



In the High Court of Judicature at Madras

Delivered on : 15-4-2016

Coram :

The Honourable Mr. Justice V. RAMASUBRAMANIAN

A.S.No.40 of 2001 and C.M.P.No.4748 of 2001

1.M.Kadirvelu
2.M.Narayanan
3.Selvaraj
4.Arumugam

...Appellants/Defendants 2, 3, 7 & 13

Vs

1.G.Santhanalakshmi
2.Radha Bai (a) Karpagavalli
3.Krishnakumari
4.Selvaraj
5.Sundarabai
6.Vanitha
7.Girija
8.Manickavalli
9.Kailashkumar
10.Jothibai
11.Revathy
12.Ramani
13.Tharabai
14.Kumari
15.Ammu
16.Visalatchi
17.Dhavamani
18.Krishnamurthy
19.Thiyagarajan
20.Muruganandam
21.Kannabai
22.Girija Ranjini
23.Venugopal
24.Sugumar
25.Ramesh Kumar
26.Suresh Kumar
27.Pandurangan
28.Soundaravani
29.Premalatha
30.Sudha Ranjini
31.Lakshminarayani
32.Megala
33.Vasuki
34.Nagavel



35. Banumathi
36. Chandrika
37. Sankaranarayanan
38. Saravanan

... Respondents/Defendants 1, 4, 8 to 12

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APPEAL under Section 96 of the Civil Procedure Code against the judgment and decree dated 19.11.1999 made in O.S.No.519 of 1996 on the file of the Additional Subordinate Judge, Pondicherry.

For Appellants :	Mr.A.Rajkumar
For Respondents 1, 6, 21 to 27, 29, 30 & 34 :	Mr.T.V.Ramanujam, SC for Mr.M.Narayanaswami
For Respondent-2 :	Ms.S.Hemalatha
For Respondents 31 to 33 and 35 to 38 :	Mr.V.Anand

J U D G M E N T

This appeal arises out of a preliminary decree for partition.

2. I have heard Mr.A.Rajkumar, learned counsel appearing for the appellants, Mr.T.V.Ramanujam, learned Senior Counsel appearing for the respondents 1, 6, 21 to 27, 29, 30 and 34, Ms.S.Hemalatha, learned counsel appearing for the second respondent and Mr.V.Anand, learned counsel appearing for the respondents 31 to 33 and 35 to 38.

3. The defendants 2, 3, 6 and 7 are the appellants herein. The first respondent herein filed a suit for partition and separate possession of her 1/6th share in the suit properties and for the grant of mesne profits at the rate of Rs.500/- per month in relation to her share of income, apart from an award for future mesne profits at 6 kalams of paddy per annum for the wet lands and Rs.10/- per annum for the dry lands.

4. The case of the first respondent/plaintiff was as follows :

(i) One Tandayuda Appasamy Pillai, who owned the suit properties, died leaving behind three sons namely (1) T.Krishnasamy Pillai (2) Cadirvelu Pillai (a) Cailassam Pillai and (3) Venugopal Pillai (a) Cojandavelu Pillai.

(ii) The eldest son T.Krishnasamy Pillai, who died in the year 1923, had a wife by name Mangayarkarasy and a son and a daughter respectively by name Appasamy (a) Cannayen and Maragatham. The second son Cadirvelu Pillai (a) Cailassam



Pillai, who died in the year 1956, had five sons by name (1) Murugasamy (a) Murugesan (2) Raja (a) Balasubramanian (3) Ranga (a) Ranganathan (4) Gobalakrishnan (a) Gobalou and (5) Purushothaman (a) Balaraman. The third son Venugopal Pillai (a) Cojandavelu Pillai had three sons by name (1) Appasamy (a) Tandapany Pillai (2) Ramassamy Pillai (a) Ganesane and (3) Arunasalam (a) Nandagopal Pillai.

(iii) The plaintiff - Santhanalakshmi was the daughter of Appasamy (a) Tandapany Pillai, who was one of the three sons of Venugopal Pillai, son of the common ancestor - Tandayuda Appasamy Pillai.

(iv) The wife and children of Murugasamy (a) Murugesan, who was one of the five sons of Cadirvelu Pillai (a) Cailassam Pillai, son of the common ancestor - Tandayuda Appasamy Pillai were arrayed as defendants 1 to 4.

