



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 23.03.2021

PRONOUNCED ON : 31.03.2021

CORAM

THE HONOURABLE MR.JUSTICE T.RAVINDRAN

S.A.NO.377 OF 2009

1. Thiruvengadam @ Angappan (deceased)
S/o.Sundaram
 2. T.Radha
W/o.Thiruvengadam @ Angappan
 3. Vijayalakshmt @ Viramalle
D/o.Thiruvengadam @ Angappan
 4. Vijayausvary @ Amurthavalliammalle
D/o.Thiruvengadam @ Angappan
 5. Vidjayaisevarane
S/o.Thiruvengadam @ Angappan
Appellants 2 to 5 brought on record
as LRs of the deceased 1st appellant
vide order of court dated 08.12.2015
made in M.P.No.1/2015 in S.A.No.377/2009.
- ... Appellants

.Vs.

- Selvanathan (died), S/o.Sundaram
Rep. by his LRs respondents 5 to 11
1. Somu (deceased)
S/o.Sundaram and Amirthavally @ Veerammal
 2. Rajeswari @ Angammal
D/o.Sundaram and Amirthavally @ Veerammal
 3. Rukkumani
W/o.Late Kothandapani
 4. Yogagnany(died)
S/o.Late Kothandapani
R3 recorded as LR of the deceased R4
vide order of court dated 12.10.2012
made in M.P.Nos.3,4 and 6/12 in
S.A.No.377/2009.



WEB COPY

5. Meenatchy
W/o.Late Selvanathan
6. Narayanasamy
S/o.Late Selvanathan
7. Devi @ Chitra
W/o.Late Baskaran (the predeceased son of Late Selvanathan)
8. Minor Mohanraj
9. Minor Aparna
Minor respondents 8 & 9 are represented by their mother and next friend Devi @ Chitra the 7th respondent.
10. Murthy
S/o.Late Selvanathan
11. Valarmathy
D/o.Late Selvanathan
12. Jayakody
W/o.Krishnan

R12 is not a necessary party,
hence given up.
13. Gunasundari
W/o.Yogagnany
14. Senthilkumar
S/o.Yogagnay
15. Malarvizhi
D/o.Yogagnay
16. Padmavathi
D/o.Yogagnay
RR13 to 16 brought on record as
LRs of the deceased R4 vide order
of court dated 17.06.2014 made in
M.P.No.5/12 in S.A.No.377/2009
17. Ramu
S/o.Not known to the petitioner
R17 brought on record as LR of the
deceased R1 vide order of court
dated 08.12.2015.

... Respondents



PRAYER:-

Second Appeal is filed under Section 100 of CPC, against the judgment and decree dated 19.12.2008 made in A.S.No.176/2006 on the file of the III Additional District Judge, Pondicherry, reversing the judgment and decree dated 18.09.1998 made in O.S.No.610/1996 on the file of the Principal Sub Judge, Pondicherry insofar as decreeing for partition and allotment of 4/5th share out of 7/8th share in Suit "A" schedule property in favour of the respondents 1 to 12/plaintiffs and against the appellant/1st defendant.

For Appellants : Mr.G.Masilamani,
Senior Counsel
For M/s.T.Sathyamoorthy

For Respondents : Mr.Bharatha Chakravarthy
R3, R5 to R11, For M/s.Sai & Bharath
R13 to R17

R1, R2 and R4 died (steps taken)

R12 : Given up.

JUDGMENT

Challenge in this second appeal is made to the judgment and decree 19.12.2008 passed in A.S.No.176/2006 on the file of the III Additional District Court, Pondicherry, reversing the judgment and decree dated 18.09.1998 passed in O.S.No.610/1996 on the file of the Principal Subordinate Court, Pondicherry.

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

3. The first defendant in O.S.No.610/1996 is the appellant in the second appeal.

4. Suit for partition, past and future mesne profits and to set aside the sale deed dated 22.08.1989 executed by the first defendant in favour of the second defendant in respect of 4/5 of 7/8 share of the plaintiffs in the plaint "B" schedule properties as not binding on the plaintiff's.

