

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 26-07-2017

Pronounced on : 06-09-2017

CORAM:

THE HONOURABLE MR. JUSTICE R. SUBBIAH
and
THE HONOURABLE MR. JUSTICE A.D. JAGADISH CHANDIRA

Appeal Suit No. 589 of 2010

Muthaiyan

... Appellant/2nd Defendant

Versus

1. Poongothai ... 1st Respondent/Plaintiff
2. Ranjitham @ Deivanai
3. Susila
4. Minor. Jeeva Bharathi
(represent by R3 Mother and next Friend)
5. Indra
6. The Branch Manager
Indian Overseas Bank
North Main Road
Thirunallar
7. The Branch Manager
Canara Bank
Church Street, Karaikal
8. The Branch Manager
State Bank of India (ADB)
Thirunallar Road
Karaikal
9. The Head Post Master
Head Post Office
The Cornor of Masthan Palli Street and
Mamathambi Maraicar Street
Karaikal
10. P. Narayanamma .. Respondents 2 to 10/
Defendants 2 to 10

Appeal filed under Section 96 read with Order XLI Rule 1 of the Code of Civil Procedure, 1908 against the Judgment and Decree dated 21.04.2010 passed in O.S. No. 51 of 2007 on the file of the Additional District Judge, Puducherry at Karaikal.

For Appellant : Mr. Bharatha Chakravarthy
for M/s. Sai, Bharath and Ilan

For Respondents : Mr. R. Sunilkumar for R1
Mr. M. Devaraj for RR2 and 5
M/s.G.Thilagavathi for R10

Mr. S.V. Jayaraman, Senior Counsel
Amicus Curiae

Mr. Gandhiraj, Government Pleader
(Pondicherry)
Amicus Curiae

JUDGMENT

R. SUBBIAH, J

The second defendant in O.S. No. 51 of 2007 on the file of the Additional District Judge, Pondicherry @ Karaikal is the appellant in this appeal. The said suit was filed by the plaintiff/first respondent herein for a preliminary decree of partition. By the Judgment and Decree dated 21.04.2010, the trial court held that the plaintiff/ first respondent herein is entitled to 1/5 share except in respect of the items 7, 8, 11, 14 and 15 of the Plaintiff 'A' schedule property and also 1/5 share in the B Schedule Properties by applying Coromandal Law, which was in force by then in the Union Territory of Puducherry. The trial court also held that the first defendant/ second respondent herein, who is the mother of the plaintiff and second defendant, is entitled to right of residence in the 1st item of the A Schedule mentioned property and after her death, the plaintiff and defendants shall effect division of the said item of the property equally.

2. The appellant in this appeal is the second defendant in the suit. The first respondent in this appeal is the plaintiff, who instituted the suit. The second respondent in this appeal is the first defendant in the suit and she is the wife of late. Ramasamy Mudaliar/mother of the plaintiff and second defendant/appellant herein. The respondents 3 to 10 in this appeal were arrayed as defendants 3 to 10 in the suit. Respondents 3 and 4 in this appeal are the wife and minor son of the deceased brother of the first defendant/appellant. Respondents 6 to 8 are the Manager of the respective Banks where the deceased Ramasamy Mudaliar had deposited some amount in the form of fixed deposit. The ninth respondent is the Head Postmaster of Karaikal Head Post Office where the deceased Ramasamy Mudaliar was maintaining a savings bank account. The tenth respondent in this appeal is the purchaser of item No. 7 and 11 of the suit properties from Ramasamy Mudaliar when he was alive.

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3. For the sake of convenience, the parties shall be referred to as per their rank in the suit.

