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IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 15.07.2021

PRONOUNCED ON : 18.08.2021

CORAM

THE HON'BLE Mr. JUSTICE G.K.ILANTHIRAIYAN

A.S.No.543 of 2006

R.Baladhandayuthapani

...Appellant/3rd Defendant

Vs.

1. Mahalakshmi ...1st Respondent/Plaintiff
2. Singaravelu ...Respondents 2&3/Defendants 1&2
3. Shanmugavadivelu (died)
4. Meenalochini
5. Priyadharshini
6. Sharmila

Respondents 4 to 6 brought on  
record as legal representatives  
of the deceased third respondent  
vide order dated 03.03.2021 made  
in C.M.P.Nos.4917, 4919 and 4921  
of 2021 in A.S.No.543 of 2006

PRAYER: Appeal Suit filed under Section 96 of C.P.C., to set aside the Judgment and Decree dated 19.01.2006, passed in O.S.No.71 of 1998 on the file of the learned Additional District Judge, Pondicherry at Karaikal and allow the counter claim in O.S.No.71 of 1998 on the file of the learned Additional District Judge, Pondicherry at Karaikal.

For Appellant : Mr.R.Natarajan

For Respondents

For R1 : Notice served  
For R2 : Mr.S.Sounthar  
R3 : Died  
For R4 to R6 : Mr.T.P.Manoharan,  
Senior Counsel  
For Mr.S.Sai Sathyajith



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## JUDGMENT

The Appeal Suit is filed as against the Judgment and Decree dated 19.01.2006 made in O.S.No.71 of 1998 by the learned Additional District Judge, Pondicherry, Karaikal.

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

3. The suit is for partition. The case of the plaintiff is that she is the sister and the defendants are her brothers and they born to one Ramanathan. After demise of their parents, the plaintiff is entitled to have equal share in the property left out by their parents viz., 1/4<sup>th</sup> share of the entire estate. Even prior to the death of their mother in the year 1992, the first defendant caused notice to the plaintiff and other defendants demanding partition of 1/4<sup>th</sup> share and followed by a suit in O.S.No.29 of 1992, seeking partition and separate possession of his ¼ share in the property left out by their parents. According to the first defendant, the properties possessed by their father are joint family and ancestral properties. Whereas the plaintiff stated that the properties possessed by her father are self acquired properties. As per Hindu law prevailing in Pondicherry, the joint family system is not recognized and there is no distinction between the ancestral properties and self acquired properties. Therefore, the sons did not get right in the properties by birth. The properties owned by her father are to be treated as self acquired properties. Further the suit filed by the first defendant was dismissed for default. Therefore, the plaintiff filed suit for partition and prayed for 1/4<sup>th</sup> share.

4. Resisting same, the first defendant filed written statement and stated that the first schedule properties are ancestral properties of their father Ramanathan and the second schedule properties are belonged to their mother. On the death of their father, he left their mother and the parties of this suit as his legal representatives. The first defendant caused notice called upon for partition on 23.11.1998. The second defendant set up a Will as if their father bequeathed the first item of the properties in his favour. Their father could not have executed the same, since he was very ill and he was not in a good state of mind at the time of execution of Will. That apart, their father was not competent to bequeath the entire properties in favour of the second defendant through the Will. Their mother was getting pension of Rs.4,000/- and after demise of their father she lived in the schedule I of the property and she was received rent from the tenants. Thereafter, the first defendant stayed with his mother at Karaikal in the portion of the suit properties.



4.1. Insofar as the other properties are concerned the defendants 2 to 3 were leased out the some of the properties and they received rents. While being so, their mother executed Will dated 07.06.1991 and bequeathed the share due to her from the entire estate of her husband and her personal property referred in schedule II, in favour of the first defendant. It was come into force on 03.04.1992. Thus the first defendant alone is entitled to have entire property prescribed in the second schedule of the suit. Therefore, the plaintiff is entitled to have  $1/5^{\text{th}}$  share in the estate of her father. The first defendant is also entitled to have  $1/5^{\text{th}}$  share in the first schedule of the property which was owned by their father. In addition to  $1/5^{\text{th}}$  share that should be allotted to their mother, totally the first defendant is entitled to have  $2/5^{\text{th}}$  share in the first schedule property.