5. Though the suit has come to be laid by the plaintiffs for both the plaint 'A' schedule and 'B' schedule properties, it is found that based on the materials placed on record, the trial court had dismissed the plaintiffs' suit in entirety. On the appeal preferred by the plaintiffs, the first appellate court,



on an appreciation of the materials placed on record, was pleased to partly allow the appeal preferred by the plaintiffs only in respect of the plaint 'A' schedule property and partly dismissed their appeal qua the plaint 'B' schedule properties and thereby the first appellate court had confirmed the dismissal of the plaintiffs' suit qua the plaint 'B' schedule properties vide its impugned judgment. Challenging the judgment and decree of the first appellate court in allowing the plaintiffs' suit qua the plaint 'A' schedule property as determined by it, the first defendant has preferred the second appeal. As against the dismissal of their suit qua the plaint 'B' schedule properties, the plaintiffs' have not thrown any challenge nor preferred any cross objection in the present second appeal laid by the first defendant. Therefore, it is evident that the dismissal of the plaintiffs' suit qua the plaint 'B' schedule properties has attained the finality. In such view of the matter, we have to focus the case projected by the parties only as regards the plaint 'A' schedule property. Hence, the pleas put forth by the respective parties qua the plaint 'A' schedule property are alone adverted to in this second appeal.

6. The case projected by the plaintiffs qua the plaint 'A' schedule property, in brief, is that the plaint 'A' schedule property belonged to Amirthavally @ Veerammal, who died on 09.10.1984 leaving behind her sons and daughters namely, Selvanathan, Somu (the plaintiffs 1 and 2), Thiruvengadam @ Angappan (the first defendant), the deceased son Kothandapani and her daughter, Rajeswari @ Angammal (the third plaintiff). It is stated that the deceased son Kothandapani died leaving behind his wife Rukkumani (the fourth plaintiff) and his son Yogagnany (the fifth plaintiff). Thus according to the plaintiffs, the plaintiffs 1 to 3 and the first defendant are each entitled to 1/5 share and the plaintiffs 4 and 5, as the legal heirs of the deceased Kothandapani, are together entitled to 1/5 share in the plaint 'A' schedule property and it is stated that Amirthavally @ Veerammal had sold her other properties and utilised the proceeds for converting the 'A' schedule property into a kalyana Mandapam. It is also the case of the plaintiffs that the first defendant, who is enjoying the plaint 'A' schedule property, is refusing to give their lawful share in the same as well as their lawful share in the income derived from the plaint 'A' schedule property from the date of the death of Amirthavally @ Veerammal. Thus according to the plaintiffs, they are entitled to 4/5 share in the plaint 'A' schedule property as well as 4/5 share in the income derived from the plaint 'A' schedule property from the date of the death of Amirthavally @ Veerammal. It is further stated that some portions of the kalyana mandapam are let out as three shops and the first defendant is getting an overall income of Rs.15,000/-



per month and also put forth the case that though the plaintiff had made several demands for amicable partition, as the first defendant had not agreed to the same, they have been necessitated to lay the suit against the defendants for partition, past and future mesne profits and for other reliefs. As regards the other pleas made by the plaintiffs in the plaint, as they pertain to the plaint 'B' schedule properties, they are not adverted to in the present second appeal as such. However, the point to be noted is that qua the plaint 'B' schedule properties, though the plaintiffs would claim partition in the same also and according to them as the donation made by their grand mother Arunthavathammal qua the plaint 'B' schedule properties is valid as regards 1/8 share as per the customary law practised in Pondicherry, accordingly, they have claimed only partition of 4/5 share out of 7/8 share in the plaint 'B' schedule properties by metes and bounds as well as the mesne profits with reference to the same from the date of the suit till the delivery of possession and put forth the case that inasmuch as the first defendant had unlawfully alienated the 'B' schedule properties in favour of the second defendant vide the sale deed dated 28.08.1989 seeking to set aside the sale deed, appropriate reliefs have also been claimed by the plaintiffs with reference to the same in the plaint.

