**(2013) 11 MAD CK 0166**

**Madras High Court**

**Case No:** A.S. No. 39 of 1991

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| K. Karai Gowder (died) and Others | | APPELLANT |
| | Vs | |
| G. Siddan and Others | | RESPONDENT |

**Date of Decision:** Nov. 13, 2013

**Citation:** (2014) 1 LW 7

**Hon'ble Judges:** R.S. Ramanathan, J

**Bench:** Single Bench

**Advocate:** S.V. Jayaraman, for Mr. S. Thangavel for 2nd Appellant and Mr. A.K. Kumarasamys 3 to 8, for the Appellant; V. Narayanasamy for Respondents 1 and 2, Mr. M.S. Subramanian for Respondent-4, for the Respondent

**Final Decision:** Dismissed

**Judgement**

R.S. Ramanathan, J.

The defendants 1 and 2 in O.S. No. 871 of 1986, on the file of the II Additional Sub Court, Coimbatore, are the appellants herein. The respondents 1 and 2/plaintiffs filed the suit for the relief of declaration that they are the owners of the properties mentioned in the suit schedules "B" and "C" to the plaint, for a consequential injunction and for costs.

2. The suit was decreed by the Trial Court. Aggrieved by the same, the defendants 1 and 2 filed the present Appeal.

3. The case of the plaintiffs/respondents 1 and 2 are as follows:-

i) The properties mentioned in the suit schedules, originally belonged to the husband of the third defendant, by name Kuppanna Gowder. He executed a settlement deed, dated 09.12.1927, whereby, the third defendant was given life interest in "A" schedule property, in lieu of her maintenance rights. The interest of the third defendant over "A" schedule property was confirmed in O.S. No. 148 of 1929, on the file of the District Munsif Court, Coimbatore, and was also recognised

in the partition deed, dated 19.10.1931, entered into between the first defendant and one Balasubramaniam, minor, represented by the Guardian and Mother Kuppakkal. The said Balasubramaniam is the father of the second defendant. The third defendant was in possession and enjoyment of ''A'' schedule property and after the coming into force of the Hindu Succession Act, 1956, she became the absolute owner of ''A'' schedule property.

ii) The first plaintiff purchased one half of ''A'' schedule property on the eastern side, measuring 1.46 acres, mentioned as ''B'' schedule and the second plaintiff purchased other half on the western side, described as ''C'' schedule from the third defendant, under two sale deeds, dated 30.04.1986. and they were also put in possession of those properties. The defendants 2 and 3, who have no interest/right over the properties mentioned in ''B'' schedule are making illegal and untenable claim and also trying to interfere with the plaintiffs'' peaceful possession and enjoyment of the properties. Therefore, the plaintiffs filed the suit for declaration of title to the suit ''B'' and ''C'' schedules and for permanent injunction.

4. The defendants 1 and 2 filed a written statement, admitting that the suit properties originally belonged to Kuppanna Gowder, and he had six wives and three sons and the third defendant was one of his wives. The said Kuppanna Gowder, died in the year, 1928. Earlier to that, he executed a settlement deed in favour of his wife-third defendant. After the death of Kuppanna Gowder, his eldest son, the first defendant herein, filed the suit for partition in O.S. No. 148 of 1929, on the file of the District Munsif Court, Coimbatore. In that suit also, ''A'' schedule property was given to the third defendant for her maintenance and she was allowed to enjoy the property, till her life time. As per the terms of the decree passed in O.S. No. 148 of 1929, the suit property should go to the defendants 1 and 2 after the life time of the third defendant. The defendants 1 and 2 also stated that when such right was given to the third defendant, she had no pre-existing right over the suit property, and, she also did not claim, or assert any right to the suit property. Therefore, the third defendant had only the right of enjoyment over the suit property till her lifetime, and, possession was given to the third defendant, as per the decree, and, it was not in recognition of her pre-existing right over the suit property.

5. The defendants 1 and 2, therefore, stated that only the provisions of Section 14(2) of the Hindu Succession Act applies and the third defendant can only enjoy the property till her life time, and the plaintiffs, who purchased the property from the third respondent, cannot claim any right over the same, and, after the lifetime of the third defendant, the defendants 1 and 2 are entitled to get the property. The defendants 1 and 2 also denied the allegations that after the coming into force of the Hindu Succession Act, 1956, the property given to the third defendant became her absolute property and asserted that she was given only restricted right to enjoy the property. The second defendant is the only son of his father-Balasubramaniam and after the death of Balasubramaniam, the suit property devolved on the second

defendant. The first defendant and Balasubramaniam are the two sons of Kuppanna Gowder and they got vested interest in the suit property. The defendants 1 and 2 also issued notice to the plaintiffs and the third defendant, informing the rights of the defendants 1 and 2, but, there was no reply. Therefore, the plaintiffs are not entitled to the relief of declaration.

6. The third defendant filed separate written statement, stating that the suit properties belonged to her, absolutely, and she sold ''B'' schedule property to the first plaintiff, and ''C'' schedule to the second plaintiff, under two registered sale deeds, dated 30.04.1986, and possession was also handed over to them, and therefore, they are entitled to the relief of declaration.

7. On the basis of the aforesaid pleadings, the Trial Court framed the following Issues:-

i) Whether the plaintiffs are entitled to the relief of declaration of title to the suit ''B'' and ''C'' schedule property?

ii) Whether the plaintiffs are entitled to the relief of permanent injunction?

and

iii) To what relief, the plaintiffs are entitled to?

8. On the side of the plaintiffs, the first plaintiff was examined as P.W. 1, and totally, six documents were marked, viz., Exs. A.1 to A.6. On the defendants'' side, the second defendant was examined as D.W. 1, but, no documents were marked.

9. The Trial Court, after framing Issues and after the examination of witnesses and marking of documents, answered Issues i) and ii), after relying upon the judgment reported in V. Tulasamma and Others Vs. Sesha Reddy (Dead) by Lrs., holding that the third defendant was enjoying the property given to her in lieu of maintenance, and, after the coming into force of the Hindu Succession Act, 1956, by virtue of the provisions of Section 14(1) of the said Act, she became the absolute owner of the properties, and therefore, she was competent to sell the properties and the plaintiffs, who purchased the suit properties from her are entitled to the reliefs of declaration and injunction. Aggrieved by the judgment and decree of the Trial Court, the present Appeal is filed by the defendants 1 and 2.

