

SA(MD). No.159 of 2025

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**BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT**

Reserved On : 17.03.2026

Delivered on : 10.04.2026

CORAM

**THE HONOURABLE MR. JUSTICE P.B.BALAJI**

**SA(MD). No.159 of 2025  
and  
CMP(MD)No.5953 of 2025**

- 1.Thirumalaikannan
- 2.Vimalarani

... Appellants/Appellants2&3 /  
Defendants 2 & 3

Vs.

- 1.Bharathan @ Muthuraj
- 2.Manimaran
- 3.Vellaiyan

... Respondents 1 to 3/Respondents 1 to 3/  
Plaintiffs 1 to 3

Mahendran (died)

4.Manikandan

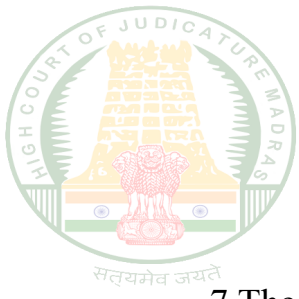
5.Kannan

6.The Tahsildar,

Taluk Office, Periyakulam Taluk,

Theni District.

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7. The District Collector,  
District Collectorate,  
Madurai Road,  
Theni Taluk,  
Theni District.

8. The Commissioner,  
Municipality Office,  
Periyakulam Taluk,  
Theni District.

... Respondents 4 to 8/Respondents 5 to 9/  
Defendants 4 to 8

9. Jeyalakshmi

10. Dinesh

11. Minor. Nithesh

(Rep. By mother and guardian

Jeyalakshmi)

... Respondents 9 to 11/Respondents 10 to 12/

L.R.s of 4<sup>th</sup> plaintiff

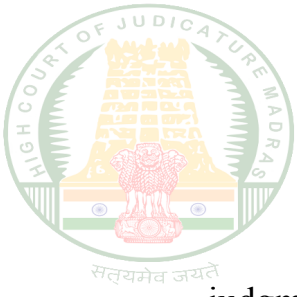
12. Ramakrishnan

... 12<sup>th</sup> Respondent / 1<sup>st</sup> Appellant /

1<sup>st</sup> Defendant

PRAYER :- Second Appeal is filed under Section 100 of the Civil Procedure Code, against the decree and judgment of the lower Appellate Court dated 26.02.2025 passed in A.S.No.17 of 2013 on the file of the Additional District and Sessions Judge, Periyakulam, confirming the

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judgment and decree of the trial Court, dated 15.07.2011 passed in O.S.No.125 of 2007 on the file of the Subordinate Judge, Periyakulam.

For Appellants : Mrs.J.Padmavathi Devi

For Respondents : Mr.N.Dilip Kumar for R1 to 3 & 9 to 11

: Mr.K.S.Selvaganesan  
Additional Government Pleader R6 to 8

: Mr.V.Ilanchezian for R12

: No appearance for R4 and R5

### **JUDGMENT**

The defendants 2 and 3, in O.S. No.125 of 2007, are the appellants, challenging the concurrent findings of the trial Court as well as the first Appellate Court.

2. The facts that are necessary for deciding the present second appeal, briefly:



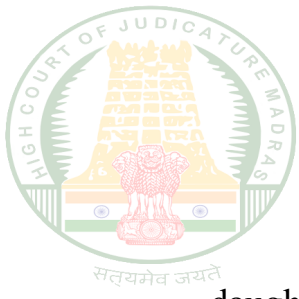
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**Pleadings:**