7. The defendants resisted the plaintiffs' suit contending that the plaint 'A' schedule property has been admittedly donated by Amirthavally @ Veerammal in favour of the first defendant vide a registered donation deed dated 23.03.1974 with a rectification deed dated 07.05.1983 and the plaintiffs have also filed those documents along with the plaint and the abovesaid donation deed has come into existence after the Hindu Succession Act came into force to Pondicherry. The question of "Quitite disponible" in French Law is not applicable to the case of donations by females and also the plaint 'A' schedule property is the self acquired property of Amirthavally @ Veerammal and therefore, the plaintiffs cannot lay any claim over the plaint 'A' schedule property as if Amirthavally @ Veerammal had died intestate as put forth in the plaint. Furthermore, as per the right to women's property Act, Amirthavally @ Veerammal had absolute right over the plaint 'A' schedule property and to dispose of the same on her own will and accordingly considering the plight of the first defendant, he being the handicapped person and had also helped and supported his mother, accordingly, put forth the case that Amirthavally @ Veerammal had donated the plaint 'A' schedule property in favour of the first defendant on account of the love and affection towards the first defendant. Therefore, according to the defendants, there is no cause of action for the suit and the suit laid by the plaintiffs is also barred by limitation under the French and Indian Laws and also contended that the



plaintiffs are not entitled to claim the relief in the light of Article 2265 of French Code Civil and hence the plaintiffs' suit is clearly barred by limitation and not entitled to claim the partition and mesne profits qua the plaint 'A' schedule property as put forth in the plaint and further put forth that at the time of donation, the plaint 'A' schedule property was only a dilapidated house and it is only the first defendant who had, on his own efforts, raised funds and constructed a marriage hall and therefore, the allegation that the marriage hall was constructed by Amirthavally @ Veerammal out of the sale proceeds of her other properties is false and accordingly prayed to dismiss the plaintiffs' suit.

8. The pleas of the second defendant in the written statement filed by him are not adverted to as the second defendant is concerned only with the plaint 'B' schedule properties and not with the plaint 'A' schedule property.

9. The reply statement has been filed by the plaintiffs contending that they do not know anything about the alleged donation deed and the rectification deed pertaining to the plaint 'A' schedule property and contended that the question of "Quitite disponible" in French Law is not applicable to the case of donation by females is incorrect and further put forth the case that the "right to women's property Act" has not been extended to Pondicherry and has no relevance to the case at hand and also contended that the allegation that the plaintiffs' suit is barred by limitation is also false and denied the other allegations put forth in the written statement and accordingly prayed for the disposal of the plaintiffs' suit as prayed for.

10. In support of the plaintiffs' case P.W.1 was examined and Exs. A1 to A9 were marked. On the side of the defendants D.Ws.1 and 2 were examined and Exs.B1 to B13 were marked.

11. On a consideration of the oral and documentary evidence adduced by the respective parties and the submissions put forth in the matter, the trial court was pleased to dismiss the plaintiffs' suit in entirety, both in respect of the plaint 'A' and 'B' schedule properties. Impugning the same, the first appeal has been preferred by the plaintiffs. In the first appellate court, Exs.B14 to B16 were marked as additional documents on the side of the defendants. The first appellate court, on an appreciation of the materials available on record, both oral and documentary, and the submissions put forth by the respective parties, was pleased to confirm the judgement and decree of the trial court qua the dismissal of the plaint 'B' schedule properties, however, set aside the judgment and decree of the trial court qua the plaint 'A' schedule property and applying the customary law applicable to Pondicherry, directed



the partition of the plaint 'A' schedule property by metes and bounds and the allotment of 4/5 share out of 7/8 share in the plaint 'A' schedule property in favour of the plaintiffs and the allotment of remaining 1/8 share together with the 1/5 share out of 7/8 share to the first defendant and accordingly disposed of the appeal preferred by the plaintiffs. Challenging the same, the second appeal has been laid by the first defendant.