10. Mr. S.V. Jayaraman, the learned Senior Counsel for the second appellant submitted that originally Kuppanna Gowder executed a settlement deed, dated 09.12.1927, marked as Ex. A1, by which, the suit properties were given to the third defendant, who was his sixth wife, to be enjoyed by her, till her lifetime and the properties were also given to her, towards her maintenance, and, if the third defendant had any male issue, such male issue and minor Balasubramaniam and their male heirs shall divide the properties equally and his wife (i.e., Kuppanna Gowder''s wife) the third defendant herein has no power of alienation and in Ex. A.1,

Kuppanna Gowder also made it clear that the properties were his self acquired properties.

11. The learned Senior Counsel for the second appellant further submitted that the first appellant filed O.S. No. 148 of 1929 for partition. In that suit, the third defendant was arrayed as the fourth defendant, and decree was passed, declaring that the first appellant and minor Balasubramaniam were entitled to half share, each, in respect of items A1, A2, and A.4, in the second schedule to the plaint holding that the properties are the ancestral properties and they are also entitled to the relief of partition of the northern portion in S. No. 220, and, in respect of the southern portion in S. No. 220, they are entitled to the partition on the death of the fourth defendant, viz., the third defendant in the present suit.

12. The learned Senior Counsel for the second appellant, therefore, submitted that the properties were the self acquired properties of Kuppanna Gowder, and, under the settlement deed-Ex. A.1, the third defendant was given ''A'' schedule property towards her maintenance and she was given restrictive rights to enjoy the property till her lifetime and that was also confirmed in O.S. No. 148 of 1929 and in the partition deed-Ex. A6, dated 19.10.1931, entered into between the first appellant and Balasubramaniam, father of the second defendant and in respect of self acquired properties, the wife had no preexisting right, and therefore, the right obtained by the third defendant, under the settlement deed-Ex. A1, did not enlarge into absolute estate even after the coming into force of the Hindu Succession Act. Hence, any sale by the third defendant in favour of the respondents 1 and 2, will not bind the appellants and the sale in favour of the respondents 1 and 2 are valid till the life time of the third defendant, and after her death, the property should go to the appellants, and hence, the respondents 1 and 2 are not entitled to the relief of declaration.

13. According to the learned Senior Counsel for the second appellant, under Ex. A1, the third defendant got only life interest and the same did not get enlarge into absolute estate, even after the coming into force of the Hindu Succession Act, 1956, and therefore, the plaintiffs/respondents 1 and 2 cannot claim any title over the suit properties. The learned Senior Counsel submitted that Kuppanna Gowder himself admitted in Ex. A.1, that the properties were his self acquired properties, and therefore, the wife had no pre-existing right over the self acquired properties and only when the properties were given in recognition of her pre-existing right, the same would be enlarged into absolute estate and in this case, having regard to the character of the properties, viz., self acquired properties of Kuppanna Gowder, the third defendant did not have any pre-existing right over the same. Therefore, the life interest given to the third defendant did not get enlarge into absolute estate u/s 14(1) of the Hindu Succession Act, and, it remained as life estate. Hence, the respondents 1 and 2 cannot claim any right over the suit properties. The learned Senior Counsel further submitted that though in Ex. A.4, it was held that the

properties were ancestral properties in the hands of Kuppanna Gowder, having regard to the specific admission by Kuppanna Gowder in Ex. A.1 that it was his separate property, it has to be presumed as such.

14. It is the further submissions of the learned Senior Counsel for the second appellant that in O.S. No. 148 of 1929, it was reiterated that the third defendant was only entitled to enjoy the property till her life time and in that suit, the third defendant was one of the parties, arrayed as the fourth defendant, and therefore, she was bound by the decree passed in that suit. It was also made clear in that suit that the third defendant was only entitled to enjoy the property till her life time, and, the same was also confirmed in the partition deed-Ex. A6, entered into between the first appellant and minor Balasubramaniam, and therefore, the respondents 1 and 2 could not get any right over the properties after the life time of the third defendant.

15. In support of his contentions, the learned Senior Counsel for the second appellant relied upon the reported judgments, as mentioned infra:-

i) Mst. Karmi Vs. Amru and Others,

ii) Sharad Subramanyan Vs. Soumi Mazumdar and Others,

iii) Sadhu Singh Vs. Gurdwara Sahib Narike and Others,

iv) Gaddam Ramakrishnareddy and Others Vs. Gaddam Rami Reddy and Another,

and

v) Jagan Singh (Dead) through L.Rs. Vs. Dhanwanti and Another,

16. Mr. A.K. Kumarasamy, the learned counsel appearing for the appellants 3 to 8 also adopted the arguments of Mr. S.V. Jayaraman, the learned Senior Counsel for the second appellant and relied upon the judgment reported in Shivdev Kaur (D) By L.Rs. and Others Vs. R.S. Grewal, and submitted that the third defendant got only restricted estate over the suit properties, under Ex. A.1, and the same was not enlarged into absolute estate, after the coming into force of the Hindu Succession Act, 1956, and therefore, after the death of the third defendant, the appellants are entitled to the suit properties, and hence, the plaintiffs/respondents 1 and 2 are not entitled to the relief of declaration that they are the owners of the suit properties.

17. Mr. M.S. Subramanian, the learned counsel appearing for the fourth respondent, while supplementing the arguments of Mr. S.V. Jayaraman, the learned Senior Counsel for the second appellant, submitted that having regard to the recitals in Ex. A.1, viz., the settlement deed executed by Kuppanna Gowder, in the year, 1927, it cannot be stated that the suit property was given to the third defendant. The learned counsel submitted that considering the recitals in favour of Kuppakkal, and the recitals in favour of the third defendant, in Ex. A.1, it is clear that no property was given to the third defendant, towards her maintenance, and what was given to the third defendant, was only a right to enjoy the usufruct from "C" schedule

property mentioned in that settlement deed. Therefore, in the absence of any dedication of any property to the third defendant, towards her maintenance, under Ex. A.1, the third defendant, even assuming to be in possession and enjoyment of ''C'' schedule property on the date of coming into force of the Hindu Succession Act, did not get absolute right over ''C'' schedule property, as there was no vestige of title in respect of ''C'' schedule property in that settlement deed in her favour.

18. In other words, the learned counsel for the fourth respondent submitted that the third defendant was only given the right to enjoy the usufruct from ''C'' schedule property mentioned in the settlement deed, and, there was no dedication of that property in her favour, and, only when certain properties were given to a female member, restricting the limited estate, that alone would enlarge into absolute estate, after the coming into force of the Hindu Succession Act, and, when property was not dedicated and the female member was allowed to enjoy only the usufruct from the property, that right will not get enlarged into absolute right, eventhough, the female member was allowed to enjoy the usufruct from those properties towards her maintenance.