4. The case of the plaintiff/first respondent herein is that her father Ramasamy Mudaliar was a permanent resident of Karaikal and he married Mrs. Ranjitham @ Deivanai, first defendant in the suit. Due to the wedlock between the deceased Ramasamy Mudaliar and the first defendant, four children were born. The second defendant/appellant is the elder son, the other son Jeevanandam died, the plaintiff is the first daughter. The fifth defendant in the suit namely Indira is yet another daughter born to the the deceased Ramasamy Mudaliar and the first defendant. According to the plaintiff, her father owned several immovable properties which are set out in 'A' schedule of the plaint and during his life time, he has deposited altogether a sum of Rs.14 lakhs with the defendants 6 to 9, which was derived from and out of the suit property. According to the plaintiff, during his life time, her father Ramasamy Mudaliar has deposited Rs.1,00,000/- with sixth defendant, Rs.2,00,000/- with the seventh defendant, Rs.1,00,000/- with the eighth defendant and Rs.10,00,000/- by way of fixed deposit with the ninth defendant in the suit. Further, approximately, 35 sovereigns of gold jewels were given by her father Ramasamy Mudaliar to her mother, the first defendant. The aforesaid movable properties are morefully described as 'B' Schedule in the plaint. According to the plaintiff, the plaint mentioned 'A' schedule properties are not the self-acquired properties of Ramasamy Mudaliar but he came to acquire the same through a Will executed by her grand father. According to the plaintiff, six years prior to the filing of the suit, due to difference of opinion between her father Ramasamy Mudaliar and her mother/first defendant, the plaintiff was forced to go to Pondicherry and worked there in a private school and because of the adamant attitude of her father Ramasamy Mudaliar, her mother/first defendant and her brother/second defendant, she even went to the extent of committing suicide. The plaintiff was not given in marriage by her father and her brother/second defendant also did not take any steps towards the same. It is further stated that her brother/second defendant was instrumental in driving her away from the house and she was forced to reside at Puducherry. Since her father did not take care of his wife/first defendant as well as the plaintiff, she sent a legal notice dated 28.07.2006 to her father for amicable partition of the suit properties. Even though the notice was received by her father Ramasamy Mudaliar, he has not issued any reply. While so, on 02.08.2006, Ramasamy Mudaliar died leaving behind the plaintiff and the defendants 1 to 5 as his legal heirs to succeed to his estate. Even thereafter, on 22.11.2006 and 20.02.2007, the plaintiff caused legal notices to her brother/second defendant calling upon him to effect partition of the properties left by her father Ramasamy Mudaliar. Even though the aforesaid notices were received by the second defendant, he has not chosen to issue any reply thereof. Thereafter, on enquiry, the plaintiff came to know that her father Ramasamy Mudaliar executed a Will in favour of the second defendant/appellant and according to the plaintiff, the Will has not been executed by her father voluntarily but at the instigation of her

brother/second defendant and therefore, it will not bind her in any manner. Further, the second defendant, without any independent right over the 'A' Schedule property left by her father Ramasamy Mudaliar, sold item Nos. 7, 8 and 11 of the 'A' Schedule property to the 10th defendant without the knowledge of the plaintiff and the first defendant. In such circumstances, the plaintiff has filed the suit for the relief of partition and separate possession of the plaint 'A' and 'B' schedule described properties.

5. Resisting the case of the plaintiff, the first defendant/mother filed a written statement. According to the first defendant, the suit is speculative in nature and it was filed to gain profits in the estate left by the deceased Ramasamy Mudaliar. The plaintiff, without heeding to the advice of her father, had abruptly left the family on her own which had deteriorated the health of her father, besides, she tarnished the name and image of the family. The allegation that her husband Ramasamy Mudaliar has given 35 sovereigns of gold to her is incorrect and 20 sovereigns of gold was given to her by her parents and she retained it till the death of her husband Ramasamy Mudaliar. Further, after the death of her husband Ramasamy Mudaliar, her son/second defendant had ransacked the house at No.112, Bharathiar Road, Karaikal and took all the jewelleries weighing 15 sovereigns from her custody. Likewise, the other unused gold ornaments weighing 20 sovereigns kept in the house at East Street, Agalankannu were also taken away by her son/second defendant. According to the first defendant, her son, the second defendant is the mischief monger and he made her husband, Ramasamy Mudaliar to write a Will according to his wishes and against the wishes and willingness of Ramasamy Mudaliar. Further, as a wife, she has got a predominant right over the properties left by her husband till her life time and only after her life time, a partition can be effected among her children. It is further stated that even if a partition is effected during her life time, she has an exclusive right of residence till her life time in the house bearing Door No.112 (129) at Bharathiyar Road, Karaikal, which is described as first item in A Schedule property and in the remaining properties, she is entitled to 1/5 share. Accordingly, she prayed for dismissal of the suit.