12. At the time of admission of the second appeal, the following substantial questions of law were formulated for consideration.

- 1) Whether the Appellate Court is right in suo moto granting a decree for partition in respect of 'A' schedule property which was donated under Ex.B1 Donation Deed by the mother to the appellant/1st defendant in the absence of any pleading to set aside the said donation deed much less invoking the principles of "disposable quota" under article 913 of the French Code Civil?
- 2) Whether the appellate court is right in holding that the suit is not barred by limitation by applying 30 years limitation as per French Code Civil when the donation deed Ex.B1 dated 23.03.1974 in question is governed by Transfer of Property Act 1882 (which was extended to U.T. of Pondicherry with effect from 01.10.1963) and hence governed by Indian Limitation Act 1963 as per the ratio decidendi laid down in the case of Syndicate Bank vs. Praha D. Naik reported in (2001) 4 SCC 713 and hence the suit is liable to be dismissed by the appellate court as per S.3 of the Indian Limitation Act 1963?
- 3) Whether the appellate court is right in granting legitim to the male heirs in the property of the mother in the presence of a daughter?
- 4) Whether the appellate court is right in holding that the doctrine of legitim/disposable quota under Article 913 of French code civil is applicable to the gratuitous donation and bequest of properties by Hindus even after the extension of the Hindu Succession Act, 1956 to Pondicherry on 01.10.1963?

13. It is not in dispute that the territories of Puducherry, Karaikal, Mahe and Yanam came to be occupied by the



French during 1720-1761 AD. By an Arrete dated 06.04.1819 the Governor of Pondicherry made it mandatory for the courts to recognize the local customs and practices for deciding the litigations between the people and accordingly, it is found that when the French Civil Code was implemented in the abovesaid territories, exception was made for native Hindus, Muslims and Christians and for them, their customary laws were applied by Arrete dated 06.04.1819. The French Government is found to have given an option to the native population to renounce their personal laws and adopt French Law, including the personal law pertaining to the matter of marriage, divorce, succession, etc. The persons who had renounced their personal laws were required to submit a form of application and the names of such of those persons and their family members are entered into the register maintained with the various Municipalities and Commune panchayats across the union territory of Pondicherry and such persons are called "Renocants". The Constitution of India came into force on 26.01.1950 and by virtue of the Article 239, the same empowered the President of India to administer the states mentioned in Part-C of the first schedule by appointing an administrator. By virtue of the De-facto agreement dated 21.10.1954 entered into between the Government of India and the Government of France, the de-facto control of the Union Territory of Pondicherry was taken by the Government of India with effect from 01.11.1954. By way of the bilateral agreement dated 08.05.1956 entered into between India and France qua the Treaty of Cession, the France ceded the sovereignty of the Union Territory of India with all the benefits of the Special Administration, Status, etc and subject to the other provisions in the Treaty and as per the same, the inhabitants were given the option to be either Indian or French citizens and it was also agreed that even if a person opt for French citizenship, he can own property and continue his avocation in Puducherry. The French citizens are known as "Opthans". On 16.08.1962 De Jure transfer of the Union Territory of Pondicherry took place and came to be vested with the Union of India and by the Fourteenth Amendment of the Constitution, Article 239-A was inserted, which enabled the Parliament to create the Legislature by law for the Union Territory of Pondicherry and the Union Territory of Pondicherry was added to the list of Union Territories in the first schedule of the Constitution.

14. Admittedly, the parties involved in the present lis are neither "Renocants" nor "Opthans" and they are the native Hindus of the Union Territory of Puducherry.

