IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE EASWARAN S.

MONDAY, THE 9TH DAY OF MARCH 2026 / 18TH PHALGUNA, 1947

RSA NO. 789 OF 2015

AGAINST THE JUDGMENT AND DECREE DATED 26.9.2014 IN AS NO.114 OF 2008 OF PRINCIPAL SUB COURT, THALASSERY ARISING OUT OF THE JUDGMENT AND DECREE DATED 11.4.2008 IN OS NO.58 OF 2006 OF MUNSIF COURT, KUTHUPARAMBA

APPELLANTS/APPELLANTS/PLAINTIFFS:

1 P.K.LAKSHMI
AGED 69 YEARS
D/O.KORAN GURUKKAL (LATE), RETIRED TEACHER, KUTHUPARAMBA AMSOM, MOORIYAD DESOM, THALASSERY TALUK, PIN-670 643.

2 P.K.SARADA
AGED 64 YEARS
D/O.KORAN GURUKKAL (LATE), ANGANAVADI TEACHER, PALAYULLATHIL HOUSE, KUTHUPARAMBA AMSOM, MOORIYAD DESOM, THALASSERY TALUK, PIN-670 643.

3 P.K.RADHA
AGED 57 YEARS
D/O.KORAN GURUKKAL (LATE), ANGANAVADI TEACHER, PALAYULLATHIL HOUSE, KUTHUPARAMBA AMSOM, MOORIYAD DESOM, THALASSERY TALUK, PIN-670 643

4 P.K.NARAYANI, AGED 53 YEARS,
D/O.KORAN GURUKKAL (LATE), TEACHER, PRANAVAM HOUSE, KUTHUPARAMBA AMSOM, MOORIYAD DESOM, THALASSERY TALUK, PIN-670 643.

BY ADVS.
SHRI.K.V.PAVITHRAN
SHRI.JAYANANDAN MADAYI PUTHIYAVEETTIL
SRI.NIAS MOOPAN
SHRI.P.SAJU

RESPONDENTS/RESPONDENTS 1, 3 TO 9/DEFENDANTS 1, 3 TO 9:

1 GOPI,(DIED) LHRS IMPLEADED
D/O.KORAN GURUKKAL (LATE), NO OCCUPATION,
KUTTIKKATTIL HOUSE, KUTHUPARAMBA AMSOM, MOORIYAD DESOM, THALASSERY TALUK, PIN-670 643.

(LEGAL HEIRS OF THE DECEASED FIRST RESPONDENT ARE IMPLEADED AS SUPPLEMENTAL RESPONDENTS 10 TO 13 AS PER ORDER DATED 09.07.2024 IN IA.NO.1799/2015 IN RSA.NO.789/2015)

2 P.K.NALINI,
AGED 66 YEARS
D/O.KORAN GURUKKAL (LATE), NO OCCUPATION,
KUTTIKKATTIL HOUSE, KUTHUPARAMBA AMSOM, MOORIYAD DESOM, THALASSERY TALUK, PIN-670 643

3 P.K.PADMANABHAN,
AGED 50 YEARS
S/O.KORAN GURUKKAL (LATE), PEON, BHAVYA NIVAS,
KUTTIKKATTIL HOUSE, KUTHUPARAMBA AMSOM, MOORIYAD DESOM, THALASSERY TALUK, PIN-670 643

4 P.K.PADMINI,
AGED 45 YEARS D/O.KORAN GURUKKAL (LATE), PEON,
ASWATHY NIVAS, KUTTIKKATTIL HOUSE, KUTHUPARAMBA AMSOM, MOORIYAD DESOM, THALASSERY TALUK, PIN-670 643.

5 THE ASSISTANT EDUCATIONAL OFFICER,
KUTHUPARAMBA P.O.,
KUTHUPARAMBA, PIN-670 643

6 THE DISTRICT EDUCATIONAL OFFICER,
THALASSERY P.O., THALASSERY, PIN-670 643

7 THE DEPUTY DIRECTOR, EDUCATION,
KANNUR P.O., KANNUR.

8 THE DIRECTOR OF PUBLIC INSTRUCTION
THIRUVANANTHAPURAM.

9 GOVERNMENT OF KERALA
REPRESENTED BY GOVERNMENT SECRETARY, (GENERAL EDUCATION) GOVERNMENT SECRETARIAT,
THIRUVANANTHAPURAM.

SUPPL.R10 V.SARASWATHI
AGED 64 YEARS, W/O.GOPI (LATE), RETIRED TEACHER,
ARUN NIVAS, MOORIYAD P.O., KUTHUPARAMBA,
KUTHUPARAMBA AMSOM, MOORIYAD DESOM, PIN-670 643.

SUPPL.R11 SMT.SAJISHA
AGED 35 YEARS, D/O.GOPI (LATE), NO OCCUPATION,,
ARUN NIVAS,
MOORIYAD,P.O.KUTHUPARAMBA,KUTHUPARAMBA AMSOM,
MOORIYAD DESOM, PIN-670 643

SUPPL.R12 SMT.SAJILA,
AGED 35 YEARS, D/O.GOPI (LATE), NO OCCUPATION,
ARUN NIVAS, MOORIYAD,P.O.KUTHUPARAMBA,
KUTHUPARAMBA AMSOM, MOORIYAD DESOM, PIN-670 643

SUPPL.R13 SRI.ARUN,
AGED 35 YEARS, S/O.GOPI (LATE), NO OCCUPATION,
ARUN NIVAS, MOORIYAD,P.O.KUTHUPARAMBA,
KUTHUPARAMBA AMSOM, MOORIYAD DESOM, PIN-670 643.

LEGAL HEIRS OF THE DECEASED FIRST RESPONDENT ARE IMPLEADED AS SUPPLEMENTAL RESPONDENTS 10 TO 13 AS PER ORDER DATED 9.7.2024 IN IA NO.1799/2015 IN RSA NO.789/2015B.

ADDL.R14 K. MAHESH BABU,
AGED 60 YEARS
S/O.K. NANU, "GEETHAYALAM, P.O., MOORIYAD,
KUTHUPARAMBA 640 643.

ADDL.R15 BABU RAJEEV K,
AGED 58 YEARS
'LAKSHMI', P.O. MOORIYAD, KUTHUPARAMBA, PIN 640643.

ADDL.R16 SNEHAGEETHA KOTTAYI,
AGED 59 YEARS
PANAKKADAN HOUSE, KONGACHI, PATHAYAKUNNU P.O., PATHAYAKUNNU, PIN- 670691.

ADDL.R17 RAJINI K,
AGED 55 YEARS
11 D, THULASI CAPITAL POINT APARTMENT, DHANYA JUNCTION, CHALIKKAVATTOM, VYTILLA ERNAKULAM PIN- 682028.

ADDL.R18 PRADEEP KINATHY,
AGED 53 YEARS
S/O. K NANU, 'GEETHAYALAM', P.O. MOORIYAD, KUTHUPARAMBA PIN- 640643.

