

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 19.07.2017
PRONOUNCED ON : 21.09.2017

CORAM:

THE HONOURABLE MR.JUSTICE S.VAIDYANATHAN

S.A.No.1222 of 2008

Saroja (died)
1.Appanraj
2.Rajavel
3.Ram Manohar
4.Karthikeyan
5.Saravanan

... Appellants/Appellants/
Defendants

Vs.

A.Ramakichenane
Rep. by his Power of Attorney agent,
G.Ranganathan

... Respondent/Respondent/
Plaintiff

Second Appeal filed under Section 100 of the Code of Civil Procedure as against the judgment and decree dated 23.04.2008 passed in A.S.164 of 2006 on the file of III Additional District Court, Pondicherry confirming the judgment and decree dated 19.11.1997 passed in O.S.No.244 of 1994 on the file of the Principal Sub Court, Pondicherry.

For Appellants : Mr.S.Sundaresan

For Respondent : Mr.Bharath Chakravarthy,
for M/s.Sai, Bharath & Ilan

J U D G M E N T

The unsuccessful defendants before the Courts below are before this Court by way of the present Second Appeal challenging the judgment and decree, dated 23.04.2008 passed in A.S.164 of 2006 on the file of III Additional District Court, Pondicherry, confirming the judgment and decree dated 19.11.1997 passed in O.S.No.244 of 1994 on the file of Principal Sub Court, Pondicherry.

2. The case of the plaintiff before the Trial Court is that he is the absolute owner of the suit property by virtue of

a Notarial Sale Deed, dated 23.09.1966, executed in his favour by one Parasuraman and Narayanasamy, who are sons of one Artchouna Counder. On 01.10.1966, the plaintiff orally leased out the suit property to one D.Ramachandran, who is the husband of the 1st defendant/Saroja and father of defendants 2 to 6, on a monthly rent of Rs.15/- for residential purpose, by raising a hut therein. As the plaintiff was employed in France, he authorized his father Alavandar to receive the rents on his behalf from the tenant Ramachandran and accordingly, Ramachandran was paying the rent regularly till August 1977. After the death of the said Alavandar in September 1977, the tenant Ramachandran stopped paying the rent, despite the plaintiff's instructions to pay the rent from September 1977 to one Thillai Govindan. As Ramachandran committed wilful default in payment of rent, the plaintiff issued a legal notice to the said Ramachandran on 29.01.1979, calling upon him to pay the entire arrears of rent and also to vacate and deliver possession of the suit property to the plaintiff. Though Ramachandran received the said notice, he neither replied to the same nor vacated and delivered possession of the suit property to the plaintiff.

3. Thereafter, on coming to know that Ramachandran died about two or three years prior to the filing of the suit and assuming that defendants 5 and 6 alone are the legal heirs of Ramachandran, the plaintiff caused a legal notice to defendants 5 and 6 on 02.12.1992, calling upon them to recognize him as their landlord and to pay the arrears of rent and future rents to him. Upon receipt of the said notice, defendants 5 and 6 gave a reply notice dated 28.12.1992, denying not only the relationship of landlord and tenant between the plaintiff and Ramachandran, but claimed prescriptive title over the suit property by denying the plaintiff's title. In the reply notice, they have also stated that defendants 1 to 4 are also the legal heirs of Ramachandran and they are in possession and enjoyment of the suit property, since his death. Therefore, on 11.04.1993, the plaintiff issued a legal notice to all the defendants calling upon them to recognize him as their landlord, attorn the tenancy in respect of the suit property and also pay the arrears of rent and future rents to him regularly every month. Since there was no reply from the defendants, the plaintiff caused another legal notice to them on 24.05.1993, for which also, there was no reply from them. Hence, the plaintiff filed a suit in O.S.No.244 of 1994 before the Principal Sub Court, Puducherry seeking declaration that he is the absolute owner of the suit property and for recovery of possession and mesne profits.

4. Denying the averments of the plaint, the defendants, in their Written Statement before the Trial Court, have stated that

the suit property was a vacant manai and the 1st defendant/Saroja's husband Ramachandran occupied the suit property in the year 1960 by constructing a thatched hut therein and he has been in peaceful possession and enjoyment of the suit property without any interference either by the plaintiff or his vendors and he has been paying property tax in his name. Ramachandran died on 06.02.1983 and since then, defendants 2 to 6 have been in continuous possession and enjoyment of the suit property without any hindrance and on 16.10.1992, the defendants have partitioned the suit property among themselves under a registered Partition Deed and they are in possession and enjoyment of their respective shares. According to the defendants, when they have partitioned the suit property among themselves, constructed houses in their respective shares and obtained electricity and water service connection in their names, the plaintiff, as such, has no semblance of right, title or legal possession over the suit property.