(v) The wife and children of Raja (a) Balasubramanian, son of Cadirvelu Pillai (a) Cailassam Pillai were arrayed as defendants 5 to 10.

(vi) The wife of Ranga (a) Ranganathan, son of Cadirvelu Pillai (a) Cailassam Pillai was arrayed as the 11th defendant.

(vii) The wife and children of the fourth son of Cadirvelu Pillai (a) Cailassam Pillai were arrayed as defendants 12 to 18.

(viii) The wife and children of the fifth son of Cadirvelu Pillai (a) Cailassam Pillai were arrayed as defendants 19 to 23.

(ix) The wife and children of Venugopal Pillai's second son by name Ramassamy Pillai (a) Ganesane were arrayed as defendants 24 to 33.

(x) The wife and children of Venugopal Pillai's third son - Arunasalam (a) Nandagopal Pillai were arrayed as defendants 34 to 41.

(xi) In other words, the suit was instituted by a person belonging to one among the three representing one out of three branches of the family of Tandayuda Appasamy Pillai. But, nevertheless, one out of the three branches of the family of Tandayuda Appasamy Pillai perished without leaving any legal heir.

(xii) Consequently, the plaintiff claimed that the two branches of Tandayuda Appasamy Pillai, one represented by the legal heirs of Cadirvelu Pillai (a) Cailassam Pillai and the other represented by the legal heirs of Venugopal Pillai, were each entitled to 1/2 share of the properties left behind by Tandayuda Appasamy Pillai. Since Venugopal Pillai, who inherited one half of the properties of Tandayuda Appasamy Pillai, had three sons, each son became entitled to 1/3rd share of the half share of Venugopal Pillai. In other words, Appasamy (a) Tandapany Pillai, Ramassamy Pillai (a) Ganesane and Arunasalam (a) Nandagopal Pillai, who were the three sons of Venugopal Pillai, each became entitled to 1/3rd share of what was inherited by Venugopal Pillai. This is why the plaintiff claimed partition and separate possession of her 1/6 share in the suit properties.



5. The plaintiff also claimed that the co-sharers of the suit properties effected amicable partition of some of the lands under a registered deed dated 24.8.1970; that the plaintiff's father agreed for dividing the lands covered by the partition deed into 8 shares instead of 6 shares out of sympathetic consideration; that out of those 8 shares, 3 shares were given to the sons of Venugopal Pillai and 5 shares were given to the sons of Cadirvelu Pillai (a) Cailassam Pillai; that the suit properties ever remained in joint possession and hence, the branch of Cadirvelu Pillai (a) Cailassam Pillai is entitled to half share and the branch of Venugopal Pillai is entitled to the other half share. According to the plaintiff, her father Appasamy (a) Tandapany Pillai constructed a room in the upstairs portion of A schedule property and used to stay there, whenever he visited Pondicherry. He was also collecting his share of the rental income from the other co-sharers. After his death, the defendants 2 and 6 collected the rent on behalf of the other sharers. Therefore, after issuing the notice seeking partition, the plaintiff filed the above suit.

6. The defendants 2, 3, 6 and 7 filed a written statement, which was adopted by the defendants 1 and 9. In brief, it was contended in the written statement of the defendants 2, 3, 6 and 7 that the suit was not properly valued; that there was actually an amicable partition on 24.8.1970 dividing the properties into 8 shares; that the reason for dividing the properties into 8 shares was that Cadirvelu Pillai (a) Cailassam Pillai had 5 sons and Venugopal Pillai had 3 sons; that the claim of the plaintiff, who is a female heir of one of the sons of Venugopal Pillai, is not valid; that the defendants had spent huge amount to construct two houses on the vacant site mentioned in A schedule and they have been maintaining the same; and that therefore, the suit was liable to be dismissed.

7. The sixth defendant filed an additional written statement, which was adopted by the defendants 2, 3 and 7. This additional written statement was in response to an amended plaint where certain wet lands were included. It was claimed in the additional written statement that some of the properties sought to be included did not belong to the family and that in any case, the defendants were not receiving any rental income.

