regard to a particular issue were not available. The Supreme Court in *Baba Mungipa Medical College and Research Centre Students Guardian Forums and another* (1997(8) SCC 682) had held as follows:

"When the issue framed by the trial Court is wide and parties understood the scope thereof and adduced such evidence as they wanted to, then there can be no prejudice and a contention regarding absence of a detailed pleading cannot be countenanced."

v) For attracting Section 14(1) of the Hindu Succession Act, 1956, the Hindu female need not be in possession of the property on the date of the commencement of the Act. The relevant date on which a female Hindu should be possessed of the property in dispute must be the date on which the question of applying the provisions of Section 14 (1) of Hindu Succession Act, 1956, arises. If on the said date, the property is possessed by the female Hindu it would be held that she is the full owner of the property and not merely a limited owner. Such a question may arise in her own life time or may arise subsequently when succession to a property opens on her death, as held by the Supreme Court in *Mongol Singh and others Vs. Smt.Rattno (dead) by her legal representatives and another* (AIR 1967 SC 1786).

vi) Even if a Hindu male dies after the commencement of the Hindu Succession Act, 1956, the life interest given to his wife under any Will or device will enlarge into an absolute estate. Therefore, the contention of the appellant that when a Hindu male dies after the commencement of the Act, his wife will inherit his estate as a Class I heir and if any restriction is made in any instrument, the said restriction will have effect and Section 14 (2) will apply cannot be countenanced in law, Since the said view of the Supreme Court in *Gumpha (Smt) and others Vs. Jaibai* (1994(2) SCC 511 = 1994-2- L.W.4) has been overruled by a three Judge Bench of Supreme Court in *C.Masilamani Mudaliar and others Vs. Idol of Sri Swaminathaswami swaminathaswami Thirukoil and others* (1996(8) SCC 525).

27. The decision rendered in *Sadhu Singh Vs. Gurdwara Sahib Narike and others* (2006(4) CTC 773), relied on by the appellant is contrary to the decision rendered by the three Judge Bench of the Supreme Court. In *Sadhu Singh Vs. Gurdwara Sahib Narike and others* (2006(4) CTC 773), it was held that for

invoking Section 14(1) of the Hindu Succession Act a Hindu women should be possessed of the property in dispute on the date of the commencement of the Act and if the male Hindu dies after the commencement of the Act, Section 14(1) will not normally apply and only Section 14(2) of the Act would apply. The said reasons given by the Supreme Court in *Sadhu Singh Vs. Gurdwara Sahib Narike and others* (2006(4) CTC 773), are contrary to the three Judge Bench judgments, reported in *Mangal Singh and others Vs. Smt.Rattno (dead) by her legal representatives and another* (AIR 1967 SC 1786) and *C.Masilamani Mudaliar and others Vs. Idol of Sri Swaminathaswami swaminathaswami Thirukoil and others* (1996(8) SCC 525).. Hence, the decision of the Supreme Court in *Sadhu Singh Vs. Gurdwara Sahib Narike and others* (2006(4) CTC 773) cannot apply to the facts of the present case.

28. It was also submitted that it has been held by the Supreme Court that if two judgments of the Supreme Court are conflicting with each other, the decision of the larger bench, whether earlier or later in point of time is binding on the High Courts and the other Courts, as held in *Union of India Vs. Subramanian* (1997 (1) SCR 87). The said decision of the Supreme Court has been followed by the Madras High Court in its decision reported in *C.Kailaschand Jain and two others V. Mohamed Kasim* (1995(1) CTC 47).

29. It is also submitted that in a recent decision of this Court in *T.Sivagnanam (died) and others Vs. Muthu Backialakshmi @ Chellam and another* (2007 (4) MLJ 21 = 2007-4-L.W.171), the decision reported in *Vaddeboyina Tulasamma and others V. Vaddeoyina Sesha Reddi (dead) by L.Rs.* (AIR 1977 SC 1944) has been followed in preference to *Sadhu Singh Vs. Gurdwara Sahib Narike and others* (2006(4) CTC 773), while deciding the status of a property bequeathed by the husband of a female Hindu for her maintenance.

30. Thus, the learned counsel for the respondents had contended that the findings of the Courts below that the suit property was given to the defendant by her husband only in recognition of her pre-existing right to maintenance are in accordance with law and the binding decisions of the Supreme Court. Both the Courts below have rightly held that the limited interest given to the defendant in the suit property by her husband under Ex.A-1, dated 4.9.1979, had enlarged into an absolute estate, u/s 14(1) of the Hindu Succession Act, 1956. Therefore, in view of the concurrent findings of the Courts below the second appeal is to be dismissed as unsustainable, both in law and on facts.

31. Further, the learned counsel for the respondents had relied on the decision of the Supreme Court in *Shakuntla Devi Vs. Kamla and others* (2005(5) SCC 390), wherein it was held, following *V. Tulasamma V. Sesha Reddy* (1977 (3) SCC 99), that by virtue of Section 14(1) of the Hindu Succession Act, 1956, the limited right of life interest obtained by the Hindu wife under the Will of her husband gets enlarged as an absolute right in the suit property. Even if there are declaratory decrees to the contrary, if they are in conflict with the law laid down by the Supreme Court in *Tulasamma's* case, they would not be of any assistance

to the appellant.

