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A.S.No.551 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 15.07.2026

Delivered on : 29.07.2026

CORAM :

**THE HONOURABLE MR. JUSTICE N. SATHISH KUMAR**

**AND**

**THE HONOURABLE MR. JUSTICE M. JOTHIRAMAN**

**A.S.No.551 of 2019**

**and**

**C.M.P.No.18060 of 2026**

Miron Lada

... Appellant

Vs.

1.Abner Alexandre Sambeth

2.The District Registrar,  
Registration Department,  
Sakthi Nagar, Saram,  
Pondicherry – 13.

2.The Oulgaret Sub Registrar,  
Office of the Sub Registration Department,  
Jawahar Nagar, Boomianpet,  
Pondicherry – 5.

... Respondents

**Prayer** : Appeal Suit filed under Section 96 r/w. Order XI Rule 1 of the Code of Civil Procedure against the judgment and decree passed by the Family Court, Pondicherry, in O.S.No.21 of 2012, dated 09.02.2019.



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For Appellant : Mr.V.Raghavachari  
Senior Counsel  
for Mrs.V.Srimathi

For R1 : Mr.R.Thiagarajan

For R2 and R3 : No appearance

## **J U D G M E N T**

### **N. SATHISH KUMAR, J.**

Challenging the decree and judgment of the learned Judge, Family Court, Pondicherry, in O.S.No.21 of 2012, dated 09.02.2019, granting a preliminary decree allotting half share in the suit properties in Item Nos.1 to 5 to the plaintiff, the 1<sup>st</sup> defendant in the suit has filed the above Appeal.

2.For the sake of convenience, the parties are referred to as per their rank before the trial Court.

3.The plaintiff and the 1<sup>st</sup> defendant were husband and wife. Their marriage was solemnised on 20.04.1987. The marriage was registered as per the French Code Civil. It is the case of the plaintiff that he is a Renoncant and the 1<sup>st</sup> defendant is a French National, thereby, both of them are



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governed by French Law, i.e., French Code Civil. From the wedlock, three children were born to them, viz., Abner Stella on 28.11.1987, Abner Jenitha on 09.12.1991 and Abner Sebastian Oscar on 11.10.1997 respectively. It is the case of the plaintiff that suit properties (Item Nos. 1 & 2) were acquired by the plaintiff in the name of the 1<sup>st</sup> defendant due to love and affection as early as in the year 1992. The 1<sup>st</sup> defendant is only a name lender to the plaintiff for the purchase of the suit properties and nothing more than that. The 1<sup>st</sup> defendant and her mother are hailing from poor family and they had no financial capacity to buy the suit schedule properties. The Items 1 and 2 of the suit properties were purchased through the Power of Attorney Deeds obtained in the name of the 1<sup>st</sup> defendant. The 1<sup>st</sup> defendant, as a Power Agent, executed two separate sale deeds in favour of her mother. Later, the 1<sup>st</sup> defendant's mother settled those properties by virtue of two settlement deeds in favour of the 1<sup>st</sup> defendant. In a nutshell, it is the case of the plaintiff that Items 1 and 2 of the suit properties are purchased by the plaintiff.

4. Similarly, it is the case of the plaintiff that the other items of the suit schedule were also purchased by the plaintiff in the name of the 1<sup>st</sup>



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defendant. In Item Nos.1 and 2, the plaintiff had designed a plan and constructed a big bungalow by depositing the title deeds while availing the loans from the LIC Housing Finance Limited as well as UCO Bank, Puducherry. The plaintiff has repaid the entire loan amount. Their family life was very cordial till 2005, however, difference of opinion arose in the year 2006, as the 1<sup>st</sup> defendant maintained illegal relationship with the car driver which resulted in filing of a criminal complaint. The 1<sup>st</sup> defendant has also filed a complaint under the Protection of Women from Domestic Violence Act, and later, the 1<sup>st</sup> defendant filed an application in M.O.P.No.123 of 2007 under Articles 233 and 242 of French Code Civil r/w. Section 7 of the Family Courts Act and had obtained divorce against the plaintiff. Similarly, she had also filed a suit in O.S.No.13 of 2008 before the District Court, Pondicherry, seeking partition in respect of the property sold by the plaintiff. Later, that suit was dismissed. It is the contention of the plaintiff that he is a Renoncant and the 1<sup>st</sup> defendant is a French National and therefore, as per French Law, in the properties acquired by either husband or wife during the marriage or after the marriage, both the husband and wife have equal rights and hence, he is entitled to half share in the entire suit properties. Hence, the husband has filed the present suit for partition.



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5.The 1<sup>st</sup> defendant filed a written statement stating that the plaintiff is not a Renoncant and he is not governed by the French Law. It is the stand of the 1<sup>st</sup> defendant that the Item Nos.1 and 2 of the suit properties were settled by her mother in her favour. Though the plaintiff and the 1<sup>st</sup> defendant jointly availed loan, it is denied that the plaintiff had repaid the loan amount. All the other suit items were also purchased by the 1<sup>st</sup> defendant by selling her jewels and also the funds provided by her mother due to love and affection. It is her contention that her brothers are well settled in France. The 1<sup>st</sup> defendant was subjected to cruelty by the plaintiff and he also had illicit relationship with other woman and was often beating her and causing mental torture to her. In order to safeguard the life of the 1<sup>st</sup> defendant and her children, her mother and brothers have helped the 1<sup>st</sup> defendant monetarily. Thereby, the Item Nos.3 to 5 of the suit properties were purchased by the 1<sup>st</sup> defendant out of the funds provided to her by her mother and brothers out of love and affection. The 1<sup>st</sup> defendant had earlier filed M.O.P.No.18 of 1999 for divorce, as she was unable to bear the atrocities committed by the plaintiff and the wayward life lead by him. Later, the said M.O.P. was withdrawn on the assurance given by the plaintiff



that he will not illtreat her any further. But still, the plaintiff continued his attitude and hence, an application in M.O.P.No.123 of 2007 was filed for divorce before the Family Court at Puducherry, on the ground of adultery and cruelty. The Family Court, Puducherry, had granted divorce on the ground of cruelty by its judgment and decree dated 06.12.2012. Hence, in sum and substance, it is the contention of the 1<sup>st</sup> defendant/wife that the entire suit properties are her individual properties and hence, the plaintiff cannot claim half share in her individual properties and thus, resisted the suit claim for partition.