5. The second defendant filed separate written statement and stated that the suit properties were purchased by their father. The first item of the first schedule in the suit properties was purchased by their grand father. Their father demolished the old house and constructed the new house out of his own earnings. Their father was a contractor and also doing import and export business. All the properties were purchased by him and developed from his income. In fact, their father discharged the debts left by their grand father.

5.1. On 21.03.1998, their father executed his last Will and registered vide document No.13/1998. As per the Will, the first item of the first schedule property was allotted to the plaintiff, the second item of the property was allotted to all the parties in the suit. Third defendant was allotted to  $2/5^{\text{th}}$  share and the plaintiff along with the defendants 1 & 2 were allotted  $1/3^{\text{rd}}$  share each. Item No.3 of the first schedule property was allotted to the plaintiff. The second defendant looked after his parents till their end of their life. After demise of their father, their mother was living in the said house and received income till her death. The second defendant though lived in Chennai, he frequently visited Karaikal and looked after his mother. Therefore, the suit for partition is not maintainable and prayed for dismissal of the present suit.

6. The third defendant filed separate written statement and stated that after demise of their parents, the suit properties have come into joint possession and enjoyment of the plaintiff and the defendants. The alleged Will executed in favour of the second defendant is not true. When the first defendant filed suit in O.S.No.29 of 1992, the Will said to have been executed by their mother in favour of the first defendant was first revealed. Their mother never executed any Will as alleged by the first defendant. Their father was suffering



throat cancer during the last two years of his life and their mother was also suffering from heart disease and both of them were bed ridden in their last days. Utilizing the said circumstances, the first and second defendants claimed to have obtained Wills in their favour from their parents. Therefore, both the Wills are not true and not valid. He has no objection to have partition of the suit properties into four equal shares.

7. The plaintiff filed reply statement and all the three defendants also filed their additional written statement. On hearing the rival pleadings, the learned trial Judge framed the following issues for determination of the suit :-

“(i) Whether the Will dated 07.06.1991 as pleaded by D1 is true, valid and genuine?

(ii) Whether the plaintiff is entitled to a partition. If so what would be her share?

(iii) To what other relief the parties are entitled?”

8. On the side of the plaintiff, she examined P.W.1 and P.W.2 and marked Ex.A.1 to Ex.A.6. On the side of the defendants, they examined D.W.1 to D.W.8 and marked Ex.B.1 to Ex.B.26. On perusal of the material produced on record and considering both the oral and documentary evidence adduced by the respective parties and also the submissions made by the learned counsel on either side, the Court below dismissed the suit. Aggrieved by the same, the third defendant filed this present appeal suit.

9. The learned counsel appearing for the appellant/third defendant submitted that the Court below held that Hindu Succession Act, 1956 would govern the plaintiff and the defendants in the suit. As against the said conclusion no appeal has been filed nor cross objection filed by the plaintiff and the defendants 1 & 2. Therefore, inheritance principles stipulated in the Hindu Succession Act would govern the parties. When the Court below refused to declare that the Wills which were marked as Ex.B.1 and B.19 as valid, for the reason that the defendants 1 & 2 failed to prove the same, the Court below ought to have allowed the suit for partition.

9.1. He further submitted that as held in the case of Antony Chelliah Vs. Mariyal reported in (1997)1 LW 743, the plaintiff being a heir under the intestacy, which must be presumed until a Will is proved, is entitled to succeed to the properties, unless it can be shown that his title has been displaced and more existence of the Will does not necessarily displace the plaintiff's title. Therefore, the plaintiff and the third respondent are entitled to have their respective share in the suit properties.



9.2. He further submitted that Ex.B.1 bears thumb impression of the testatrix especially, when she is a signatory. In the deposition of DW.1, he contradicts with D.W.2, who is attesting witness in the Ex.B.1, in respect of their relationship. Admittedly, their mother was French national who received pension from the government of France. The claim made by the defendants 1 & 2 are contrary to law governing partition and Hindu Succession Act. It is settled position in law that the proponent of the Will through which he claims right over other sharers should alone seek for declaration and establish the truthfulness and genuineness of the Will in terms of Section 63 (c) of the India Succession Act, 1925. Therefore, the defendants 1 & 2 failed to prove their claim respectively and both the Wills which were marked as Ex.B.1 and Ex.B.19 had lost its relevance and efficacy.