32. The learned counsel had also relied on the decision of the Supreme Court in *Santhosh and others Vs. Saraswathi and another* (2008(3) MLJ 530 = 2008-2-L.W.514), wherein it was held as follows:

"The right of the first wife to possess the land has been accepted in the consent decree itself. After death of her husband she became one of the co-owners of the property. If she had a right to possess the said land as a co-owner, the question of divesting her of the said right by invoking sub-section (2) of Section 14 of the Hindu Succession Act, 1956, would not arise. Only Section 14(1) will apply."

33. Considering the rival contentions advanced on behalf of the parties concerned and in view of the substantial questions of law arising for consideration and in the light of the decisions of the Courts of law cited before this Court it is clear that the life interest in the suit property bequeathed to the defendant, namely, Parvatham Ammal, by her husband Sethurama Iyer, would enlarge into an absolute estate u/s 14(1) of the Hindu Succession Act, 1956, as held by both the Courts below.

34. The contentions raised on behalf of the appellant are not acceptable as they are in conflict with the propositions of law laid down by the Supreme Court by way of a number of binding decisions cited in support of the contentions raised on behalf of the respondents. It is clear from the decision of the Supreme Court in *C.Masilamani Mudaliar and others Vs. Idol of Sri Swaminathaswami swaminathaswami Thirukoil and others* (1996(8) SCC 525) that the law laid down by the Supreme Court in *Gumpha (Smt) and others Vs. Jaibai* (1994(2) SCC 511) has been overruled. Relying on the decisions of the Supreme Court in *Valsamma Paul v. Cochin University* (1996 (3) SCC 545) the Three Judge Bench of the Supreme Court had held that if the acquisition of the property attracts sub-section (1) of Section 14, sub-section (2) does not come into play. If the acquisition is for the first time, without any vestige of preexisting right, under the instrument, document or device, then sub-section (2) of Section 14 of the Hindu Succession Act, 1956, gets attracted. Sub-section (2) being in the nature of an exception, it does not engulf and wipe out the operation of sub-section (1). The right to dispossession of property by a Hindu u/s 30 of the Act, is required to be understood in its proper perspective. If any attempt is made to put a restriction upon the property possessed by a Hindu female under an instrument, document or device, though executed after the Act had come into force, it must be interpreted in the light of the facts and circumstances of the case under consideration. Both sub-sections (1) and (2) of Section 14 has to be given their full play without rendering either as otiose or aids as means of avoidance. The Supreme Court has placed emphasis on the right to equality and the dignity of a person enshrined in the Constitution of India. Such rights are enshrined in the preamble of the Constitution, the fundamental rights and the Directive Principles which are a trinity intended to remove discrimination or disability on grounds only of a person's social status or gender. Since the right to equality is a

fundamental right forming a part of the basic structure of the Constitution, the Parliament has enacted the Hindu Succession Act, 1956, containing Section 14 with the clear intention of removing the pre-existing disabilities fastened on the Hindu female limiting her right to property without full ownership thereof. The discrimination is sought to be remedied by Section 14(1) of the Act, enlarging the scope of acquisition of the property by a Hindu female.

35. Section 14(1) of the Act is intended to give full effect to Article 21 of the Constitution of India to live life in its full measure. It has been enacted to create equality and equal opportunity for human development. Women are entitled to enjoy economic, social, cultural and political rights without discrimination. Property is one of the important endowments or natural assets to accord an opportunity, to be independent and to enjoy the right of equal status with dignity and to develop a person's personality. Section 14(1) of the Act has been enacted to create an opportunity of eliminating gender based discrimination. Since human rights are derived from the dignity and the inherent worth of a human person, the female Hindu deserves sufficient protection of her right to property. In such view of the matter, there can be no doubt that Section 14(1) of the Hindu Succession Act, 1956, is intended to enlarge the limited interest vested in a female Hindu into an absolute estates when she has been given a property by her husband in recognition of her pre-existing right to maintenance.

36. From the facts of the case, it is clear that the suit property, which a residential house, has been given to the defendant by her husband to reside therein. In such circumstances, there is a strong presumption that it is given to her in recognition of her right to maintenance. Section 14(1) of the Act will apply not only to ancestral properties but also to separate and self-acquired properties as seen from the decision of the Supreme Court in Tulasamma's case. It is also clear that the preexisting right to maintenance has received the statutory recognition in the Hindu Adoption and Maintenance Act, 1956, as noted by the Supreme Court in C.Masilamani Mudaliar and others Vs. Idol of Sri Swaminathaswami swaminathaswami Thirukoil and others (1996(8) SCC 525). If the intention of the Legislature is to recognise the rights of a Hindu female in the property given to her by her husband in recognition of her pre-existing right of maintenance by way of enacting a statute, it cannot be said that the provisions of such a statute could be considered to limit or abridge the prevalent customary rights existing prior to such an enactment.

37. If the concept of social justice has to be given its full meaning, especially, in the context of eliminating gender discrimination, a liberal approach is required in interpreting the statutory provisions recognising the rights of a female Hindu in the properties given to her as a limited estate in order to allow such a right to enlarge into an absolute estate. Restricting the meaning, scope and applicability of Section 14(1) of the Hindu Succession Act, 1956, would be counter productive to the avowed purpose of alleviating the status of a women in the Indian society by extinguishing the evil of gender discrimination. In the light of the above

observations, the substantial questions of law arising for consideration in the present second appeal are answered in favour of the respondents. Accordingly, the second appeal stands dismissed, confirming the judgment and decree of the Courts below. No costs.