6. Based on the above pleadings, the trial Court framed the following issues :

- i. *Whether the plaintiff is a Renoncant governed by French Code Civil ?*
- ii. *Whether the suit properties are purchased by plaintiff out of his own funds in the name of the 1<sup>st</sup> defendant ?*
- iii. *Whether the plaintiff has right to claim share in the suit properties ?*
- iv. *Whether the plaintiff is entitled for partition and separate possession of the suit properties ?*
- v. *Whether the plaintiff is entitled for the relief of permanent*



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*injunction as prayed for ?*

*vi. To what other relief the plaintiff is entitled to ?*

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7.On the side of the plaintiff, P.W.1 to P.W.6 were examined and Exs.A1 to A94 were marked. On the side of the defendants, D.W.1 was examined and Exs.B1 to B38 were marked.

8.Based on the evidence and materials on record, the trial Court, by its judgment and decree dated 09.02.2019, decreed the suit and granted a preliminary decree allotting half share in the suit properties to the plaintiff/husband.

9.Challenging the judgment and decree of the trial Court, the 1<sup>st</sup> defendant/wife has filed the above Appeal.

10.Mr.V.Raghavachari, learned Senior Counsel appearing for the appellant/1<sup>st</sup> defendant/wife, would submit that the trial Court is not proper in decreeing the suit. Admittedly, Item Nos.1 and 2 of the suit properties were purchased in the name of the plaintiff's mother-in-law. Such being the position, the plaintiff cannot take a plea of Benami as against his mother-in-

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law. Further, it is his contention that the mother-in-law has settled the property in favour of her daughter, i.e., the 1<sup>st</sup> defendant. Therefore, it is the separate property of the 1<sup>st</sup> defendant. Hence, at no stretch of imagination, such properties can be treated as community properties as per French Law to claim equal share. Further, the other items of the suit properties have also been purchased by the 1<sup>st</sup> defendant out of the funds given by her mother and brothers who are settled in France. Therefore, the suit Item Nos.3 to 5 also fall outside the scope of community property under French Law for claiming division. It is his further contention that Exs.B28 to B30 clearly establish the clinching fact that the contribution has been given by the brothers of the 1<sup>st</sup> defendant from foreign countries for the purchase of the suit properties. Therefore, the contention of the plaintiff that he has purchased the properties in the name of the wife, is not substantiated. It is his further contention that, merely because the LIC Housing loan has been obtained by both the husband and wife during the subsistence of the marriage, it cannot be concluded that the entire properties belong to the community. He would further submit that the plaintiff is not a Renoncant to claim partition under the French Code Civil. In the written statement filed by him in another suit for partition filed by the wife, he has denied his status as Renoncant. It is his



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contention that, merely because the wife had filed divorce petition and obtained divorce under the French Law as against the plaintiff, the same is not a determining factor to decide the status of the parties. The plaintiff has not even established his status as Renoncant. The documents relied upon by the plaintiff will not prove his status. Once the plaintiff has not established the status as Renoncant, he cannot claim any benefit under the French Law. The trial Court has failed to properly appreciate the evidence. It is his further contention that the Benami Transactions (Prohibition) Act, 1988, is itself an Act in *rem*, which applies to Pondicherry. Therefore, the plaintiff cannot set up a plea of Benami and no claim is permissible as Benami as per Section 4 of the said Act. Therefore, he would submit that the trial Court is not correct in granting a decree in favour of the plaintiff.

11. Whereas, Mr.R.Thiagarajan, learned counsel appearing for the 1<sup>st</sup> respondent/plaintiff/husband, would submit that the appellant/1<sup>st</sup> defendant herself has filed a divorce petition as against the plaintiff/husband under French Law, wherein, she has clearly stated that her husband is a Renoncant. Having pleaded that her husband is a Renoncant and having taken advantage of the French Law and obtained divorce, now, the 1<sup>st</sup> defendant is totally



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estopped from taking a contrary stand. That apart, the 1<sup>st</sup> defendant/wife has also filed a suit against her husband to claim half share in one of the properties dealt with by her husband, wherein also, she has clearly admitted that her husband is a Renoncant. Later, the suit came to be dismissed after receipt of Rs.10 Lakhs from the purchaser. Therefore, the very conduct of the parties clearly shows that the parties are governed by French Law. Now, when the husband sought partition in respect of the properties standing in the name of the wife by claiming himself as a Renoncant, a different stand has been taken by the wife as if her husband is not a Renoncant. Therefore, it is his contention that the 1<sup>st</sup> defendant is totally estopped from taking a different stand. It is further submitted that Exs.A56 to A89 filed by the plaintiff clearly establish the fact that he is a Renoncant. According to the learned counsel, the very suit properties were purchased by the plaintiff out of his own income in the name of his wife. The evidence of P.W.2 to P.W.6 would amply prove the above fact. It is his further contention that the 1<sup>st</sup> defendant (D.W.1) has no source of income to purchase the properties in her own name. All these facts clearly show that the plaintiff is certainly entitled to half share as declared by the trial Court. Hence, it is his contention that the judgment and decree of the trial Court does not require any interference.



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12. Based on the submissions made by the learned counsel on either side, the points that arise for consideration in this Appeal are as follows :

1. *Whether the 1<sup>st</sup> respondent/plaintiff is not a Renoncant as per French Law to claim benefit under the French Code Civil ?*
2. *Whether the Item Nos.1 and 2 of the suit properties were purchased by the 1<sup>st</sup> respondent/plaintiff himself in the name of his wife ? If so, whether he can base his claim on such properties purchased in Benami ?*
3. *Whether the Item Nos.1 and 2 of the suit properties are separate properties of the appellant, namely, the 1<sup>st</sup> defendant/wife ?*
4. *Whether the Item Nos.3 to 5 of the suit properties belong to the assets of the community property ?*
5. *To what other relief, the parties are entitled to ?*

13. An application has been taken out by the appellant/wife in C.M.P.No.18060 of 2026 to receive an additional document, viz., certified copy of the written statement filed by the plaintiff in his capacity as defendant in O.S.No.13 of 2008, as additional evidence in the above Appeal. It is the contention of the petitioner/appellant that the plaintiff had suppressed the written statement filed by him in the another suit in



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O.S.No.13 of 2008 filed by the wife, wherein, he denied his status as

Renoncant. It is her further contention that the trial Court, in Para No.9 of the impugned judgment, opined that there was no document filed by the 1<sup>st</sup> defendant that neither the plaintiff nor the 1<sup>st</sup> defendant or her ancestors were not Renoncant and on that footing, the trial Court held that the plaintiff continues to be governed by French Law. According to her, the reasoning of the trial Court proceeds on the absence of any documentary material precisely of the kind that the document sought to be received herein supplies. Hence, it is the contention of the petitioner/appellant that the above certified copy of the written statement filed by the husband is absolutely necessary and hence, prays for receiving the same as additional evidence.