ADDITIONAL RESPONDENTS 14 TO 18 ARE IMPLEADED AS PER ORDER DATED 09.07.2024 IN IA 1/2023.

BY ADVS.
SRI.K.DENNY DEVASSY, SR.GOVERNMENT PLEADER FOR R5 TO R9
SMT.NISHA GEORGE FOR R10 – R13
SRI.M.P.PRABHAKARAN (PALAKKAD) FOR R10-R13
SRI.C.P.PEETHAMBARAN FOR R2

THIS REGULAR SECOND APPEAL HAVING BEEN FINALLY HEARD ON 18.02.2026, ALONG WITH RSA.7/2015, THE COURT ON 09.03.2026 DELIVERED THE FOLLOWING:

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE EASWARAN S.

MONDAY, THE 9TH DAY OF MARCH 2026 / 18TH PHALGUNA, 1947

RSA NO. 7 OF 2015

AGAINST THE JUDGMENT AND DECREE DATED 26.09.2014 IN AS NO.82 OF 2008 OF PRINCIPAL SUB COURT, THALASSERY ARISING OUT OF THE JUDGMENT AND DECREE DATED 11.04.2008 IN OS NO.323 OF 2005 OF MUNSIF COURT, KUTHUPARAMBA

APPELLANT/APPELLANT/1ST DEFENDANT:

1 P.K.NALINI,(DIED) LHS IMPLEADED
AGED 71 YEARS
W/O.KARUNAKARAN, KUTTIKATTIL, KUTHUPARAMBA AMSOM, MOORIYAD DESOM, KANNUR DISTRICT.

ADDL.A2 SHYLARAJAN P.K
AGED 64 YEARS
S/O. KARUNAKARAN, KUTTIKATTIL HOUSE, KUTHUPARAMBA AMSOM, MOORIYAD DESOM, KANNUR DISTRICT-670643.

(THE LEGAL HEIR OF THE DECEASED SOLE APPELLANT IS IMPLEADED AS ADDL.APPELLANT NO.2 AS PER ORDER DATED 09.07.2024 IN IA.1/2024 IN RSA.NO.7/2015)

BY ADVS.
SRI.S.SREEKUMAR (SR.)
SRI.C.P.PEETHAMBARAN
SMT.MINI.V.A.

RESPONDENTS/RESPONDENTS/PLAINTIFFS & OTHER DEFENDANTS:

1 P.K.GOPI @ K.GOPI,(DIED)
S/O.KORAN GURUKKAL, ARUN NIVAS, KUTHUPARAMBA, MOORIYAD DESOM, P.O.MOORIYAD, THALASSERY TALUK, KANNUR DISTRICT-670 643.

2 THE ASSISTANT EDUCATIONAL OFFICER
KUTHUPARAMBA P.O., KUTHUPARAMBA, KANNUR DISTRICT-670 643.

3 THE DISTRICT EDUCATIONAL OFFICER
THALASSERY, KANNUR DISTRICT-670 701.

4 THE DEPUTY DIRECTOR OF EDUCATION
KANNUR-670 701.

5 THE DIRECTOR OF PUBLIC INSTRUCTION
THIRUVANANTHAPURAM, PIN – 695 001.

6 STATE OF KERALA
REPRESENTED BY DISTRICT COLLECTOR, KANNUR, PIN – 670 001.

ADDL.R7 SARASWATHI,
AGED 61 YEARS, W/O.LATE P.K.GOPI @ K.GOPI, ARUN NIVAS, KUTHUPARAMBA, MOORIYAD DESOM, P.O.MOORIYAD, THALASSERY TALUK, KANNUR DISTRICT.

ADDL.R8 SAJITHA,
AGED 34 YEARS, D/O.LATE P.K.GOPI @ K.GOPI, ARUN NIVAS, KUTHUPARAMBA, MOORIYAD DESOM, P.O.MOORIYAD, THALASSERY TALUK, KANNUR DISTRICT.

ADDL.R9 SAJILA,
AGED 32 YEARS, D/O.LATE P.K.GOPI @ K.GOPI, ARUN NIVAS, KUTHUPARAMBA, MOORIYAD DESOM, P.O.MOORIYAD, THALASSERY TALUK, KANNUR DISTRICT.

ADDL.R10 ARUN
AGED 30 YEARS, S/O.LATE P.K.GOPI @ K.GOPI, ARUN NIVAS, KUTHUPARAMBA, MOORIYAD DESOM, P.O.MOORIYAD, THALASSERY TALUK, KANNUR DISTRICT.

(LEGAL HEIRS OF DECEASED 1ST RESPONDENT ARE IMPLEADED AS ADDL.RESPONDENTS 7 TO 10 AS PER THE ORDER DATED 07.06.2018 IN IA.1056/2015).

ADDL.R11 P.K.LAKSHMI, AGED 81 YEARS, D/O.KORAN GURUKKAL, KUTHUPARAMBA AMSOM, MOORIYAD DESOM, KOOTHUPARAMBA P.O., THALASSERY TALUK, KANNUR DISTRICT-670 643.

ADDL.R12 P.K.SARADA,
AGED 76 YEARS, D/O.KORAN GURUKKAL, PALAYULLATHIL HOUSE,KUTHUPARAMBA AMSOM,MOORIYAD DESOM, KOOTHUPARAMBA P.O., THALASSERY TALUK, KANNUR DISTRICT-670 643.

ADDL.R13 P.K.RADHA,
AGED 69 YEARS, D/O.KORAN GURUKKAL, KUTHUPARAMBA AMSOM, MOORIYAD DESOM, KOOTHUPARAMBA P.O., THALASSERY TALUK, KANNUR DISTRICT-670 643.

ADDL.R14 P.K.NARAYANI,
AGED 65 YEARS, D/O.KORAN GURUKKAL, PRANAVAM HOUSE, KUTHUPARAMBA AMSOM,MOORIYAD DESOM, KOOTHUPARAMBA P.O., THALASSERY TALUK, KANNUR DISTRICT-670 643.

ADDL.R15 P.K.PADMANABHAN,
AGED 62 YEARS, D/O.KORAN GURUKKAL, BHAVYA NIVAS, KUTHUPARAMBA AMSOM, MOORIYAD DESOM, KOOTHUPARAMBA P.O., THALASSERY TALUK, KANNUR DISTRICT-670 643.

ADDL.R16 P.K.PADMINI,
AGED 57 YEARS, D/O.KORAN GURUKKAL, KUTHUPARAMBA AMSOM, MOORIYAD DESOM, KOOTHUPARAMBA P.O., THALASSERY TALUK, KANNUR DISTRICT-670 643.

(ADDL.RESPONDENTS 11 TO 16 ARE IMPLEADED IN RSA NO.7/2015 AS PER ORDER DATED 9.3.2026 IN IA.3/2020 IN RSA NO.7/2015).