6. The second defendant/appellant, who is the son of the first defendant and brother of the plaintiff, has filed a written statement contending inter alia that his father Ramasamy Mudaliar acquired the suit A Schedule property from his father through a Will and therefore it was not ancestral property. During his life time, his father Ramasamy Mudaliar executed a Will in which provisions were made to all the family members, including those who have gone out of the family and estranged themselves. According to the second defendant, the Will executed by his father Ramasamy Mudaliar was acted upon and out of the proceeds of the properties covered in the Will, he is paying Rs.300/- per month to third defendant, widow of his brother, Rs.2000/- per annum for his children and also deposited a sum of Rs.2,00,000/- for his deceased brother's

son/fourth defendant. It is further contended that he has also deposited Rs.75,000/- each for two children of his deceased brother. Similarly, the mother/first defendant gets pension of Rs.4,000/- per month of the father. After the demise of his father Ramasamy Mudaliar he is paying a sum of Rs.1,000/- per month to his mother besides providing the house at Karaikal to reside till her life time. It is further stated by the second defendant that during his life time, his father Ramasamy Mudaliar sold item Nos. 14 and 15 described in the A Schedule Property and also received a portion of the sale price in respect of item Nos. 7, 8 and 11, however, even before execution of the sale deed, he died. Therefore, after the death of his father, the first defendant received the balance sale consideration of Rs.2,00,000/- and executed the sale deed in respect of item Nos. 7, 8 and 11. As far as B Schedule mentioned properties are concerned, even during his life time, his father Ramasamy Mudaliar has redeemed almost all the items 1 to 3 shown in B Schedule Properties for his medical expenses. Therefore, the second defendant prayed for dismissal of the suit.

7. The tenth defendant, who is the subsequent purchaser of the properties described as item Nos. 7, 8 and 11 through a sale deed executed by the second defendant would contend that he was put in possession of the aforesaid property. The property sold in his favour ought not to have been included along with other properties for being partitioned. He is a bonafide purchaser having purchased the item Nos. 7, 8 and 11 for a valuable sale consideration and therefore prayed for dismissal of the suit in so far as item Nos. 7, 8 and 11 of the suit A Schedule described property.

8. Before the trial Court, the plaintiff examined herself as PW1, another witness Jayabal as PW2 and Exs. A1 to A15 were marked. On the side of the defendants, the mother of the plaintiff and second defendant namely Ranjitham examined herself as DW1 along with 7 other witnesses as Dws 2 to 8 and Exs. B1 to B20 were marked. Exs. X1 and X2 were also marked as Court documents. The Family Welfare Officer attached to the office of the Senior Superintendent of Police, Karaikal was summoned and examined as DW3 to speak about the complaint given by one Bhuvaneswari, who is sister-in-law of the plaintiff against the first defendant. DW4 is another Family Welfare Officer who was examined to speak about the complaint given by the plaintiff against the second defendant. DW5 was the attesting witness, who attested the Will executed by the deceased Ramasamy Mudaliar. DW6 was the scribe of the Will executed by Ramasamy Mudlaiar. Exs. A1 to A6 are the Patta in respect of the suit property. Ex.A7 is the birth certificate of the plaintiff. Ex.A8 is the advocate notice dated 28.07.2006 sent on behalf of the plaintiff and first defendant to the deceased Ramasamy Mudaliar and Ex.A9 is the postal acknowledgment card. Ex.B1 is the signature of the plaintiff obtained in a deed and and Ex.B2 is the letter of apology.

Ex.B3 is the Will executed by the deceased Ramasamy Mudaliar on 21.04.2003. Exs. X1 and X2 are the reports submitted by the Family Counsellor.

9. The trial court, after analysing the entire evidence available on record, came to a conclusion that the first defendant has proved that the deceased Ramasamy Mudaliar has executed the Will dated 21.04.2003, Ex.B3, while he was in a sound and disposing state of mind. Even though such a conclusion was arrived at by the trial Court, it was held that Coromandel Law, which is in force in the Union Territory of Puducherry, will apply to the case on hand. Therefore, even though Ramasamy Mudaliar was the absolute owner of the schedule properties, the liberalities such as donation, Will etc., will be subject to and will be valid only to the extent of his disponible quota and fixed the same at 1/5th share. Ultimately, it was held that Ramasamy Mudaliar can dispose of his absolute properties only by way of a Will in respect of 1/5th of the properties, therefore the Will can be valid in respect of the 1/5 share in the suit properties and the remaining 4/5 share of the suit property has to be divided by metes and bounds among all the surviving legal heirs. In other words, it was held by the trial court that the deceased Ramasamy Mudaliar can execute a Will only in so far as his 1/5 share in the suit property alone and he cannot execute a Will for more than that. Thus, it was held that the legal heirs of the deceased Ramasamy Mudaliar are having equal right and are entitled to the remaining 1/5 share in the suit properties. Accordingly, the trial court passed a preliminary decree for partition of 1/5 share in respect of all item of the suit properties except item Nos. 7, 8, 11, 14 and 15 in the A Schedule Property and also 1/5 share executed by the deceased Ramasamy Mudaliar as per Ex.B3 and the B schedule Properties. In other words, the trial court dismissed the suit in respect of item Nos. 7, 8, 11, 14 and 15. It was further directed that the first defendant is entitled to right of residence in the 1st item of the A Schedule Property and after her death, the same shall be divided by the plaintiff and the defendants equally. Aggrieved by the above said Judgment and decree passed by the trial court, the second defendant has come forward with this appeal.