**The Complaint in brief:**

2.1. The suit properties were originally belonging to one Vellaiyan Servai, the father of the first plaintiff. The said Vellaiyan Servai married Kailayee Ammal as the first wife and Vellaiyammal as the second wife both of his wives being sisters. Through Kailayee Ammal, Vellaiyan Servai was blessed with the first plaintiff and the father of the plaintiffs 3 and 4, viz., Maruthai. Through second wife, Vellaiyammal, Vellaiyan Servai was blessed with a daughter, Maruthammal, wife of the first defendant and a son Sannasi Servai. Both Vellaiyammal and Sannasi Servai were mentally challenged persons. Vellaiyan Servai died on 07.01.1968 and his wife, Kailayee Ammal died on 14.02.1993 and the father of the plaintiffs 3 and 4, viz. Maruthai died on 14.06.1995. The second wife Vellaiyammal died on 14.11.2002 and Sannasi Servai died as a bachelor on 11.04.2000. The wife of the first defendant Maruthammal died on 25.01.2005. The second plaintiff-Manimaran is the son of the first plaintiff. The defendants 2 and 3 are the son and

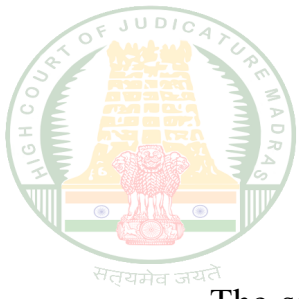


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daughter of Maruthammal, that is the children of the first defendant. The defendants 4 and 5 are lessees of defendants 1 to 3, insofar as the items Nos.1 and 2 suit properties. The Government officials are impleaded as defendants 6 to 8. Items 1 and 2 are landed properties, which have been leased to the defendants 4 and 5. Item No.3 is the house property, which is in possession of the 1<sup>st</sup> defendant, who is the husband of late Maruthammal.

2.2. Vellaiyan Servai has executed a registered Will dated 15.12.1966 bequeathing the suit property which is set out in B schedule properties in the Will to Maruthammal, who has to maintain Vellaiyammal and Sannasi Servai, both of whom are mentally challenged, from and out of income from Will B schedule property, with no right of encumbrance. After the death of Vellaiyan Servai, Sannasi Servai and Maruthammal, the said properties would devolve on the first defendant and Maruthai and their legal heirs. As Maruthammal died, in terms of the will dated 15.12.1996, the properties devolved on the plaintiffs and one Umamaheswari, who is the daughter of Maruthammal.



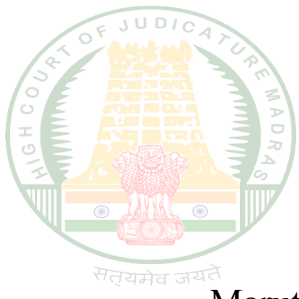
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The said Umamaheswari has already executed a release deed in favour of the plaintiffs 3 and 4 and hence, she is not joining the plaintiffs in filing the suit for recovery of possession, mandatory injunction and mense profits.

**3. Written statement filed by the defendants 1 to 3 in brief:**

The defendants 1 to 3 admitted the relationship between the parties. The defendants denied that the first plaintiff's mother Kailayee Ammal was the legally wedded wife of Vellaiyan Servai, contending that she was married to a person in Anaikatti Village and Vellaiyammal alone is the legally wedded wife of Vellaiyan Servai. The contention that Vellaiyammal and Sannasi Servai were mentally challenged is denied. The plaintiffs do not have any right in the suit properties, even in terms of Will dated 15.12.1966. Tthe plaintiffs have suppressed the earlier Wills dated 01.12.1966 and 21.09.1966. The Will dated 15.12.1996 under which the plaintiffs now claim right, as well as the Will dated 21.09.1996 were executed by Vellaiyan Servai, under coercion. At that time, he was not in good health and was in a confused state of mind.



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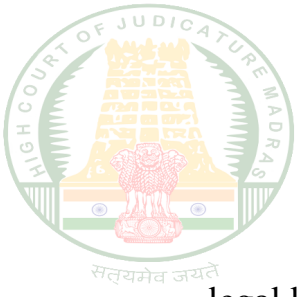
Maruthammal filed a suit in O.S.No.278 of 1970 before the District Munsif, Dindigul, for recovery of the suit properties from the plaintiffs and the defendants 1 to 3 were in possession and enjoyment of the properties. Maruthammal took possession of the suit properties. The said Maruthammal and subsequent to her life time, defendants 1 to 3 are in lawful continuous possession and enjoyment. The suit is liable to be dismissed.