5. The Trial Court, on a consideration of the oral and documentary evidence, decreed the suit in favour of the plaintiff and aggrieved by the same, the defendants preferred an appeal in A.S.No.164 of 2006 before the III Additional District Court, Pondicherry and the First Appellate Court dismissed the appeal on the ground that the suit has been filed within time and is not barred by limitation and that the defendants cannot take up the plea of adverse possession, when the plaintiff has well established his case through reliable evidence.

6. This Court, on 13.04.2017, admitted the Second Appeal on the following substantial questions of law:

(i) Whether the Courts below are right in holding that the plaintiff has proved his title under Ex.A.3 without examining anybody connected to the document?

(ii) Whether the Courts below are right in holding that the suit is not barred by limitation?

(iii) Whether the Courts below are right in accepting the evidence of P.W.1, when the Power of Attorney holder does not have personal knowledge of the Principal?

7. ***Learned Counsel for the Appellants submitted that the contention of the Respondent/Plaintiff that the lessee Ramachandran paid rent till his death and the lease came to an end, is not correct, as neither the re-called lease, nor payment of rent or the ownership is admitted by the appellants.** But, the plaintiff filed the suit in O.S.No.244 of 1994 on 19.11.1994 after 15 years, invoking Article 2262 of the French Civil Code, which has prescribed 30 years time for filing a suit. According to the learned counsel, the same is illegal after the

introduction of the Limitation Act, 1963 and the suit ought to have been filed within 12 years and there is enormous delay in filing the suit and on that ground alone, the suit has got to be dismissed.

8. It is the further contention of the learned counsel for the appellants/defendants that the Courts below failed to appreciate that as against a registered document, the respondent/plaintiff has produced an unregistered Notarial document, which is said to have been executed after the Notaries Act amended in 1964, and that the Notary concerned was not examined as to the existence of such document. According to the learned counsel for the appellants/defendants, after the Registration Act came into existence, i.e. after the year 1908, in terms of Section 17 of the Act, all the deeds that are falling into the said provision needs to be registered.

9. To substantiate his case, learned counsel for the appellants has relied on the following:

(i) a Supreme Court decision in the case of Syndicate Bank vs. Prabha D.Naik, (AIR 2001 SC 1968)

"22. As regards the doctrine of implied repeal, another aspect of the matter ought to be noticed vis-à-vis the Civil Code. The issue of limitation being a mixed issue of law and fact under the Limitation Act, the court in spite of plea not being raised by the defence, can go into the same suo motu but there is a specific bar under Article 515 of the Civil Code which records that the court cannot suo motu take cognizance of description (sic prescription) unless it is specifically pleaded by the parties. It is a bar to jurisdiction of court. The repugnancy and incongruity arise by reason of the fact that Parliament by law viz. the High Court at Bombay: (extension of jurisdiction to Goa, Daman and Diu) Act, 1981 extended the jurisdiction of the High Court of Judicature at Bombay to the Union Territory of Goa, Daman and Diu from the appointed day and the Court of Judicial Commissioner was abolished. Section 9 of the statute [(Act of 1981) (supra)] provides that there shall be, on and from the appointed day, established a permanent Bench of the High Court of Bombay at Panaji and some Judges of the High Court at Bombay being not less than two in number or as may be nominated by the Chief Justice of the High Court from time to time shall sit at Panaji, in order to exercise the jurisdiction and power for the time being vested in the High Court

in respect of cases arising in this Union Territory. The authority and jurisdiction of the High Court of Bombay, to take cognizance of an action being barred by limitation, thus stands negated – conceptually even a difficult situation to conceive that the same High Court will have two different spheres of jurisdiction while dealing with matters. At the cost of repetition we say that while implied repeal is not to be readily inferred but in the contextual facts, upon scrutiny, we cannot but hold that in the wake of the factum of the Limitation Act coming into existence from 1-1-1964, Article 535 of the Portuguese Civil Code cannot but be termed to be impliedly repealed and it is on this score that the decision of this Court in Justiniano case [(1979) 3 SCC 47] stands overruled. There is one general law of limitation for the entire country, being the Act of 1963, and the Portuguese civil law cannot be termed to be a local law or a special law applicable to the State of Goa, Daman and Diu prescribing a different period of limitation within the meaning of Section 29(2) of the Limitation Act and in any event, question of saving of local law under the Limitation Act of 1963 does not and cannot arise. The submission that without there being a specific mention of repealing statute (since the 1963 Act of Limitation does not record express repeal of any other law excepting the Limitation Act of 1908), question of the Portuguese Civil Code being repealed does not arise, cannot hold good by reason of the doctrine of implied repeal as noticed above. In the premises aforesaid, these appeals fail and are dismissed without however any order as to costs."