10. The learned counsel appearing for the first defendant/appellant submits that in so far a Union Territory of Pondicherry is concerned, there is no concept of co-parcenary property in the customary Coromandal Law. So far as native Hindus of the Union Territory of Pondicherry are concerned, there is no concept of co-parcenary in existence and Coromandel Hindu Law is applicable. As per the Coromandal Law, all the properties held by the father in a joint family are his absolute properties. In this context, the learned counsel for the appellant/ 2nd defendant relied on the decision of the Honourable Supreme Court in the case of (Ramalingam vs. Manicka Gounder) reported in 1978 SCC Online Madras Page No.54 wherein in Para Nos. 10 and 12, it was held as follows:-

"10. In the event, I think it would be proper to hold 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 all of them devolved 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 the extent to that territory.

11.....

12. I do not however accept the validity of this contention based on the proviso to Section 6 of the Act. In my view, the section as well as its proviso apply only to cases where a male Hindu dies possessed of an undivided interest in Mitakshara Coparcenary property and not where he died possessed of absolute properties. The suit property, as already mentioned, has to be recorded as Arumuga's absolute property under the customary Hindu Law of Pondicherry. It cannot bear a different character merely on the introduction of the Hindu Succession Act to that territory. There is no provision in the Act to bring about any such transformation."

11. The learned counsel for the appellant/second defendant also placed reliance on the decision of the Honourable Supreme Court in the case of (Pandurangan vs. Sarangapani and another) reported in 1981 SCC Online Madras 160, wherein in para No.8 it was held as follows:-

"8. In the case of Ramalingam vs. Manicka Gounder, already referred to, it has been held that the plea of survivorship embodied in Section 6 is not available in such cases. It would thus follow that the plaintiff has no present right in the properties so as to be in a position to challenge the alienation."

12. The learned counsel for the appellant/second defendant has further placed reliance on the Division Bench decision of this Court in the case of (Viwanathan and another vs. Savarimouthurayan and others) reported in 2004 (3) CTC 81 wherein in Para No.9, 12 and 13, it was held as follows:-

"9. Prior to the applicability of Indian Succession Act, 1956 in the State of Pondicherry, Christians were governed by customary law which was by then applicable to Hindus. Even such customary law applicable to Hindus has to be applied to the Christians also. However, the Hindu Succession Act, 1956 would not apply to Christians as expressed in Section 2 (1) (c) of the Hindu Succession Act. So, the law of succession applicable to the Christians in the State of Pondicherry is not the succession Act as

envisaged in the Hindu Succession Act, 1956, but it is customary law amongst Hindus which was prevalent in the State of Pondicherry, namely, as the law of succession. Even in the present case, the law of succession applicable to the parties is Hindu Customary law, prevalent in Pondicherry. Hence, to decide the rights of the parties in this case, we have to find out what is the right of the plaintiffs in the properties of the 1st defendant till his death on the basis of Hindu customary law prevailed in Pondicherry State.

12. The French writer Saneer in his book on "Hindu Laws" summed up the position as follows:-

'By virtue of a more correct interpretation of custom, the theory of coparcenary system between father and son 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 judicial 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.'

It cannot be disputed that the abovesaid principle of law governs the right of the parties in these appeals. So, the 1st defendant was the absolute owner of the properties.

13. In view of the discussion made in the above said decision, it is clear that though the 1st defendant got the property by partition with his father along with his brother Simon, it is his absolute property. During the lifetime of the 1st defendant, even if the 1st defendant and the plaintiffs lived together and the said joint living was known as "Regime De Law Co-Propriete Familiale", after the death of 1st defendant, if the plaintiffs continue to live jointly without any partition between them, that is known as "Communaute". But this cannot be construed as a joint family but it remains undivided with the unity in residence and joint living of residence.