15. The main question that requires to be determined in this case is whether the legitim right/disposable quota applicable to the property of a person belonging to the native Hindu of Puducherry, also covers the donation gift involved in



WEB COPY

this matter. Before going into the facts of the case as such, we have to briefly understand as to what is the meaning of legitim. The same came to be considered in detail by the Division Bench of this Court in the decision reported in 2002-3-L.W.669 (Krishnamoorthy Gounder vs. Sitarama Gounders and others) and for understanding the same, the Division Bench relied upon the 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 and also the opinion of Sanner in his *Droit Civil applicable aux Hindous* 1916 and quoted the Article of Justice David Annoussamy to understand the subject of legitim and the same is reproduced as follows:

"French jurists however have found that the father could give away only a portion of his properties called his disposable 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 Hindous*, 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 in applying integrally the provisions of Code Civil in the matter of legitim to Hindus."



Accordingly the Division Bench had also held that 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 and it is also seen that the abovesaid right of legitim was followed both in respect of the ancestral and self acquired properties of the title holder and thus it is found that the right of legitim is allowed on the totality of the estate. The right of legitim is governed under Article 913 French Code Civil, which is otherwise known as "disposable quota".

16. It is not in dispute that the plaint A schedule property belonged to Amirthavally @ Veerammal by way of the purchase of the same under the notarial sale deed dated 14.08.1944. The above said fact is not in dispute. It is thus found that the plaint 'A' schedule property is the absolute property of Amirthavally @ Veerammal. Now according to the first defendant Amirthavally @ Veerammal had donated the plaint 'A' schedule property in his favour by way of the donation deed dated 23.03.1974 coupled with a rectification deed dated 07.05.1983 out of love and affection. The copy of the abovesaid donation deed dated 23.03.1974 has been marked as Ex.B1. In fact, the plaintiffs have enclosed the copies of the abovesaid donation deed and the rectification deed as the plaint documents in serial Nos. 10 and 11. According to the plaintiffs, as put forth in the plaint, following the donation deed marked as Ex.B1, it is only the first defendant who is enjoying the plaint 'A' schedule property and refusing to give any share in the abovesaid property as well as in the income derived from the abovesaid property from the date of the death of Amirthavally @ Veerammal. It is not in dispute that Amirthavally @ Veerammal died on 09.10.1984. In fact it is seen that the plaintiffs are found to have made a claim for the past and future mesne profits i.e. for the past 3 years prior to the institution of the suit and future mesne profits from the date of the suit till the partition is effected and the delivery is handed over to the plaintiffs. Considering the abovesaid factors in toto, it is evident that the plaintiffs are fully aware of the donation deed executed by Amirthavally @ Veerammal Ex.B1 in favour of the first defendant. The plaintiffs, in particular, have not pleaded that Amirthavally @ Veerammal is not entitled to donate the plaint A schedule property in entirety to the first defendant ignoring their right of legitim over the same and on the other hand, while dealing with the plaint B schedule properties, which had come to be settled in favour of the first defendant by the grand mother Arunthavathammal, very consciously, they have specifically taken the plea that Arunthavathammal could dispose of only 1/8 of her share of properties by way of the donation as per the principle of "Quittite disponible" and accordingly contended that the donation deed dated 01.10.1956 qua the plaint 'B' schedule properties is



valid only with regard the 1/8 share and as regards the balance 7/8 share, the same is liable to be partitioned amongst the legal heirs of Arunthavathammal and accordingly claimed partition of 4/5 share out of 7/8 share of the plaint B schedule properties by metes and bounds. Whereas, as regards the plaint 'A' schedule property, they had only claimed partition of 4/5 share in its entirety.

17. However, in the written statement, the defendants have taken the plea that as the donation deed Ex.B1 had been effected after coming into force the Hindu Succession Act and made applicable to Pondicherry, it is the case of the first defendant that the principle of "Quittite disponible" is not applicable to the disposal of the property by a female and according to him, as the plaint 'A' schedule property is the self acquired property of Amirthavally @ Veerammal and as she had not died intestate as put forth by the plaintiffs and as per the law applicable to Pondicherry, Amirthavally @ Veerammal is entitled to dispose of her property as per her own will and accordingly contended that the donation deed executed by her marked as Ex.B1 in favour of the first defendant is valid and the plaintiffs are not entitled to ignore the same and claim partition in the said property.