(ii) another Supreme Court decision in the case of Janki Vashdeo Bhojwani vs. IndusInd Bank Ltd., (2005 (3) CTC 128 (SC))

"13. In the context of the directions given by this Court, shifting the burden of proving on to the appellants that they have a share in the property, it was obligatory on the appellants to have entered the box and discharged the burden by themselves. The question whether the appellants have any independent source of income and have contributed towards the purchase of the property from their own independent income can be only answered by the appellants themselves and not by a mere holder of power of attorney from them. The

power-of-attorney holder does not have personal knowledge of the matter of the appellants and therefore he can neither depose on his personal knowledge nor can he be cross-examined on those facts which are to the personal knowledge of the principal.

(iii) yet another Supreme Court decision in the case of Gothamchand Jain vs. Arumugam @ Tamilarasan (Civil Appeal No.8308 of 2013, decided on 18.09.2013)

"5. The question of limitation was the primary issue which was raised before the High Court. It was submitted that the provisions of the Limitation Act govern the law of limitation, so far as the Union Territory of Pondicherry is concerned and not Article 2262 of the French Code Civil. Placing reliance on the judgment of this Court in Syndicate Bank v. Prabha D. Naik [(2001) 4 SCC 713], which dealt with the applicability of the provisions of the Limitation Act, 1963, vis-à-vis, Article 535 of the Portuguese Civil Code in the Union Territory of Goa, Daman and Diu, the High Court took the view that it is Article 54 of the Limitation Act, 1963 that would apply in the matter of filing of the suit in Pondicherry and not Article 2262 of the French Code Civil. Consequently, it was found that the suit filed for specific performance of the contract, was not saved by Article 54 of the Limitation Act which provided that the suit be filed within three years of the date of agreement. The appeal was accordingly allowed and the judgment and decree of the trial court was reversed by the High Court. Hence the present appeal.

12. This Court also held in Syndicate Bank case [(2001) 4 SCC 713] that it cannot but hold that in the wake of the factum of the Limitation Act coming into existence from 1-1-1964, Article 535 of the Portuguese Civil Code cannot but be termed to be impliedly repealed and it is on this score that the decision of this Court in Justiniano Augusto De Piedade Barreto v. Antonio Vicente Da Fonseca [(1979) 3 SCC 47] stood overruled. This Court also held that there is one general law of limitation for the entire country, being the 1963 Act, and the Portuguese Civil law cannot be termed to be a local law or a special law applicable to the State of Goa, Daman and Diu, prescribing a

different period of limitation within the meaning of Section 29(2) of the Limitation Act and the question of saving of local law under the Limitation Act, 1963 does not and cannot arise.

14. The Pondicherry (Extension of Laws) Act, 1968, as amended, has adopted several such legislations in the UT of Pondicherry, but the Act which governs limitation is the general law of the land that is the Limitation Act. Consequently, it is not Article 2262 of the French Code Civil that applies to the suit in question, but Section 54 of the Limitation Act, 1963. Under such circumstances, as rightly held by the High Court, the suit filed beyond the period of limitation prescribed under Article 54 of the Limitation Act, 1963 is clearly barred. Since the suit itself is barred by the law of limitation, the other questions of law framed by the High Court were rightly not answered. The appeal, therefore, lacks merit and is accordingly dismissed."

(iv) a decision of this Court in the case of D.Kaliaperumal v. Vedavalliammal, 2006 (2) L.W. 455

"8. In 2001 (1) MLJ 225, Arumugam vs. Herniette Sandjivy and others) in an Appeal Suit against the decree of the suit filed on the strength of the Promissory Note, exactly a similar defence was taken and this Court has held that French Civil Code is not applicable and only the Indian Limitation Act, 1963 is applicable and thus dismissed the suit."