19. The learned counsel for the fourth respondent also submitted that, while giving the property to Kuppakkal, the settlor-Kuppanna Gowder has clearly stated that ''B'' schedule property shall be enjoyed by Kuppakkal, till her lifetime, by paying taxes towards her maintenance, and, after her lifetime, the said property shall be taken over by the Devasthanam Board. The learned counsel, therefore, submitted that in respect of ''B'' schedule property, Kuppakkal was given the right to enjoy that property, without any power of alienation, whereas, in respect of ''C'' schedule property, it was stated that the third defendant shall enjoy the usufruct from ''C'' schedule property, towards her maintenance and to look after the marriage expenses of her daughters, and having regard to the wordings in respect of ''B'' and ''C'' schedule properties, in respect of ''B'' schedule property, the same was dedicated/given to Kuppakkal, and, in respect of ''C'' schedule property, there was no dedication and only the usufruct was allowed to be enjoyed by the third defendant. The learned counsel, therefore, submitted that in such case, the provisions of Section 14(1) of the Hindu Succession Act will not come into operation.

20. In support of his contentions, the learned counsel for the fourth respondent placed reliance on the judgments reported in Thatha Gurunadham Chetti Vs. Thatha Navaneethamma (Died) and Another, , Eramma Vs. Verrupanna and Others, and submitted that those two judgments were considered and accepted by the Hon''ble Supreme Court in V. Tulasamma''s case, (referred supra).

21. Mr. V. Narayanasamy, the learned counsel appearing for the respondents 1 and 2 submitted that, a hindu woman is entitled to claim maintenance from her husband, and, that right is her pre-existing right, and she can enforce the right against her husband''s separate or joint family properties and in recognition of her right to maintenance, under the settlement deed-Ex. A.1, the suit properties were

given to the third defendant by her husband-Kuppanna Gowder, and therefore, after the coming into force of the Hindu Succession Act 1956, by virtue of Section 14(1) of the said Act, her limited estate enlarged into absolute estate, and therefore, she became the absolute owner of the suit properties and she sold the same to the respondents 1 and 2 under two sale deeds, and therefore, the respondents 1 and 2 also became the absolute owners and considering all these aspects, the Trial Court rightly decreed the suit.

22. The learned counsel appearing for the respondents 1 and 2 also relied upon the following reported judgments, in support of his contentions:-

i) Mangat Mal (Dead) and Another Vs. Smt. Punni Devi (Dead) and Others,

ii) Nazar Singh and others Vs. Jagjit Kaur and others,

iii) Smt. G. Rama Vs. T.G. Seshagiri Rao (Dead) by LRs.,

and

iv) Gangamma etc. Vs. G. Nagarathnamma and Others etc.,

23. On the basis of the above submissions, the following point arises for consideration in this Appeal:-

Whether it is sub section (1) or sub-section (2) of Section 14 of the Hindu Succession Act, 1956, that applies where property is given to a Hindu female in lieu of maintenance under an instrument which in so many terms restricts the nature of the interest given to her in the property?

24. It is an admitted fact that Kuppanna Gowder was the owner of the suit properties and he had two sons, (viz., first appellant and Balasubramaniam) and six wives and the third defendant was his sixth wife. The second defendant is the son of Balasubramaniam, and under Ex. A.1-settlement deed, Kuppanna Gowder gave ''C'' schedule properties mentioned in that settlement deed to his sixth wife, the third defendant herein towards her maintenance, restricting her interest over the suit property till her life time and thereafter to the sons born to her and sons born to Balasubramaniam.

25. To appreciate the contentions of the learned Senior Counsel for the second appellant, we will have to see the rights of a hindu woman in the year 1927 towards her husband''s property. In other words, whether a hindu woman has got any pre-existing right towards maintenance in respect of the husband''s separate property, or her right of maintenance is confined only to the ancestral properties in the hands of the husband.

26. In the famous judgment reported in V. Tulasamma and Others Vs. Sesha Reddy (Dead) by Lrs., , this aspect has been dealt with elaborately by the Hon''ble Mr. Justice S. Murtaza Fazal Ali, who wrote separate judgment, which was also

considered and approved by other two Hon''ble judges. The Hon''ble Mr. Justice S. Murtaza Fazal Ali, in his separate judgment traced the law on this aspect after quoting i) Cole-brooke''s ''Digest of Hindu Law'' Vol. II, ii) Book by Gopalchandra Sarkar Sastri, and iii) certain passages from Mayne''s "Treatise on Hindu Law & Usage", 11th Edition and Mulla''s Hindu Law 14th Edition., and after relying upon the various intra court''s judgments as well as High Court''s judgments, and summarized the legal conclusions, as follows:-

(1) The Hindu female''s right to maintenance is not an empty formality or an illusory claim being conceded as a matter of grace and generosity, but is a tangible right against property which flows from the spiritual relationship between the husband and the wife and is recognised and enjoined by pure Shastric Hindu Law and has been strongly stressed even by the earlier Hindu jurists starting from Yajnavalkya to Manu. Such a right may not be a right to property but it is a right against property and the husband has a personal obligation to maintain his wife and if he or the family has property, the female has the legal right to be maintained therefrom. If a charge is created for the maintenance of a female, the said right becomes a legally enforceable one. At any rate, even without a charge the claim for maintenance is doubtless a pre-existing right so that any transfer declaring or recognizing such a right does not confer any new title but merely endorses or confirms the pre-existing rights.

(2) Section 14(1) and the Explanation thereto have been couched in the widest possible terms and must be liberally construed in favour of the females so as to advance the object of the 1956 Act and promote the socio-economic ends, sought to be achieved by this long needed legislation.

(3) Sub-section (2) of section 14 is in the nature of a proviso and has a field of its own without interfering with the operation of section 14(1) materially. The proviso should not be construed in a manner so as to destroy the effect of the main provision or the protection granted by s. 14(1) or in a way so as to become totally inconsistent with the main provision.

(4) Sub-section (2) of section 14 applies to instruments, decrees, awards, gifts etc. which create independent and new titles in favour of the females for the first time and has no application where the instrument concerned merely seeks to confirm, endorse, declare or recognize pre-existing rights. In such cases a restricted estate in favour of a female is legally permissible and section 14(1) will not operate in this sphere. Where, however, an instrument merely declares or recognizes a pre-existing right, such as a claim to maintenance or partition or share to which the female is entitled, the sub-section has absolutely no application and the female''s limited interest would automatically be enlarged into an absolute one by force of section 14(1) and the restrictions placed, if any, under the document would have to be ignored. Thus where a property is allotted or transferred to a female in lieu of maintenance or a share at partition, the instrument is taken out of the ambit of

sub-section (2) and would be governed by section 14(1) despite any restrictions placed on the powers of the transferee.