**4. Written statement filed by the 6<sup>th</sup> defendant, which is adopted by the 7<sup>th</sup> defendant, in brief:**

These defendants are unnecessary parties and as and when the plaintiffs or the defendants, filed appropriate petition along with supporting document, will be considered and patta will be issued. These defendants therefore prayed for dismissal of the suit.

**5. Written statement filed by the 8<sup>th</sup> defendant, in brief:**

Plaint schedule Item No.3 was assessed in the name of Maruthammal and she died leaving behind the defendants 1 to 3 as her



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legal heirs. Assessment of house tax has been transferred in the names of the defendants 1 to 3. The 8<sup>th</sup> defendant also prayed for dismissal of the suit. The defendants 4 and 5 remain exparte.

### **6.Issues framed by the trial Court:**

Based on the pleadings, the trial Court has framed the following issues:

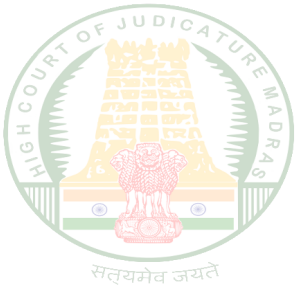
“1. வாதிக்கு தாவா சொத்துக்களைப் பொறுத்து விளம்புகை பரிகாரம் கிடைக்கத்தக்கதா?

2. தாவா 1,3வது லக்கச் சொத்துக்களைப் பொறுத்து 6,7 பிரதிவாதிகள் வாதி பெயருக்கு பட்டாவை மாற்றம் செய்து கொடுக்கும்படி செயலுறுத்துக் கட்டளை கிடைக்கத்தக்கதா?

3. வாதிகளுக்கு 3-ம் லக்கச் சொத்தான வீட்டை கொடுத்து வரி விதிப்பை மாற்றம் செய்யும்படி 8-ம் பிரதிவாதி மீது செயலுறுத்துக் கட்டளை உத்தரவு கிடைக்கத்தக்கதா?

4. வாதிகளுக்கு 1 முதல் 5 பிரதிவாதிகள் தாவா சொத்தை ஒப்படைக்கும் காலம் வரை பின் மகசூல் நஷ்டி கிடைக்கத்தக்கதா?

5. 1 முதல் 3 பிரதிவாதிகள் கூறுவது போல் 5.1.06-ம் தேதிய விடுதலைப்பத்திரம் செல்லத்தக்கதா?



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6. 15.12.1966ம் தேதி ஓர் வெள்ளையன் சேர்வை எழுதிய உயில் சாசனம் சட்டப்படி செல்லத்தக்கதா?

7. 1,2,3 பிரதிவாதிகள் கூறுவது போல் 1.12.1964-ம் மற்றும் 21.9.1966-ம் தேதிகளில் ஏற்பட்ட உயில்களின் விவரங்களை மறைக்கப்பட்டுள்ள விவரங்கள் உண்மைதானா?

8. வாதிகளுக்கு கிடைக்கக்கூடிய இதர பரிகாரங்கள் என்ன?"

### **7.Trial:**

At trial, the first plaintiff examined himself as P.W.1 and marked Ex.A1 to Ex.A14. On the side of the defendants 1 to 3 examined themselves as D.W.1 to D.W.3 and one Baskar was examined as D.W.4 and Ex.B1 to Ex.B5 were marked.

### **8.Decision of the trial Court:**

The trial Court, on appreciation of the pleadings and oral and documentary evidence, decreed the suit by the judgment and decree dated 15.07.2011.

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### **9. Decision of the First Appellate Court:**

Challenging the decision of the trial Court, a first appeal was filed in A.S.No.17 of 2013 before the Additional District and Sessions Judge, Periyakulam. Before the first appellate Court, the appellant also took out an application for adducing evidence under Order 41 Rule 27 CPC. The first Appellate Court dismissed the application for adducing additional evidence and also dismissed the appeal.