9.3. He further submitted that the appellant/third defendant claimed 1/3<sup>rd</sup> share in the suit properties. It is also open to the Court concerned to direct the parties to pay excess Court fee even at the time of pronouncing judgment. It is well settled legal position that the suit for partition, all the parties to the litigation being sharers are the plaintiff since they are co-owners. In support of his contention, he relied upon the following judgments:-

- (i) 2020 (5) CTC 302 - Vineeta Sharma Vs. Rakesh Sharma
- (ii) 2020 (5) CTC 279 - Ameenulla Vs. Ubayathulla
- (iii) 2008 (17) SCC 491 - Bachhaj Nahar Vs. Nilima Mandal
- (iv) 2010 (7) SCC 717 - Laxman Tatyaba Kankate Vs. Taramati Harishchandra Dhatrak
- (v) 2018 (3) CTC 662 - Joseph Nodier Vs. Jeanette Nodier
- (vi) 2007 (9) SCC 468 - Krishna Mohan Kul @ Nai Charan Kul and anr Vs. Pratima Maity and ors
- (vii) 2020 (4) CTC 321 - Shivakumar Vs. Shanranabasappa
- (viii) 2020 (4) CTC 429 - Kavita Kanwar Vs. Pamela Mehhta
- (ix) (1997)1 LW 743 - Antony Chelliah Vs. Mariyal

10. The learned counsel appearing for the second respondent/ first defendant contended that the parents of the parties were inhabitants of Pondicherry and hence Customary Hindu Law prevailed in French settlement of Pondicherry is applicable to them. He further submitted that none of the parties pleaded about the legal effect of extension of Hindu Succession Act to Pondicherry with effect from 01.10.1963 and in fact, there is no necessity to plead the same. In this regard he specifically relied upon the judgment reported in (2018) 1 LW 209 in the case of Muthaiyan Vs. Poongothai, wherein it is held that Hindu inhabitants of Pondicherry, are not renouncants, are governed by the Hindu Succession Act from 01.10.1963, though they were governed by Customary Hindu Law before 01.10.1963.

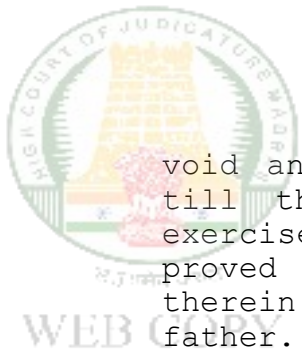


10.1. He further submitted that admittedly, the parties in the present case never claimed the status of renouncants. Therefore, they cannot claim themselves as renouncants of the Union Territory of Pondicherry. The Will projected by the second defendant under Ex.B.19 was not true, hence as per Hindu Succession Act his estate devolved on all of his class one heirs viz., wife, three sons and a daughter. His widow bequeathed her 1/5<sup>th</sup> share to the first defendant under Ex.B.1 Will, which is proved by the evidence of D.W.2. Therefore, her estate goes to the first defendant as per the testamentary document.

10.2. He also contended that the propounder of the Will must prove the same by examining atleast one of the attestors to the Will as per Section 68 of the Indian Evidence Act r/w. Section 63 of the Indian Succession Act. The second defendant made an attempt to prove the Will, which was marked as Ex.B.19, by examining one of the attestor viz., D.W.7. In his evidence D.W.7 never stated that the testator signed the Will. Therefore, the second defendant failed to prove the Will executed in his favour. When the Will is not proved in the manner known to law, questioning the same on the principle of legitim will not arise.

10.3. As far as the Ex.B.1 is concerned, it was executed by their mother and she bequeathed her 1/5<sup>th</sup> share in the first schedule property and the entire second schedule property in favour of the first defendant. It was proved by one of the attestor, who is practicing Advocate in Pondicherry, examined as D.W.2. He categorically deposed that he had seen that the testatrix affixing her thump impression in the Will and also before Sub Registrar. Therefore, the first defendant is entitled to have 1/5<sup>th</sup> share of his mother apart from his 1/5<sup>th</sup> share in the properties of his father. Thus, he is entitled to have 2/5<sup>th</sup> share in the first schedule property. The plaintiff and the defendants 1 & 3 are entitled to have their 1/5<sup>th</sup> share each in the first schedule properties. As far as the second schedule property is concerned, it is the property of his mother and as per the Will Ex.B.1, the first defendant alone is entitled to have entire second schedule property. Therefore, he prayed for dismissal of the appeal suit accordingly.