14.As far the document that is sought to be received is concerned, reception of additional document is not a matter of right. Only when a document could not be procured besides due diligence during trial, such document can be received later in appellate stage. It is not the case of the petitioner/appellant that she was not aware of the document that is now sought to be received. In fact, the document now sought to be filed is only a



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written statement filed by the plaintiff in another suit instituted by the wife in O.S.No.13 of 2008, wherein, the wife sought half share in a property held in the name of the husband on the ground that he is a Renoncant and he is governed by French Law. In the written statement, an evasive denial has been made by the husband about his status as Renoncant. Now, the 1<sup>st</sup> defendant/wife, as appellant in this Appeal, wants to take advantage of that written statement to prove her contention that her husband is not a Renoncant.

15.It is relevant to note that, mere evasive denial cannot be taken as an admission. It is not the case of the appellant that she was not aware of the document and the document came into her possession only later, besides due diligence. When she was very much aware of the existence of the document and she has not taken any steps to exercise due diligence, as a matter of right, such document cannot be sought to be received. Further, it is to be seen whether the said document is relevant for this Court to determine the issues on hand. It is relevant to note that the appellant herself has filed a suit against her husband claiming half share, by pleading that her husband is a Renoncant. That apart, she has also taken advantage of the French Law and



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has filed divorce proceedings under French Law, treating her husband as Renoncant, and has obtained divorce. Now, it is too far beyond one's comprehension to contend that her husband is not a Renoncant. Therefore, we are of the view that the document showing a mere evasive denial made by the husband about his status as Renoncant, is not at all required for this Court to decide the issues on hand. Hence, **the petition in C.M.P.No.18060 of 2026 is dismissed.**

**Point No.(i) :**

16.The relationship of the parties is not in dispute. The plaintiff and the 1<sup>st</sup> defendant were husband and wife. Their marriage took place on 20.04.1987 and the same was registered at Etat Civil, Pondicherry Municipality vide Registration No.95/1987/PMC as per French Code Civil. The marriage between the parties is not in dispute. It is also not in dispute that the 1<sup>st</sup> defendant/wife is a French National.

17.Whereas, it is the contention of the plaintiff that he is a Renoncant. Though he was a Christian originally, his forefathers had renounced their personal law and they adopted the French Law and therefore, they are

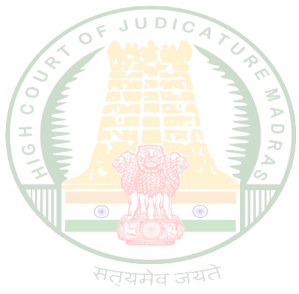


Renoncants.

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18.The following observations made by a learned Single Judge of this Court in *M.Kadirvelu and others v. G.Santhanalakshmi and others* reported in **2016 (2) MWN (Civil) 449** are relevant to understand how the local population become Renoncants in the Union Territory of Pondicherry, :

*“28.With a view to enable the local population to renounce their personal laws and to adopt the French Code Civil, a Regulation was passed on 21.9.1881. By this Regulation, an option was given to the native Indians to renounce their personal status. Such a renunciation was to be effected by way of a declaration in the office of the Mayor of the locality. Incentives were also offered to people, who renounce their personal status. These incentives were in the form of political rights and the opportunities thrown up for an employment in the Government. According to Author Claude Markovits (A History of Modern India 1480-1950), people professing Christianity and people belonging to lower castes, were eager to make use of this opportunity. These persons were actually given a term namely “renoncants”. These renoncants are governed by the French Code Civil in matters relating to marriage, divorce and family affairs. The 3 major enactments, namely, The Hindu Succession Act, Hindu*



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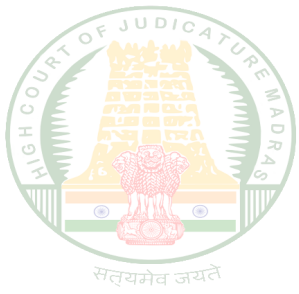
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*Marriages Act and the Hindu Adoption and Maintenance Act are not applicable to renouncants in Pondicherry.*

*29.The decree of 21 September 1881 enables the Indians, who so desired to renounce their personal status and to come under the purview of the French laws, with the objective of 'facilitating the progressive assimilation of natives' and of contributing to 'the uplift of the pariah by fraternity'. These measures, which aimed at ethnic (or cultural), not only political, assimilation marked the beginning of the process of absorption.*

*30.One of the important steps taken in this direction was to give French Indians the right of 'Universal Manhood Franchise' and towards that end, the French counters in India were endowed with a Deputy, a Senator, a General council, Local councils and Municipalities. In addition, native Indians were given the right to representation, association and organisation. Culturally, those Indians, who so desired, were invited to renounce their personal status (hence become renouncants) and place themselves under the authority of the French Civil Code.*

*31.After India attained Independence, an agreement was signed in October 1954 between India and France for the*

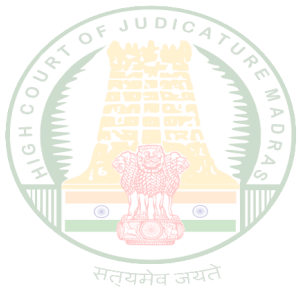


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*defacto transfer of the French Territories, including Pondicherry in India. A Treaty of Cession was signed on 28.5.1956. The Treaty was ratified by the French Parliament in 1962. On 16.8.1962, both countries exchanged Instrument of Ratification. Consequently, de jure transfer got effected and Pondicherry, together with the enclaves of Karaikal, Mahe and Yanam became the Union Territory of Pondicherry from 01.7.1963. In the meantime, Pondicherry (Administration) Act, 1962, was passed by the Parliament, to provide for the administration of Pondicherry and matters connected therewith. Under Section 4(1) of the Pondicherry (Administration) Act, 1962, all laws in force immediately before the appointed date in the former French Establishments were directed to continue to be in force, until amended or repealed by a competent legislature. 16th day of August, 1962 was made as the appointed date.*