10. In reply, learned counsel appearing for the respondent/plaintiff submitted that the respondent/plaintiff terminated the lease under Section 106 r/w Section 111(h) of the Transfer of Property Act vide Ex.A5 - Notice and despite the same, as the appellants/defendants continue to possess the property even after the expiry of the termination of lease, the possession of lessee can only be considered as a tenancy holding over possession. He further submitted that inasmuch as the suit is within time in view of the application of French Law of limitation, the possession by the appellants/defendants cannot be termed as adverse possession.

11. In support of his case, learned counsel appearing for the respondent has relied on the following:

(i) a Supreme Court decision in the case of Saroop Singh vs. Banto and others, (2005) 8 SCC 330

"26. In the instant case, the question of

applicability of the Limitation Act does not arise. The appellant-first defendant could have legitimately raised a plea that Indira Devi having died in the year 1961, his possession thereafter has become adverse to the true owner and, thus, on the expiry of the statutory period of limitation he had perfected his title by adverse possession. But, he did not raise such a plea. Even before us, Mr Jain categorically stated that the appellant does not intend to raise such a plea.

28. The statutory provisions of the Limitation Act have undergone a change when compared to the terms of Articles 142 and 144 of the Schedule appended to the Limitation Act, 1908, in terms whereof it was imperative upon the plaintiff not only to prove his title but also to prove his possession within twelve years, preceding the date of institution of the suit. However, a change in legal position has been effected in view of Articles 64 and 65 of the Limitation Act, 1963. In the instant case, the plaintiff-respondents have proved their title and, thus, it was for the first defendant to prove acquisition of title by adverse possession. As noticed hereinbefore, the first defendant-appellant did not raise any plea of adverse possession. In that view of the matter the suit was not barred."

(ii) yet another Supreme Court decision in the case of Hemaji Waghaji Jat vs. Bhikhabhai Khengarbhai Harijan and others, (2009) 16 SCC 517

"32. Before parting with this case, we deem it appropriate to observe that the law of adverse possession which ousts an owner on the basis of inaction within limitation is irrational, illogical and wholly disproportionate. The law as it exists is extremely harsh for the true owner and a windfall for a dishonest person who had illegally taken possession of the property of the true owner. The law ought not to benefit a person who in a clandestine manner takes possession of the property of the owner in contravention of law. This in substance would mean that the law gives seal of approval to the illegal action or activities of a rank trespasser or who had wrongfully taken possession of the property of the true owner."

(iii) a Gauhati High Court judgment in the case of Smt. Sapam Ongbi Loidang Devi vs. Smt. Takhelkumbam Ongbi Rajkumari Monosana Devi, AIR 2005 Gau 101

"30. Question (c): this question appears to be somewhat vague to record any finding. Even then, let me try to answer it. It is not stated what specific relief claimed in the suit is time barred relief. The amendment of the pleading is generally done by giving notice to the opponent and after hearing both sides. So this objection cannot be raised at this stage of second appeal. Moreover, the question being not specific and clear, it is very difficult to answer the same. However, if it is directed towards the question of adverse possession, then, my answer will be that, in the instant case, there is no distinct and clear pleading to assert in case of adverse possession. Law is well settled that adverse possession is to be claimed from a definite point of time (starting point) and is to be shown to have been run out the limited period of 12 years from the date of inception to ripening into a title by prescription on the strength of possession. Furthermore, there should be specific evidence by setting a hostile title to the knowledge of the real owner, on the facts and circumstance of the case. As we learn that around 1970, the dispute started as claimed by the appellant, if not in the year 1967 when the defdt. No. 1 claimed to have sold out his interest and separate possession in the joint property in favour of the present appellant/defdt. No. 7. If it is so, the relief of evicting a trespasser/tenant based on title is to be sought within 12 years from the date when the possession of the defendant becomes adverse to the plaintiff. The suit being presented on 10-11-1975, here the bar of Art. 65 of Limitation Act will not apply, requiring any decision."