BY ADVS.
SMT.NISHA GEORGE FOR R7-R10
SHRI.K.V.PAVITHRAN FOR ADDL.R11 TO R16

SRI.M.P.PRABHAKARAN (PALAKKAD) FOR R7-R10
SRI.GEORGE POONTHOTTAM (SR.) FOR R7-R10
SRI.K.DENNY DEVASSY, SR.GOVERNMENT PLEADER FOR R2-R6

THIS REGULAR SECOND APPEAL HAVING BEEN FINALLY HEARD ON 18.02.2026, ALONG WITH RSA.789/2015, THE COURT ON 09.03.2026 DELIVERED THE FOLLOWING:

'C.R.'

EASWARAN S., J.

RSA Nos.7 of 2015 and 789 of 2015

Dated this the 9th day of March, 2026

J U D G M E N T

The intrinsic interplay between Section 14(1) and Section 14(2) of the Hindu Succession Act, 1956 and the impact of a second bequest in a Will comes up for consideration in these appeals.

1. RSA No.7/2015 is filed by the first defendant in OS No.323/2005, whereas RSA No.789/2015 is by the plaintiffs in OS No.58/2006, both suits were on the files of the Munsiff's Court, Kuthuparamba. The appellant in RSA No.7/2015 is the 2nd respondent in RSA No.789/2015. Since these appeals raise common questions of law, facts leading to the filing of OS No.58/2006 are narrated herein.

2. The plaint schedule properties belonged to one Koran Gurukkal. On 15.04.1955 he executed a registered Will bearing No.10/1955 of SRO, Kuthuparamba, bequeathing the property in terms of the dispositions made therein. In one item, namely item No.9, there exists a school in the name and style, Mooriyad Central Upper Primary School. In terms of the said Will, the right of management of

the school was vested with his wife, Bachi @ Janaki. She was the third wife of Koran Gurukkal, and in their wedlock, they had six daughters and two sons. In terms of the Will, the wife of Koran Gurukkal had the right to manage the school and also to appropriate the profits derived from the management of the school till her death, and on her death, the right of management was vested with Gopi, the plaintiff in OS No.323/2005. Later, the school was shifted from item No.9 of the property scheduled to the Will to item No.1 and it continued to function. While so, OS No.253/1978 on the files of the Munsiff's Court, Kuthuparamba was instituted by the 1st appellant in RSA No.789/2015 (1st plaintiff in OS No.58/2006) for the partition of the property of Koran Gurukkal, and judgment was rendered on 30.11.1979 (Ext.B2). In the said suit, the partibility of item No.1 was one of the issues raised by the plaintiff in OS No.323/2005, who was the third defendant in OS No.253/1978, and the question of partibility was found against him, and it was held that item No.1 property was partible subject to the life estate of Bachi @ Janaki. Accordingly, a preliminary decree for partition was passed. On 18.03.1982, a final decree was passed in FDIA No.312/1980 (Ext.A1), and accordingly, the suit properties therein were partitioned. Thereafter, on 04.09.1992, Bachi @ Janaki executed

a settlement deed (Ext.B3) stating that her share will be devolved upon all her children. As regards the management of the School, another settlement deed was executed on 10.06.1998 (Ext.B4), wherein, Bachi @ Janaki conferred her right of management of the School to the first defendant in OS No.323/2005. Later, on the death of Bachi @ Janaki, Gopi claimed the right of management of the School. The claim was resisted by others, contending that once the suit property was found to be partible, Gopi lost his claim for the right of management of the School. The death of Bachi @ Janaki was on 16.08.2002, as evident from the death certificate (Ext.B7). Since there was a dispute regarding the management of the School, Gopi filed OS No.323/2005 before the Munsiff's Court, Kuthuparamba, seeking a declaration of the right of the management of the Mooriyad Central Upper Primary School as per the registered Will dated 15.04.1955 (Ext.B8). Immediately on filing of the suit, other daughters of Koran Gurukkal filed OS No.58/2006 seeking a declaration that the management of the Mooriyad Central Upper Primary School should be declared as a corporate agency and that the first and second defendants therein (plaintiff and 1st defendant in OS No.323/2005) should be further restrained from functioning as the Managers. Both suits were tried together, and evidence was

ordered to be adduced in OS No.58/2006 . Exts.A1 to A6 documents were produced on behalf of the plaintiffs, and Exts.B1 to B15 documents were produced on behalf of the defendants. No oral evidence was adduced by the parties. The trial Court framed the following issues for consideration :

Issues framed in OS No.323/2005

1) Whether the plaintiff is entitled to the declaration prayed for?
2) Whether the plaintiff is entitled to the mandatory injunction prayed for?
3) Whether Bachi alias Janaki had absolute right of management of the Educational Institution or only a limited right of management till her death?
4) Whether the right of management of the Educational Institution has devolved on plaintiff on the death of Bachi alias Janaki?
5) Whether the settlement deed executed by Bachi alias Janaki dated 4.9.1992 and 10.6.1998 are genuine documents?
6) Whether the right, if any, of the plaintiff's claim in the suit is barred by ouster, adverse possession and limitation?
7) Whether the transfer of management effected in favour of D1 is legal?
8) Whether the claim, if any, of the plaintiff over the school

and management, is barred by the principle of *res judicata* and under Order-II Rule-2 CPC?

9) Whether the suit is barred by limitation?

10) Whether plaintiff is entitled to the relief of de-approval of the management of the school by the first defendant and get approved the plaintiff as the manager?

11) Relief and costs?

Issues framed in OS No.58/2006

1) Whether plaintiffs are entitled to the declaration prayed for?

2) Whether plaintiffs are entitled to the prohibitory injunction prayed for?

3) Whether plaintiffs are entitled to the mandatory injunction prayed for?

4) Whether Bachi alias Janaki had absolute power of management of plaint mentioned Educational Institution as per the will dated 15.4.1955 and to D1 as per the gift deed dated 10.6.1998?

5) Whether plaintiffs' allegation that right of management of the school has been vested in a Corporate education agency is true and correct?

6) Whether suit is barred by limitation?

7) Whether the right, if any, of plaintiffs and defendants 2 to 4, raised in the suit is barred by ouster adverse possession and limitation?

8) Whether the suit is barred under Order II Rule 2 CPC in view of the decree and judgment in OS 253/78 of this court?

9) Whether D1 and D2 are entitled to compensatory costs as provided under Section 35(A) CPC?
10) Is it correct to say that Koran Gurukkal has no right to propose who must be the Manager after him?
11) Whether the provisions contained in the will of Koran Gurukkal regarding the right of management of the school after his life time is invalid and void ab-initio?
12) Whether the D2 is entitled to claim the post of the Manager after death of Bachi alias Janaki?
13) Reliefs and costs?"