*32. Under Section 4(2) of the Pondicherry (Administration) Act, the Central Government was empowered by order to make such adoptions and modifications, for the purpose of facilitating the application of any law in relation to the administration of Pondicherry and for the purpose of bringing the provisions of any such law into accord with the provisions of the Constitution. But, the Central Government was to pass such an order within three years from the*



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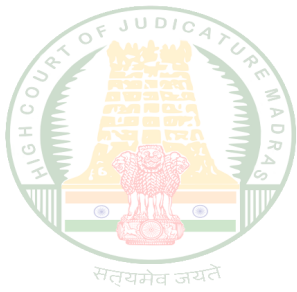


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*appointed date. Section 8 of the Act empowers the Central Government to issue notifications extending any enactment which is in force in a State, to Pondicherry with such restrictions and modifications as it deems fit.*

*33. Thereafter, the Pondicherry (Laws) Regulation, 1963, was issued by the President in exercise of the powers conferred by Article 240 of the Constitution, with a view to extend certain laws to the Union Territory of Pondicherry. Section 3 of the said Regulation declared that the Acts as they are generally in force in the territories to which they extend, shall also extend to and come into force in Pondicherry on the 1st day of October 1963, subject to the modifications specified in the First Schedule. The First Schedule to the Regulation contained a lot of enactments. The Hindu Succession Act, 1956 is one of the Parliamentary enactments included in the First Schedule to the Regulation of the year 1963. But, as seen from the First Schedule, the Hindu Succession Act, 1956 was extended to Pondicherry and it came into force in Pondicherry on the 1st day of October 1963, subject to one modification. The modification was that a separate Sub-Section, namely Sub-Section (2A) was inserted under Section 2 of the Hindu Succession Act, 1956. This new Sub-Section reads as follows:*

*“Section 2(2A) : Notwithstanding anything contained in Sub-Section (1), nothing contained in this Act shall apply*



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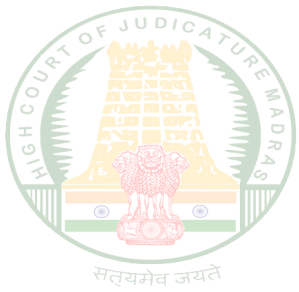
*to the renouncants of the Union Territory of Pondicherry.”*

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*34. Therefore, it is clear that as per Section 3 read with the First Schedule to the Pondicherry (Laws) Regulation, 1963, the provisions of the Hindu Succession Act, 1956, were extended to the inhabitants of the Union Territory of Pondicherry, subject to one restriction namely that in so far as renouncants are concerned, the Hindu Succession Act would not have any application.*

...

*40. As we have seen earlier, the French Code Civil was made applicable to the inhabitants of the French Settlements of Pondicherry, Karaikal, Mahe and Yanam by the resolution dated 6.1.1819. But, this resolution contained a saving clause. By a subsequent resolution dated 24.4.1880, provisions relating to registration of births and deaths and performance of marriages were regulated. Even this resolution contained a saving clause, making it optional to the Indians to follow their own customs. It appears that a further option to the Indians to switch over to the French way of life was given under another resolution dated 21.9.1881. By this option, the inhabitants were allowed to renounce their Personal Law and espouse the French law. People, who availed this opportunity and exercised the option to renounce their Personal Laws, emerging out of customary rights and practices, were called renouncants.*

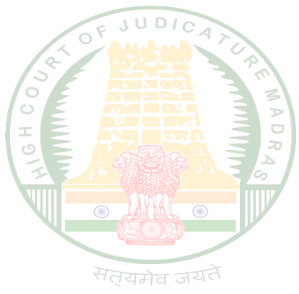


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... *41.It is a linguistic paradox that the descendants of the renouncants inherited the consequence of renunciation by their forefathers. Mr. Ramabathiran cites in his article, 3 decisions, which recognised the consequence of such renunciation. One was a judgment dated 12.11.1870 by the then Court Appeal at Pondicherry, which held valid the recourse by Muslims to the freedom of guardianship as organised by the French Code Civil. The second was the case of a Hindu widow, who adopted a son to herself. The adoption was held valid by the Privy Council in C.S. Nataraja Pillai v. C.S. Subbaraya Chettiar [AIR 1949 PC 24].”*

19.The above judgment was followed in various other judgments including the case in ***Gowri v. Subbu Mudaliar and others*** reported in ***(2017) 4 CTC 503***, wherein, after extracting the above observations, it has been held as follows :

*“29.The learned single Judge ultimately held that only the persons who were exercised the option to renounce their customary laws and adopted the French Code Civil, are not governed by the provisions of Hindu Succession Act, 1956 and held that the saving clause applies only to persons, who are inhabitants at the time when the French Code Civil was extended. **Persons, who are descendants of those inhabitants,***



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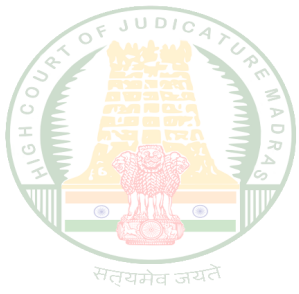
*are also entitled to the benefit. But, persons, who became inhabitants of Pondicherry after the application of the French Code Civil, are not entitled to claim since they are not renouncants.”*

*(emphasis supplied)*

20. Though the said case was arising out of Hindus, the learned Single Judge has held that the savings clause applies only to persons who are inhabitants at the time when the French Code Civil was extended. It was further held that persons who are descendants of those inhabitants are also entitled to the benefit. The history recorded above clearly shows that, even a person professing Christianity is permitted to renounce when the parties are governed by Indian Succession Act.

21. Section 1-A of the Indian Succession Act reads as follows :

*“1-A. Act not to apply to Renoncants – Nothing contained in this Act shall apply to the Renoncants of the Union Territory of Pondicherry” – Pondicherry Act 10 of 1980, Section 3 (w.e.f. 27.09.1980)”.*



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22. Therefore, a person, either Renoncant by himself or descendant of his inhabitants, is also entitled to adopt the French Law.