(iv) a decision of this Court in the case of Pandurangan vs. Sarangapani, 1995 L.W. 318

"11. Learned counsel for the respondent submitted that in the case of a document executed before a Notaire, it must be presumed that the document is a valid one. He went to the extent of submitting that the validity of such a document is conclusive. It is true that a Notaire is not in the

same position as Registering authority under the Indian Registration Act, and that he combines in himself certain other functions as shown by the decision of this Court in Mourougaessa Mudeliar v. Aguilandammanalle (died) and others, by a Bench of this Court consisting of Ismail, J. as he then was, and Natarajan, J. The functions of a Notaire are not strictly identical with those of the officials empowered to register the documents under the Indian Registration Act. However, as brought out in an article by L. Neville Brown of the University of Lyons in Volume II 1953, of the International and Comparative Law Quarterly, it is possible to impeach the transaction on the score of falsity by appropriate evidence. The impeachment for falsity is a very involved and costly procedure under the French Law. In terms of the Indian conditions, the impeachment could be by a suit supported by proper evidence to show that the transaction was a false one. In the present case, there is no such convincing proof that the transaction was in any manner false. It appears as if the transaction is being challenged as a kind of nominal transaction not supported by consideration. The court below has pointed out that the document was executed before a Notary Public who had the duty to examine personally the parties and to ascertain that they are fit and able to give their consent to the transaction. The burden of proof that lay on the plaintiff to show that the Notaire's duty had not been properly performed in the present case has not been discharged. The result is that the validity of the alienation is not assailable on any grounds taken by the plaintiff. The court below rightly dismissed the suit."

(v) another decision of this Court in the case of Alliance Francoise v. Egalammalle, (2012) 2 LW 362

"17. Incidentally I would like to refer to the importance that could be attached to Notaire documents, as per The French Civil Code, translated into English, with Notes Explanatory and Historical and comparative References to English Law, By B. Blackwood Wright, Trinity College.

Article 1317 of the French Code Civil and the notes thereunder would run thus:

"(d) "Recu" (drawn); to say that a deed is "recu" means that the notary was present when the parties expressed their wishes. The document must be written by the notary, or dictated by him, or else drawn up in his presence. The vice by signature proves the notarial drawing up. (Laurent, Vol. XIX. 102).

(e) "Acte" in the French, here translated "instrument". Laurent says that the writing intended by the parties to it to serve as evidence is called by the Code indifferently an "acte" or a "titre", and that writings not drawn up and intended to be evidence are described by it simply as "ecritures" (Writings). "Titre" is also used to mean a juridical fact—an act of law — e.g., the agreement which the instrument is intended to prove. (See the expression "a titre gratuit" in Art. 893). It is also the name given to "donations". Thus in Art. 2265 the "juste titre" is an "act in law" which would have transferred the property if the person who transferred the property had been owner, and the word is also so used in Art. 2267. From the above it will be seen that these expressions are both used interchangeably, and that neither of them is used in the same sense throughout. (See Laurent, Vol. XIX. 97).

18. Axiomatically and obviously, a fortiori importance could be attached to such Notaire documents. Therefore, it is clear that Ex. B1 is beyond doubt and challenge."

(vi) yet another decision of this Court in the case of Gnanasoundary @ Gnanasoundaram & others vs. Vaithianatha Sivacharyar, 2009 (2) L.W. 773

"19. Under the French regime, Notaires are not mere notaries as understood in the rest of India under the Notaires Act. But, French Notaires are French law graduates having the power of justice of peace and their office is a sanctified and responsible one, as French law attaches much importance to them and they were responsible for drafting the sale deeds in accordance with law and they were expected to get themselves satisfied about the recitals recorded by them on the instigation of parties in the deeds. With this background, it is just and necessary to analyse

the French deeds here. Wherefore, it is obvious that the recitals in Ex. A26 cannot simply be slighted or discarded as mere unilateral versions of the executants of the mortgage deed. The clauses found in Ex. A26 would exemplify that the ancestors of Pattu Gurukkal, the propositus of the plaintiffs here acquired title over the suit property and they exercised right of ownership over it and on the strength of the same, Pattu Gurukkal and his relative mortgaged the suit property as evidenced by Ex. A26. In these circumstances, it is really strange to hear from the defendant certain statements as though his own ancestors are not the owners of the suit property and that some third party is the owner."

12. Heard the learned counsel on either side and perused the material documents available on record.

13. The respondent/plaintiff claims right and interest over the suit property by virtue of Ex.A3-Notarial Sale Deed, dated 23.09.1966 and Ex.A23 - Patta is in his favour. Though according to the respondent/plaintiff, he leased out the suit property orally to Ramachandran, the husband of the deceased 1st appellant/1st defendant, on 01.10.1966, it is the case of the appellants/defendants that Ramachandran had been in possession of the suit property since 1960 and after his death, they partitioned the suit property equally among themselves on 10.01.1992 under Ex.B65 - Partition Deed. The contention of the appellants/defendants is that they were in enjoyment of the suit property for over 30 years and that they are the owners of the property and at no point of time, the respondent/plaintiff has established his title. According to them, Ex.A3-Notarial Sale Deed cannot be held to be legally valid, though it appears to be original in the eye of law.