8. The 17th defendant filed a separate written statement primarily contending that the partition effected in the year 1970 dividing the properties into 8 equal shares, was intended to sell one share to each of the five sons of Cadirvelu Pillai and one share to each of the three sons of Venugopal Pillai; that the plaintiff, who could inherit only one of those 8 shares, cannot seek to enlarge her claim into 1/6 share; and that therefore, at the most, the plaintiff was entitled only to the allotment of 1/8 share. The 17th defendant actually prayed



for a decree of partition, dividing the properties into 8 equal shares and for the allotment of one of those shares to the plaintiff and proportionate shares to all the defendants.

9. The 19th defendant filed a written statement, which was adopted by the defendants 20 to 23. Her written statement was almost on similar lines as that of the 17th defendant. These defendants also prayed for the division of properties into 8 equal shares as per the partition deed.

10. The 11th defendant filed a written statement making a similar prayer for the division of properties into 8 equal shares.

11. It is to be pointed out here that the 11th defendant originally filed a written statement through one advocate submitting to the decree. Later, she filed another written statement through a different advocate claiming that her earlier stand was on a misunderstanding that the plaintiff was claiming only 1/8 share in the properties. A similar pattern was followed by the defendants 19 to 23.

12. Therefore, the Trial Court framed 9 issues and three additional issues, which are as follows :

"Issues :

1. Whether the genealogy as set out in the plaint is correct ?

2. Whether the dates of deaths of respective predecessors in title of the parties to this suit are correct ?

3. Whether the plaintiff is the sole legal heir of her deceased parents Dhandapani Pillai and Rajeswari Ammal ?

4. Whether the plaintiff is entitled for 1/6 share in the suit properties ? and what are the shares of the defendants in the suit properties ?

5. Whether there is any improvement made in the suit properties ? If so, who made it and whether the plaintiff is entitled to that improvements also or not ?

6. How the suit properties are being enjoyed? and who is getting the income ?

7. Whether the plaintiff is entitled for mesne profits ? If so, as against whom ?

8. What was the quantum of income derived from the suit properties ?

9. Whether the plaintiff is entitled for a preliminary decree and final decree as prayed for with costs ?



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Additional Issues framed on 26.7.1999 :

1. Whether the suit was not properly valued and correct court fee was not paid ?

2. Whether the suit house was not enjoyed by the plaintiff's father at all ? and

3. Whether the plaintiff's father by his conduct relinquished his right over the suit house?"

13. The plaintiff examined herself as P.W.1. She marked 20 documents on her side as Ex.A.1 to Ex.A.20. The Village Administrative Officer was examined as P.W.2. He marked the authorization letter issued by the Deputy Tahsildar as Ex.X.1 and the adangal for the fasli year 1409 in respect of some of the landed properties as Ex.X.2. The second defendant examined himself as D.W.1. The 11th defendant examined herself as D.W.2. The 19th defendant examined herself as D.W.3. The 27th defendant examined himself as D.W.4. The 6th defendant examined himself as D.W.5. Ex.B.1 to Ex.B.6 were marked on the side of the defendants.

14. On the basis of the pleadings and the evidence on record, the Trial Court came to the conclusion on Issue No.1 that the genealogy set out in the plaint was correct. On Additional Issue No.1 regarding the valuation of the suit properties, the Trial Court found that the valuation was properly made in terms of Section 37(2) of the Pondicherry Court Fees and Suits Valuation Act and that merely because some of the defendants disputed the right of the plaintiff to claim partition, she cannot be compelled to pay ad valorem court fees. The Trial Court also recorded a finding that since the plaintiff was the daughter of Appasamy (a) Tandapany Pillai, who died long after the extension of the Hindu Succession Act to Pondicherry, the plaintiff was prima facie a Class I heir under the Hindu Succession Act and that therefore, she is entitled to claim joint possession in terms of Section 37(2).

15. On Issue Nos.2 and 3, there was not much opposition and hence, the Trial Court concluded that the dates of deaths of respective predecessors in title of the parties were correct and that the plaintiff was the sole legal heir of her parents.

16. On Issue No.4, the Trial Court took note of Section 4 of the Hindu Succession Act and the provisions of the Pondicherry (Extension of Laws) Regulation, 1963 and came to the conclusion that the plaintiff's father was entitled to 1/3rd of the half share of Venugopal Pillai and that therefore, the plaintiff was entitled to 1/6 share in the suit properties.