23. In the above background, it has to be looked into whether the plaintiff is a Renoncant or not.

24. It is the specific contention of the plaintiff that he is a Renoncant and his forefathers are also Renoncants who have renounced their personal laws and adopted the French Civil Code. Ex.A2 (certified copy of the Marriage Extract of the plaintiff and the 1<sup>st</sup> defendant) clearly shows that the plaintiff's father's name is Abneth Rassendaram, Military (Retired) and the 1<sup>st</sup> defendant/wife has declared that she wants to conserve her French nationality after her marriage with the plaintiff. Exs.A4, A5, A6 and A7 prove the fact that the plaintiff's father was a Renoncant. Similarly, Exs.A56 to A89 have been filed by the plaintiff to prove the clinching fact that the plaintiff's ancestors and the entire family members have renounced their personal law and adopted the French Code Civil and have become Renoncants. Once the descendants of such Renoncants are also entitled to



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adopt the French Law, it has to be held that the plaintiff is also a Renoncant.

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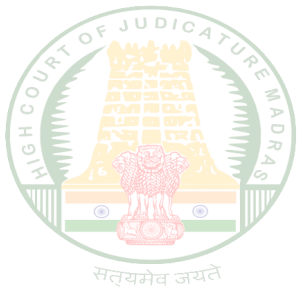
25.The above factum that the plaintiff is a Renoncant is further established by the own pleadings of the 1<sup>st</sup> defendant/wife. It is relevant to note that the 1<sup>st</sup> defendant has filed M.O.P.No.123 of 2007 before the Family Court, Pondicherry, amended copy of which has been marked as Ex.A28, seeking divorce on the ground of cruelty. The very petition was filed under Articles 233 and 242 of French Code Civil, seeking divorce. The 1<sup>st</sup> defendant, in the matrimonial petition, has taken a specific stand that both the petitioner/wife and her husband are Christians and the petitioner is a French National and the respondent/husband is a Renoncant. Divorce has been granted to the 1<sup>st</sup> defendant in the said petition. It is also to be noted that the 1<sup>st</sup> defendant has also filed a suit in O.S.No.13 of 2008 before the District Court, Pondicherry, claiming her half share from her husband's property. In the said plaint, which is filed as Ex.A30, in Para No.10, she has clearly pleaded that, both the plaintiff and the 1<sup>st</sup> defendant, being Renoncants, are governed by French Law and accordingly, in any property purchased by the husband or wife during the marriage or after the marriage, both the husband and wife are having equal rights. The said suit has been



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dismissed as not pressed and the judgment and decree in the said suit have been marked as Exs.A38 and A39. It is the stand of the husband that the said suit came to be dismissed after receipt of Rs.10 Lakhs by the wife from the purchaser. Though the receipt of Rs.10 Lakhs is denied by the wife, the fact remains that, in her two judicial proceedings, viz., one filed for divorce in M.O.P.No.123 of 2007 under Ex.A28 and another suit in O.S.No.13 of 2008 filed for half share in the husband's properties whose plaint is marked as Ex.A30, it is the specific stand of the wife that her husband is a Renoncant.

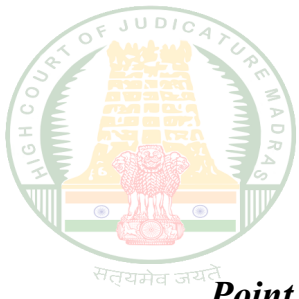
26.The evidence of D.W.1 (1<sup>st</sup> defendant), when carefully seen, she has admitted in the cross-examination that, in O.S.No.123 of 2007, she has sought half share as per French Law. She has also admitted in the cross-examination done on 27.06.2017 that she received a sum of Rs.8 Lakhs for her daughters. This admission clearly probabilises the plaintiff's case that the suit filed by the 1<sup>st</sup> defendant came to be dismissed for default after settlement of certain amount. Be that as it may.



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27.Considering the documents Exs.A2, A4, A5, A6, A7 and A56 to A89 and the pleadings in judicial proceedings under Exs.A28 and A30 and also the positive admission by the wife about the status of her husband in the judicial proceedings admitting that her husband is a Renoncant, the stand taken by the plaintiff/husband that he is a Renoncant, has been clearly established. The 1<sup>st</sup> defendant, having taken advantage of the French Law and obtained divorce against her husband, now cannot approbate and reprobate and contend that he is not a Renoncant in the present proceedings. The very candid admission made in both the proceedings amounts to estoppel by pleadings. Thereby, the 1<sup>st</sup> defendant/wife is estopped from denying the status of her husband as a Renoncant for the purpose of sharing the properties. Accordingly, we are of the view that the plaintiff has established the fact that he is a Renoncant, as his forefathers have renounced their personal laws and are governed by French Law. Accordingly, ***Point No.(i) is answered against the appellant/wife.***



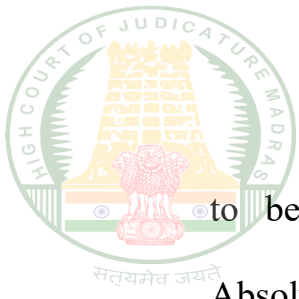
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**Point No.(ii) :**

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28.It is the specific stand of the plaintiff that the 1<sup>st</sup> defendant did not have any source to purchase the suit properties. According to the plaintiff, the entire amount has been paid by the plaintiff in respect of all the properties. Initially, Power of Attorney was executed in favour of the 1<sup>st</sup> defendant in the year 1992 and she, in turn, executed sale deeds in favour of her mother in respect of Item Nos.1 and 2 and thereafter, the said properties came to be settled in favour of the 1<sup>st</sup> defendant by her mother. However, it is the stand of the defendant that she has purchased the properties out of the contribution made by her brothers and mother.

29.It is the contention of the plaintiff that constructions have been put up in the Item Nos.1 and 2 of the suit properties by availing loan from LIC Housing Finance Limited as well as UCO Bank. The plaintiff has also examined P.W.2 to P.W.6 to show that he has borrowed certain amount from P.W.2 to P.W.6 and the consideration has been paid by them. Though P.W.2 to P.W.6, in their evidence, would submit that they also supported the plaintiff and paid substantial amount right from 1992, their evidence appears

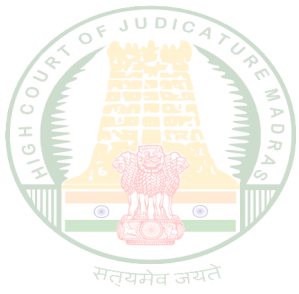


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to be artificial in nature and it appears to be parrot-like-repetition.