14. Since the respondent/plaintiff came to know that the said Ramachandran died, he effected a legal notice dated 02.12.1992 to defendants 5 and 6 for handing over the suit property and payment of rent. Since the said notice did not evoke response, the respondent/plaintiff sent a legal notice to all the defendants on 11.04.1993. As there was no reply from the defendants, the respondent/plaintiff effected yet another legal notice to them on 24.05.1993, calling upon them to vacate and deliver vacant possession of the suit property to him and also to pay mesne profits. Only thereafter, the respondent/plaintiff filed a suit against the appellants/defendants.

15. On a perusal of the documents, it is seen that in Ex.A4 - translated version of the Survey Report, dated 26.04.1963, the Surveyor has mentioned that the applicants viz. Parasuraman and his brother Narayanasamy were in enjoyment of the suit property, which is in dispute in this Second Appeal. In the Written Statement, the defendants have specifically denied that the property originally belonged to Artchouna Counder, who acquired the property by means of a Partition Deed dated 16.05.1917 and that he died intestate in 1925 and that his sons, viz. Parasuraman and Narayanasamy took possession of the suit property and enjoyed the same, as specified in the Notarial Deed, dated 14.12.1962.

16. It is further seen that there is no iota of evidence with regard to the registration of the Notarial Sale deed and that no consideration was passed on the said Deed vide Ex.A3. However, the translated version of the Sale Deed dated 23.09.1966 clearly shows that the suit property was sold by the sons of Artchouna Counder to the respondent/plaintiff for a sum of Rs.1,600/- and that there was a valid consideration. Though Ex.A23, dated 18.12.1978, which is the provisional patta issued to the respondent/plaintiff may not give him the right of title to the suit property, Ex.A3 - Notarial Sale Deed, dated 23.09.1966 clearly shows that the suit property was sold by Parasuraman and Narayanasamy, sons of Artchouna Counder to the respondent/plaintiff.

17. Though three substantial questions of law have been framed by this Court, the main question for consideration is whether the suit is barred by limitation.

18. Both parties have referred to Articles 64 and 65 of the Limitation Act, 1963 and also French Code, 2262, which are extracted below:

	Description of suit	Period of limitation	Time from which period begins to run
64	For possession of immovable property based on previous possession and not on title, when the plaintiff while in possession of the property has been dispossessed	Twelve years	The date of dispossession

65	For possession of immovable property or any interest therein based on title	Twelve years	When the possession of the defendant becomes adverse to the plaintiff
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SECTION II Of Thirty-Year Prescription

Art. 2262 : All claims, in rem as well as in personam, are prescribed by thirty years, without the person who alleges that prescription being obliged to adduce a title, or a plea resulting from bad faith being allowed to be set up against him.

19. The suit property is situated in Pondicherry and it is covered by the French Court. Of course, after the introduction of the Limitation Act, 1963, the provisions of the said Act would be applicable to Pondicherry, as Pondicherry became a part of India in 1962. In this regard, this Court will have to take into account Section 29 of the Limitation Act, which reads as follows:

"29. Savings: ...

(2) Where any special or local law prescribes for any suit, appeal or application a period of limitation different from the period prescribed by the Schedule, the provisions of section 3 shall apply as if such period were the period prescribed by the Schedule and for the purpose of determining any period of limitation prescribed for any suit, appeal or application by any special or local law, the provisions contained in sections 4 to 24 (inclusive) shall apply only in so far as, and to the extent to which, they are not expressly excluded by such special or local law.

From the above provision, it is very clear that there is a saving clause for protecting the interest of the parties/residents of Pondicherry.

20. In the case of Syndicate Bank (cited supra), the Apex Court has extensively dealt with the issue of Limitation and held that there is one general law of limitation for the entire country, being the Limitation Act, 1963. On a reading of the said decision, it is clear that after the enactment of the Limitation Act, 1963, the other laws/Code applicable, cannot be invoked. However, it is subject to Section 29 of the Limitation Act, mentioned supra.

21. There are two kinds of Repeal provisions, one is implied Repeal and the other is express Repeal. At the time of rendering the decision in the case of Syndicate Bank (cited supra) by the Apex Court, the doctrine of express repeal was in force in the State of Pondicherry. Had this been brought to the attention of the Apex Court, the interest of the citizens of Pondicherry, as in the case on hand, would have certainly been protected.