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

(6) The words "possessed by" used by the Legislature in section 14(1) are of the widest possible amplitude and include the state of owning a property even though the owner is not in actual or physical possession of the same: Thus, where a widow gets a share in the property under a preliminary decree before or at the time when the 1956 Act had been passed but had not been given actual possession under a final decree, the property would be deemed to be possessed by her and by force of section 14(1) she would get absolute interest in the property. It is equally well settled that the possession of the widow, however, must be under some vestige of a claim, right or title, because the section does not contemplate the possession of any rank trespasser with-out any right or title.

(7) That the words "restricted estate" used in section 4(2) are wider than limited interest as indicated in section 14(1) and they include not only limited interest, but also any other kind of limitation that may be placed on the transferee.

27. The majority judgments rendered by the Hon''ble Mr. Justice P.N. Bhagwati (as he then was) on behalf of the Hon''ble Mr. Justice A.C. Gupta also dealt with this aspect and scope of Section 14(1) and (2). In the majority judgments, it is held as follows:-

3. Para 3.... Prior to the enactment of section 14, the Hindu law, as it was then in operation, restricted the nature of the interest of a Hindu female in property acquired by her and even as regards the nature of this restricted interest, there was great diversity of doctrine on the subject. The Legislature, by enacting sub-section (1) of section 14, intended, as pointed by this Court in S.S. Munna Lal v. S.S. Raikumar (1) "to convert the interest which a Hindu female has in property, however, restricted the nature of that interest under the Shastric Hindu law may be, into absolute estate". This Court pointed out that the Hindu Succession Act, 1956 is a codifying enactment and has made far-reaching changes in the structure of the Hindu law of inheritance, and succession. The Act confers upon Hindu females full rights of inheritance and sweeps away the traditional limitations on her powers of disposition which were regarded under the Hindu law as inherent in her estate". Sub-section (1) of section 14, is wide in its scope and ambit and uses language of great amplitude. It says that 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 thereof and not as a limited owner. The words "any property" are, even

without any amplification, large enough to cover any and every kind of property, but in order to expand the reach and ambit of the section and make it all-comprehensive, the Legislature has enacted an explanation which says that property would include "both movable and immovable property acquired by a female Hindu by inheritance or device, 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, whatever, and also any such property held by her as stridhana immediately before the commencement" of the Act. Whatever be the kind of property, movable or immovable, and whichever be the mode of acquisition, it would be covered by subsection (1) of section 14, the object of the Legislature being to wipe out the disabilities from which a Hindu female suffered in regard to ownership of property under the old Shastric law, to abridge the stringent provisions against proprietary rights which were often regarded as evidence of her perpetual tutelage (sic) and to recognize her status as an independent and absolute owner of property.

This Court has also in a series of decisions given a most expansive interpretation to the language of sub-section (1) of section 14 with a view to advancing the social purpose of the legislation and as part of that process, construed the words ''possessed of'' also in a broad sense and in their widest connotation. It was pointed out by this Court in Gummalepura Taggina Matada Kotturuswami v. Setra Veeravva that the words ''possessed of mean "the state of owning or having in one''s hand or power". It need not be actual or physical possession or personal occupation of the property by the Hindu female, but may be possession in law. It may be actual or constructive or in any form recognized by law. Elaborating the concept, this Court pointed out in Mangal Singh v. Rattno that the section covers all cases of property owned by a female Hindu although she may not be in actual, physical or constructive possession of the property, provided of course, that she has not parted with her rights and is capable of obtaining possession of the property.

It will, therefore, be seen that 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.

28. The Hon''ble Judges have also interpreted sub-section 2 of the Hindu Succession Act, as follows:-

Para 4.... 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 sub-section (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 prescribe a restricted estate in the

property. This constructional approach finds support in the decision in Badri Prasad''s case (supra) where this Court observed that sub-section (2) "can come into operation only if acquisition in any of the methods enacted therein is made for the first time without there being any pre-existing right in the female Hindu who is in possession of the property.

29. The Hon''ble Judges further held as follows:-

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.

30. The Hon''ble Judges finally held that when specific property is allotted to the widow in lieu of her claim for maintenance, the allotment would be in satisfaction of her jus ad rem, namely, the right to be maintained out of the joint family property. It would not be a grant for the first time without any pre-existing right in the widow. The widow would ''be getting the property in virtue of her pre-existing right, the instrument giving the property being merely a document effectuating such pre-existing right and not making a grant of the property to her for the first time without any antecedent right or title.

31. In the very same judgment, (i.e., the judgment rendered in V. Tulasamma''s case) the Hon''ble Mr. Justice S. Murtaza Fazal Ali quoted Cole brooke''s ''Digest of Hindu Law'' Vol. II, wherein, the celebrated Author quotes the adage from Mahabharatha, one of the great Epics of India, which is as follows:-

Para 16....Where females are honoured, there the deities are pleased; but where they are unhonoured, there all religious acts become fruitless.

This clearly illustrates the high position which is bestowed on Hindu women by the Shastric Law.

Again Colebrooke in his book Vol. II at p. 123, while describing the circumstances under which the maintenance is to be given to the wife, quotes Manu thus:

Should a man have business abroad, let him assure a fit maintenance to his wife, and then reside for a time in a foreign country; since a wife, even though virtuous, may be tempted to act amiss, if she be distressed by want of subsistence:

While her husband, having settled her maintenance, resides abroad, let her continue firm in religious austerities; but if he leave no support, let her subsist by spinning an other blameless arts.

This extract clearly shows that there is a legal obligation on the part of the husband to make arrangements for his wife''s due maintenance even if he goes abroad for business purposes.

Colebrooke again quotes Yajnavalkya at p. 243 of his book Vol. thus:

When the father makes an equal partition among his sons, his wives must have equal shares with them, if they have received no wealth either from their lord or from his father.

If he makes an equal partition among his sons by his own choice, he must give equal shares to such of his wives also as have no male issue.

This shows that when a partition is effected, the Hindu Law enjoins that the wife must get an equal share with the sons, thus reinforcing the important character of the right of maintenance which a Hindu wife or widow possesses under the Hindu Law.

32. The Hon''ble Mr. Justice S. Murtaza Fazal Ali also relied upon the Book by Gopalchandra Sarkar Sastri, wherein, it is stated as follows:-

Para 17... The support of the group of persons who should be maintained, is the approved means of attaining heaven, but hell is the man''s portion if they suffer; therefore he should carefully maintain them.