Absolutely, there is no evidence, whatsoever, to show that a huge amount has been parted by them.

30. Even assuming that the suit Items 1 and 2 have been purchased in the name of the wife, unless contrary is established, it shall be held that the said properties have been purchased only for the benefit of his wife as per Section 3 of the unamended Benami Transactions (Prohibition) Act, 1988. Absolutely, there is no motive, whatsoever, established by the plaintiff. No contrary evidence is available to establish what was the motive to purchase the properties in the name of his wife. Therefore, in the absence of any contrary evidence, law presumes that such purchase in the name of the wife, is only for the benefit of the wife. Though the Benami Transactions (Prohibition) Act does not prohibit purchase of the property in the name of wife or unmarried daughter, even assuming that the property has been purchased by the husband in the name of his wife, it shall be presumed, unless contrary is proved, that the property had been purchased for the benefit of his wife or unmarried daughter.



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31.It is interesting to note that, though Item Nos.1 and 2 of the suit properties are stated to be purchased by the plaintiff in the name of his wife, on perusal of the documents, particularly, Ex.A17 (Power of Attorney) dated 05.08.1992, executed by one Panneerselvam as Power Agent of one Devikiammal, it is seen that power was given in respect of Item No.2 of the suit properties in favour of the 1<sup>st</sup> defendant. The 1<sup>st</sup> defendant, as a Power Agent, in turn, executed a sale deed under Ex.A16 in favour of her mother Miron Rohini. After her mother becoming owner of the property, she has settled the property under Ex.A14 in favour of the 1<sup>st</sup> defendant. These documents are in respect of Item No.2 of the suit property. Similarly, in respect of Item No.1 of the suit properties, a Power of Attorney was executed in favour of the 1<sup>st</sup> defendant on 06.05.1996 under Ex.A51 and based on the Power of Attorney, the 1<sup>st</sup> defendant has conveyed the same to her under sale deed marked as Ex.A15. Later, the mother has settled the property in favour of the 1<sup>st</sup> defendant under Ex.A13.

32.Though P.W.2 has stated that he has paid a sum of Rs.2 Lakhs, the Power of Attorney does not indicate the nature of any payment and it is just



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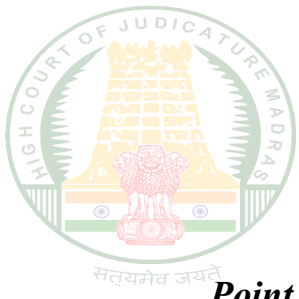
a General Power of Attorney to deal with the property executed by one

Panneerselvam. The Power of Attorney documents do not show that the power deed was coupled with interest. Even assuming that the properties were purchased out of the consideration paid by the plaintiff, the fact remains that the sale deeds have been executed only in favour of his mother-in-law, which clearly falls outside the ambit of Section 3 of the unamended Benami Transactions (Prohibition) Act. As far as Item Nos.1 and 2 of the suit properties are concerned, admittedly, the sale deeds are registered in the name of mother-in-law of the plaintiff. What is permitted under the Benami Transactions (Prohibition) Act under Section 3 is only a purchase in the name of wife or unmarried daughter, not beyond that. Admittedly, the properties in question were purchased and registered in the name of the mother-in-law. Even assuming the contention of the plaintiff that such purchase is a benami transaction to be true, it is relevant to note that, such a stand cannot be taken by the plaintiff, which is prohibited under Section 4 of the said Act. Section 4 of the Benami Transactions (Prohibition) Act, 1988, would state that no suit, claim or action to enforce any right in respect of any property held benami against the person in whose name the property is held or against any other person shall lie by or on behalf of a person claiming to



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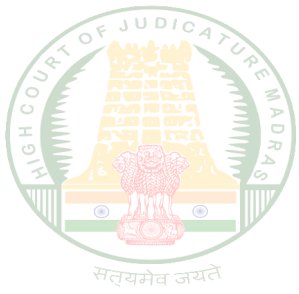
be the real owner of such property. Similarly, as per Section 4(2) *ibid.*, no defence based on any right in respect of any property held benami, whether against the person in whose name the property is held or against any other person shall be allowed in any suit, claim or action by or on behalf of a person claiming to be the real owner of the such property. Though there is an exception to hold the property in the name of coparcener or trustee or a person standing in a fiduciary capacity, it is not the stand of the plaintiff that his mother-in-law was holding his property as a trustee and the property has been registered in her name as a trustee or she was standing in a fiduciary capacity. In the absence of any pleadings in respect of the same, the plea of benami as against the mother-in-law, in whose name Item Nos.1 and 2 of the suit properties, were originally registered by the Power Agent, namely the 1<sup>st</sup> defendant, cannot be sustained. Without any basic pleading that the mother-in-law was a trustee or she was standing in a fiduciary capacity, the plea of benami as against the Item Nos.1 and 2 of the suit properties, cannot be maintained by the plaintiff. Therefore, we are of the view that the plaintiff cannot base his claim on Item Nos.1 and 2 of the suit properties as purchased in benami. ***Point No.(ii) is answered in favour of the appellant.***



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**Point No.(iii) :**  
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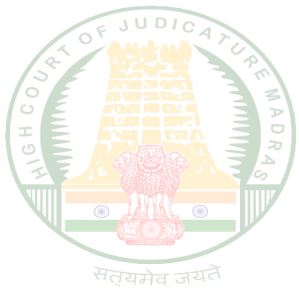
33.Much emphasis is made by the plaintiff to show that a building was constructed in suit Item Nos.1 and 2 by availing loan jointly by the husband and wife and he has relied upon the documents Exs.A18 and A19 (loan payment receipts issued by LIC Housing Finance Limited dated 29.12.2008 and 13.07.2009 respectively), Exs.A20 and A21 (letters informing to pay the housing loan issued by LIC Housing Finance Limited dated 22.12.2008 and 25.08.2009 respectively), Exs.A22 and A23 (letters informing to pay the housing loan issued by LIC Housing Finance Limited informing about the revision in rate of interest dated 08.01.2009 and 04.02.2012 respectively) and Ex.A25 (statement of account for the housing loan issued by LIC Housing Finance Limited dated 17.05.2012). Further, the plaintiff has also relied upon Exs.B19 and B20 (UCO Bank Passbook of the 1<sup>st</sup> defendant). He has also relied upon Ex.B18 (letter sent by the UCO Bank dated 01.02.2005) sanctioning a loan of Rs.7.4 Lakhs borrowed by both husband and wife on the commercial building at 133, 135, S.V.Patel Salai, Pondicherry. This letter is of the year 2005.