11. The learned Senior Counsel appearing on behalf of the third respondent/second defendant contended that their father executed the Will, which was marked as Ex.B.19 dated 21.03.1988 bequeathing his properties to all his wife, three sons and one daughter. Therefore all the parties in the suit are beneficiaries under the said Will. After demise of their father on 21.06.1988, the Will come into force. All the parties are permanent residents of Karaikal and governed by the Customary Hindu Law prevailing in the Union Territory of Pondicherry. Therefore, Ex.B.19 registered Will would not become null and



void and it would continue to be legal, valid and in enforce till the forced heirs viz., defendants 1 to 3 choose and exercise their right, file a suit within a period of limitation, proved their right and claim cancel any excess disposal made therein and reduce the same to the disposal quota of their father.

11.1. He further submitted that the first defendant had filed a suit for partition as against the defendants 2 & 3 and the plaintiff in O.S.No.29 of 1992. In the said suit the second defendant filed his written statement and also produced the registered Will dated 21.03.1988, which was marked as Ex.B.19 as defence to the said suit. Therefore, all the parties came to the knowledge about the Will on filing of the written statement by the second defendant and thereby their father bequeathed the first schedule of the properties to all their favour. Even then, if they want to challenge the said Will, the limitation will within a period of three years from their knowledge, as per the Limitation Act. Therefore, the defendants 1 and 3 had lost their right and cause of action to file such a suit on all grounds available to them in respect of Ex.B.19 and it had become final and binding on them and also on the plaintiff. Thus Ex.B.19 is continuing to be a legal, valid and in force. In fact, the plaintiff in the present suit was also a party in the earlier suit in O.S.No.29 of 1992 filed by the first defendant and they were aware of the Ex.B.19, since it was produced by the second defendant in the said suit. Therefore, the present suit has been filed without disclosing the above facts, without any legal right or cause of action. The properties under Ex.B.19 are not available for partition and the suit itself is not maintainable and rightly dismissed by the Court below.

11.2. Likewise the third defendant also lost his right and cause of action to challenge the Will in Ex.B.19 in all the grounds. Therefore, his counter claim is barred by the principle of Customary Hindu Law, law of limitation and the doctrine of estoppel, without any legal right, locus-standi and cause of action. When the party filing a suit or making a counter claim in the written statement, is bound to value the suit/counter claim and pay the Court fee thereon. The third defendant failed to give proper value of the counter claim and failed to pay the Court fee. Therefore, the counter claim is not maintainable and barred by limitation and liable to be rejected.

11.3. He further submitted that the present Appeal Suit has been filed by the third defendant and not filed by the plaintiff. If at all the claim of the plaintiff is genuine, bonafide, legal and tenable, she would have filed the appeal suit as against the judgment and decree. Therefore it is very clear that only on the insistence of the defendants 1 & 3, she



filed the suit and the same was rightly dismissed by the Court below. He further submitted that in view of the principle of the Customary Hindu Law, Ex.B.19 would not automatically become null and void and it would continue to be legal, valid and in enforce till the forced heirs viz., the defendants 1 & 3 choose and exercise their right, file a suit within a period of limitation, proved their right and claim, cancel any excess disposal made therein and reduce the same to the disposal quota of their father. Therefore, Ex.B.19 is valid and in force and there is no need to declare its validity. Therefore, he prayed for dismissal of the appeal suit.

12. Heard Mr.R.Natarajan, learned counsel appearing for the appellant/third defendant, Mr.S.Sounthar, learned counsel appearing for the second respondent/first defendant, Mr.T.P.Manoharan, learned Senior Counsel appearing for the respondents 4 to 6/ legal heirs of the second defendant. Though notice served on the first respondent/plaintiff and her name printed in the cause list, none appeared on behalf of her either by person or through pleader.