The father, the mother, the Guru (an elderly relation worthy of respect), a wife, an offspring, poor dependants, a guest, and a religious mendicant are declared to be the group of persons who are to be maintained.

Manu, cited in Srikrishna''s commentary on the Dayabhaga, ii, 23.

It is declared by Manu that the aged mother and father, the chaste wife, and an infant child must be maintained even by doing a hundred misdeeds" Manu cited in the Mitakshara while dealing with gifts.

The last extract dearly shows the imperative nature of the duty imposed on the owner of the property to maintain wife, aged mother, father etc. even at the cost of perpetrating a hundred misdeeds.

Similarly Sastri in his book quotes Yajnavalkya at p. 523 thus:

"Property other than what is required for the maintenance of the family may be given." The learned author highlights the importance of the right maintenance as being a charge on the property of the husband and observes as follows:

The ancestral immovable property is the hereditary source of maintenance of the members of the family, and the same is charged with the liability of supporting its members, all of whom acquire a right to, such property from the moment they become members of the family, by virtue of which they are at least entitled to maintenance out of the same. Such property cannot be sold or given away except for the support of the family; a small portion of the same may be alienated, if not incompatible with the support of the family.

The learned Author Gopalchandra Sarkar Sastri also summarized the nature of liability of the husband to maintain his wife in his Book as follows:-

Para 18... When the husband is alive, he is personally liable for the wife''s maintenance, which is also a legal charge upon his property, this charge being a legal incident of her marital co-ownership in all her husband''s property..... But after ''his death, his widow''s right of maintenance becomes limited to his estate, which, when it passes to any other heir, is charged with the same.....

There cannot be any doubt that under Hindu law the wife''s or widow''s maintenance is a legal charge on the husband''s estate; but the Courts appear to hold, in consequence of the proper materials not being placed before them, that it is not so by itself, but is merely a claim against the husband''s heir, or an equitable charge on his estate; hence the husband''s debts are held to have priority, unless it is made a charge on the property by a decree.

To sum up, therefore, according to Sastri''s interpretation of Shastric Hindu Law the right to maintenance possessed by a Hindu widow is a very important right which amounts to a charge on the property of her husband which continues to the successor of the property and the wife is regarded as a sort of co-owner of the husband''s property though in a subordinate sense, i.e. the wife has no dominion over the property.

33. The learned Hon''ble Mr. Justice S. Murtaza Fazal Ali also quoted the passages from Mayne''s "Treatise on Hindu Law & Usage", 11th Edition, which reads as follows:-

The importance and extent of the right of maintenance necessarily arises from the theory of an undivided family. The head of such a family is bound to maintain its members, their wives and their children, to perform their ceremonies and to defray the expenses of their marriages;

Again at p. 816 para 684 the author stresses the fact that the maintenance of a wife is a matter of personal obligation on the part of the husband and observes thus:

The maintenance of a wife, aged parents and a minor son is a matter of personal obligation arising from the very existence of the relationship and quite independent of the possession of any property, ancestral or acquired.....

It is declared by Manu that the aged mother and father, the chaste wife and an infant child must be maintained even by doing a hundred misdeeds." Again it has been observed at p. 818 para 687:

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

The author points out at p. 821 paragraph 689 that even after the coming into force of the Hindu Women''s Right to Property Act, 1937 which confers upon the widow a

right of succession in respect of the non-agricultural property, she is still entitled to maintenance from the family property. The author observes thus:

It cannot, therefore, be said that the reason of the right has ceased to exist and the right is gone. It was accordingly held that the widow of a deceased coparcener is still entitled to maintenance notwithstanding her right under the Act to a share in the non-agricultural part of the family estate.

Furthermore, the author cites the passage of Narada cited in Smriti Chandrika regarding which there is no dispute. The saying runs thus:

Whichever wife (patni) becomes a widow and continues virtuous, she is entitled to be provided with food and raiment.

At p. 822 para 690 the author points out that the right of a widow to be maintained is taken over even by the heirs of the husband who succeed to his property either by inheritance or by survivorship. In this connection the following observations are made:

She is entitled to be maintained where her husband''s separate property is taken by his male issue. Where, at the time of his death, he was a coparcener she is entitled to maintenance as against those who take her husband''s share by survivorship.

The Hindu law is so jealous in guarding the interests of Hindu women that the obligation for maintaining the Hindu women falls even on the King when he takes the estate by escheat or by forfeiture.

34. The Hon''ble Mr. Justice S. Murtaza Fazal Ali, also quoted Mulla''s Hindu Law", 14th Edition, which reads as follows:-

Para 20..... "A wife is entitled to be maintained by her husband, whether he possesses property or not. When a man with his eyes open marries a girl accustomed to a certain style of living, he undertakes the obligation of maintaining her in that style. The maintenance of a wife by her husband is a matter of personal obligation arising from the very existence of the relationship, and quite independent of the possession by the husband of any property, ancestral or self acquired."

We might further mention that the Hindu women''s right to maintenance finally received statutory recognition and the entire law on the subject was consolidated and codified by the Hindu Married Women''s Right to Separate Maintenance and Residence Act, 1946 hereinafter to be referred to as ''the Act of 1946 which came into force on April 23, 1946. Thus there appears to be complete unanimity of the various schools of Hindu law on the important incidents and indicia of the Hindu women''s right to maintenance which has now received statutory recognition and which only shows that the right to maintenance though not an indefeasible right to property is undoubtedly a pre-existing right. We shall now refer to some of the authorities which have dealt with this aspect of the matter.

35. Therefore, the Hon''ble Three Judges Bench of the Supreme Court in the aforesaid judgment (i.e., the judgment rendered in V. Tulasamma''s case) held that hindu female has got right to maintenance against her husband and it flows from the spiritual relationship between the husband and the wife and it is pre-existing right, and therefore, when the property is given to the female towards her right to maintenance, the provisions of Section 14(1) of the Hindu Succession Act applies and at the time of coming into force of Hindu Succession Act 1956, if she was in possession of the property, she would become the absolute owner of the property.

36. In the judgment reported in Seth Badri Prasad Vs. Srimati Kanso Devi, , widow was given some properties under an award and as per the award, the widow would have a widow''s estate in the property awarded to her, since the suit was filed for injunction restraining her from committing acts of waste and from alienating the properties on the ground that she was a limited owner of the property. The Trial Court held that by virtue of section 14(1) of the Hindu Succession Act, she became the absolute owner of the property and the same was confirmed by the Lower Appellate Court and the High Court, on Appeal by the plaintiff, the Hon''ble Supreme Court held as follows:-

The word "acquired" in sub-section (1) has also to be given the widest possible meaning. This would be so because of the language of the Explanation which makes sub-section (1) applicable to acquisition of property by inheritance or devise or at a partition or in lieu of maintenance or arrears of maintenance or by gift or by a female''s own skill or exertion or by purchase or prescription or in any manner whatsoever. Where at the commencement of the Act a female Hindu has a share in joint properties which are later on partitioned by metes and bounds and she gets possession of the properties allotted to her there can be no manner of doubt that she is not only possessed of that property at the time of the coming into force of the Act but has also acquired the same before its commencement.