### **10. Present appeal:**

Challenging the concurrent findings of the Courts below, the present Second Appeal has been filed.

### **11. Substantial questions of law:**

On 03.04.2025, this Court admitted the Second Appeal on the following substantial question of law:

1. Whether the suit for recovery of possession is maintainable

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particularly when the plaintiffs suffered a decree in earlier suit in O.S.No. 278 of 2010 filed by the first defendant's wife Maruthammal and others and took some possession of the property through court?

12. I have heard Mrs.J.Padmavathi Devi, learned counsel for the appellant and Mr.N.Dilipkumar, learned counsel for the respondents 1 to 3 and 9 to 11 and Mr.K.S.Selvaganesan, learned Additional Government Pleader for the respondents 6 to 8 and Mr.V.Illanchezian, learned counsel for the 12<sup>th</sup> respondent.

**13. Arguments of the learned counsel for the appellant:**

13.1. Mrs.J.Padmavathi Devi, learned counsel for the appellants, taking me through the genealogy tree of the family and the earlier proceedings filed in O.S.No.279 of 1970 and the first appeal therefrom would vehemently contend that the plaintiffs are guilty of suppression of material facts. According to the learned counsel for the appellants, firstly, the plaintiffs have suppressed two earlier Wills executed by Vellaiyan Servai in the year 1966. She would also contend that the plaintiffs have



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not disclosed the factum of having suffered decrees for recovery of possession in the earlier suit filed by the wife of the first defendant and mother of the defendants 2 and 3 /Maruthammal. The learned counsel would state that when the issues pertaining to the very same property had already been gone into in detail in the earlier round of litigation, the present attempt is on the part of the respondents/plaintiffs, is barred by *res judicata*.

13.2. The learned counsel for the appellants would also state that when the property had been given to the daughter of Vellaiyan Servai, viz., Maruthammal, her limited right, by virtue of Section 14 of the Hindu Succession Act, would blossom into an absolute estate and the First Appellate Court has erroneously dealt with the said issue by holding that Ex.A1 Will came into existence only on 15.12.1966, and therefore, the question of a Hindu woman having any limited share prior to 1956 does not arise at all.



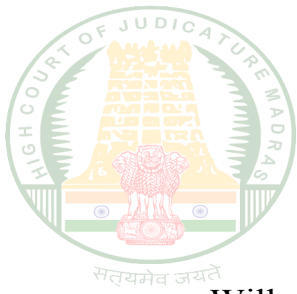
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13.3. The learned counsel for the appellants would rely upon the decision of this Court in *Thimma.V.Saradha Ammal (Died) v. M.N.Kumareshababu* reported in *2019-2-MWN(Civil)537* and a judgment of the Hon'ble Supreme Court in *Maharaja Pillai Lakshmi Ammal v. Maharaja Pillai Thillanayakom Pillai* reported in *1988-1-SCC-99*. The learned counsel would therefore pray for the appeal being allowed as prayed for.

**14.Arguments of the learned counsel for the contesting respondents:**

14.1. Per contra, Mr.N.Dilipkumar, learned counsel for the contesting respondents 1 to 3 and 9 to 11 would at the outset state that though the plaintiffs have not disclosed about the earlier suit filed by Maruthammal/ wife of first defendant and mother of defendants 2 and 3, they have justified their filing of the suit on the ground that the earlier proceedings do not operate as a bar insofar as the present cause of action is concerned and even in the said suit, Maruthammal relied on the very same Will dated 15.12.1966 and claimed right and that based on the said

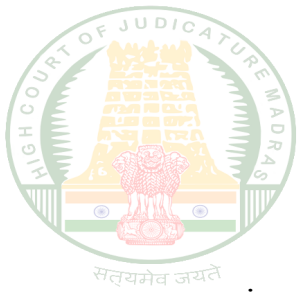


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Will alone, the suit filed by Maruthammal and others came to be decreed pursuant to which, she was also in possession of the property. The learned counsel for the contesting respondents would submit that if at all *res judicata* has to be invoked, it can operate only against the defendants 1 to 3 and not against the plaintiffs.

