

IN THE HIGH COURT OF JUDICATURE AT MADRAS

ORDER RESERVED ON: 20.04.2018
ORDER PRONOUNCED ON:16.05.2018

CORAM:

THE HON'BLE MR. JUSTICE R.SUBRAMANIAN

Review Application No.223 of 2017
and CMP No.22117 of 2017

Joseph Nodier, France,
S/o. Thomas Arul Nodier,
No.6, Chemin De La Ferne,
69120 VAILX EN VELIN,
France, Rep by his Power of Attorney
Edison Rogarar, S/o.Arockiyadass,
No.13, Thirunallar Road, Karaikal 609 602,
Union Territory of Puducherry. Applicant

vs.
Jeanettee Nodier Respondent

Review Application has been filed under Order XLVII Rule 1 &
2 r/w Section 114 of the Civil Procedure Code, against the order
dated 18.07.2017 passed in AS. No.884 of 2012 on the file of the
High Court.

For Applicant : Mr.S.Subbiah, Senior Counsel
for M/s. Elizabeth Ravi

For Respondent : Ms.S.Suseela Devi

J U D G M E N T

This Review Application has been filed by the appellant in AS No.884 of 2012, seeking review of the judgment rendered in the said Appeal on 18.07.2017. The said Appeal arose out of the suit for partition, filed by the respondent in the Appeal, seeking partition and separate possession of her half share in the suit properties. The properties subject matter of the suit belonged to one Thomas Arul Nodier, who died on 15.02.1963, leaving behind his widow Kulanthai Savari Muthammal alias C.S.Nodier, two sons Joseph Nodier, Jeannot Nodier and a daughter Jeanette Nodier. It was claimed that on 05.02.1976, the plaintiff, viz. the respondent herein had relinquished her rights in the property in favour of the other three heirs, viz. her mother and her two brothers. The elder brother Jeannot Nodier had relinquished his 1/3 share in favour of his mother and the other brother Joseph Nodier, the appellant herein, by a Deed of relinquishment dated 12.03.1976. Thus, the mother C.S.Nodier and the brother Joseph Nodier, the applicant herein, became entitled to half share each in the suit property. The respondent herein would claim that her mother C.S.Nodier had executed a Registered Will dated 27.06.1992 in and by which, she bequeathed her half share in favour of the respondent

herein and hence, the respondent is entitled to partition and separate possession of the said half share. The suit came to be resisted by the defendant/appellant herein contending that the respondent herein had released her 1/4th share even as early as on 05.02.1976 under Ex.A4, therefore, the respondent herein is not entitled to claim partition. It is his further contention that the Will dated 27.06.1992 is not true and valid.

2. On the above contentions, after framing necessary issues the Trial Court rejected both the defences on the reasoning that partition is sought for by the respondent herein as a legatee of her mother Mrs.C.S.Nodier and not as a heir of her father, wherefore, she would be entitled to the half share. On the other plea regarding truth and genuineness of the Will dated 27.06.1992, the learned Trial Judge concluded that the Will is true and genuine. On the said conclusions the learned Trial Judge decreed the suit as prayed for.

3. Aggrieved, the defendant, viz. the appellant herein, had come forward with the Appeal in AS No.884 of 2012. While disposing of the Appeal, I framed the following points for determination, on the basis of

the arguments addressed by the parties.

1. Whether the Trial Court was right in holding that the plaintiff is entitled to get a share on the basis of the Will executed by her mother, after having relinquished her interest in the property by the release deed dated 05.02.1976?

2. Whether the plaintiff has proved the execution and due attestation of the Will Ex.A12 dated 27.06.1992?

4. On both the points framed I had accepted the findings of the Trial Court and dismissed the Appeal confirming the judgment and decree of the Trial Court. Aggrieved the applicant herein the defendant in suit has come forward with this Review Application, primarily contending that the parties in the suit were not Indian Citizens, but they were actually French Nationals and the children also continued to be the French Nationals. It is claimed that the mother, viz. Kulanthai Savari Muthammal alias C.S.Nodier, had given a declaration on 12.02.1963 at Karaikal to the French Government styled as a "Declaration Adoption Deed Nationalite" and in view of the same, it is the French Law of succession that could be applicable to them. Therefore, it is claimed that under Article 913 of the French Code Civil,

the mother viz., Kulanthai Savari Muthammal alias C.S.Nodier could not have disposed of the entirety of the property by way of a Will, ignoring the rights of the son, who has a right to the legitim. Therefore, according to the Review applicant, the judgment dated 10.07.2017 made in the Appeal requires reconsideration by way of review. Though, this question relating to the parties being French National and the applicability of the French Code Civil, to the parties to the proceeding was not raised, either before the Trial Court or before me, when the Appeal was disposed of, I thought it fit to issue notice in the Review Petition, inasmuch as, it raised an important question of law relating to the right of a person to dispose of property by way of Will, based on the theory of legitim enunciated under Article 913 of the Code Civil. Upon notice, the respondent herein has appeared through counsel.