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34.The above documents clearly show that the plaintiff and the 1<sup>st</sup> defendant have jointly availed loan for commercial properties in the year 2005. Whereas, it is relevant to note that Item Nos.1 and 2 were purchased long back. When the matrimonial relationship was cordial, both the husband and wife availed loan from the Bank and they made some improvement in the Item Nos.1 and 2 of the suit properties. The fact remains that Item Nos.1 and 2 of the suit properties were, in fact, purchased in the name of mother-in-law and therefore, even assuming that some constructions were made by the husband and wife at the later point of time, at the most, it can be termed only as improvement. Merely because some improvement was made by availing loan at later point of time, except claiming a share on such improvement, the plaintiff cannot assert his right over the title of the suit Item Nos.1 and 2, since the same have been purchased by the mother-in-law, who, in turn, settled the properties in the name of the 1<sup>st</sup> defendant. It is not the case of the plaintiff that he seeks partition only in respect of the improvement made by them jointly. Whereas, he asserts his right only in respect of the title of the properties, which is certainly not permitted under law insofar as Item Nos.1 and 2 are concerned.

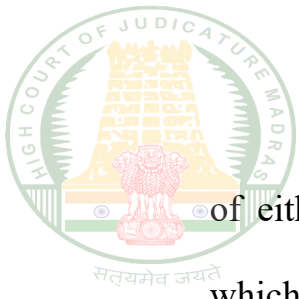


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35. Whereas, the 1<sup>st</sup> defendant contends that the entire construction was made out of the amounts contributed by her brothers and mother under Ex.B28 series. Ex.B28 series, when carefully seen, it is clear that, from 03.06.1998, the brothers of the 1<sup>st</sup> defendant have sent money to the mother of 1<sup>st</sup> defendant and from 09.12.2002, the brothers have sent money directly to the 1<sup>st</sup> defendant. Under Sl.No.1 to Sl.No.18 in Ex.B28 series, the money has been sent to the 1<sup>st</sup> defendant. Similarly, from Sl.No.19 to Sl.No.22 in Ex.B28 series, the amount has been sent by the brothers of the 1<sup>st</sup> defendant to their mother and later, from Sl.No.23 to Sl.No.32 in Ex.B28 series, the amount has been sent by the brothers to the 1<sup>st</sup> defendant. Totally, a sum of Rs.14,21,389/- has been sent by the brothers of the 1<sup>st</sup> defendant. It is the contention of the 1<sup>st</sup> defendant that, only out of the said contribution made by the brothers and mother of the 1<sup>st</sup> defendant, the improvement has been made on Item Nos.1 and 2 of the suit properties. However, there is no specific plea as to the extent of amount spent for such improvement.

36. The fact remains that the parties are governed by French Code Civil. As per French Code Civil, when a property is purchased in the name

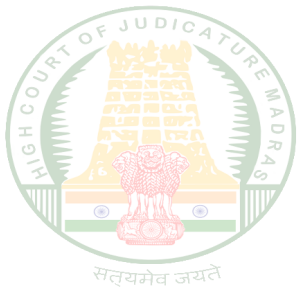


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of either spouse, it shall be the property belonging to the community, in which, both the husband and wife are certainly entitled to claim share.

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Though the above documents show that the 1<sup>st</sup> defendant has also received certain contribution from her brothers and mother, the fact remains that, both the husband and wife have also availed loan from UCO Bank for commercial building and prior to that, they have also availed loan from LIC Housing Finance Limited. The fact also remains that they have made improvement on suit Items 1 and 2, though stands in the name of the wife. Though it is stated by the plaintiff that house warming ceremony of the building over suit Item No.1 was celebrated in the year 2003, in the absence of any specific details as to the nature of the improvement made and the amount spent upon Item Nos.1 and 2 and in the absence of any relief for recovery of amount spent for Item Nos.1 and 2, which admittedly, were purchased in the name of the mother-in-law, which falls outside Section 3 of the Benami Transactions (Prohibition) Act, who, in turn, donated the property in favour of her daughter, viz., the 1<sup>st</sup> defendant, the plaintiff cannot assert his title over the said properties.



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37. In this regard, it is useful to extract the relevant Articles of the unamended French Code Civil, which read as follows :

*“1401. The following things form the assets of the community :*

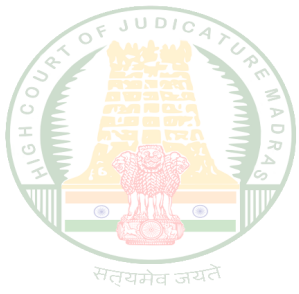
*1. All the movables which husband and wife possess on the day of their marriage, and also all the movables which they may acquire during marriage, either under a succession or by gift inter vivos; unless the donor has expressed a contrary intention.*

*2. All the produce, revenues, interest or arrears of every kind which fell due (r), or have been received either husband and wife at the time of their marriage, or from property which they fell into during the marriage, whether as heirs or otherwise.*

*3. All the movables purchased during marriage (C.529, 1393, 1400, 1404, 1433, 1437, 1470, 1497, 1498, 1500).*

*1402. All immovables are assumed to be purchased by the community which are not proved to have been either the property of or to have been in husband's or wife's legal possession before the marriage, or which are not proved to have come to him or her since, either under a succession or by way of donation inter vivos. (C.1352, 1401, 1404, 1455).*

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***1405.Immovable property given by donation inter vivos to one of the parties to a marriage (during the subsistence of the marriage) does not become part of the property belonging to the community, but belongs to the donee thereof exclusively; unless the instrument of donation expressly recites that it shall belong to the community. (C.1470, 1493).”***

38.Article 1402 of the French Code Civil makes it clear that, if any property comes to either husband or wife, either by way of succession or donation, the said property will not be considered as the property belonging to the community. Article 1405 of the French Code Civil makes it clear that immovable properties given as donation to one of the parties to the marriage during subsistence of the marriage does not become a part of the property belonging to the community, but belongs only to the donee thereof exclusively, unless the instrument of donation expressly recites that it shall belong to the community.