The Hon''ble Supreme Court confirmed the judgment of the High Court and dismissed the Appeal holding that the widow became the absolute owner of the property, after the coming into force of the Hindu Succession Act 1956.

37. In the judgment reported in Thota Sesharathamma and Another Vs. Thota Manikyamma (Dead) by Lrs. and Others, , the entire law was discussed, including the famous judgment rendered in V. Tulasamma''s case and the Hon''ble Supreme Court held as follows Para 21, page 325.

Section 14(1) of the Act declares that any property, movable or immovable, possessed by a female Hindu shall be held by her as full owner thereof and not as a limited owner irrespective of the time when the acquisition was made, i.e., whether it was before or after the Act.

Both sub-sections (1) and (2) of s. 14 attract the conferment of restricted estate had by a Hindu female under an instrument, i.e. gift, will, decree or order of a Civil Court

or an award. Section 14 and the impugned document must be read harmoniously as an integral scheme. The disability attached to Hindu female by Shastric Law was removed by statutory provisions in Hindu Succession Act. Section 14(1) thereof was thought to be a tool to remove disabilities or restrictions imposed by Customary or Shastric Law on Hindu women section 14 declares in unequivocal terms that the property whether movable or immovable held by a Hindu female acquired either before or after the Act shall be her absolute property, abolishing the limited estate known to Shastric law. Hindu women as a class are declared as class I heirs entitling to intestate succession to a Hindu Male.

Sub-section (2) of section 14 of the Act attempts to denude the object of sub-section (1) and emasculates its efficacy. It should, therefore, be'' read as an exception or a proviso to sub-section (1) of section 14. The interpretation of the'' proviso or an exception should not be to allow to eat away the vital veins of full ownership accorded by sub-section (1) of section 14.

The Hon''ble Supreme Court also relied upon the following reported judgments:-

i) Bai Vajia (Dead) by Lrs. Vs. Thakorbhai Chelabhai and Others, in the case of

Bai Vajia (dead) by L.Rs, v. Thakorbhai Chelabhai &.Ors.,)

ii) Jaswant Kaur Vs. Major Harpal Singh, in the case of

Jaswant Kaur v. Major Harpal Singh)

and

iii) Gulwant Kaur and Another Vs. Mohinder Singh and Others, . in the case of

In Gulwant Kaur & Anr. v. Mohinder Singh & Anr.)

38. In the judgment reported in Maharaja Pillai Lakshmi Ammal Vs. Maharaja Pillai Thillanayakom Pillai and Another, in the case of (Maharaja Pillai Lakshmi Ammal Vs. Maharaja Pillai Thillanayakom Pillai) the Hon''ble Supreme Court held that when properties were given to a hindu woman in lieu of maintenance, it was given in recognition of her pre-existing right and that right can be enlarged into absolute right after the coming into force of Hindu Succession Act 1956, by virtue of section 14(1) of the said Act and she became the absolute owner of the suit property.

39. In the judgment reported in C. Masilamani Mudaliar and Others Vs. The Idol of Sri Swaminathaswami Swaminathaswami Thirukoli and Others, , the three Bench of the Hon''ble Supreme Court approved the judgments reported in i) V. Tulasamma and Others Vs. Sesha Reddy (Dead) by Lrs., ii) Thota Sesharathamma and Another Vs. Thota Manikyamma (Dead) by Lrs. and Others, and iii) Seth Badri Prasad Vs. Srimati Kanso Devi, and held that if acquisition or possession was in recognition of her pre-existing right, and maintenance being such a right, under Shastric''s Law, sub-section 1 of Section 14 will operate and the limited estate will blossom into full

ownership. The same principle has been reiterated in the judgments reported in Mangat Mal (Dead) and Another Vs. Smt. Punni Devi (Dead) and Others, , Smt. G. Rama Vs. T.G. Seshagiri Rao (Dead) by LRs., , AIR 2009 SC. 2561 (supra).

40. Therefore, from the above judgments, it is seen that the Hon''ble Supreme Court has laid down a principle that the husband is duty-bound to maintain his wife, irrespective of possession of any joint family property, or, separate property, and, maintenance of a wife by the husband is a matter of personal obligation, and when property is given to a female hindu, towards her maintenance, and her right of enjoyment over that property is restricted till her lifetime, and when she is possessed of that property on the date of coming into force of the Hindu Succession Act, the limited estate will be enlarged into absolute estate and in that case, Section 14(1) of the Hindu Succession Act will apply. It is also held that a wife''s right to maintenance against her husband, is a preexisting right, and, it does not depend upon the possession of the property by the husband, either self acquired, or, joint family property.

41. Therefore, in the lights of the judgments, referred to supra and rendered by the Hon''ble Supreme Court, we will have to appreciate the contentions of the learned Senior Counsel for the second appellant and other counsel for the appellants, viz., Mr. A.K. Kumarasamy, the learned counsel appearing for the appellants 3 to 8.

42. Mr. S.V. Jayaraman, the learned Senior Counsel for the second appellant emphasized that as per the judgment reported in Mst. Karmi Vs. Amru and Others, , a wife has no preexisting right towards the separate property of her husband and the same was also affirmed in the judgments reported in Sadhu Singh Vs. Gurdwara Sahib Narike and Others, : (2006) 8 SCC 91 (supra). Moreover, the settlor, viz., the original owner-Kuppanna Gowder, made it clear, in Ex. A1 that the properties dealt with by him under the settlement deed, were his separate properties, and therefore, having regard to the declaration made by the settlor, in Ex. A1, that the properties were his separate properties, his wife did not have any preexisting right over those separate properties, and hence, as per Section 14(1) of the Hindu Succession Act only, when property was given to a female member, in recognition of her preexisting right, the same will get enlarged into absolute estate, and when the wife was not having any preexisting right in respect of the separate property of the husband, Section 14(1) will not apply and Section 14(2) alone applies, and hence, the wife will not become the absolute owner of the property and she was entitled to enjoy the property, only as per the terms of the settlement deed.