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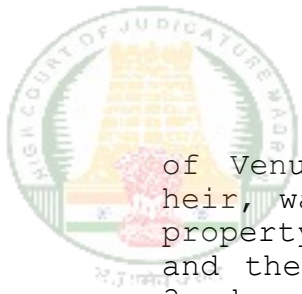
17. On Issue No.5, the Trial Court found that all the co-sharers contributed for effecting improvements in the suit house and that therefore, the principle of 'all for each and each for all' had to be applied. On Issue No.6, the Trial Court held that the properties were in joint enjoyment of all the co-sharers.

18. On Additional Issue Nos.2 and 3, the Trial Court found that the plaintiff's father did not relinquish his right over the suit properties and that he also enjoyed the properties. As a consequence of these findings on all the above issues, the Trial Court held on Issue No.9 that the plaintiff was entitled to a decree as prayed for with costs. In so far as the rental income is concerned, the issue was relegated to final decree proceedings. Therefore, aggrieved by the aforesaid judgment and decree, the defendants 2, 3, 6 and 7 have come up with the above appeal.

19. As we have seen earlier, defendants 2, 3, 6 and 7, who are the appellants herein, are the children of 2 out of 5 sons of one branch, which is admittedly entitled to half share in the properties originally left behind by Tandayuda Appasamy Pillai. Neither the legal heirs of the other sons of Cadirvelu Pillai alias Cailassam Pillai (which forms one branch), nor the legal heirs of Venugopal Pillai (representing the other branch) have come up with any appeal against the preliminary judgment and decree for partition granted by the Trial Court. Therefore, primarily the grounds of appeal raised by the appellants revolve around the stand taken by the appellants in their written statement and additional written statement.

20. In the written statement filed by the appellants before the Trial Court, they did not dispute the fact that the suit properties originally belonged to Tandayuda Appasamy Pillai, he having inherited the same from his father Tandayuda Krishnasamy Pillai. They also did not dispute the fact that Tandayuda Appasamy Pillai had 3 sons, by name Krishnasamy Pillai, Cadirvelu Pillai and Venugopal Pillai and that the eldest among them died leaving behind a wife and a son, both of whom also died later without leaving any heirs to represent the branch. Consequently, the appellants did not and do not dispute the fact that the properties, which originally belonged to Tandayuda Appasamy Pillai, devolved in two equal shares upon two of his sons, namely Cadirvelu Pillai and Venugopal Pillai and their respective children representing their branches.

21. But, the objections taken by the appellants before the Trial Court were (i) that the properties were not properly valued; (ii) that the properties had already been partitioned under a registered deed dated 24.8.1970; (iii) that they were divided into 8 equal shares, with 5 shares being allotted to the 5 sons of Cadirvelu Pillai and 3 shares allotted to the 3 sons



of Venugopal Pillai; (iv) that the plaintiff, being a female heir, was not entitled to claim a share; (v) that the A Schedule property was enjoyed only by 3 out of 5 sons of Cadirvelu Pillai and they also developed the property; (vi) that 1 out of those 3, by name Ranga alias Ranganathan died without leaving any legal heirs; (vii) that right from the year 1965, all co-sharers consented to the peaceful enjoyment of the A Schedule property by the appellants herein; and (viii) that the plaintiff's father never stayed in the A Schedule property.

22. Though the appellants have raised the very same points that they had pleaded in the written statement as the grounds of appeal, the learned counsel did not harp upon many of the smaller issues, but focussed only upon the major issue, namely the applicability of the provisions of the Hindu Succession Act, 1956 and the entitlement of the female heir to succeed, especially in the light of the partition deed dated 24.8.1970. Therefore, from the arguments raised by the learned counsel for the appellants, I am of the considered view that two questions arise for consideration in the appeal. They are (i) whether the plaintiff, who is a female heir, is entitled to claim partition, in the light of the Hindu Law that is applicable to the Hindus within the French Territory of Pondicherry, and (ii) whether the Trial Court was right in decreeing the suit as prayed for.

Question No.(i):

23. The original owner of the property Tandayuda Appasamy Pillai died way back in the year 1923, leaving behind him surviving 3 sons. At the time of his death, Pondicherry was under the French Rule. Therefore, as per the Coramendel Law that was followed in Pondicherry at that time during the French Regime, sons alone were entitled to succeed to the estate of a Hindu father.