39.In the light of the above Articles, the Settlement Deeds executed by the mother of the 1<sup>st</sup> defendant under Exs.A13 and A14, when perused, do not indicate that the properties shall be treated as community properties.



Therefore, Item Nos.1 and 2 are certainly the absolute properties of the 1<sup>st</sup> defendant.

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40.Even after the amendment, the French Code Civil (English Translation) of the year 2006, when carefully seen, Articles 1402 and 1405 read as follows :

***“Art.1402***

*Any property, movable or immovable, shall be deemed an acquisition of the community where it is not proved that it is a separate property of one of the spouses in accordance with a provision of law.*

*Where a property is one of those which do not display proof or mark of their origin, personal ownership of a spouse, if disputed, shall be established in writing. Failing an inventory or other contemporaneously constituted proof, the judge may take into consideration all writings, in particular family instruments of title, registers and papers, as well as bank documents and invoices. He may even admit testimonial or presumptive evidence, where he observes that it was materially or morally impossible for one spouse to obtain a writing.*



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**Art.1405**

*Remain separate property the items of property of which the spouses had ownership or possession on the day of the celebration of the marriage, or which they acquire, during the marriage, through succession, gift of legacy.*

*A gratuitous transfer may stipulate that the property which is its subject-matter will belong to the community. Property falls into community, unless otherwise stipulated, where a gratuitous transfer is made jointly to both spouses.*

*Property surrendered or transferred by the father, mother or other ascendant to one of the spouses, either in order to discharge what he owes to him or her, or under the obligation of paying debts of the donor to outsiders, remain separate property, subject to reimbursement.”*

41.Article 1405 clearly shows that any property obtained by succession, gift or legacy remains as a separate property, unless stipulated in the deed itself that it is a property belonging to the community. Therefore, in the absence of any indication in the Settlement Deeds executed by the mother of the 1<sup>st</sup> defendant in favour of the 1<sup>st</sup> defendant that the property shall belong to the community, Item Nos.1 and 2 of the suit properties which are given by way of Settlement Deeds under Exs.A13 and A14 in favour of



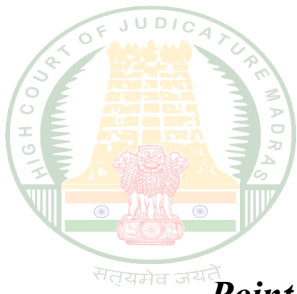
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the 1<sup>st</sup> defendant, shall be the separate properties of the 1<sup>st</sup> defendant.

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42. Though it is stated that the husband and wife had jointly borrowed loans from LIC Housing Finance Limited and UCO Bank, the letter from the UCO Bank under Ex.B18, as discussed above, clearly shows that it is in respect of commercial properties. The loan is of the year 2005, which is much after the purchase of Item Nos.1 and 2 of the suit properties. Even assuming that they had jointly availed some loan for making improvements over the properties, without establishing the specific nature of the improvement or the amount spent by the husband, the husband/plaintiff cannot base his right on the entire immovable properties, since they came by way of gift deed to the wife from her mother and remain as separate properties of the wife. Therefore, we are of the view that Items Nos.1 and 2 of the suit properties are the separate properties of the appellant/1<sup>st</sup> defendant and the plaintiff cannot claim any share over suit Items 1 and 2.

***Accordingly, Point No.(iii) is answered in favour of the appellant.***



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**Point No.(iv) :**

43.As far as suit Item Nos.3 to 5 are concerned, since this Court has held that the parties are governed by French Code Civil, since the plaintiff is also held to be a Renoncant, the properties held either in the name of the husband or wife during subsistence of marriage, will become the asset of the community as per French Code Civil. Therefore, as per French Code Civil, the plaintiff is certainly entitled to half share in Item Nos.3 to 5 of the suit properties. ***Accordingly, Point No.(iv) is answered against the appellant.***

**Point No.(v) :**

44.To sum up, since the suit Item Nos.1 and 2 have been held to be the separate properties of the appellant/1<sup>st</sup> defendant by rejecting the plea of benami set up by the 1<sup>st</sup> respondent/plaintiff as hit by Section 4 of the Benami Transactions (Prohibition) Act, 1988, whereas, the plaintiff is held to be entitled to half share in suit Item Nos.3 to 5 standing in the name of the 1<sup>st</sup> defendant as forming part of the asset of the community as per French Code Civil, as both parties are governed by French Law, this Court holds that the plaintiff is entitled to half share in Item Nos.3 to 5 of the suit properties, but



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not Item Nos.1 and 2.

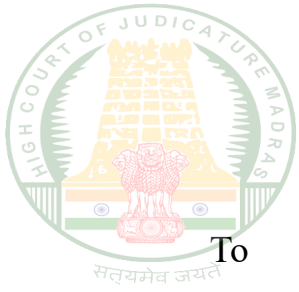
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46. Accordingly, this Appeal is partly allowed and the judgment and decree of the trial Court granting preliminary decree allotting half share in favour of the plaintiff in respect of Item Nos.1 and 2 of the suit properties alone is set aside, whereas, the decree granting half share in respect of Item Nos.3 to 5 stands confirmed. No costs.

(N.S.K., J.) (M.J.R., J.)  
29.07.2026

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Internet : Yes  
Index : Yes / No  
Speaking Order  
Neutral Citation : Yes

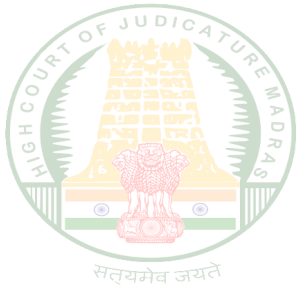


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To

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- 1.The Judge,  
Family Court,  
Pondicherry.
- 2.The District Registrar,  
Registration Department,  
Sakthi Nagar, Saram,  
Pondicherry – 13.
- 3.The Oulgaret Sub Registrar,  
Office of the Sub Registration Department,  
Jawahar Nagar, Boomianpet,  
Pondicherry – 5.
- 4.The Section Officer,  
VR Section,  
High Court, Madras.



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A.S.No.551 of 2019

**N. SATHISH KUMAR, J.**  
**and**  
**M. JOTHIRAMAN, J.**

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**Judgment in**  
**A.S.No.551 of 2019**

**29.07.2026**