13. By placing reliance on the above decisions, it is submitted by the learned counsel for the appellant/second defendant that in this case the Coromandel Law is applicable. Further, there is no concept of co-parcenary property in customary Coromandal Law, but the trial court misapplied the concept of applicability of the said Law.

14. The important principle in the customary law is the principle of right to legitim. As per the said principle, son has a right over the property of the father and the daughters will have right over the property of the mother. In the instant case, the plaintiff, being a daughter, is having a right only as against the mother's property and not the

property of the father. The trial court misapplied the concept of right to legitim by overlooking the fact that the plaintiff has no right to legitim over the property of her father. The learned counsel, referring to the word 'legitim' which means a legitimate expectation, would submit that the forced heirs over the property of the mother or the father as the case may be by which, they are empowered to attack the liberalities i.e., donation or Will etc., But such liberalities can be attacked only by the forced heirs. Sons are forced heirs of the father's property and daughters are the forced heirs of the mother's property. The transactions of donations or bequeaths are valid and not null and void. They will be held to be excessive only to the extent of satisfying the share of the forced heir, who is attacking the excessive liberality. According to the counsel for the appellant/ second defendant, in the instant case, the trial court had overlooked the nature of the right of legitim and the non-availability of the plaintiff of such a right as she is the daughter and also the extent of her right. Therefore, it is submitted that the trial court erred in partially decreeing the suit instead of dismissing the suit in entirety. In this context, the learned counsel placed reliance on the Division Bench decision of this Court in Krishnamurthy Gounder vs. Seetharama Gounder Gounder and others reported in 2002 (2) Law Weekly 669 and submitted that in the said case, the Division Bench had an occasion to consider the question what is legitim, who are the beneficiaries, who can enforce and what is the effect of such enforcement, if so, whether he can exercise. In Para Nos. 16 to 20 of the said Judgment, it was held by the Division Bench as follows:-

"16. Mr. T. Murugesan, learned Senior counsel appearing for the contesting respondents submitted that under the French Customary System of Hindu Law, a person cannot claim any right in the properties of his father during his life time; that only after the life time of the father, he could challenge any gratuitous transfer on the principle of legitim. According to the learned Senior counsel, the plaintiff Krishnamoorthy does not have any present right to challenge the donations of the first defendant Sivarama Gounder. The learned Senior counsel referred to Sanner Hindu Law translation and also Article by Justice David Annoussamy on French Legal System published by the Institute of Comparative Law and Jurisprudence, National Law School of India University, Bangalore.

17. In Sanner on Hindu Law it is stated as follows:-

'The theory of common property of father and sons so far as the ancestral patrimony is concerned, is abandoned in our Establishments of the Coromandel Coast. It is to the chief of the family that belongs in reality, in the judicial sense of the word, the properties deriving from ancestors and he is alone qualified to exercise by principle, the right

of free disposition which confers on him his title as owner. It is admitted that the sons have rights, if not in presenti, at least in future on those properties i.e., A reserve which they can claim at the opening of their father's succession, against those who have benefitted by the liberalities of the deceased.

So far as the alienation by onerous title agreed on by the father, even for his exclusive benefit they are out of control of the sons. Save, be it understood, if it concerns about sham deeds and without prejudice to the right which the French legislation grants to interested parties to provoke the interdiction of their father, or to provide him with a judicial counsel, in the case provided by the Code Civil.

The same observation applies in the suit for partition, which the commentators of Mitakshara gave formerly to the son when, due to mental weakness, or by prodigality, the chief of the family frittered away the ancestral patrimony. The interdiction or the appointment of a judicial counsel being unknown procedures in olden days, it was necessary to avoid the dangers of an administration more disastrous to the sons, by allowing them to ask immediately their share in family patrimony. But now as they have the rights to resort to the means of protection defined by Chapter I and II of Title XI of Code Civil, they cannot be allowed to proceed by way of partition suit i.e., to exercise rights which did not belong to them till the father is alive.'

Same is the case with regard to self acquisition of the father. As regards the acquisition of his sons, the presumption is that they are also family properties and it is for the sons to establish that the acquisition by onerous title was realised not only with the income personal to his sons, but also that they were never merged with the family patrimony, Justice David Annoussamy reiterates that the exclusive right of a Hindu father in Pondicherry is recognised "in respect of all properties whether ancestral or self acquired and the denial to the son of any right by birth or any right to ask for partition during the life time of his father. Till his death the father is the sole owner of all the properties with full right of disposal for valuable consideration."