14.2. Mr.N.Dilipkumar, learned counsel would further contend that once the Will was admitted by Maruthammal in the earlier suit filed by her, she was estopped from challenging the truth and genuineness of the Will and subsequently, it is not open to her legal heirs also and since the claim is only under Maruthammal, taking me through Mr.Dilipkumar would contend that since Vellaiyammal, second wife of Vellaiyan Servai and son born to them, viz.,Sannasi Servai were both mentally challenged, Maruthammal was appointed as a next friend and the Will clearly set out that after the demise of Vellaiyammal and Sannasi Servai and Maruthammal, schedule B properties to the Will, which is now subject matter of the present proceedings would revert back to the sons through the first wife Kailayee Ammal, who would only have a limited right of



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enjoyment and after the life time, the properties would go to their children. It is therefore the submission of Mr.Dilipkumar that the earlier suit which was filed by Maruthammal was only for enforcing right of enjoyment of Vellaiyan and Sannasi Servai and after the demise of both the mentally challenged person and the demise of Maruthammal, in terms of the Will, the property is bequeathed only to the grand children, through the sons of the first wife and therefore, there is no question of any *res judicata* as contended by the learned counsel appellants.

14.3. Insofar as the arguments touching Section 14 of the Hindu Succession Act, Mr.Dilipkumar, learned counsel for the respondents would state that the appellants have not pleaded that Maruthammal had only a limited right and that such limited right blossomed into an absolute right under Section 14 of the Hindu Succession Act, either in the written statement or by letting in evidence in this regard and in the first time, the issues as raised before the first Appellate Court, which too were negatived, according to the learned counsel for the respondent, Mr.Dilipkumar, rightly.

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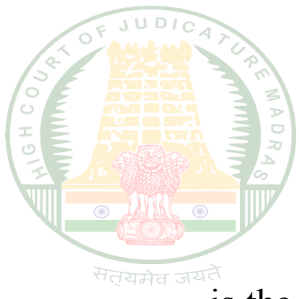
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14.4. Mr.Dilip Kumar has relied on the decision of the Hon'ble Supreme Court in *Bhagwat Sharan (Dead) v. Purushottam* reported in *2020-6-SCC-387* and a decision of the Division Bench of this Court, to which I was a party in *Boomathi (Died) V. Murugesan (Died) and others made in AS.No.299 of 2013 dated 09.03.2023*.

15. I have paid my anxious and careful consideration to the submissions advanced by the learned counsel on either side. I have also gone through the pleadings as well as the oral and documentary evidence available on record. I have also carefully perused the findings arrayed at by the trial Court as well as the first Appellate Court, in ultimately decreeing the suit concurrently.

### **16. Discussion:**

16.1. The relationship between the parties is not in dispute. Vellaiyan Servai, died on 07.01.1968, leaving behind his two wives Kailayeeammal and Vellaiyan Servai, who are admittedly own sisters. It



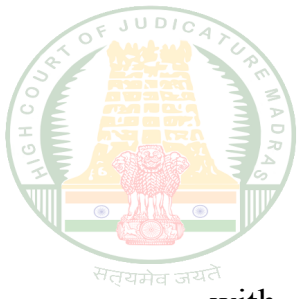
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is the contention of the respondents / plaintiffs that Vellaiyan Servai had executed a Will dated 15.12.1966, which has been marked as Ex.A1. Rights are claimed under the said Will, and recovery of possession has been sought from defendants 1 to 3.

16.2. It is vehemently contended by the learned counsel for the appellants that the said Will dated 15.12.1966 was not a true and genuine Will and was not brought about with the consent of the sisters. Admittedly, Maruthammal had filed a suit in O.S.No.278 of 1970 and the decree and judgment in the said suit 28.02.1972, exhibited as Ex.A11 and Ex.A12 in the present proceedings. The decree in the said suit was no doubt appealed against in A.S.No.383 of 1972, which was also dismissed on 10.04.1973. The judgment and decree of the first appellate Court have been exhibited as Ex.A13 and Ex.A14.