13. The third defendant is the appellant in the present Appeal Suit. The plaintiff and the defendants 1 to 3 were born to one Ramanathan and his wife Dhanapakkiyam. The plaintiff claimed that first schedule properties were belonged to her father and the second schedule properties were belonged to her mother. The suit was resisted by the first defendant by projecting the Will dated 07.06.1991 which was marked as Ex.B.1, executed by their mother in respect of the second schedule properties in his favour. Likewise the suit was resisted by the second defendant by projecting the Will dated 21.03.1988 executed by their father, which was marked as Ex.B.19. Under the Will dated 21.03.1988, all the parties are beneficiaries in respect of the first schedule properties.

14. The father of the plaintiff and the defendants and his ancestors were permanent residents of Karaikal and governed by the Customary Hindu Law prevailing in the Union Territory of Pondicherry. As per the Will dated 07.06.1991 executed by their mother, which was marked as Ex.B.1, the first defendant claimed his 2/5<sup>th</sup> share in the first schedule properties and entire share in the second schedule properties. In fact, the first defendant filed suit for partition in O.S.No.29 of 1992 on the file of the Additional District Court, Karaikal and the same was dismissed for default. While pending the said suit, the second defendant filed written statement and claimed the first schedule properties through Will executed by their father dated 21.03.1988, which was marked as Ex.B.19, bequeathing his properties viz., first schedule properties in favour of his wife, three sons and one daughter. Accordingly all the parties



in the present suit are the beneficiaries.

15. On filing of the written statement by the second defendant in the earlier suit, the plaintiff and the defendants 1 & 3 had knowledge about the Will dated 07.06.1991, executed by their father. The plaintiff herein has denied the Will executed by their mother in favour of the first defendant herein and also denied the execution of Ex.B.19 in favour of the second defendant. More over, the third defendant failed to make any counter claim or suit for declaration as against the Wills which were marked as Ex.B.1 and Ex.B.19. The plaintiff also failed to seek any prayer of declaration that those Wills are not valid and not binding on the plaintiff.

16. Now the point for consideration is that whether Ex.B.19 is vitiated by the principles of legitim?

17. The learned Senior Counsel appearing for the respondents 4 to 6 relied upon the judgment reported in 2002 (3) LW 669 in the case of Krishnamoorthy Gounder Vs. Sitarama Gounder & others, which reads as follows :-

"17..... 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."

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

"..... 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. "

20. The learned Judge has referred to the opinion of Sanner in his Droit Civil Applicable aux Hindous, 1916 in the following terms:

".....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.

21. Dealing with the scope of the legitim



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under the heading "The Beneficiaries" the learned Judge has observed as follows:

"..... The daughter in the absence of a son is considered to be the heir of her father....."

.....

24. The next question is regarding the "Mechanism for enforcement". The learned Judge has elucidated the mechanism in the following manner:

"..... If a forced heir comes to the conclusion that what is left of the estate after the donations and the bequests is not sufficient to meet his legitim he has a right of action for having the liberalities effected by the propositus reduced to his disposable quota in order to recover what is necessary to complete the legitim....."

Mode of reduction

..... If the legitim is not so filled up with the liberalities made to himself there will be ground for reduction of other acts of liberalities in the absence of properties left undisposed. If the liberality received by him exceeds both the disposable quota and his legitim that liberality is liable to reduction at the instance of other forced heirs..... If the liberality is more than his legitim he will be entitled to keep the excess only if it does not exceed the disposable quota and if there is no person with preferential right. Otherwise, such excess shall be subject to reduction at the instance of other forced heirs.

When after completing the operations as described above in respect of all the forced heirs who have made a claim for reduction if it is found that there is a ground for reduction of liberalities, the reduction shall first operate on the properties bequeathed and if they are not sufficient then on the properties donated.

If the donations exceed the disposable quota they are subject to reduction.....

Effect of reduction

When a liberality is found to be in excess of the disposable quota it does not become null



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and void. The action instituted by the forced heir has only the effect of cancelling the liberality to the extent necessary to satisfy the due of that heir.....

Procedure

Any forced heir who as per his calculation comes to the conclusion that his legitim has been invaded has a right to ask for reduction of excessive liberalities. Such a claim produces effect only in respect of the heirs who make it and not in respect of others who may have the same right but who have failed to claim it. In fact, all the heirs are not bound to enforce their rights. They may renounce it. It is also possible that in respect of an estate some of the heirs renounce, some others not. The right is a divisible one.