The trial court, on appreciation of the documentary evidence adduced by the parties, came to the conclusion that on the death of Bachi @ Janaki, Ext.B8 Will dated 15.04.1955 will take effect and the plaintiff in OS No.323/2005 is entitled to have his appointment approved as the Manager of the School. Consequently, OS No.58/2006 to declare the School as a corporate agency was declined. The appeals filed against the judgment and decree were also dismissed by the Principal Sub Court, Thalassery. Hence, the present second appeals.

3. Heard Sri.S.Sreekumar, the learned Senior Counsel assisted by Sri.C.P.Peethambaran, the learned counsel appearing for the appellants in RSA No.7/2015 and Sri.K.V. Pavithran, the learned counsel appearing for the appellants in RSA No.789/2015, and

Smt.Nisha George, the learned counsel appearing for respondent Nos.7 to 10 in RSA No.7/2015 and Sri.K.Denny Devassy, the learned Senior Government Pleader appearing for respondent Nos.2 to 6 in RSA No.7/2015 (respondent Nos.5 to 9 in RSA No.789/2015).

4. On 12.8.2015, this Court admitted RSA No.7/2015 and framed the following substantial questions of law for consideration:

(i) Once a life estate is given to a Hindu widow under a Will, is not that limited right enlarges in to a full ownership and if so, such right can be taken away from mother kottayi Bachi @ Janaki by a subsequent disposition in the Will, limiting her enjoyment of the absolute right conferred under Section 14(1) of Hindu Succession Act?

(ii) Is the dictum laid down by the Apex Court in **Tulasamma and others v. Shesha Reddy** reported in **(1977) 3 SCC 99** and **Bai Vajia v. Thakorbhai Chelabhaci and others** reported in **(1979) 3 SCC 300** are applicable to the facts in this case?

(iii) Can a declaration in the nature prayed for in the present suit be granted without cancelling a document, namely Ext.B4 settlement deed, which directly affects the right of the plaintiff in the suit and which was validly executed by mother Bachi @ Janaki?

(iv) Did the courts below properly construe the purpose of the Will and interpret the same in terms of the intention of the

testator in issue No.1?

This Court, on 17.1.2020, in RSA No.7/2015 framed the following additional substantial questions of law:

"1) Does the owner cum Manager of school have the right to nominate another to hold the office of Manager after his life?

2) Ext.B3 settlement deed having been accepted by all, cannot Ext.B3 be understood to spell out an agreement/consensus between the owners agreeing that D1-Appellant (Nalini) shall be the Manager on the demise of the mother ?"

5. Whereas, this Court admitted RSA No.789/2015 on 8.1.2026 on the substantial questions of law framed in the memorandum of appeal.

Submissions on behalf of Appellant in RSA No.7 of 2015.

6. Sri.S.Sreekumar, the learned Senior Counsel appearing on behalf of the appellants in RSA No.7/2015, raised the following submissions:

(a) Ext.B8 Will conferring life estate of Smt.Bachi @ Janaki will evolve into an absolute right in terms of Section 14 (1) of the Hindu Succession Act, 1956. The question of partibility of the property was the subject matter of consideration in OS No.253/1978 and going by Ext.A1 decree, the suit property

was found to be partible.

(b) Going by the provisions of the Kerala Education Act, 1958 partition of the property of a school is not prohibited under law.

(c) Once the property bequeathed to Bachi @ Janaki conferred a limited estate, that limited estate will get enlarged into an absolute right under sub-Sections (1) and (2) of Section 14 of the Hindu Succession Act, 1956. In support of his contention relied on the Three Judges Bench decision of the Supreme Court in **V.Tulasamma and others** v. **Sesha Reddy (Dead) By Lrs [(1977) 3 SCC 99]**. The learned Senior Counsel further contended that the above decision was sought to be revisited by the Supreme Court in **Bai Vajia (Dead) By Lrs** v. **Thakorbhai Chelabhai and Others [(1979) 3 SCC 300]**, and it was held that there is no reason to revisit the decision in **V.Tulasamma** (supra) since the same was correctly decided.

(d) The learned Senior Counsel further pointed out that when an absolute bequest has been made in respect of certain properties to certain persons, then a subsequent bequest

made qua the same person later in the same Will to other persons will have no effect and the legatee is entitled to ignore the same because of the operation of Section 95 of the Succession Act.

(e) The learned Senior Counsel further pointed out that there is no warrant for any inference of a constructive trust under Ext.B8 Will. The claim of the plaintiff in OS No.323/2005 that item No.1, where the school was later shifted, is not partible, was found against him, and the said finding has become final.

(f) Relying on the decision of the Single Bench of this Court in **Jose** v. **Antony [2001 KHC 572],** it is contended that the management right of a school can also be treated as partible. He further pointed out that in **Maroli Balan v. Maroli Dannu & Others [1986 KLT 919]**, a Division Bench of this Court has held that a suit for partition of a school and its property is not barred under Section 6(1) of the Kerala Education Act. The learned Senior Counsel maintains that the question of partibility is only an incidental question and not germane to the issue.

Submissions on behalf of Respondents in RSA No.7/2015

7. *Per contra*, Smt.Nisha George, the learned counsel appearing for respondents 7 to 10, opposed the submissions of the learned Senior Counsel and raised the following submissions.

a) There cannot be two views as regards the interpretation of the Will. She further contended that the provisions of Section 14(1) are not applicable in a case where the right is derived by virtue of a Will. According to the learned counsel, in order to apply Section 14(1), the right of a female Hindu must be subsisting as on the date of the death of the husband and not one which is created afresh.

b) She further pointed out that in order to claim the right under Section 14(1) based on a Will, the death of the husband must have occurred prior to 1956.

c) The legatee under the Will cannot ignore the bequest and deal with the property as if it was her own property. The said act will destroy the very intention of the testator.

d) The finding in the earlier suit OS No.253/1978 that deceased Bachi @ Janaki had only a limited estate has become final and hence on her death, the right of management became vested

with the plaintiff and hence the suit.

In support of her contentions, relied on the following decisions of the Supreme Court:

1. **Bhura and Others v. Kashiram [1994 KHC 767 : (1994) 2 SCC 111]**
2. **Gumpha (Smt) and Others v. Jaibai [(1994) 2 SCC 511]**
3. **Sadhu Singh v. Gurdwara Sahib Narike and Others [(2006) 8 SCC 75]**
4. **Sharad Subramanyan v. Soumi Mazumdar and Others [2006 KHC 1294 : (2006) 8 SCC 91]**
5. **Ranvir Dewan v. Rashmi Khanna and Another [(2018) 12 SCC 1]**
6. **Jogi Ram v. Suresh Kumar and others [(2022) 4 SCC 274]**
7. **Tej Bhan (D) through Lr. and others v. Ram Kishan (D) through Lrs. and Others [2024 SCC Online SC 3661]**

e) She further submitted that the ratio decidendi laid down by the Supreme Court in **V.Tulasamma** (supra) cannot be said to be the correct proposition of law and, precisely, the reason why the Supreme Court in **Tej Bhan (D) through Lr. and others** v. **Ram Kishan (D) through Lrs. and Others [2024 SCC Online SC 3661]** referred the matter to a Larger

Bench and the same is pending consideration.

f) She further pointed out that Ext.B2 judgment is not a bar for the plaintiff to claim management of the school and that there is a specific finding in Ext.B2 that Smt.Bachi @ Janaki had only a limited estate and a limited right of management. She concluded her arguments by stating that the appellants have no claim, whatsoever, on the basis of the settlement deed. In fact, according to the learned counsel, Bachi @ Janaki had no right to execute the settlement deed.