22. At this juncture, this Court feels it appropriate to rely on the Apex Court decision in the case of Padma Sundara Rao v. State of T.N., (2002) 3 SCC 533, wherein, it is held as under:

"9. Courts should not place reliance on decisions without discussing as to how the factual situation fits in with the fact situation of the decision on which reliance is placed. There is always peril in treating the words of a speech or judgment as though they are words in a legislative enactment, and it is to be remembered that judicial utterances are made in the setting of the facts of a particular case, said Lord Morris in *Herrington v. British Railways Board*. Circumstantial flexibility, one additional or different fact may make a world of difference between conclusions in two cases."

23. Also, it is useful to refer to Section 4 of the Puducherry Limitation (Repeal of Local Laws) Act, 1994, as reiterated hereunder:

Savings

"4. Notwithstanding anything contained in this Act,
(a) any suit for which the period of limitation prescribed in the Limitation Act is shorter than the period of limitation prescribed by the local laws may be instituted -

(i) within such shorter period or within a period of one year next after the commencement of this Act, whichever is longer, or

(ii) within the period prescribed for such suit by the local laws, whichever period expires earlier; and

(b) any appeal or application for which the period of limitation prescribed under the Limitation Act is shorter than the period of

limitation prescribed by the local laws may be preferred or made -

(i) within such shorter period of within a period of ninety days next after the commencement of this Act, whichever is longer, or

(ii) within the period prescribed for such appeal or application by the local laws,

whichever period expires earlier.

24. When there is an express repeal enactment of the year 1994 and the same was not brought to the attention of the Apex Court, this Court is of the view that taking note of the judgment of the Apex Court in Padma Sundara Rao (cited supra), the rights of the respondent/plaintiff have to be protected, more particularly in terms of Section 4 of the Puducherry Limitation (Repeal of Local Laws) Act, 1994 (cited supra).

25. Apart from that, the Court will have to take into account the Statement of Objects and Reasons for Act No.15 of 1994, which is extracted below:

STATEMENT OF OBJECTS AND REASONS
FOR ACT No.15 OF 1994

The Indian Limitation Act, 1963, was enacted by the Parliament and brought into force from 01.01.1964. The Act came into force in this Union Territory from the above date itself. In the meantime, even though, many of the substantive civil laws in force in the other parts of the country were extended to the Union territory of Puducherry repealing the corresponding French Law, the provisions relating to limitation in the French Law like French Civil Code, Code Commercial, etc., have not been specifically repealed. In the result, the French Law of Limitation continues to remain in force side by side with the provisions of the Indian Limitation Act. This has created lot of confusion and this has also unduly prolonged extinction of the causes of action arising from time to time. The position has turned to be such that in one or two cases, the High Court has gone to the extent of even declaring that the Indian Limitation Act, has not been extended to Puducherry. The ultimate result is that for every cause of action, the period of

limitation pleaded is 30 years. In view of this situation, it is proposed to repeal the French Law of Limitation that remain in force as local law, so that our Union Territory can fall in line with the rest of the country in matters relating to law of limitation."

26. The contention of the appellants/defendants that French Code by no stretch of imagination can be construed as law, cannot be accepted and it was invoked when the Limitation Act, 1963 came into force, but also continued to be in force till the Puducherry Limitation (Repeal of Local Laws) Act, 1994 came into effect. It cannot be construed that there is a implied Repeal when there is an express enactment for that purpose. In Syndicate Bank case (cited supra), the Apex Court, while dealing with Portuguese Law and Portuguese Code, also referred to the French Law. According to the appellant, only the Portuguese provisions have been considered, even though there was reference to French Law and it cannot be construed as a binding precedent to reject their claim.

27. As the subsequent enactment has not been brought to the attention of the Apex Court, the French Code that protects the interest of the citizens like that of the respondent/plaintiff would be in operation. The respondent/plaintiff has filed the suit within 30 years, well within the period of limitation.

28. Though much reliance has been placed on Articles 64 and 65 of the Limitation Act and it has been contended that even with reference to the period of limitation, the plaint has been filed within 12 years, this Court is not inclined to go into that aspect, as I am of the view that the limitation prescribed is 30 years in terms of the Code and that there is an express Repeal provision of the year 1994 (extracted supra), which has not been brought to the attention of the Apex Court. Thus, the suit is well within time. For the fault of the counsel, who has not brought to the notice of the Apex Court about the enactment of express Repeal, the respondent/plaintiff should not be affected. Hence, the second substantial question of law is answered in favour of the respondent/plaintiff, holding that the suit is well within time.