The right of action becomes available only after the death of the propositus. The limitation for claiming reduction is thirty years from that time, the period of thirty years being the normal time limit in French law for all actions.....

25. We have faithfully reproduced very substantially the illuminating article of Justice DAVID ANNOUSSAMY not only out of deference to the erudition and knowledge of the learned Judge but also for the purpose of providing a sort of ready reckoner when need arose or occasion warranted for applying the principles so succinctly and lucidly enunciated.

26. Thus, the father irrespective of the nature of the properties in his possession cannot gratuitously transfer the property in favour of others more than 1/8th of the totality of his estate. However, this 1/8th we have to work out only on his death. Till then it would appear that the forced heir cannot have any right, ....."

18. In the impugned judgment passed by the Court below, the following points were emerged :-

- (i) "The person claiming the right under the Customary Hindu Law should specifically plead and prove that the Customary Hindu Law governs his ancestors.
- (ii) Right of 'Legitim' shall be specifically pleaded and proved.
- (iii) Excessive liberalities shall have to be



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- specifically worked out and proved.
- (iv) There is no distinction between self acquired property and ancestral properties and father possesses the properties as absolute properties;
  - (v) Forced heirs alone can plead and question the excessive liberality of the father.
  - (vi) Such claim can be made only after the death of the father
  - (vii) Sons alone are the forced heirs
  - (viii) Daughters can be forced heirs in the absence of sons in the direct line
  - (ix) Such claim has to be made within the period of limitation.

19. Admittedly, in the case on hand, there was no plea of principles of legitimacy under the Customary Hindu Law. Further the plaintiff is the daughter and the suit properties admittedly belonged to her father. The parties are covered by the Customary Hindu Law prevailing in the Union Territory of Pondicherry. Since, the plaintiff is the daughter and she cannot questioning the validity of the Will executed by her father as an excessive liberality, since sons are available as forced heirs.

20. That apart, the first defendant already filed suit for partition in O.S.No.29 of 1992 as against the plaintiff and the defendants 2 & 3, in which the second defendant filed his written statement along with Ex.B.19, the Will executed by their father dated 21.03.1988. Therefore, the plaintiff had knowledge about the Ex.B.19 even in the year 1992. In fact Ex.B.19 was executed by her father in favour of all the parties in the present suit. If at all the plaintiff and the defendants 1 to 3 intended to challenge Ex.B.19, they have to exercise such right within the period of limitation.

21. In this regard, the learned Senior Counsel appearing for the respondents 4 to 6 relied upon the judgment reported in (2013) 10 SCC 472 in the case of Gothamchand Jain Vs. Arumugam alias Tamilarasan, as follows :-

"7. We may notice that de jure merger of the erstwhile French Territory of Pondicherry took place on 16.8.1962 following the Treaty of Cession concluded between France and India on 28.5.1956 establishing the cession of the French Establishments by France to India in full sovereignty. The Parliament enacted the Pondicherry (Administration) Act, 1962 (Act 49 of 1962) to provide for the administration of Pondicherry and for matters connected therewith. The said Act came into force on



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15.12.1962.....

.....

9. The Government of Union Territories Act, 1963 (Act 20 of 1963) was enacted to provide for Legislative Assemblies and Ministries for the Union Territories. It received the assent of the President on 10.5.1963. The Limitation Act, 1963 was passed by the Parliament on 5.10.1963. By that time, the Union Territory of Pondicherry had become part of India. Clause 2 of Section 1 of the Limitation Act, 1963 says that it extends to the whole of India except the State of Jammu and Kashmir. Since the Union Territory of Pondicherry having become part of India, the Limitation Act automatically extended to the then Pondicherry. The Limitation Act, 1963, consequently, came into force in the Union Territory of Pondicherry on 1.1.1964.

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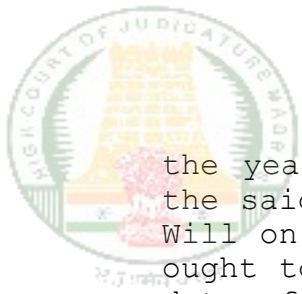
13. Pondicherry (Extension of Laws) Act, 1968, as amended, has adopted several such legislations in the State of Pondicherry, but the Act which governs limitation is the general law of the land that is the Indian Limitation Act. Consequently, it is not Article 2262 of the French Code Civil that applies to the suit in question, but Section 54 of the Indian Limitation Act, 1963.....

