CASE NO.:
Appeal (civil) 2220 of 1993

PETITIONER:
V. MUTHUSAMI (DEAD) BY LRS.

Vs.

RESPONDENT:
ANGAMMAL & ORS.

DATE OF JUDGMENT: 26/02/2002

BENCH:
Syed Shah Mohammed Quadri & S.N. Phukan

JUDGMENT:

Phukan, J.

The appellant in this appeal has impugned the judgment dated 5.3.1991 of the Division Bench of the High Court of Judicature at Madras in AS No.951 of 1977.

The facts, which are necessary for our purpose, are summarized as below. The parties would be referred to as arrayed in the suit: -

The suit land originally belonged to one Alagirisami Chettiar, who was said to have died during the pendency of the appeal before the High Court. His son, Arimuthu died in September, 1940. Angammal, defendant No.1 is the third wife of Arimuthu and Gowrammal was the daughter of Arimuthu through his deceased second wife. Gowrammal was married to one Subramania Chettiar. Gowrammal died in April 1953 and Subramania died in July 1971. Their son, Dhanapal, is the only surviving legal heir of Alagirisami.

On 17.10.1937 Alagirisamy executed a settlement deed (Ex.A-1) in favour of his wife Nagammal, daughter Maruthammal and his son Arimuthu Chetty wherein it was provided that the settlees would get the properties absolutely after his lifetime. The properties were described as self-acquired properties of Alagiriswamy excepting a small building. This document was cancelled by the deed dated 13.06.1945 (Ex.A-3) as all the settlees died by that time. As stated above Arimuthu died leaving his third wife Angammal and his daughter Gowrammal through his deceased second wife. On 11.09.1940 i.e. three days after the death of Arimuthu, Alagirisamy executed a document (receipt, Ex.A-6) in favour of Angammal, pursuant to the decision by the Panchayat, in token of having received a sum of Rs.1200-2-0 and textile goods worth Rs.278-4-0 from Angammal, which she received from her late husband and agreed to execute a settlement deed in her favour. Alagirisamy agreed to pay interest of Rs.60/- per year to Angammal, failing which the above amount of Rs.1478-6-0 would be returned as and when demanded by the Panchayat. However, on 17.10.1940, a deed of settlement (Ex.A-2) was executed between Alagirisamy, his wife and daughter-in-law, Angammal, providing for payment of Rs.5/- per month to Angammal with a charge over the properties including the suit land of Alagirisamy. It was also provided in the deed that in case

of default Angammal would be entitled to take possession of the properties. The possession was not taken by Angammal as there was no default in payment. On 13.06.1945, Alagirisamy executed a separate settlement deed (Ex.A-4) in favour of Gowrammal, his grand-daughter and her husband Subramania creating a life interest in their favour over his properties which included the suit land with a direction that during his life time and during life time of Gowrammal and Subramania the properties should not be alienated and after their life time the properties would go to their male issue and failing which to female issue. There was a provision in the deed directing the settlees to make monthly payment of Rs.2-8-0 to Angammal as maintenance and the balance amount of maintenance of Rs.2-8-0 was to be paid by Marimuthu Chetty, son of the sister of Alagirisamy by a separate settlement deed (Ex.B-29) which was executed by Alagirisamy. On the 21st January, 1946 a maintenance settlement deed (Ex.A-5) was executed by Subramania and Gowrammal and their minor daughter Selvarani in favour of Angammal. This deed was also executed as per direction of the Panchayat as the earlier maintenance allowance given to Angammal was not sufficient. By this deed only limited interest was created in favour of Angammal and during her life time she was given the right to enjoy the income from the properties (suit land) without any power of alienation and after her life time the properties would revert back to the settlers. On 8.05.1974 Dhanapal executed an agreement for sale (Ex.B-24) in respect of suit properties in favour of defendant No.4 claiming himself to be the absolute owner. Subsequently, on 13.02.1975 a sale agreement (Ex.B-1) for the suit land was entered into between the plaintiff, Muthuswamy, Angammal and Dhanapal. On 21.02.1975 in pursuance of the earlier agreement for sale dated 8.05.1974 (Ex.B-24) Dhanapal executed four sale deeds (Ex.B-25 to B-28) for valuable consideration in favour of defendant Nos.3 to 6. After issuance of advocates notice the plaintiff, Muthusamy, filed the suit for specific performance of the agreement for sale deed dated 13.02.1975 (Ex.B-1) which was numbered as O.S. No.155 of 1975. In this suit plaintiff Muthuswamy impleaded Angammal as defendant No.1, Dhanapal as defendant No.2 and purchasers of the land as defendant Nos.3 to 6. Subsequently, on 28.02.1975 Angammal, filed a separate suit (O.S. No.105 of 1976, originally numbered as O.S. No.250 of 1975) for declaration of her right of enjoyment of the suit properties by being in possession of the same till lifetime and also for injunction. In the said suit it was categorically pleaded that defendant No.2, Dhanapal being the male issue and only heir of the settlers was entitled to suit properties after her life time. In this suit, Muthuswamy was not a party.