24. It appears that by Arrete of the Governor dated 06.4.1818, the French Government made it mandatory for the Courts to recognise established customs of the local people within the French Territory. Therefore, when the French Code Civil was made applicable by a resolution dated 16.01.1819 to the inhabitants of the French Settlement in Pondicherry, Karaikal, Mahe and Yanam, a saving clause was inserted to enable the Hindus, Muslims and Christians inhabitants of these settlements to be governed by the usages and customs of their respective races.

25. It appears that thereafter, a local ordinance was passed on 30.10.1827 by the local Government, constituting a Consultative Committee known as "Comite Consultatif De La Jurisprudence Indienne" with the localites to study the local customs. This Committee was to enlighten the Courts on the position of Hindu Law in customary matters. According to a



scholarly article written by one Mr. Ramabathiran, a retired District Judge, this Committee comprised of 9 elderly Hindus drawn from various castes. 2 out of these 9 were Brahmins, 2 were Vellalars, 1 was a Kavarai, 1 was a Desaye, 1 Berger, 1 Komuti and 1 Chetty.

26. But, the French Regime always wanted the localite to be assimilated into the French way of life. Therefore, these French Settlements in India were endowed with a Deputy to the French Chambre and a Senator to the French Senat towards the local reforms council known as "Consueilcolonaial" was established. Another Council known as "Conseilslocaux" was also established. Members of these 2 Councils were to be elected through Universal Manhood Franchise by two lists of voters, one comprising of native Indians and another comprising of the Europeans and their descendants.

27. The colonial council was replaced by a general council elected by universal adult franchise and invested with extended powers. (Decree of 25th January 1879). Ten communes were created by the decree of 12th March 1880. The establishment of Pondicherry numbered four of them and that of Karaikal three. The municipal councils were elected by universal franchise. However, as for the elections to the general council, the electors were registered on two lists, one for the Europeans and the descendants of the Europeans and the other for Indians. The decree of 24th June 1880 promulgated in the colony a number of provisions of the Civil Code. Though exemptions were granted to Hindus and Muslims, there was considerable unrest in Pondicherry where the wind of revolt was beginning to blow. This was followed by the decree of 1881, by which, Indians could renounce their personal status.

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 "renouncants". These renouncants 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 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 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 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 to the renouncants of the Union Territory of Pondicherry."

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.

35. In the year 1968, a second exercise of a similar nature was undertaken by the Parliament and an Act known as the Pondicherry (Extension of Laws) Act, 1968 was passed. Under Section 3(1) of the said Act, the Parliament extended the provisions of the Acts specified in Parts I and II of the Schedule to the Union Territory of Pondicherry, subject to the modifications specified in the Schedule. Parts I and II of the Schedule to the 1968 Act covered those Acts, which are not covered by the Regulation of the year 1963. While the Special Marriage Act, 1954, the Hindu Marriage Act, 1955 and the Hindu Succession Act, 1956, were covered by the Regulation of the year 1963, the Hindu Minority and Guardianship Act, 1956 and the Hindu Adoptions and Maintenance Act, 1956 were covered by the 1968 Act. Consequently, a provision, which is similar to Sub-Section (2A) that was inserted under Section 2 of the Hindu Succession Act, 1956 was also incorporated under Sections 3 and



2 respectively of the Hindu Minority and Guardianship Act, 1956 and the Hindu Adoptions and Maintenance Act, 1956.

36. The resultant position is that by virtue of the Regulation of the year 1963 and the Act of the year 1968, the provisions of what we may call as the Hindu Code, namely the Hindu Marriage Act, the Hindu Succession Act, the Hindu Minority and Guardianship Act, 1956 and the Hindu Adoptions and Maintenance Act, 1956, would generally apply to the inhabitants of Pondicherry, except those, who are renouncants of the Union Territory of Pondicherry.

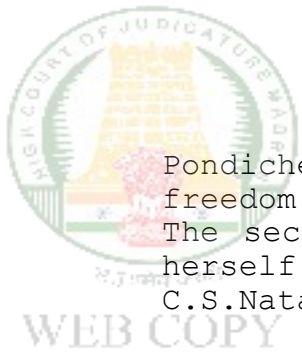
37. But, unfortunately neither the 1963 Regulation nor the 1968 Act defined the expression "renouncants". Therefore, the question as to who a renoucant is, has often baffled Courts.