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18. The next point is as to what the son can do after the life time of the father in respect of

gratuitous transfers. That is where the principle of legitim steps in. What is legitim?

19. To quote Justice David Annoussamy

'French Jurists however have found that the father could give away only a portion of his properties called his disposal quota and the balance constituted the legitim of the heirs. The principle of legitim for direct heirs as has been a consistent principle in the legal history in France and the same was affirmed with force and precision in the Code Civil. It is how the principle of legitim is a familiar one for Hindus in Pondicherry, whereas, it is unknown in the rest of India..... Till his death the father is the sole owner of all the properties with full right of disposal for consideration. The legitim is the portion of the estate which a person cannot dispose of by an act of liberality, if he has heirs in direct line, who are called accordingly forced heirs. When a person indirectly deprives his forced heirs of the amount of property which was in their legitimate expectation by disposing away without consideration the totality or a substantial part of his estate, those heirs are entitled to show that their legitim had been encroached upon and to have it restored by way of reduction of excessive liberalities.'

20. The learned Judge has referred to the opinion of Sanner in his *Droit Civil Applicable Aux Hindus*, 1916 in the following terms:-

'preservation of the properties in the family was at the root of the real estate regime and successoral law in India and that, therefore, legitim was a necessary part of that law. He observed that there was no obstacle of Code of Civil in the matter of legitim to Hindus.

Thus, it is seen that the Courts in Pondicherry have consistently allowed to the children the right to attack the acts of liberalities of their parents when such acts had the effect of deriving them substantially of their legitimate right to succeed and that in the course of time the very principle of legitim as understood in Frenchy Law has come to be accepted.

The sons have a right of legitim in the property of their father and the daughters have the same right in the property of their mother."

15. The learned counsel for the appellant/second defendant, by placing reliance on the above decision, would submit that the observations made by the Division Bench of this Court mentioned supra, particularly para Nos.18 and 19, would

answer all the questions involved in this case. In other words, all the aspects of the right to legitim are covered by the Judgment of the Division Bench of this Court and the said Judgment holds good till date. Therefore, from the above judgment, it could be understood that a daughter will not have a right over the properties of her father.

16. It is submitted by the learned counsel for the appellant/second defendant that the Plaintiff claiming right under the customary law, should expressly plead and prove the same and cannot be given the benefit without any pleading. In the instant case, the plaintiff never pleaded that she had a right of legitim over the properties of her father, while so, the trial Court erred in considering a question which was never pleaded before it. Since the properties of the father is his absolute property by way of Will, the father bequeathed the property in favour of the appellant/second defendant. In such view of the matter, the learned counsel for the appellant/second defendant prayed for setting aside the Judgment and decree of the trial court by allowing this appeal.

17. Countering the submissions of the learned counsel for the appellant, the counsel for the first respondent/plaintiff would contend that the trial Court is wholly justified in passing a preliminary decree for partition. According to the learned counsel, the Division Bench of this Court in the decision rendered in Thanjayan vs. Palani reported in (2012) 3 CTC 577, following the earlier decision of this Court in Krishnamurthy Gounder's case rendered in 2002 (3) Law Weekly 699 has held that a Hindu father, who is a renoncant cannot dispose of more than 1/8 share in his property, even though he is the absolute owner of the same. It is further held therein that when the Hindu Succession Act is not applicable to such persons, then they are governed by the Coromandel Hindu Law of Pondicherry and it is not under dispute that under the Coromandel Hindu Law of Pondicherry, a gratuitous transfer made by a Hindu Male in excess of 1/8 share will not bind his legal heirs. The learned counsel further submits that following the aforesaid decisions of this Court, this Court, in the latest decision rendered in M. Kadirvelu and others vs. G. Shanthanalakshmi and others) reported in 2016 (4) MLJ 562 it held in Para No.53 as follows:-

"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, on the date of 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 got assimilated into the 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."

18. The learned counsel for the plaintiff/first respondent herein also invited the attention of this Court to an unreported Judgment in Sokkalinga Chettiar vs. Somu Chettiar (19th November 1963) and submits that the Hindu father is bound to reserve a share to his children over the properties possessed by him. Therefore, it is incorrect to state that a son has a right to legitim in the property owned by the father and the daughter has such right in the property of the mother. There cannot be any distinction between a son and a daughter with respect to inheritance of the property left by his or her parents.