18. In the reply statement, the plaintiffs would only state that they do not know about the donation deed and rectification deed qua the plaint A schedule property and disputed the position that the principle of "Quittite disponible" is not applicable to the donation made by the female.

19. Therefore, as above pointed out, though no specific plea of disposable quota qua the plaint A schedule property had been taken by the plaintiffs in the plaint, however, the defendants having taken the same in the written statement and the plaintiffs having disputed the same in the reply statement, all put together, it is found that the issue has also been framed by the trial court in issue No.3 as to whether the doctrine of "Quittite disponible" is not applicable to the case of the plaintiffs as contended by the defendants.

20. When as per Order VI Rule 1 of the CPC "pleading" shall mean plaint or written statement and accordingly, it has to be held that the pleas had been taken vis-a-vis the applicability of the principle of "Quittite dispobanable" to the plaint A schedule property also and accordingly the issue had also been framed by the trial court. Hence, we have to consider whether the plaintiffs are entitled to invoke the abovesaid principle to the plaint A schedule property for claiming the partition in the same as prayed for by them. It is not in dispute that Hindu Succession Act 1956 was extended to Pondicherry with effect from



01.10.1963. It is found that by virtue of the Puducherry (Laws) Regulation 1963, the Hindu Succession Act 1956 was extended to the Union Territory of Pondicherry and the relevant Sections 3 and 4 of the abovesaid Regulation are extracted below.

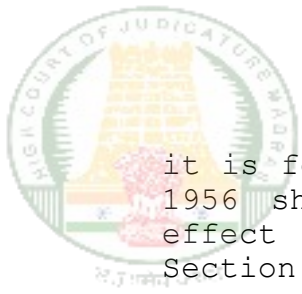
WEB COPY

"3. Extension with amendments of certain laws to Pondicherry and their commencement therein - The Acts as they are generally in force in the territories to which they extend, shall extend to, and come into force in, Pondicherry on the 1st day of October, 1963, subject to the modifications, if any specified in the First Schedule.

4. Repeal and saving - (1) Any law in force in Pondicherry or any area thereof corresponding to any Act referred to in Section 3 shall stand repealed as from the coming into force of such Act in Pondicherry; and all the laws specified in the Second Schedule are hereby repealed.
...."

By virtue of the abovesaid provisions, it is found that, as rightly contended by the first defendant's counsel, the Hindu Succession Act 1956 having been made applicable to Pondicherry with effect from 01.10.1963 and as per the repeal and saving clause of the abovesaid Regulation, any law in force in Pondicherry or any area thereof corresponding to any Act referred to in Section 3 shall stand repealed as from the coming into force of such Act in Pondicherry and all the laws specified in the Second Schedule are hereby repealed, therefore, it is evident that following the introduction of the Hindu Succession Act 1956 to Pondicherry with effect from 01.10.1963, all the customary laws of Pondicherry shall stand repealed when provisions thereof are incorporated in the Hindu Succession Act 1956. Thus it is found that the Hindu Succession Act 1956 shall apply to all the native Hindus in the Union Territory of Pondicherry. As per Section 2A of the Hindu Succession Act 1956, it has been made clear that notwithstanding anything contained in Sub Section 1 of Section 2, nothing contained in the Act shall apply to the Renocants of the Union Territory of Pondicherry with effect from 01.10.1963. Therefore, it is made clear that the Renocants are not covered under the Hindu Succession Act 1956. Similarly Opthans, who had chosen to adopt the French laws are also not falling within the purview of the Hindu Succession Act 1956. As above pointed out, the parties involved in the present lis are neither Renocants nor Opthans and they are only native Hindus.