Accordingly, Article 59 of the Limitation Act, 1963 applies and it read as follows:-

|    |                                                                                     |             |                                                                                                                                                     |
|----|-------------------------------------------------------------------------------------|-------------|-----------------------------------------------------------------------------------------------------------------------------------------------------|
| 59 | To cancel or set aside an instruments or decree or for the rescission of a contract | Three years | When the facts entitling the plaintiff to have the instrument or decree cancelled or set aside or the contract rescinded first become known to him. |
|----|-------------------------------------------------------------------------------------|-------------|-----------------------------------------------------------------------------------------------------------------------------------------------------|

Accordingly, the limitation for challenging the Ex.B.19 by forced heirs viz., defendants 1 & 3 is only three years from the date of their knowledge.

22. As stated supra, the defendants 1 & 3 and the plaintiff had knowledge about the Will even in the year 1992. Their father died in the year 1988 and they had knowledge about the Will in



the year 1992 itself. In fact, they are all beneficiaries under the said Will. Even then, if they intended to challenge the said Will on the ground of disposal quota or some other grounds, they ought to have filed suit within a period of three years from the date of their knowledge about the Will. Therefore, they ought to have filed suit on or before the year 1995. As such, they had lost their right and cause of action for challenging the Ex.B.19 and it has become finality and binding all the parties to the suit. In fact, the plaintiff did not file any appeal suit and the third defendant alone preferred this Appeal Suit.

23. The learned counsel appearing for the appellant submitted that the Hindu Succession Act, 1956 has been extended to Union Territory of Pondicherry with effect from 01.10.1963. Section 4 thereof suggests that the provisions of Hindu Succession Act, 1956 would prevail over any other law or custom which are found to be inconsistent with the provisions of Hindu Succession Act, 1956. The Hindu Succession Act, 1956 has been amended in the year 2005 with regard to the coparcenries right for the daughter in the estate of father by amending Section 6 thereof, with effect from 09.09.2005.

24. In this regard he relied upon the judgment reported in 2020 (5) CTC 302 in the case of Vineeta Sharma Vs. Rakesh Sharma, in which the Hon'ble Supreme Court of India upheld the claim of daughters as coparceners that whether they born prior to 09.09.2005 or subsequent and that the survival of father as on 09.09.2005, is no longer warranted to defeat the claim of daughters. Further submitted that Ex.B.1, which was executed by their mother dated 07.06.1991, bears thumb impression of the testatrix, though she is a signatory. Admittedly, the plaintiff or the defendants did not challenge the Ex.B.1 or Ex.B.19. In fact, they had knowledge about the Ex.B.1 and Ex.B.19, while filing the earlier suit for partition in O.S.No.29 of 1992. As stated supra, they are barred by limitation to challenge the Ex.B.1 as well as Ex.B.19 on any ground. Therefore, the judgments cited by the learned counsel appearing for the appellant are not helpful to the case on hand.

25. The learned counsel appearing for the first defendant contended that the second defendant has not pleaded specifically which personal law is applicable to the parties but the reading of his written statement revealed that he claimed the suit properties through the alleged Will executed by their father as if Hindu Succession Act is applicable to the parties. In this regard, he relied upon the judgment of the Hon'ble Division Bench of this Court reported in 2018 (1) LW 209 in the case of Muthaiyan Vs. Poongothai, which held as follows :-

21. We have given our anxious consideration to the rival submissions made. In



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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.

.....

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 and 39, 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 renouncants 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



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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



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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 French Nationals, who are renoscants, the Hindu Succession Act will not apply. So far as all others are concerned, only Hindu Succession Act will apply. In the instant case, the plaintiff neither got any accrued right under the Customary Law before 01.10.1963 nor claimed any right as renoscant 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.