Consideration by the Court.

8. I have considered the rival submissions raised across the bar and perused the judgments rendered by the courts below and also the records of the case.

i) Impact of Sections 14(1) and 14(2) of the Hindu Succession Act, 1956 on Ext B8 Will.

9. At the outset, this Court must notice the fact that the question as to whether Bachi @ Janaki had a full right over the property on the basis of the operation of Section 14 of the Hindu Succession Act, 1956, was not a point which fell for consideration before the courts below. It is for the first time, the said question has

been raised. But, since the above is purely a question of law and there is no dispute on facts, and since this Court had already permitted the appellants to raise the said question by framing a substantial question of law as above, this Court is of the considered view that, on that point, a remand is not required.

10. As stated, both sides have their own perspective as regards the applicability of sub-Sections (1) and (2) of Section 14 of the Hindu Succession Act, 1956.

11. Before proceeding to answer the said question, it is imperative for this Court to note that as regards the right of Bachi @ Janaki over the management of the School, there is no dispute. The dispute stems from the exact nature of the right of Bachi @ Janaki derived under Ext.B8 Will. It is also indisputable that a settlement deed was executed by Bachi in the year 1998, which was not impugned in the suit at the instance of the plaintiff, Gopi. The settlement deed (Ext.B4) is dated 10.06.1998, and the suit was instituted only in the year 2005. Therefore, this Court may have to incidentally answer the question as to whether, without seeking a declaration that Ext.B4 settlement deed is not binding on the plaintiff, the declaratory relief could be sustained by him or not. This question will be answered at a

later point of time.

12. Coming to the applicability of sub-Sections (1) and (2) of Section 14 of the Hindu Succession Act, 1956, it is worthwhile to note that Section 14(1) speaks about the entitlement of a female Hindu to hold a property with limited estate as her absolute property. Sub-Sections (1) and (2) of Section 14 of the Hindu Succession Act, 1956 are 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 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 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."

13. In **V.Tulasamma and others** v. **Sesha Reddy (Dead) By Lrs [(1977) 3 SCC 99],** the scope of sub-Sections (1) and (2) of Section 14 of the Hindu Succession Act, 1956 came up for consideration before a three-judge bench of the Supreme Court. The point that arose for consideration before the Supreme Court was whether sub-section (1) or sub-Section (2) of Section 14 of the Hindu Succession Act, which applies where a property is given to a Hindu female in lieu of maintenance under an instrument which in so many terms restrict the nature of interest given to her in the property. Paragraph 2 of the judgment is extracted hereunder for reference:

> "**2.** Venkatasubba Reddy, husband of Appellant 1 Vaddeboyina Tulasamma — hereinafter to be referred to as "Tulasamma" — died in the year 1931 in a state of jointness with his step *brother* v. *Sesha Reddy* and left behind Tulasamma as his widow. On October 11, 1944 the appellant Tulasamma filed a petition, for maintenance in *forma pauperis* against the respondent in the Court of the District Munsif, Nellore. This application was set ex parte on January 13 1945 but

subsequently the petition was registered as a suit and an ex parte decree was passed against the respondent on June 29, 1946. On October 1, 1946 the respondent filed an interlocutory application for recording a compromise alleged to have been arrived at between the parties out of Court on April 9, 1945. The appellant Tulasamma opposed this application which was ultimately dismissed on October 16, 1946. An appeal filed by the respondent to the District Judge, Nellore was also dismissed. Thereafter Tulasamma put the decree in execution and at the execution stage the parties appear to have arrived at a settlement out of Court which was certified by the executing court on July 30, 1949 under Order 21 Rule 2 of the Code of Civil Procedure. Under the compromise the appellant Tulasamma was allotted the Schedule properties, but was to enjoy only a limited interest therein with no power of alienation at all. According to the terms of the compromise the properties were to revert to the plaintiff after the death of Tulasamma. Subsequently Tulasamma continued to remain in possession of the properties even after coming into force of the Hindu Succession Act, 1956 — hereinafter to be referred to as "the 1956 Act" or "the Act of 1956". By two registered deeds dated April 12, 1960 and May 25, 1961, the appellant leased out some of the properties to Defendants 2 and 3 by the first deed and sold some of the properties to Defendant 4 by the second deed. The plaintiff-respondent filed a suit on July 31, 1961 before the District Munsiff, Nellore for a declaration that the alienation

made by the widow Tulasamma were not binding on the plaintiff and could remain valid only till the lifetime of the widow. The basis of the action filed by the plaintiff was that as the appellant Tulasamma had got a restricted estate only under the terms of the compromise her interest could not be enlarged into an absolute interest by the provisions of the 1956 Act in view of Section 14(2) of the said Act. The suit was contested by the appellant Tulasamma who denied the allegations made in the plaint and averred that by virtue of the provisions of the 1956 Act she had become the full owner of the properties with absolute right of alienation and the respondent had no locus standi to file the present suit. The learned Munsiff decreed the suit of the plaintiff holding that the appellant Tulasamma got merely a limited interest in the properties which could be enjoyed during her lifetime and that the alienations were not binding on the reversioner. Tulasamma then filed an appeal before the District Judge, Nellore, who reversed the finding of the trial court, allowed the appeal and dismissed the plaintiff's suit holding that the appellant Tulasamma had acquired an absolute interest in the properties by virtue of the provisions of the 1956 Act. The learned Judge further held that sub-section (2) of Section 14 had no application to the present case, because the compromise was an instrument in recognition of a pre-existing right. The plaintiff-respondent went up in second appeal to the High Court against the judgment of the District Judge. The plea of the plaintiff-respondent appears to have found favour with

> the High Court which held that the case of the appellant was clearly covered by Section 14(2) of the Hindu Succession Act and as the compromise was an instrument as contemplated by Section 14(2) of the 1956 Act Tulasamma could not get an absolute interest under Section 14(1) of the Act. The High Court further held that by virtue of the compromise the appellant Tulasamma got title to the properties for the first time and it was not a question of recognizing a pre-existing right which she had none in view of the fact that her husband had died even before the Hindu Women's Right to Properties Act, 1937. We might further add that the facts narrated above have not been disputed by Counsel for the parties."