Both the suits were dismissed by the trial court. Appeals filed by Muthuswamy and Angammal were heard together by the High Court and were dismissed by the impugned judgment. Muthuswamy has filed the present appeal but no appeal has been filed by Angammal. She accepted that she was a limited owner.

The Trial Court inter alia held that the sale deeds (Ex. B-25 to B-28 dated 21.2.1975) executed in favour of defendant Nos.3 to 6 were valid and they were bonafide purchasers for valuable consideration in pursuance of the agreement for sale (Ex.B-24) and that Angammal was not entitled to the suit property. It was held that Angammal was not in possession of the suit land.

The main question, which was considered by the High Court, was whether Angammal, defendant No.1 had absolute title over the suit land, which she along with Dhanapal, defendant No.2 agreed to sell under Ex.B-1 in favour of plaintiff, Muthuswamy. The High Court was of the view that recitals in Ex.A-2 and A-6 would show that the source of Angammal’s right for maintenance sprang only from the settlement reached in the Panchayat and not under ’old

Hindu Law'. The High Court also noted that in other two documents Ex.A-1 and A-4 the suit properties were described as self-acquired and exclusive properties belonging to Alagirisami and, therefore, Angammal had no pre-existing right of maintenance under the Hindu law. According to the High Court only Ex.A-5 purported to give Angammal for the first time a life interest in the suit properties. The High Court after taking into consideration other documents and the fact that Arimuthu was living separately and doing separate business held that Angammal had no pre-existing right of maintenance under the Hindu customary law over the properties of Alagirisami and, therefore, she was not entitled to get the benefit of Section 14 of the Hindu Succession Act, 1956 (for short the Act). Though, the High Court found that Angammal was in possession of the suit land pursuant to Ex.A-5, it was held that this possession was not in pursuant to pre-existing right of maintenance under the Hindu law.

Learned senior counsel for the appellant has urged the following points:-

(i) that Angammal in law had pre-existing right of maintenance which is enforceable in law;

(ii) that Angammal could proceed against the properties of her father-in-law over which charge was created taking all properties of her husband, Arimuthu, though he separated himself from the joint family of Alagirisami; and

(iii) that her coming into possession of the suit land on 21.01.1946 under Ex.A-5 coupled with the fact that she has pre-existing right of maintenance, by virtue of sub-section (1) of Section 14 of the Act, she became full owner.

In this context learned senior counsel has relied on the decision of three learned Judges bench of this court in V. Tulsamma and Others versus Sesha Reddy [1977 (3) SCC 99]. Learned senior counsel placed before us other decisions of this Court in which the ratio laid down in Tulsamma's case was followed. According to the learned senior counsel as Angammal acquired title over the suit property, Dhanapal, defendant No.2 had no right to execute the sale deeds dated 21.02.1975 (Ex.B-25 to B-28) in favour of defendant Nos.3 to 6.

Per contra, learned senior counsel for defendant Nos.3 to 6 has contended that Angammal had no pre-existing right of maintenance against properties of her father-in-law, Alagirisami and the liability undertaken by him under Ex.A-6 cannot be termed as pre-existing right of maintenance. Learned senior counsel further submitted that under Ex.A-4, Gowrammal and Subramania were given a limited right of enjoyment of the property during their lifetime and, therefore, they could not have transferred a better title to Angammal. According to the learned senior counsel Angammal could not claim any benefit under Section 14(1) of the Hindu Succession Act, 1956.

The point for our consideration is whether Angammal had any pre-existing right of maintenance pursuant to which she came into possession of the suit land and whether she was entitled to the benefit under Section 14(1) of the Hindu Succession Act, 1956.

In Tulsamma's case (supra) the court considered the real nature of the incidence of a Hindu widow's right of maintenance and also the scope and ambit of Section 14 of the Act. We quote below the said section: -

"14.Property of a female Hindu to be her absolute

property.-(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 movable and immovable property acquired by a female Hindu by 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 acquire 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."