The Hon'ble Division Bench of this Court held that Hindu inhabitants of Pondicherry, who are not renouncants, are governed by the Hindu Succession Act from 01.10.1963. There is no plea by any of the parties in the present case that they are renouncants. In order to claim the status of renouncants, it has to be pleaded and proved that parties expressly renounced their personal law and opted to adopt French Code. But none of the parties pleaded that they are renouncants. Accordingly, the father of the parties died intestate and the Will Ex.B.19 projected by the second defendant not proved. Therefore, as per the Hindu Succession Act, his estate devolved on all of his class one heirs viz., wife, three sons and a daughter. His wife bequeathed her 1/5<sup>th</sup> share to the first defendant by the Will dated 07.06.1991, which was marked as Ex.B.1 and the same was proved by evidence of D.W.2.

26. As stated supra, the parties are governed by Customary Hindu Law prevailing in Union Territory of Pondicherry. Accordingly, the first suit schedule property was owned by their father and he executed the Will dated 21.03.1988 in favour of all the parties to the present suit. Therefore all of them are beneficiaries. If at all, the defendants 1 & 3 intended to



challenge the said Will, they ought to have challenged the same in time. Therefore, the contention raised by the learned counsel appearing for the first defendant cannot be considered and the judgments relied upon by him are not helpful to the case on hand.

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27. The learned Senior Counsel appearing for the second defendant submitted that Ex.B.19 the registered Will is valid and as such exercise would only be futile. Therefore, the Court below ought not to have observed that the Ex.B.19 cannot be declared as valid. It is directly contrary to the principles of law.

28. Admittedly, the plaintiff and the defendants 1 & 3 did not challenge the Ex.B.19 and the plaintiff also never challenged the Ex.B.1, the Will executed by their mother. In fact, the present Appeal Suit has been preferred by the third defendant. That apart, the Court below held that the defendants have worked out as to what extent their father encroached into their right of legitim in executing Ex.P.19 and to what extent such alleged excessive liberality of their father shall have to be reduced. While being so, mere averment that Ex.B.19 is invalid to the extent of 7/8<sup>th</sup> is not sufficient to substantiate such claim. Further concluded that defendants 1 and 3 have not also made any counter claim or filed separate suit to challenge the validity of Ex.B.19 as a concocted or fabricated Will and as such it is not valid and binding them. The second defendant has not made any specific declaration based on Ex.B.19 to defeat the claim of the plaintiff in asking partition of the properties stated in Ex.B.19. The defendants have not clearly established the custom pleaded by them and prayed for specific declaration as to the two Wills in Ex.B.1 and Ex.B.19 produced by them claiming exclusive right to the exclusion of other legal heirs cannot be allowed based on the mere production of the said Wills. If they indented to prove the Will and get them declared to be valid, when the other legal heirs question them and doubt their genuineness. Hence the Wills in Ex.B.1 and Ex.B.19 cannot be declared to be valid. The parties are at liberty to get them declared to be valid and genuine accordingly.

29. Admittedly, the plaintiff or the defendants never challenge the Wills Ex.B.1 and Ex.B.19. The first defendant claimed first schedule property through Ex.B.1 and the second defendant claimed second schedule property through Ex.B.19. In fact Ex.B.19 is for all the parties to the suit. As stated supra, the parties who have chosen to challenge the Wills Ex.B.1 and Ex.B.19 are lost their right and barred by limitation, since they had knowledge about the Wills in Ex.B.1 and Ex.B.19 even in the year 1992, i.e., in the earlier suit filed by the second defendant in O.S.No.29 of 1992 for partition. Therefore, the



above observations are not necessary and unwarranted in the present suit. Hence, the observations made in the paragraph No.59 of the judgment passed by the Court below is liable to be expunged. Accordingly, the observations made in the paragraph No.59 of the Judgment dated 19.01.2006 in O.S.No.71 of 1998 by the learned Additional District Judge, Pondicherry, Karaikal, is hereby expunged.

30. In the result, the Appeal Suit stands dismissed. Consequently, connected miscellaneous petition is closed. There shall be no order as to costs.

Sd/-  
Assistant Registrar(CS I)

//True Copy//

Sub Assistant Registrar

rts

To

1.The Additional District Judge,  
Pondicherry  
at Karaikal.

+2ccs to Mr.R.Natarajan, Advocate Sr No.41967  
+1cc to Mr.Sai Sathya Jith, Advocate Sr No.41379  
+1cc to Mr.S.Sounthar, Advocate Sr No.41851

A.S.No.543 of 2006

RR (CO)  
PR (30/09/2021)