After a detailed discussion on the various intricate questions that fell for consideration before the Supreme Court, the Supreme Court succinctly laid down the propositions that emerged with respect to the incidents and characters of a Hindu woman's right to maintenance. Paragraphs 20 and 21 are extracted hereunder:

> "**20.** Thus on a careful consideration and detailed analysis of the authorities mentioned above and the Shastric Hindu law on the subject, the following propositions emerge with respect to the incidents and characteristics of a Hindu woman's right to maintenance:
>
> "(1) that a Hindu woman's right to maintenance is a personal obligation so far as the husband is concerned, and it is his duty

to maintain her even if he has no property. If the husband has property then the right of the widow to maintenance becomes an equitable charge on his property and any person who succeeds to the property carries with it the legal obligation to maintain the widow;

(2) though the widow's right to maintenance is not a right, to property but it is undoubtedly a pre-existing right in property i.e. it is a *jus ad rem not jus in rem* and it can be enforced by the widow who can get a charge created for her maintenance on the property either by an agreement or by obtaining a decree from the civil court;

(3) that the right of maintenance is a matter of moment and is of such importance that even if the joint property is sold and the purchaser has notice of the widow's right to maintenance, the purchaser is legally bound to provide for her maintenance;

(4) that the right to maintenance is undoubtedly a pre-existing right which existed in the Hindu law long before the passing of the Act of 1937 or the Act of 1946, and is, therefore, a pre-existing right;

(5) that the right to maintenance flows from the social and temporal relationship between the husband and the wife by virtue of which the wife becomes a sort of co-owner in the property of her husband, though her co-ownership is of a subordinate nature; and

(6) that where a Hindu widow is in possession of the property of her husband, she is entitled to retain the possession in lieu of

her maintenance unless the person who succeeds to the property or purchases the same is in a position to make due arrangements for her maintenance."

21. With this preface regarding a Hindu woman's right to maintenance and the necessary concomitants and incidents of those rights, we now proceed to determine the question of law that arises for consideration in this appeal. Before taking up that question, I might trace the historical growth of the legislation introducing slow and gradual changes in the Shastric Hindu law from time to time. The exact origin of Hindu law is steeped and shrouded in antiquity and, therefore, it is not possible to determine the ethics or justification for assigning a somewhat subordinate position to a Hindu woman in matters of inheritance, marriage and the nature of the limited interest which she took even after inheriting her husband's property. It is also strange that the Hindu law made no provision for divorce at all. This may be due to the fact that during the time of Manu and Yajnavalkya the structure to the Hindu society was quite different and there being no social problem of the magnitude that we have today, it was not considered necessary to break up the integrity and solidarity of a Hindu family by allowing ownership rights to the Hindu females. Another object may have been to retain the family property within the family in order to consolidate the gains which a particular family may have made. However, these are matters of speculation. But one thing is clear, namely, that the Hindu jurists were very

particular in making stringent provisions safeguarding the maintenance of the Hindu females either by the husband or even by his heirs after his death. Perhaps they thought that the property which a widow may receive in lieu of maintenance or the expenses which may be incurred for her maintenance would be a good substitute for the share which she might inherit in her husband's property. Nevertheless, the Legislature appears to have stepped in from time to time to soften the rigours of the personal law of Hindus by adding new heirs, conferring new rights on Hindu females and making express provisions for adoption, maintenance, etc. It appears that the question of conferring absolute interest on the Hindu female had engaged the attention of the Legislature ever since 1941 but the idea took a tangible shape only in 1954 when the Hindu Succession Bill was introduced and eventually passed in 1956. This Bill was preceded by a Hindu Code Committee headed by Mr B.N. Rao who had made a number of recommendations which formed the basis of the 1956 Act."

The conclusion reached by the Supreme Court is as follows.

"**61.** We would now like to summarise the legal conclusions which we have reached after an exhaustive considerations of the authorities mentioned above on the question of law involved in this appeal as to the interpretation of Sections 14(1) and (2) of the Act of 1956. These conclusions may be stated thus:

"(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 recognising 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 Section 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 recognise 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 recognises 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 without any right or title.

(7) That the words 'restricted estate' used in Section 14(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."

14. In **Bai Vajia (Dead) By Lrs** v. **Thakorbhai Chelabhai and Others [(1979) 3 SCC 300]**, the question arose whether the decision in **V.Tulasamma** (supra) was correctly decided. On a complete analysis of the law on the point, the Supreme Court concluded that the decision in **V.Tulasamma** (supra) was correctly decided.

15. Based on the conclusion reached by the Supreme Court in **V.Tulasamma** (supra), it must necessarily be held that any instrument by which a right of maintenance is created in favour of a female Hindu would enable her to treat the property as an absolute property. Sub-section (2) works as a proviso to sub-section (1) and cannot be read in isolation so as to destroy the effect of Section 14(1). If a right is created by virtue of an instrument conferring a limited estate on a female Hindu on or after the commencement of the Hindu Succession Act, 1956, she is entitled to treat the same as an absolute property by virtue of operation of sub-Section (1). Therefore, this Court has no hesitation in its mind to hold that the right of management of the Mooriyad Central Upper Primary School conferred on late Bachi @ Janaki, later devolved on her as an absolute estate.

16. However, according to Smt.Nisha George, there is no warrant for such a conclusion by this Court based on **V.Tulasamma** (supra), especially since the Supreme Court in its subsequent decisions have taken a contrary view.

17 In view of the said submission, it is imperative for this Court to examine as to whether the views expressed by the Supreme Court in the subsequent decisions would warrant a change of

observation as stated above.

18. In **Bhura and Others** v. **Kashiram [(1994) 2 SCC 111]**, a Two Judges Bench of the Supreme Court took a view that a female Hindu who derives a right by virtue of a Will, takes only a limited estate and does not have any absolute right.

19. In **Gumpha (Smt) and Others** v. **Jaibai [(1994) 2 SCC 511]**, the question which fell for consideration before the Supreme Court was "Does the life estate of a widow under a Will executed in 1941 gets enlarged into an absolute estate under Section 14(1) of the Hindu Succession Act, 1956 if the succession opened after the death of the testator in 1958?" Answering the said question, the Supreme Court held that the power of a Hindu to bequeath a property to anyone as it existed before the Act came into force and determine the nature of an estate that could be created by him has, thus, been statutorily recognised. However, it was further held that if a right of maintenance under a will after 1956 would fall under sub-section (2), as even on ratio in **Tulasamma** *(supra)* it would be the creation of right for the first time and not in recognition of a pre-existing right. It was thus concluded that "*consequently if a female Hindu acquires possession after the enforcement of the Succession Act and that*

possession was traceable to an instrument or a document described in sub-section (2), then she could not get a higher right than what is stipulated in the document itself."

20. In **Sadhu Singh v. Gurdwara Sahib Narike and Others [(2006) 8 SCC 75]** the Supreme Court after referring to **V.Tulasamma** (supra) held that as seen from the "*antecedents of the property, the possession of the property as on the date of the Act and the existence of a right in the female over it, however limited it may be, are the essential ingredients in determining whether sub-section (1) of Section 14 of the Act would come into play. 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 an 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."*

21. In **Sharad Subramanyan** v. **Soumi Mazumdar and Others [(2006) 8 SCC 91]**, the Supreme Court followed the decision

in **Bhura** (supra) after referring to **V.Tulasamma** (supra) and held that the wife deriving right under a Will would only take a limited estate.