19. As regards the submission of the counsel for the appellant that the plaintiff did not plead in her plaint regarding the right to legitim, it is replied by the counsel for the plaintiff/first respondent that the question of right of legitim is a pure question of law which does not require any pleading and even in the absence of the same, it can be adjudicated by the courts to render substantial justice to the litigant.

20. The learned counsel appearing for the respondents 2 and 5 would contend that if this Court holds that the Coromandel customary Law has been repealed by the extension of Hindu Succession Act to the Union Territory of Pondicherry, as per the Hindu Succession Act, the property in question, being the ancestral property of Late. Ramasamy Mudaliar, has to be divided among all the legal heirs equally. As per the amendment brought in the year 2005 to Section 6 of the Hindu Succession Act, the daughters have become coparceners and as such are entitled to right of succession. If the right of succession has been extinguished before 20.12.2004 by alienation, partition or any testamentary disposition, the same is held valid. In the present case, though the deceased Ramasamy Mudaliar executed the Will on 21.04.2003, the same came in to effect only on 21.8.2006 on the date of death of the testator. Therefore, it is submitted that the right of the plaintiff or the other legal heirs of the deceased Ramasamy Mudaliar has not been extinguished. It is further submitted that the deceased Ramasamy Mudaliar can only bequeath his share as per the testamentary disposition and not the entire property which he has inherited from his ancestors. In such a case, even though a Will has been validly executed, the same would be valid only to the extent of 1/5 share in favour of the second defendant and not over the entire extent of the suit property. Thus, the learned counsel for the respondents 2 to 5 prayed for dismissal of the appeal.

21. We have given our anxious consideration to the rival submissions made. In view of the aforesaid submissions made in this appeal, the only question that falls for our consideration is whether Customary Hindu Law will apply to the natives of Pondicherry.

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22. The main argument advanced by the learned counsel appearing for the appellant/second defendant is that there is

no concept of co-parcenary property in customary Coromandel Law. For the native Hindus of Pondicherry, Coromandel Hindu Law is unanimously applied by the Courts in Pondicherry and it is applicable even after the introduction of the Hindu Succession Act. Therefore, a right to legitim exists under the customary practice prevailing in Pondicherry. As per the Coromandel Law governing the native Hindus, the sons are the forced heirs of the property of the father and the daughters are the forced heirs of the property left by the mother. The transactions of donations or bequeaths are valid and are not null and void. They will be held to be excessive only to the extent of satisfying the share of the forced heir, who is attacking the excessive liberality. Therefore, according to the appellant, the trial Court overlooked the nature of the right of legitim and extended such right in favour of the plaintiff, being a daughter by passing a preliminary decree for partition.

23. During the course of arguments in this appeal, we have appointed Shri. S.V. Jayaraman, learned Senior Counsel in this Court and Mr. Gandhiraj, learned Government Pleader (Pondicherry) as amicus curiae to assist this Court to effectively adjudicate the issues involved in this appeal.

24. We have also heard Mr. S.V. Jayaraman, learned Senior counsel and Mr. Gandhiraj, learned Government Pleader (Pondicherry), who were appointed as Amicus Curiae in this case. Mr. S.V. Jayaraman, learned Amicus Curiae relied on the decision of this Court in the case of (M. Kadirvelu and others vs. G. Santhanalakshmi and others) reported in 2016 3 Law Weekly 385 wherein in para Nos. 34, it was held as follows:-

"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 in so far as renoncants are concerned, the Hindu Succession Act would not have any application."

25. The learned Amicus Curiae therefore submitted that Hindu Succession Act, 1956 has application to the inhabitants of the Union Territory of Pondicherry, except to those who have renounced their right.

26. Mr. Gandhiraj, learned Government Pleader has submitted a report. In his report, in Para No.3 and 4, it was stated as follows:-

"3. Section 2A of the Hindu Succession Act, 1956 had excluded the "renoncants of the Union Territory of Puducherry" from the application of the Hindu Succession Act, 1956. Persons belonging to various religions such as Christianity, Islam, Hindus, Jains who are French nationals of Indian Origin have opted to become "Renoncants" under the above regulation dated 21.09.1981 of the erstwhile