38. The normal English word "renounce" is defined by Merriam-Webster Dictionary to mean "to give up, refuse or resign or to refuse to follow, to refuse to obey, etc. While these meanings are given by the said dictionary to the word "renounce", when used as a transitive verb, a different set of meanings is assigned to the same word when used as intransitive verb. Since we are not concerned here with the meaning of the English word "renounce", we need not take note of other meanings.

39. But, what is important to note is that according to the Merriam-Webster Dictionary, the English word "renounce" originated from the Anglo-French word "renuncer" and from the Latin word "renuntiare".

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.

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 Cour d' Appel 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].

42. Therefore, persons, who 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. But, it must be remembered that by its very nature, 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, 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 that they are renouncants.

43. Keeping the above fundamental aspects in mind, if we now have a look at the pleadings, it can be seen that the defendants nowhere pleaded that their forefathers were renouncants and therefore, Section 2(2A) of the Hindu Succession Act, 1956 cannot be applied. The question as to whether a person is a renuncant or not is a question of fact, which should have been pleaded and proved. It was not done by the parties. Therefore, the provisions of the Hindu Succession Act, 1956, would stand automatically applied. The parties cannot claim the benefit of renunciation, especially when they have renounced such a right, while making pleadings.

44. In Ramalingam Vs. Manicka Gounder [1980 (2) MLJ 350], a question arose before a learned Judge of this Court as to how the law of intestate succession operated in the territory of Pondicherry with a Hindu father possessed of ancestral property died leaving behind both male and female heirs. The question arose in a second appeal out of a suit for partition and separate possession. The plaintiff in the suit had purchased 1/4th share. The daughter of a deceased inhabitant of Pondicherry claimed the properties left behind by her father. But, the sons claimed that the daughter had no share. While examining the question as to the kind of law that prevailed in the territory of Pondicherry, V.Balasubrahmanyam, J observed in paragraph 8 of the judgment as follows :

"It may be observed by way of preface, that wherever Mitakshara law was being administered in this country according to its ancient texts, succession to ancestral or coparcenary property was by survivorship and not by inheritance. The rule was general in its application, and brooked no exception. It applied, for instance, whether



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the deceased died leaving undivided brothers or died leaving undivided sons. The rule of survivorship operate in both the cases. The particular reason why, even in the latter kind of case, the rule governed the devolution was because the sons had a right by birth in the ancestral property even during their father's lifetime. In the territory of Pondicherry, however, the legal position was quite different for a pretty long time. The textual Hindu law had yielded to a local variation, wrought, it would seem, by custom and usage. The position which obtained in Pondicherry was summed up by the French writer Sanner in his well-known work on Hindu Law in the following terms:

Today, by virtue of a more correct interpretation of custom, the theory of coparcenary system between father and sons in respect of the ancestral properties in abandoned in our establishment of Coramandel Coast. It is to the head of the family only, in reality, in the juridical sense of the word, I the assets deriving from the ancestor belong, and he alone has capacity to exercise, in principle, the right to dispose, which is conferred on him by owner's right."

45. In paragraph 9 of his judgment, the learned Judge cited with approval a decision of the Superior Court of Appeal of Pondicherry rendered by a Three Member Bench. It reads as follows :

"That this was the law which was being administered by Courts in Pondicherry is found from a recent application of it in a decision of the Superior Court of Appeal, Pondicherry in Appeal No. 326 of 1964. That Court, consisting of a three-member bench of which Maharajan, J., was the President echoed Sanner with the following passage:

Under Hindu Law, as it is in force in Pondicherry, Hindu sons do not acquire any interest in the father's property by birth, whether the property be the self-acquired property of the father or his ancestral property."



46. Thereafter, the learned Judge held in Ramalingam Vs. Manicka Gounder that under the Hindu Law as in vogue in Pondicherry, all properties held by a father in a joint family are his absolute properties whatever might be their origin or their modes of acquisition and that all of them devolve on his death in accordance with the law, which governs succession to a male Hindu's absolute estate. This was the law as administered in Pondicherry, when the Hindu Succession Act, 1956 came to be extended by the Regulation of the year 1963, subject, however, to the exception contained in Section 2(2A).