22. In **Ranvir Dewan** v. **Rashmi Khanna and Another [(2018) 12 SCC 1]**, sub-section (2) of Section 14 came up for interpretation again and it was concluded by the Supreme Court that, if a 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 Section 14(2) of the Act, even if the instrument, decree, order or award allotting the property prescribes a restricted estate in the property. But, if a life interest was in the nature of a restricted estate under Section 14 (2) of the Act which remained as a restricted estate till her death, it will not ripen into an absolute interest under Section 14(1) of the Act.

23. In **Jogi Ram** v. **Suresh Kumar and others [(2022) 4 SCC 274]**, the Supreme Court followed the earlier views and held as follows:

> "**34.** In our view the relevant aspect of the aforesaid conclusion is Conclusion (4) in para 62 which opines where sub-section (2) of Section 14 of the said Act would apply, and

this does inter alia apply to a will which may create independent and new title in favour of females for the first time and is not a recognition of a pre-existing right. In such cases of a restricted estate in favour of a female is legally permissible and Section 14(1) of the said Act will not operate in that sphere.

35. We may add here that the objective of Section 14(1) is to create an absolute interest in case of a limited interest of the wife where such limited estate owes its origin to law as it stood then. The objective cannot be that a Hindu male who owned self-acquired property is unable to execute a will giving a limited estate to a wife if all other aspects including maintenance are taken care of. If we were to hold so it would imply that if the wife is disinherited under the will it would be sustainable but if a limited estate is given it would mature into an absolute interest irrespective of the intent of the testator. That cannot be the objective, in our view.

36. The testator in the present case, Tulsi Ram, had taken all care for the needs of maintenance of his wife by ensuring that the revenue generated from the estate would go to her alone. He, however, wished to give only a limited life interest to her as the second wife with the son inheriting the complete estate after her lifetime. We are, thus, of the view that it would be the provisions of Section 14(2) of the said Act which would come into play in such a scenario and Ram Devi only had a life interest in her favour. The natural sequitur is

> that the respondents cannot inherit a better title than what the vendor had and, thus, the view taken by the trial court and the first appellate court is the correct view and the sale deeds in favour of the respondents cannot be sustained."

24. A close exploration of the above precedents leads to an inescapable conclusion that, there is conflict in the views of the Supreme Court as regards the applicability of sub-sections (1) and (2) of Section 14 of the Hindu Succession Act, 1956. Two Three Judges Bench decisions held that Section 14(2) must be read as a proviso to Section 14(1) and that wordings in Section 14(2) cannot restrict the operation of Section 14(1), whereas the subsequent decisions of lesser quorum says that Section 14(2) must stand independently and that if a right is created for the first time under a Will, the said right cannot get qualified into an absolute right.

25. Noticing the conflicting precedents, the Supreme Court in **Tej Bhan (D) through Lr. and others** v. **Ram Kishan (D) through Lrs. and Others [2024 SCC Online SC 3661]** referred the issue for consideration to a Larger Bench. Paragraphs 22 to 25 of the said decision are extracted hereunder:

> "**22.** It is important to note that except, Karmi v. Amru *[(1972) 4 SCC 86 : AIR 1971 SC 745]*), the decisions

in *Bhura, Gumpha and Sadhu Singh* (supra) are all by two Judge benches. The larger perspective in which Section 14 was interpreted holistically commenced from *Karmi* and was followed in many subsequent cases. Some of the decisions in the same line are *Gaddam Ramakrishnareddy v. Gaddam Ramireddy [(2010) 9 SCC 602], Jagan Singh (Dead) through Lrs v. V.Dhanwanti [(2012) 2 SCC 628], Shivdev Kaur (Dead) through Lrs v. RS Grewal [(2013) 4 SCC 636], Ranvir Dewan* and *Jogi Ram* (supra).

23. We have noticed that while following *Tulsamma*, the subsequent decisions in *Thota Sesharathamma v. Thota Manikyamma[(1991) 4 SCC 312], C.Masilamani Mudaliar v. Idol of Sri.Swaminathasami Thirukoil* [(1996) 8 SCC 525] and *Shakuntala Devi* v. V.Kamla ((2005) 5 SCC 390) have made passing observations about the discordant note in the case of *Karmi, Bhura* and *Gumpha* (supra) but they have not been clearly and categorically overruled. Perhaps this is the reason why the subsequent decisions consistently followed the idea in *Karmi* and enunciated different principles in the subsequent decisions of *Gumpha, Sadhu Singh* (supra) and that perspective continued on its own strength.

24. We heard the present appeal in detail and have also taken a view in the matter, but having realised that there are a large number of decisions which are not only inconsistent with one another on principle but have tried to

negotiate a contrary view by distinguishing them on facts or by simply ignoring the binding decision, we are of the view that there must be clarity and certainty in the interpretation of Section 14 of the Act.

25. In view of the above, we direct the Registry to place our order along with the appeal paper book before the Hon'ble Chief Justice of India for constituting an appropriate larger bench for reconciling the principles laid down in various judgments of this Court and for restating the law on the interplay between sub-section (1) and (2) of Section 14 of the Hindu Succession Act."

26. The question before this Court is whether in view of the reference to the Larger Bench, the decision in the matter is required to be taken after the reference is answered. According to Smt.Nisha George, the learned counsel for the respondents 7 to 10 in RSA No.7/2015, the reference to the Larger Bench by the Supreme Court in **Tej Bhan (D) through Lr.** (supra) would lead to a prima facie assumption that **V.Tulasamma** (supra) has not been correctly decided and therefore the same cannot qualify itself as a precedent, since the Supreme Court itself has doubted the same.

27. This Court is afraid that it is not permissible for this Court to hold that because of the reference of the case to Larger Bench the

decision in **V.Tulasamma** (supra) is not correctly decided. Under Article 141 of the Constitution of India, this Court is bound to follow the Larger Bench decision of the Supreme Court in **V.Tulasamma** (supra). Admittedly, in all the decisions of the Supreme Court touching upon sub-section (2) of Section 14, a contrary view has been taken, ignoring the principles laid down by a Larger Bench.

28. Equally so, this Court does not find any substance in the argument of Smt.Nisha George that if a Will creates a right of maintenance in favour of a female Hindu and that the succession opened after 1956, that will not qualify into an absolute estate in her favour. This is because Section 14(1) starts by saying "any property possessed by a female Hindu, whether acquired before or after the commencement of the Act".