The Bench expressed the view that 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 the customary Hindu law and such a right may not be a right to property, that is, jus in rem but it is a right against property, that is, jus ad rem. The husband has a personal obligation to maintain his wife and if a charge is created for the maintenance of a female, the said right becomes a legally enforceable one. It is also well settled that a widow is entitled to maintenance out of her deceased husband's estate irrespective of whether that estate is in the hands of his male issue or in the hands of his coparcener.

The bench considered the sub-section (1) of Section 14 of the Act and held that this sub-section is wide in its scope and ambit and any property possessed by a female Hindu, whether acquired before or after the commencement of the Act, shall be held by her as full owner. With regard to the words 'any property' the Court was of the view that the words are large enough to cover both movable and immovable property acquired by a female Hindu by inheritance or devise etc. from any person, whether a relative or not. Regarding the word 'possessed' occurring in the sub-section (1) the Court took the view that it would mean the state of owning or having in one's hand or power and it need not be actual or physical possession or personal occupation of the property but may be possession in law and it can be even constructive possession provided she has not parted with her rights and is capable of obtaining possession of the property.

Regarding sub-section (2) of Section 14 of the Act it was held inter alia that this provision is in the nature of proviso or exception to sub-section (1) and being in the nature of an exception it must be construed strictly so as to impinge as little as possible on the broader sweep of the ameliorative provision contained in sub-section (1). Further sub-section (2) cannot, therefore, 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). According to the Court sub-section (2) must be confined to cases where a property is acquired by a Hindu female for the first time as a grant, without any pre-existing right under a gift, will, instrument, the terms of which prescribe a restricted estate in the property and that is the legislative intendment.

The law laid down in Tulsamma's case has been consistently followed by this court. Let us now examine the present case in the light of above law.

Arimuthu had personal obligation to maintain his wife Angammal. After his death Angammal could enforce her tangible right of maintenance over the estate left behind by her husband. After three days of the death of her husband, the entire estate of her husband in the form of movable properties were received by Alagirisamy for which he executed the receipt on September 11, 1940 Ex.A-6. Thereafter, on 17.10.1940, Alagirisamy and his wife executed the deed Ex.A-2 in favour of Angammal providing for payment of Rs.5 per month to her and a charge was created over the properties including suit land of Alagirisamy. In the deed it was also provided that in case of default of payment Angammal would be entitled to take possession of the land. The submission of learned counsel for the defendant that Angammal is claiming maintenance over the properties of her father-in-law Alagirisamy is not sustainable inasmuch as Angammal is claiming maintenance as of right against the property i.e. jus-ad-rem left behind by her husband as property includes both movable and immovable. The right of maintenance could be enforced by Angammal against the estate of her husband in the hands of Alagirisami, though Angammal was not in actual physical possession of the land, she was in legal possession as she never parted with the right of her maintenance and she could enforce such right in law. The finding of the High Court that by Ex.A-2 a contractual right was given to Angammal as the deed was executed in view of the settlement arrived at the intervention of the Panchayat is erroneous as Panchayat only helped the parties to come to a settlement in recognition of her right to be maintained from the properties of her husband.

By the deed Ex.A-4 executed on June 13, 1945 by Alagirisamy in favour of his grand daughter Gowrammal and her husband Subramania, a life interest was created over the suit land in favour of Gowrammal and Subramania and in the said deed a provision was made for payment of maintenance to Angammal. In other words, Alagirisamy accepted the pre-existing right of maintenance of Angammal given effect to by the deed Ex.A-2 and thereafter the said right preserved by Ex.A-4. Ex.A-5 is the deed of maintenance executed on January 21, 1946 by Subramania, Gowrammal and their minor daughter in favour of Angammal by which she was given a right to enjoy the income from the suit property during her lifetime, and thereafter would revert back to settlers. Learned senior counsel for the defendant has contended that as Subramania and Gowrammal acquired only limited interest under Ex.A-4 and they could not have transferred a better title. This contention is not acceptable as even prior to the date Ex.A-2 was executed the right of maintenance of Angammal continued and by this deed (Ex.A-5) also her pre-existing right of maintenance was recognised and a charge was also created over the suit land in favour of Angammal. There is a dispute regarding actual physical possession of the suit land by Angammal but it is immaterial as she had legal possession, which would be sufficient in view of the law laid down in Tulsamma's case.