16.3. On going through the judgments of the trial Court as well as the first appellate Court, I find that firstly, the wife of the first defendant and mother of defendants 2 and 3, viz., Maruthammal had filed suit along



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with Vellaiyammal, her mother and Sannasi Servai, her brother.

Maruthammal herself has described Vellaiyammal and Sannasi Servai as persons of unsound mind, and she represented them as their next friend.

Even in the said suit, Maruthammal for herself and on behalf of the defendants Vellaiyammal and Sannasi Servai relied on the Will dated 15.12.1966 executed by Vellaiyan Servai and only on the basis of the said Will, sought for relief. Therefore, it is not now open to them to turn around and contend that the Will dated 15.12.1966 is not a genuine document or that it was brought about by the exercise of undue influence over Vellaiyan Servai. The defendants / appellants, who are claiming under Maruthammal are estopped from taking such a plea and in this regard, I do not find any infirmity committed by the trial Court as well as the first Appellate Court in their assessment of the pleadings and evidence in arriving at the finding that the defendants were bound by the Will dated 15.12.1966.



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16.4. Coming to the issue as to whether having lost the suit in O.S.No.278 of 1970 and also the appeal therefrom, whether the plaintiff can maintain the present suit in respect of the very same properties. On going through the Will Ex.A1, I find that the suit properties are described as schedule B to the said Will. The testator Vellaiyan Servai has clearly recorded the fact that his wife Vellaiyammal and son Sannasi Servai. are mentally unsound and for such purposes, Vellaiyan Servai has appointed his daughter Maruthammal as the guardian and next friend. In the said Will, Vellaiyan Servai has clearly expressed his wishes that after the demise of Vellaiyammal and Sannasi Servai, property would stand reverted to the sons and grand children through first wife Kailayee Ammal. Admittedly, Vellaiyammal died on 14.11.2002 and Sannasi Servai died on 11.04.2000 and subsequently, Maruthammal also died on 25.01.2005. Accordingly, the plaintiffs' cause of action to seek recovery of possession of the suit property, in the occupation of Maruthammal or her legal heirs, arises only on the death of Maruthammal and not earlier.



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16.5. Though I am in agreement with the argument of Mr.N.Dilipkumar that in the absence of any pleading in the written statement, the appellants cannot take the plea that Maruthammal's limited right blossomed into a full estate under Section 14 of the Hindu Succession Act, however, at the same time, considering the fact that the first Appellate Court has considered the said issue on behalf of the appellants, I am proceeding to decide as well.

16.6. There is no dispute with regard to Section 14 of the Hindu Succession Act, I am proceeding to consider Section 14 of the Hindu Succession Act, which is extracted hereunder:

*“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*



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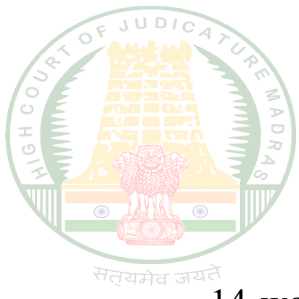


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*at a partition, or in lieu of maintenance or arrears of maintenance, or by gift from any person, whether a relative or not, before, at or after her marriage, or by her own skill or exertion, or by purchase or by prescription, or in any other manner whatsoever, and also any such property held by her as sridhana immediately before the commencement of this Act.*

*(2) Nothing contained in sub-section (1) shall apply to any property acquired by way of gift or under a will or any other instrument or under a decree or order of a civil court or under an award where the terms of the gift, will or other instrument or the decree, order or award prescribe a restricted estate in such property. “*

16.7. In the present case, the testator has clearly mentioned that Maruthammal would have only a limited estate for the purpose of maintenance of his second wife Vellaiyammal and his son Sannasi Servai and therefore, it cannot be contended that the right given to Maruthammal would blossom into full estate. Though the First Appellate Court may not be right in holding that, since the Will came into existence after the commencement of the Hindu Succession Act, 1956 and Section