43. The learned Senior Counsel for the second appellant also submitted that in the judgments reported in Sharad Subramanyan Vs. Soumi Mazumdar and Others, : (2006) 8 SCC 75 (supra), the abovesaid aspects were discussed in detail. Therefore, the third defendant was only having life estate and she never become the absolute owner of the property. The learned Senior Counsel also submitted that the same principle was reiterated in the judgments reported in Gaddam Ramakrishnareddy

and Others Vs. Gaddam Rami Reddy and Another, : (2012) 2 SCC 628 : (2013) 2 CTC 587 (SC). The learned Senior Counsel further submitted that though in Ex. A.4, finding was rendered in O.S. No. 148 of 1929 that the properties, viz., the present suit properties, were the ancestral properties, having regard to the assertion of Kuppanna Gowder in Ex. A1 that the properties were his separate properties, the findings rendered in O.S. No. 148 of 1929, cannot be taken into consideration to arrive at a conclusion that the properties were the ancestral properties in the hands of Kuppanna Gowder, and therefore, the third defendant was having preexisting right over the property.

44. According to me, the contentions of the learned Senior Counsel for the second appellant and the learned counsel for the fourth respondent cannot be accepted.

45. In the judgment reported in Mst. Karmi Vs. Amru and Others, , there is no indication with respect to the character of the property. As per the facts of that case, one Jaimal was the owner of the suit properties and he appeared to have executed two Wills and by the execution of the second Will, he revoked the first Will, and, under the second Will, he bequeathed his entire estate in favour of his widow to be enjoyed by her till her lifetime, and thereafter, to his collaterals. Jaimal''s wife died in the year, 1960 or 1961 and on her death, the collaterals claimed the properties on the basis of the Will executed by Jaimal, but, the appellant claimed the properties under the Will executed by the wife of Jaimal.

46. In the judgment reported in Sadhu Singh Vs. Gurdwara Sahib Narike and Others, , the judgment rendered in Mst. Karmi Vs. Amru and Others, was relied upon, and, it is stated in the judgment reported in Sadhu Singh Vs. Gurdwara Sahib Narike and Others, that the property dealt with by the owner, was his self acquired property and that was the subject matter in the judgment reported in Mst. Karmi Vs. Amru and Others, . Placing reliance on that judgment, (viz., the judgment reported in Mst. Karmi Vs. Amru and Others, the Judges of the Hon''ble Supreme Court proceeded that in respect of self acquired property, the widow had no preexisting right. Unfortunately, the judgment reported in Thota Sesharathamma and Another Vs. Thota Manikyamma (Dead) by Lrs. and Others, was not brought to the notice of the Hon''ble Supreme Court, while deciding the case in Sadhu Singh Vs. Gurdwara Sahib Narike and Others, . In the judgment reported in Thota Sesharathamma and Another Vs. Thota Manikyamma (Dead) by Lrs. and Others, , the Judges of the Hon''ble Supreme Court held that the judgment reported in Mst. Karmi Vs. Amru and Others, , cannot be considered as an authority. In Paragraph No. 10 of that judgment, it is held as follows:-

The case of Mst. Karmi v. Amru on which a reliance has now been placed by Learned Counsel for the appellant and petitioners was also decided by a Bench of three Judges Hon. J.C. Shah, K.S. Hegde and A.N. Grover, JJ. It may be noted that two Hon''ble Judges, namely, J.C. Shah and A.N. Grover were common to both the cases. In Mst. Karmi v. Amru, one Jaimal died in 1938 leaving his wife Nihali. His son Ditta

pre-deceased him. Appellant in the above case was the daughter of Ditta and the respondents were collaterals of Jaimal. Jaimal first executed a will dated December, 18, 1935 and by a subsequent will dated November, 13.1937 revoked the first will. By the second will a life estate was given to Nihali and thereafter the property was made to devolve on Bhagtu and Amru collaterals. On the death of Jaimal in 1938, properties were mutated in the name of Nihali died in 1960/61. The appellant Mst. Karmi claimed right on the basis of a will dated April, 25, 1958 executed by Nihali in her favour. It was held that the life estate given to a widow under the will of her husband cannot become an absolute estate under the provisions of the Hindu Succession Act. Thereafter, the appellant cannot claim title to the properties on the basis of the will executed by the widow Nihali in her favour. It is a short Judgment without adverting to any provisions of Sections 14(1) or 14(2) of the Act. The Judgment neither makes any mention of any argument raised in this regard nor there is any mention of the earlier decision in Badri Pershad v. Smt. Kanso Devi. The decision in Mst. Karmi & Anr. cannot be considered as an authority on the ambit and scope of Sections 14(1) and (2) of the Act.

47. Even otherwise, the judgments reported in Sadhu Singh Vs. Gurdwara Sahib Narike and Others, : (2006) 8 SCC 91 (supra) cannot be relied upon by the learned Senior Counsel for the appellants, as the facts of that case are entirely different from the facts of the present case. Further, in the above judgments, (viz., the judgments reported in Sadhu Singh Vs. Gurdwara Sahib Narike and Others, : (2006) 8 SCC 91 (supra) the Hon''ble Supreme Court affirmed the law laid down in V. Tulasamma''s case and having regard to the facts of that particular case, it has been held that the estate given to the wife under the deed, will not get enlarged into absolute estate and held that the provisions of Section 14(2) of the Hindu Succession Act alone will apply and not 14(1)

48. In the judgment reported in Sadhu Singh Vs. Gurdwara Sahib Narike and Others, , the facts of the case are as follows:-

One R was owning self acquired properties and he executed a Will on 07.10.1968, giving life estate to his wife and vested remainder to the appellant and his brother. As per the terms of the Will, the R''s wife had no right to gift the property to the Gurdwara and she is only entitled to enjoy the properties without any power of alienation. The Will was dated 7.10.1968 and the testatrix died on 19.3.1977 and the wife gifted the property to Gurdwara and that was challenged by the vested remainder.

In that judgment, it was held that the ratio laid down in V. Tulasamma''s case has application only when the female hindu is possessed of the property on the date of the Act under semblance of a right, whether it be a limited right or preexisting right of maintenance, in lieu of which, she was put in possession of the property. The ratio laid down in V. Tulasamma''s case cannot be applied, when the female was not in possession of the property under semblance of right or in recognition of

preexisting right. It is further held as follows:-

Para 11...What emerges according to us is that any acquisition of possession of property (not right) by a female Hindu after the coming into force of the Act, cannot normally attract Section 14(1) of the Act. It would depend on the nature of the right acquired by her. If she takes it as a heir under the Act, she takes it absolutely. If while getting possession of the property after the Act, under a devise, gift or other transaction, any restriction is placed on her right, the restriction will have play in view of section 14(2) of the Act.