29. As regards the third substantial question of law, it is seen that the Power of Attorney was a witness and has gone into the Witness Box, deposed evidence and produced documentary evidence, which are available. It cannot be said that he has given evidence, which is not known to him. Even assuming for the sake of argument that the evidence of P.W.1 has got to be eschewed not in entirety, when the documents speak for itself, the entire case cannot be thrown out on technicalities. In this

case, the Power of Attorney has deposed based on the documentary evidence and documents have been taken on record by the Trial Court, which cannot be faulted with. That apart, whether the Witness has spoken based on the documentary evidence is the question of fact and this Court cannot re-appreciate the evidence on that aspect and come to a different conclusion. Hence, the Courts below were right in accepting the evidence of the Power of Attorney that are well within the knowledge of the Principal and his Power of Attorney, more particularly when the documents were marked through him. Thus, the third substantial question of law is answered in favour of the respondent/plaintiff.

30. With regard to the first substantial question of law, it is seen that the suit property has been purchased by the respondent/plaintiff from the children of Artchouna Counder vide Ex.A3 - Notarial Sale Deed and it has been vehemently contended by the appellants/defendants that the document is of the year 1917 and as to how the suit property devolved upon the children of Artchouna Counder, has not been established before the Courts below.

31. The appellants/defendants have proceeded on the basis that the respondent/plaintiff claimed right over the suit property viz. ownership based on the Notarized document. A Notary, as contended by the appellants is completely different from a Notaire under the French system. A document has got to be prepared by a Notaire and the same has to be counter-signed by the parties and such a document is an authenticated document. As rightly contended by the counsel for the appellant, Notaires are discharging quasi-judicial powers. The document vide Ex.A3, i.e. the Sale Deed, dated 23.09.1966, which is nothing but a Notarized Sale Deed executed under the erstwhile French Law in Puducherry has a legal sanctity in the eye of law and all the Notarized Deeds are equivalent to a decree of a Civil Court. Both the Courts below have rightly held that there is nothing wrong about the authenticity of the Sale Deed vide Ex.A3 in favour of the respondent/plaintiff.

32. The contention of the respondent/plaintiff is also supported by two judgments of this Court in the case of Alliance Francoise and in the case of Gnanasoundary (cited supra). I am entirely in agreement with the said decision of this Court, where, it has been held that under the French regime, Notaires are not mere notaries as understood in the rest of India under the Notaires Act. But, French Notaires are French law graduates having the power of justice of peace and their office is a sanctified and responsible one, as French law attaches much importance to them and they were responsible for drafting the sale deeds in accordance with law and they were

expected to get themselves satisfied about the recitals recorded by them on the instigation of parties in the deeds.

33. This Court, in yet another judgment in Pandurangan's case (cited supra) has accepted the contention of the respondent therein that the document prepared by a Notaire has got to be presumed as a valid one. Anyone who questions it, will have to disprove the same. In this case, the burden of proof lies on the appellants/defendants to show that the duty of the Notaire has not been properly performed. The Courts below have rightly accepted Ex.A3 - Notarial Sale Deed and also taken into account Patta vide Ex.A23 and held that the respondent/plaintiff has proved his title and is entitled for the relief of declaration and the consequential relief. Thus, the first substantial question of law is also answered in favour of the respondent/plaintiff.

34. In view of the aforesaid discussion, this Court concurs with the findings of the Courts below and holds that the respondent/plaintiff is entitled to the relief of declaration and the consequential prayer.

35. In fine, the Second Appeal is dismissed, confirming the judgment and decree of both the Courts below. No costs. Consequently, connected M.P.No.1 of 2008 is closed.

Sd/-

Assistant Registrar(CS II)

***1st sentence of para 7 of Judgment
dated 21.09.017 shall stand deleted
and substituted as above as per order
dated 11.10.2017 and made in
S.A.No.1222 of 2008.**

//True Copy//

Sub Assistant Registrar

aeb

To:

1.The III Additional District Judge,
Pondicherry.

2.The Principal Sub Judge,
Pondicherry.

Copy To : The Section Officer,
V.R. Section, High Court, Madras.

+1cc to M/s.Sai, Bharath & Ilan, Advocate, S.R.No.69382
S.A.No.1222 of 2008

RSY (CO)
CA(27/10/2017)