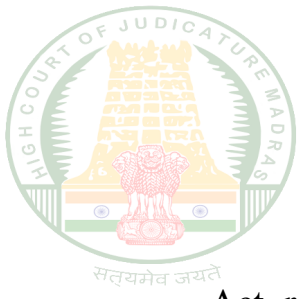
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14 would not apply, Section 14(1) of the Act applies not only to rights acquired prior to the amendment but also thereafter. For the above reasons, the conclusion arrived at by the first appellate Court that Section 14(1) will not apply need not be disturbed.

16.8. Coming to the decisions that have been relied upon, as already discussed, the plea regarding Section 14 of the Hindu Succession Act was not pleaded in the written statement. In any event, Section 14(2) would operate as a bar to the appellants contending that Maruthammal's limited right would blossom into a full estate. The decisions in *Maharaja Pillai Lakshmi Ammal's* case as well as *Thimma V.Saradha Ammal's* case would have no application to the facts of the present case, since both were concerned with the enlargement of a Hindu woman's estate into a full estate.

16.9. In *Boomathi's* case, the Division Bench held that when the adverse litigant admits the Will, there is no necessity to prove the Will, applying the definition of 'admission' under Section 17 of the Evidence



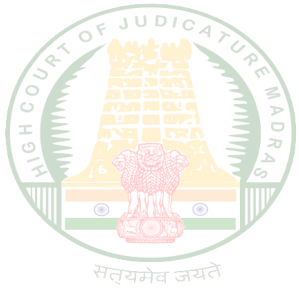
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Act read with Section 58, which does not require a party to prove admitted facts.

16.10. In *Bhagwat Sharan's* case, the Hon'ble Supreme Court in a similar set of facts held that when the plaintiffs therein had not only accepted the Will, but also had taken the benefit of the same, they could not turn around and urge that the Will was not valid, The Hon'ble Supreme Court relied on the principle of estoppel and disallowed the plaintiffs therein from asserting that a limited right had blossomed into a full estate. This decision, in fact, would squarely apply to the facts of the present case.

17. For all the foregoing reasons, the substantiate question of law is answered against the appellants and in favour of the contesting respondents.



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**18. Result:**

In fine, the second appeal is dismissed. However, there shall be no order as to costs. Consequently, connected Miscellaneous Petition is closed.

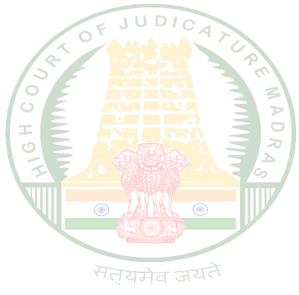
**10.04.2026**

NCS : Yes/No  
Index : Yes / No  
Internet : Yes / No  
LS

TO

1. The Additional District and Sessions Judge,  
Periyakulam.
2. The Subordinate Judge,  
Periyakulam.
3. The Tahsildar,  
Taluk Office,  
Periyakulam Taluk,  
Theni District.

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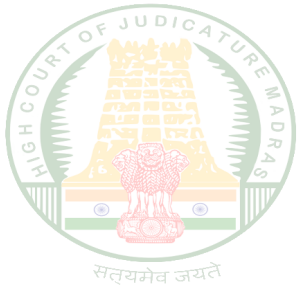
SA(MD). No.159 of 2025

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4. The District Collector,  
District Collectorate,  
Madurai Road,  
Theni Taluk,  
Theni District.

5. The Commissioner,  
Municipality Office,  
Periyakulam Taluk,  
Theni District.

6. The Section Officer,  
VR Section,  
Madurai Bench of Madras High Court,  
Madurai.



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SA(MD). No.159 of 2025

**P.B.BALAJI,J.**

LS

**Pre-delivery Judgment made in  
SA(MD) No.159 of 2025**

**10.04.2026**

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