French Government. There are Renoncants who are Indians and there are French Nationals who are not Renoncants. Hindu French Nationals who are not renoncants cannot be excluded from the application of the Hindu Succession Act, 1956, if they are domiciled in the Union Territory of Puducherry and acquired properties therein. The law of succession for French Nationals, who are Indians, can only be the Hindu Succession Act, 1956. The Hindu Marriage Act, Hindu Adoption and Maintenance Act, 1956, Hindu Minority and Guardianship Act, 1956, the Parsi Marriage and Divorce Act, 1936, the Child Marriage Restraint Act, 1929 are all applicable to the French Nationals who are Hindus as defined under the Statutes. The Renoncants are governed by the French Code Civil only for the purpose of marriage, divorce, Adoption and succession, and for all other purposes they are governed by the laws of the land or State as they are protected by the law of the land/State. The exclusion clause found in Section 2A of the Hindu Succession Act, 1956 cannot be hyper-extended to any other category of persons except the "renoncants" domiciled in the former French Establishments. To treat all French Nationals and French Citizens as Renoncants and all Renoncants as French Citizens are only a misnomer in law.

4. Right to succession opens only on the date of death of the proprietor of the property or the testator. The law of succession would be the law prevailing on the date of death of the testator or the proprietor of the properties that are the subject matters of succession. If a Hindu died prior to 01.10.1963, the law of succession would be the Hindu Customary Law. If a Hindu died after 01.10.1963, the law of succession to his properties is the Hindu Succession Act, 1956 and the repealed customary Hindu law can be applied only when the right or interest over the property had accrued prior to 01.10.1963."

27. It is evident from the above that if a Hindu died after 01.10.1963, the law of Succession to the properties is as per the Hindu Succession Act and the repealed Customary Hindu Law cannot be applied. In other words, after the application of Hindu Succession Act on 01.10.1963 to the State of Pondicherry, the Hindus domiciled in Puducherry are governed by the provisions of the Hindu Succession Act, whatever be their personal law before 1st October 1963. Therefore, we are of the view that those Hindus, who are domiciled at Pondicherry will be governed by Hindu Succession Act after 01.10.1963, unless they accrue any right under the Customary Hindu law before 01.10.1963. In so far as the Hindus who are French Nationals and renoscants, the Hindu Succession Act will not apply. So far as all others are concerned, who are not renoscants, only Hindu Succession Act will apply irrespective of their nationality. In the instant case, the plaintiff neither got any accrued right under the Customary Law before 01.10.1963 nor

claimed any right as reoscant and hence, Hindu Succession Act alone will apply to the plaintiff in this case. The parties to the appeal are governed only by Hindu Succession Act and customary Hindu Law will have no application to their case. We find that the Trial Court, without framing any issue as regards the applicability of Coromandal Law in this case has dealt with the same and proceeded to pass a preliminary decree in favour of the plaintiff.

28. The learned counsel for the respondents 2 and 5 submits that the suit property was not the self-acquired property of Ramasamy Mudaliar and therefore he has no right to execute the Will in favour of the first defendant/appellant herein. This submission of the counsel for the respondents 2 to 5 cannot be accepted. As we have held above, the parties to the appeal are governed only by Hindu Succession Act. Further, the trial Court has rendered a finding that the suit properties are the absolute property of Late. Ramasamy Mudaliar and the said finding has not been challenged by the respondents 2 to 5 herein. The only error committed by the trial court is it had erroneously applied Coromandal Law and arrived at a conclusion that the Will is valid only to the extent of 1/5 share of Ramasamy Mudaliar. Since we have come to the conclusion that Coromandal Law cannot apply to the facts of this case, we hold that the Will executed by Ramasamy Mudaliar in favour of the appellant herein is valid in entirety.

29. In the light of the above discussion, we set aside the preliminary decree and judgment dated 21.04.2010 passed in O.S. No. 51 of 2007 on the file of the Additional District Judge, Puducherry at Karaikal. The appeal suit is allowed. The suit in O.S. No. 51 of 2007 on the file of the Additional District Judge, Puducherry at Karaikal stands dismissed. No costs. Connected M.P. No. 1 of 2012 is closed.

Sd/-

Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

To

1.The Additional District Judge
Pondicherry @ Karaikal

2.The Section Officer,

VR Section, High Court, Madras.

+ 1 CC to M/s R.Sunilkumar, Advocate vide Sr No.64824

+ 2 CC to Mr.Sai Bharath & Ilan, Advocates vide Sr No.64675

+1 CC to M/s M.Devaraj, Advocate vide sr No.64458

Judgment in

A.S. No. 589 of 2010

cnr(co)

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SS(20/10/2017)