47. The views expressed by V.Balasubrahmanyam, J in Ramalingam were cited with approval by Sethuraman, J in Pandurangan Vs. Sarangapani [1982 1 MLJ 143]. In paragraph 6 of the judgment, the learned Judge held that under the Hindu Law in force in the territory of Pondicherry, Hindu sons did not acquire any interest in the father's property by birth, whether the property be a self acquired property of the father or his ancestral property. The learned Judge also quoted French writer Sanner in his work on Hindu Law to the following effect :

"Today, by virtue of a more correct interpretation of custom, the theory of coparcenary system between father and sons in respect of the ancestral properties is abandoned in our establishment of Coromandel Coast. It is to the head of the family only, in reality, in the juridical sense of the word, the assets deriving from the ancestor belong, and he alone has capacity to exercise, in principle the right to dispose, which is conferred on him by owner's right."

48. In Maniammal (a) Rajambal Vs. Mangalakshmy [1986 1 MLJ 160], S.Mohan, J pointed out that if, during the lifetime of the father, the father and sons lived together, that joint living was known in Pondicherry as 'Regime de la co-propriete familiale'. If, even after the death of the father, the sons effected no partition, but continued to live jointly, the same was known as 'Communaute'. The learned Judge quoted author Lang Lard from his book 'Lecons de Droit Hindu' to the effect that the characteristic feature of a Hindu family, which remained undivided, was that there existed unity in residence and joint interest. However, the learned Judge pointed out that the joint family system was not applicable to Pondicherry. The learned Judge quoted with approval the decision of V.Balasubrahmanyam, J in Ramalingam and Sethuraman, J in Pandurangan.



49. However, another Division Bench of this Court did not subscribe to one of views expressed by Sethuraman,J in Pandurangan. That Division Bench, in Krishnamoorthy Gounder Vs. Sitarama Gounder [2002 (3) LW 669], was concerned with the validity of a transfer made by the father. After holding that under the Customary Hindu Law prevailing in Pondicherry, the son cannot ask for partition during the lifetime of the father, the Division Bench held in paragraph 34 that under the French system, the father does not have an unlimited power in the matter of gratuitous transfer. After differing from the view expressed by Sethuraman,J in Pandurangan, only in so far as the claim of legitim by a forced heir is concerned, the Division Bench highlighted that there are two principles under the French system, which are in conflict with each other. But, be that as it may, the Division Bench affirmed the view that under the French system, the traditional principles of Mitakshara School of Hindu Law would apply.

50. Therefore, it is clear that unless the parties had pleaded and proved that they were renouncants, they are not entitled to claim the benefits of Section 2(2A) of the Hindu Succession Act, 1956. Without any pleading to the effect that they were renouncants, they cannot claim the benefit of the said Section.

51. However, in Thananjayan Vs. Palani [2012 (3) CTC 577], R.S.Ramanathan,J followed the decision of the Division Bench in Krishnamurthi Gounder, applied the definition of the word 'renoucant' as given in P.Ramanatha Aiyar's Law Lexicon and upheld a decree of the Trial Court setting aside a gift deed executed by a renoucant's father. In paragraph 18 of the judgment, the learned Judge recorded that the decision of Sethuraman,J in Pandurangan stood overruled by the Division Bench in Krishnamoorthy Gounder.

52. Therefore, on the basis of the said decision, it was contended by the learned counsel for the appellants that judicial discipline and propriety require that the matter is referred to a Larger Bench, if I could not agree with the opinion expressed by R.S.Ramanathan,J. The learned counsel also relied upon the decision of the Supreme Court in Century Textiles Vs. Deepak Jain [2009 (5) SCC 634] in this regard. But unfortunately for the appellants, I have no quarrel with the proposition of law as laid down by the learned Judge in paragraph 20 of the judgment in Thananjayan. The learned Judge held in paragraph 20 that a Hindu renoucant in Pondicherry was governed by the Coramendel Hindu Law of Pondicherry and that by virtue of Section 2(2A) of the Hindu Succession Act, the provisions of the said Act were not applicable. This is undoubtedly the correct position of law.