29. In the present case, it is true that Koran Gurukkal died after the commencement of the 1956 Act. The question whether a female Hindu coming into possession of the property in terms of an instrument described under sub-Section (2) of Section 14 of the Hindu Succession Act, 1956 should still qualify itself as an absolute right, was decided by the Supreme Court in **V.Tulasamma** (supra) and once the Supreme Court concluded that sub-section (2) must be read as a

proviso to sub-Section (1) of Section 14, there is no room for further deliberation. In the light of the decision of the Three Judges Bench of the Supreme Court in **V.Tulasamm**a (supra), this Court finds that there is no scope for any further deliberation in the matter, and therefore, this Court is inclined to answer the substantial questions of law (i) and (ii) in favour of the appellants and it is held that once a life estate is given to a Hindu widow under a Will, that limited right enlarges into a full ownership and if so, it cannot be taken away by limiting her claim for enjoyment of the absolute right. Thus, the dictum laid down in **V.Tulasamma and others** v. **Sesha Reddy *(Dead) through Lrs* [(1977) 3 SCC 99]** and **Bai Vajia *(Dead) through Lrs*** v. **Thakorbhai Chelabhai and others [(1979) 3 SCC 300]** squarely applies to the facts of the case.

Impact of Subsequent Bequest in Ext.B8 Will.

30. One of the important facets of the dispute which requires resolution is the nature of bequeath under Ext.B8 Will. Bachi @ Janaki was given the right of management till her lifetime and after her death, the right gets transferred to the plaintiff. What is the impact of insertion of such a clause in Ext.B8 Will? Section 95 of the Indian Succession Act, 1925 provides that such a bequest will have no impact

on the right of the testator.

31. Section 95 of the Indian Succession Act, 1925 reads as under:

> "**95. Bequest without words of limitation**.- Where property is bequeathed to any person, he is entitled to the whole interest of the testator therein, unless it appears from the Will that only a restricted interest was intended for him."

32. The impact of Section 95 came up for consideration in **Madhuri Ghosh and another** v. **Debobroto Dutta and Another [(2016) 10 SCC 805]**. The Supreme Court held that the legatee can ignore the subsequent bequeath in a case where the property is bequeathed to another person in the same Will after the death of the legatee. The apex court followed the principles in **Rameshwar Bakhsh Singh Kunwar and others Vs Balraj Kuar, Thakurain and others [1935 SCC Online PC 41]** and summarised as follows:

i) where under a will, a testator has bequeathed his absolute interest in the property in favour of his wife, any subsequent bequest inconsistent to the first bequeath would be invalid;

ii) where under a will a testator has bequeathed limited interest in

the property to his widow, it is open to the testator to bequeath the property after the death of his wife in the same will.

33. In the present case, because of the operation of Section 14(1) of the Hindu Succession Act 1956, the limited interest of the late Bachi@ Janaki elevates itself into an absolute right and once it becomes absolute right, the subsequent bequeath in Ext.B8 Will in favour of the plaintiff conferring him the right of management of the school cannot not have any efficacy of law.

Whether the plaintiff ought to have sought for cancellation of Ext.B4 Settlement deed

34. An incidental issue which must be addressed by this Court is whether the declaratory relief sought for in OS No.323/2005 as regards the management of the School is maintainable without seeking for a declaration regarding the validity of the settlement deed. Pertinently, the plaintiff has not sought for cancellation or a declaration that Ext.B4 settlement deed dated 10.6.1998 is not binding on him.

35. In **Hussain Ahmed Choudhury & Ors** v. **Habibur Rahman (Dead) Through Lrs & Ors [2025 SCC OnLine SC 892]**, the Supreme Court considered the question as to whether a

plaintiff who is not a party to the document is obliged to sue for cancellation. It was held that, if a document is executed by a person who has the right to execute the same, certainly, he must ask for a declaration that the said document is not binding on him.

36. In the present case, it is indisputable that Bachi @ Janaki was entitled to execute Ext.B4 settlement deed. This Court has already seen that Bachi @ Janaki had an absolute right over the property. Therefore, she was having every right to execute Ext.B4 settlement deed. Once the settlement deed was presented before the court along with the written statement, it was imperative on the plaintiff to have sought cancellation of the same, or at least seek a declaratory relief qua the settlement deed and failure to do so will attract the proviso to Section 34 of the Specific Reliefs Act, 1963.

Conclusion.

37. Based on the discussions, the following points emerge:

A) The limited estate conferred on Late Bachi @ Janaki evolves into an absolute right under Section 14(1) of the Hindu Succession Act, 1956.

B) The subsequent bequeath in Ext.B8 Will is liable to be ignored.

C) The plaintiff in OS No.323/2005, having not sought for

cancellation or declaration that the settlement deed is not binding on him, is not entitled to declaratory relief.

38. It must be remembered that the first defendant in OS No.323/2005, who is the beneficiary of Ext.B4 settlement deed, has been since approved as the manager of the school. But then, since there was a dispute regarding the approval and in the light of the pendency of the civil proceedings, the appointments made by her in the school have not been approved. The trial court, on the basis of an erroneous assumption that Ext.B8 Will would take effect after the death of Bachi @ Janaki and her limited right would devolve upon Gopi, directed the defendant nos. 2 to 6 to approve his appointment. In view of the infirmities in the framework of OS No.323/2005, the same could not have been decreed.

39. In the light of the above discussion, the substantial questions of law (iii) and (iv) are answered in favour of the appellants and it is held that without challenging Ext.B4 settlement deed as not binding upon him, the plaintiff could not have succeeded in the suit. Moreover, the courts below failed to properly construe the purpose of the Will.

40. Coming to the additional substantial questions of law (1)

and (2) framed by this Court, in the light of the discussions as above, this Court finds that these questions are only incidental and must be answered in favour of the appellants and that it must be held that the owner and the manager of the school had right to nominate another to hold office of the manager and in view of Ext.B3 settlement having been accepted by all, an agreement/consensus between all agreeing that the appellant shall be the manager on the demise of Bachi @ Janaki must be inferred.

41. As an upshot of the above discussions, this Court finds that the judgment and decree in OS No.323/2005 on the files of Munsiff's Court, Kuthuparamba as affirmed by the Principal Sub Court, Thalassery in AS No.82/2008 cannot be sustained. Accordingly, RSA No.7 of 2015 is allowed, reversing the judgment and decree in OS No.323/2005 on the files of Munsiff's Court, Kuthuparamba as affirmed in AS No.82 of 2008 by Principal Sub Court, Thalasserry. Consequently, OS No.323 of 2005 shall stand dismissed. The direction to the defendants 2 to 6 to approve the appointment of the plaintiff is consequently vacated. The Educational Authorities are directed to approve the appointment of the appellant as the manager and consequently, approve the appointments of teachers made by her in

the school if those are otherwise in order.

RSA No.789/2015.

In the light of the discussions as above, this Court is of the considered view that the claim for treating the School as a corporate agency is unsustainable under law. Therefore, finding that no substantial question of law arises for consideration in the present appeal, the appeal stands dismissed.

Parties shall bear their costs.

Sd/-
EASWARAN S.
JUDGE

jg