Let us now examine whether Angammal became the full owner of the suit property by virtue of Section 14 of the Act. Sub-section (2) of Section 14 of the Act confines to cases where properties are acquired by a Hindu female for the first time as a grant. Angammal did not come for the first time into possession of the suit property on the basis of Ex.A-5 and her possession in law continued from the date Ex.A-2 was executed on 17.10.1940 and this possession was also confirmed by Ex.A-4 dated June 13, 1945 and

Ex.A-5 dated January 21, 1946. Therefore, possession of Angammal was not by virtue of sub-section (2) of Section 14. As Angammal has come into possession of the suit land by virtue of pre-existing right of maintenance out of the estate of her late husband, the present case is covered by sub-section (1) of Section 14 and therefore after coming into force of the Act she became full owner over the suit land and as a full owner she had power to execute the agreement for sale dated 13.2.1975 Ex.B-1 in favour of the plaintiff. Therefore, plaintiff could enforce this agreement of sale, which he did by filing the present suit. In view of the above position the suit should not have been dismissed by the courts below on the ground of want of title in Angammal. Accordingly, we hold that both the High Court and the trial court erred in law in rejecting the claim of the plaintiff and consequently the judgment of the trial court and the impugned judgment of the High Court to that extent are set aside.

Now the question is to what relief is plaintiff is entitled? It is settled position of law that grant of a decree for specific performance is a discretionary one. This court in K. Narendra versus Riviera Apartments (P) Ltd. [1999 (5) SCC 77] held that Section 20 of the Specific Relief Act, 1963 provides that the jurisdiction to decree specific performance is discretionary and the court is not bound to grant such relief merely because it is lawful to do so; the discretion of the court is not arbitrary but sound and reasonable, guided by judicial principles. It was further held that if performance of a contract involve some hardship on the defendant which he did not foresee while non-performance involving no such hardship on the plaintiff, is one of the circumstances in which the court may properly exercise discretion not to decree specific performance and the doctrine of comparative hardship has been statutorily recognized in India.

In Her Highness Maharani Shantidevi P. Gaikwad versus Savjibhai Haribhai Patel and others [2001 (5) SCC 101], a Bench of three learned Judges held as follows:

"The grant of decree for specific performance is a matter of discretion under Section 2000 of the Specific Relief Act, 1963. The court is not bound to grant such relief merely because it is lawful to do so but the discretion is not required to be exercised arbitrarily. It is to be exercised on sound and settled judicial principles. One of the grounds on which the court may decline to decree specific performance is where it would be inequitable to enforce specific performance."

Coming to the facts of the case in hand all the parties proceeded on the basis that Angammal was a limited owner over the suit land and Dhanapal was the full owner and on that basis both the agreements for sale Ex.B-1 and Ex.B-24 were executed. All the courts have held that Ex.B-1 executed by Angammal and Dhanapal in favour of the plaintiff was subsequent to the agreement for sale Ex.B-2 executed by Dhanapal in favour of defendant Nos.3-6. The courts also held that defendant Nos.3 to 6 were bonafide purchasers for valuable consideration without notice of the agreement for sale, Exb.B-1.

Defendant Nos.3-6 purchased this suit land on February 21, 1975 and they are in possession of suit land by investing a considerable sum for improvement. On these facts, we are of the opinion that a decree for specific relief of the contract would involve hardship on the purchasers defendant Nos.3-6 and no hardship would be caused to the plaintiff and he can be compensated by a decree of compensation. We are also of the view that it will also be

inequitable, on the facts and in the circumstances of this case, to enforce specific performance of the agreement, Ex.B-1.

At the time of execution of the agreement for sale, the plaintiff paid an advance of Rs.3,000/-. We are of the opinion that the interest of justice would be met if we direct the defendant Nos.3-6 to pay a sum of Rs.3,000/- to the plaintiff together with interest @ 12% from the date of the filing of the suit, i.e. March 14, 1975 till the date of payment. Accordingly, we modify the judgment and the decree under challenge.

In the result, the appeal is allowed by modifying the impugned judgments and decrees. The suit of the plaintiff is decreed for a sum of Rs.3,000/- with interest @ 12% from 14.3.1975 till the date of payment in lieu of specific performance. Defendants shall pay the amount within a period of six months from today. Considering the facts and circumstances of the case, we direct the parties to bear their own costs.

.J.
[Syed Shah Mohammed Quadri]

.J.
[S.N. Phukan]

February 26, 2002