53. But, the real question is as to whether all the inhabitants of Pondicherry at the time of enactment of Pondicherry Administration Act, 1962 were renouncants or not, irrespective of the date of their migration to Pondicherry. To presume that all inhabitants of Pondicherry, on the date of the coming into the force of the Treaty of Cession, were renouncants, does not appear to be correct. By the very fact that the French Government gave an option either to renounce their Personal Law and get assimilated into French system or to continue to be governed by the Local Customary Personal Law, would show that only those, who exercised the option, could become renouncants.

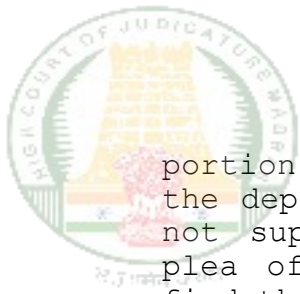
54. In the case on hand, there was no pleading by any of the parties that either Tandayuda Appasamy Pillai or his ancestors were renouncants. Therefore, the parties are not entitled to claim the benefits of Section 2(2A) of the Hindu Succession Act. Consequently, the Trial Court was right in holding that the plaintiff, who is a female heir, was entitled to seek partition of her 1/3rd share out of the half share that fell to the share of Venugopal Pillai. Hence, the first question is answered against the appellants and in favour of the first respondent/plaintiff.

Question No.2 :

55. The second issue arising for consideration is as to whether the judgment and decree of the Court below are sustainable or not.

56. One of the contentions of the appellants before the Trial Court was that once a partition had already taken place, there is no scope for reopening the same. But, the Trial Court rightly rejected the same on the ground that the plaintiff was not a party to the partition deed. The partition deed Ex.A.1 dated 24.8.1970 was only between Kuzhandaivelu and Kadhirvelu. The said deed divided the properties into 8 shares on the impression that the female heirs are not entitled to succeed. But, as rightly pointed out by the Court below, the plaintiff, as one of the co-sharers, is entitled to ask the Court to apply the law. There could be no estoppel against the statute. The appellants set up a plea of release by the plaintiff's father. No release deed was ever produced before the Court below. Therefore, the Trial Court was right in holding that the plaintiff will not be bound by the same.

57. The appellants then set up a plea of ouster in respect of the house described as item-A of the plaint schedule. But, the second defendant, who is the first appellant herein and the sixth defendant, who is the third appellant herein, admitted in their evidence as D.W.1 and D.W.5 that the eastern portion was in the occupation of the second defendant and that the western



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portion was in the occupation of the defendants 6 and 7. But, the deposition of the eleventh defendant, examined as D.W.2, did not support the case of the other defendants. Therefore, the plea of ouster was rightly rejected by the Trial Court and I find that the same was justified on facts as well as in law.

58. A contention was raised regarding the valuation of the suit properties and the payment of court fees under Section 37 (2) of the Pondicherry Court Fees and Suits Valuation Act. But, as rightly pointed out by the Trial Court, the plaintiff's father died on 25.8.1987 long after the extension of the provisions of the Hindu Succession Act, 1956 to Pondicherry with effect from 1.10.1963. The plaintiff's mother died only subsequently. Therefore, the plaintiff was entitled to claim joint possession so as to invoke Section 37(2) of the Act. The Trial Court has given cogent reasons for holding that the plaintiff was in joint possession. The said findings do not call for any interference.

59. The appellants have also raised the plea of adverse possession, after pleading ouster. But, there was absolutely no evidence to show that the plaintiff or her father was ousted out of the properties. The test for establishing adverse possession as between the co-sharers is of an higher standard. The Trial Court rightly rejected the plea of adverse possession. Therefore, I find that the Trial Court was justified in granting preliminary decree for partition. There is absolutely no reason to interfere with the judgment and decree of the Trial Court.

60. Hence, the appeal is dismissed. There will be no order as to costs. Consequently, C.M.P.No.4748 of 2001 is also dismissed.

-s/d-

Assistant Registrar(CS-II)

True Copy

Sub-Assistant Registrar

To

The Additional Subordinate Court, Pondicherry.

+ 1 cc to M/s.N.Narayanaswamy, Advocate SR 23418

+ 1 cc to Mr.T.R.Rajaraman, Advocate SR 23953

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A.S.No.40 of 2001 &
CMP.No.4748 of 2001