49. Their lordships held that when a male hindu dies, possessed of property after the coming into force of the Hindu Succession Act, his heirs take his property absolutely and there is no question of limited estate. Therefore, when a male hindu dies after 1956, leaving his widow, as his sole heir, she gets the property as class I heir and she gets absolute title over the property. When a male hindu dies after the coming into force of the Act, bequeathing some properties to his widow, under the Will or settlement deed, restricting the right of enjoyment, in such case, Section 14(2) alone applies, as the terms of the deed or bequest have to be given effect to.

50. Similarly, in the judgment reported in Sharad Subramanyan Vs. Soumi Mazumdar and Others, , one K executed his last Will on 19.3.1991, bequeathing life interest in favour of his wife and further stated that either his wife or executors would execute the Will and distribute the properties in the manner as prescribed in the Will. K died on 26.09.1991, leaving behind his wife, as his sole heir. On 21.10.1992, the wife executed a lease deed in favour the appellant and also executed a Will dated 21.10.1992, in favour of the appellant and died on 27.11.1998. The appellant claimed absolute right under the Will deed, dated 21.10.1992. In that judgment also, the Hon''ble Supreme Court, after relying upon the judgment reported in C. Masilamani Mudaliar and Others Vs. The Idol of Sri Swaminathaswami Swaminathaswami Thirukoli and Others, and the judgment rendered in V. Tulasamma''s case, accepted the proposition that when limited estate was conferred on the legatee in lieu of the right to maintenance, it was in recognition of preexisting right to maintenance known under the Shastric''s Law and it had become the absolute right u/s 14(1) and the legatee became an absolute owner of the property. Having regard to the facts of that case, it was held by the Hon''ble Supreme Court that in the Will dated 21.10.1992, relied upon by the appellant, there were no indications that the property was given to the female hindu in recognition of, or, in lieu of her right to maintenance, and therefore, held that situation would fall within the ambit of Section 14(2) of the Hindu Succession Act and the restricted life estate would not be enlarged into absolute estate. It was also made clear in that judgment that there was no material to indicate that the property was given to the wife in lieu of her right to maintenance. Such arguments was also not advanced before the Court. Therefore, having to the specific recitals in the documents, which were considered in those two judgments, the Hon''ble Supreme Court held that

when there was no indication in the documents that the property was given in lieu of maintenance, the female member will have to accept the property with all restrictions, as stated in the documents and the provisions of Section 14(2) will apply and not 14(1).

51. In the judgment reported in Gaddam Ramakrishnareddy and Others Vs. Gaddam Rami Reddy and Another, also, it was held that under the gift deed, the property was given to the wife, not in lieu of maintenance, and therefore, the female member will not become the absolute owner of the property.

52. In the judgment reported in Shivdev Kaur (D) By L.Rs. and Others Vs. R.S. Grewal, , the judgments reported in Mst. Karmi Vs. Amru and Others, , were relied upon and there was no reference to the judgment rendered in V. Tulasamma''s case and other judgments rendered by Three Bench of the Hon''ble Supreme Court, wherein, it was held that when any property was given to the female member, under the deed, in lieu of her maintenance, she would become the absolute owner of the property, after the coming into force of the Hindu Succession Act. Further, in that case also, property was given to the daughter and there was no reference or indication in the document that the property was given in lieu of her maintenance.

53. The judgment reported in Jagan Singh (Dead) through L.Rs. Vs. Dhanwanti and Another, also cannot be applied to the facts of this case and that judgment was rendered with reference to the provisions contemplated under U.P. Zamindari Abolition and Land Reforms Act, 1950.

54. The contentions of Mr. M.S. Subramanian, the learned counsel for the fourth respondent also cannot be accepted. Though his arguments appears to be attractive at the first instance, having regard to the recitals in Ex. A.1, it cannot be contended that the third defendant was given only right to enjoy the usufruct, and, no property was dedicated in her favour, under Ex. A.1. No doubt, while dedicating ''B'' schedule property to Kuppakkal, it was specifically stated that she could enjoy the properties till her lifetime and while giving ''C'' schedule property to the third defendant, it was stated that she could enjoy the income from the properties. But, that will not lead to the conclusion that ''C'' schedule property was not given to the third defendant, under Ex. A.1. In that document, viz., Ex. A.1, it was stated that the third defendant shall enjoy the property till her lifetime, without any power of alienation, and, if she had any male progenies, they and minor Balasubramaniam Gounder and his male heirs shall divide the property equally. If there was no vestige of title in favour of the third defendant, under Ex. A1, then, there was no necessity for the settlor-Kuppanna Gowder to state further that she has no power of alienation and she can only enjoy the property.

55. Therefore, having regard to the recitals in Ex. A1, ''C'' schedule property was given to the third defendant to be enjoyed by her till her life time and she possessed of that property at the time of coming into force of the Hindu Succession Act, and

therefore, as per section 14(1) of the Hindu Succession Act, she became the absolute owner of ''C'' schedule property.

56. In the judgment reported in Eramma Vs. Verrupanna and Others, , it was held that section 14(1) will not apply, where a female hindu is in possession of the property without any right over the same. In other words, when female hindu is in possession of the property, not in recognition of any preexisting right, her mere possession of the property on the date of coming into force of the Hindu Succession Act, will not become absolute, and therefore, she will not become absolute owner of the property. The judgment reported in Thatha Gurunadham Chetti Vs. Thatha Navaneethamma (Died) and Another, , cannot be considered, having regard to the judgments rendered in V. Tulasamma''s case and other judgments (referred to above).

57. Therefore, the legal principles can be summarized as follows:-

i) The right of maintenance of a wife is a preexisting right against the husband, irrespective of the fact, whether the husband is possessed of any separate property, or ancestral property and it can be enforced even against the husband''s separate property.

ii) When the property has been given to wife under an instrument, in lieu of her maintenance, it is in recognition of her preexisting right and when the wife/widow is in possession of the property, on the date of coming into force of the Hindu Succession Act, 1956, the limited interest, stated in that instrument, would enlarge into absolute estate.

iii) When the wife is in possession of the property, not pursuant to any legal right, or, in recognition of her preexisting right, that interest will not be enlarged into absolute estate.

58. In this case, admittedly, under Ex. A1, the property was given to the deceased third defendant, the widow of Kuppanna Gowder, in lieu of her maintenance and she was in possession of the property, and therefore, on the date of coming into force of the Hindu Succession Act, 1956, she became the absolute owner of the property. Therefore, the sale deeds executed by her in favour of the respondents 1 and 2 are valid. In the result, the Appeal is dismissed and the judgment and decree of the Trial Court are confirmed. However, there shall be no order, as to costs.