5. I have heard Mr.S.Subbiah, learned Senior Counsel appearing for Ms.Elizabeth Ravi for the applicant and Mrs.R.Suseela Devi, learned counsel appearing for the respondent.

6. Article 913 of the French Code Civil, reads as follows:

“913. A man can only dispose of half of his property by

gift inter vivos or by will if he leaves a legitimate child surviving him. If he leaves two children he can only dispose of a third. If he leaves three or more he can only dispose of a quarter.”

Relying upon Article 913, Mr.S.Subbiah, learned Senior Counsel would contend that parties being French Nationals, they are governed by the French Code Civil, as such the theory of legitim has to be applied. Heirs would be entitled to question the liberalities of their ancestors, if such liberalities exceeded the allowable limits. Therefore, according to Mr.R.Subbiah, the mother viz. Kulanthai Savari Muthammal alias C.S.Nodier, having died leaving three children, could not have disposed of the entirety of the property by way of Will in favour of one of them.

7. Per contra, Mrs.R.Suseela Devi, learned counsel appearing for the respondent would vehemently contend that this question was not raised in the suit or appeal and it cannot be raised by way of Review. It is also her contention that a son cannot question the liberalities of the mother. According to her it is only the daughters, who can question the liberalities of the mother, a son would get a right to question the liberalities of the mother, only in the absence of the daughter.

8. I have considered the rival submissions. The right of legitim, which is described as a right of legitimate expectation by the immediate heirs. The legitim is a 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 forced heirs. The existence of the right is almost settled now. This right or principle of legitim is equated to the restriction placed on a Hindu father, while dealing with the ancestral properties under Hindu Law.

9. The French Code Civil prescribes in the quantum of the disposable quota also. Dr.David Annoussamy in his Book on French Legal system, while explaining as to how the Doctrine of legitim operates observes as follows:

“C-Effect of Reduction:

When a liberality is found to be in excess of the disposable quota it does not become null and void. The action instituted by the protected heir has only the effect of reducing the liberality to the extent necessary to satisfy the legitim of that heir. In case of a bequest, the heir would get

out of the bequest what is needed to make good the legitim, and the bequest would be operative for the balance, if any. Regarding donations the right of action available to the protected heir does not give him a share in each of the movables and immovables donated necessitating a partition. The donations will get cancelled in the order indicated above and to the extent necessary to meet the legitim irrespective of the nature of properties (movable or immovable) donated. Even disguised donations are not null and void; they are only subject to reduction like the other donations.”

10. Article 921 of the Code Civil provides that the liberalities could be challenged by only those heirs for whose benefit a law has reserved a portion of the property. The law relating to the right to challenge the liberalities of the ancestors has been dealt with by Dr. David Annoussamy, in his Article titled

“About the Right of Legitim among Hindus in Pondicherry”

published in the Journal of the Indian Law Institute in 1978. The learned Author while dealing with the beneficiaries in the said Article

has observed as follows:

Scope of the Legitim

The Beneficiaries

“The question of legitim arose first in respect of sons as regards the properties of their father. As it was found that they had a close interest in those properties and that they had the obligation to continue the family, they have been consistently considered as forced heirs. The illegitimate son was also held to be a forced heir in Codiresa Mudaliar v. V.Ekambaram. The question whether a daughter, who in the absence of a son was considered to be the heir of her father, was a forced heir as well arose in Amurdalingam v. Vijaya Saradamballe. The Court recognized to such a daughter the right to attack the will of her father disposing of the totality of his patrimony by holding that the daughters in the absence of sons were entitled to a share which could be called as legitim and which should be sufficient for their settlement by way of marriage. In this decision there is some confusion between the right to settlement and the right

of legitim. But the right of legitim of daughters on the properties of the mother was recognized in the following unreported decisions- Kannussamy v. Sornathamalle, Moutlouchickenapillai v. Govindassamy, Djealatchoumiammalle v. Madouramballe.”

The learned Author further observes:

“... One can, therefore, safely draw the conclusion that the two points are well settled, i.e., 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.”

11. The above passage would go to show that the right of legitim is confined to the sons in their father's estate and the daughters in their mother's estate. Therefore, a son will not be considered to be a forced heir of the mother and a daughter will not be considered to be a forced heir of the father. I have already extracted Article 921, which enables only such forced heirs to challenge the liberalities of their ancestors. Therefore, it is clear that the challenge in this Review Petition to the liberalities of the mother by a son, cannot be entertained. No other

question was addressed by the learned counsel for the Review applicant, I am not going into the question, as to whether, the parties being French Nationals, they would be entitled to claim that the French Code Civil would apply to them, inasmuch as, the said question is not in dispute in the case on hand.

12. For all the above reasons, the Review Petition is dismissed. However, in the circumstances, there will be no order as to costs. Consequently, the connected miscellaneous petition is closed.

16.05.2018

jv

Index: Yes/No

Internet: Yes/No

Speaking order/Non Speaking order

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To

The District Judge,
Karaikal.

R.SUBRAMANIAN,J.

Jv



Pre Delivery Judgment
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