21. When the plaint A schedule property is admittedly the self acquired property of Amirthavally @ Veerammal, accordingly,



it is found that only the provisions of the Hindu Succession Act 1956 shall apply to the Union Territory of Pondicherry with effect from 01.10.1963, as above pointed out. By virtue of Section 14 of the Hindu Succession Act, 1956, it is found that any property possessed by a female Hindu whether acquired before or after the commencement of the Act shall be held by her as the full owner thereof and not as a limited owner. For a better understanding of Section 14 of the Hindu Succession Act, the same is extracted below.

Section 14 : The Hindu Succession Act, 1956:

Property of a female Hindu to be her absolute property:-

(1) Any property possessed by a female Hindu, whether acquired before or after the commencement of this Act, shall be held by her as full owner thereof and not as a limited owner.

Explanation : In this sub section, "property" includes both movable and immovable property acquired by a female Hindu by inheritance or devise, or at a partition, or in lieu of maintenance of arrears of maintenance, or by gift from any person, whether a relative or not, before, at or after her marriage, or by her own skill or exertion, or by purchase or by prescription, or in any other manner whatsoever and also any such property held by her as stridhana immediately before the commencement of this Act.

(2) Nothing contained in sub-section(1) shall apply to any property acquired by way of gift or under a will or any other instrument or under a decree of order of a civil court or under an award where the terms of the gift, Will or other instrument or the decree, order or award prescribe a restricted estate in such property.

Considering the decision of the Apex Court reported in (1996) 2 SCR 626 (Eramma vs. Veerupana and others), it is noted that the object of the Section 14 is to extinguish the estate called 'limited estate' or 'widow's estate' in Hindu law and to make a Hindu Woman, who under the old law would have been only a limited owner, a full owner of the property with all powers of disposition and to make her estate heritable by her own heirs and not revertible to the heirs of the last male holder. It is thus noted that the object of the abovesaid provision is to make a Hindu female, a full owner of the property, which she had



already acquired or which she acquires after the commencement of the Act. The above being the object of Section 14 of the Hindu Succession Act 1956, it is seen that by virtue of Section 14, the absolute title has been conferred on the female Hindu over the property belonging to her and therefore, as rightly contended by the first defendant's counsel Section 14 seeks to achieve empowerment of economic and social status in respect of the Hindu female who from time immemorial were treated as chattel or a second class human being. Section 4 of the Hindu Succession Act, 1956 reads as follows:

"4. Overriding effect of Act (1) save as otherwise expressly provided in this Act,- (a) any text, rule or interpretation of Hindu law or any custom or usage as part of that law in force immediately before the commencement of this Act shall cease to have effect with respect to any matter for which provision is made in this Act; (b) any other law in force immediately before the commencement of this Act shall cease to apply to Hindus insofar as it is inconsistent with any of the provisions contained in this Act. (2) For the removal of doubt it is hereby declared that nothing contained in this Act shall be deemed to affect the provisions of any law for the time being in force providing for the prevention of fragmentation of agricultural holdings or for the fixation of ceilings or for the devolution of tenancy rights in respect of such holdings."

Considering the same, it is evident that the customary law that was prevailing in the Union Territory of Pondicherry coupled with restriction if any on the property of the Hindu female as such, following the applicability of the Hindu Succession Act 1956 to the Union Territory of Pondicherry with effect from 01.10.1963, shall cease to have effect with respect to any matter for which the provision is made in the Act. Thus, when by virtue of Section 14 of the Hindu Succession Act, the female is held to be the full owner of the property acquired by her whether before or after the commencement of the Act and she is also declared not to be the limited owner of such property, accordingly, as rightly contended by the first defendant's counsel, in the light of Sections 4 and 14 of the Hindu Succession Act 1956 as well as Section 4 of the Pondicherry (Laws) Regulation 1963 as above noted, it is found that the legitim right or the disposable quota hitherto followed as a custom in the Union Territory of Pondicherry i.e prior to 01.10.1963 ceases to have any effect on the property belonging to the female, in particular, when the property possessed by a female Hindu had been declared to be her absolute property under Section 14 of the Hindu Succession Act 1956 and in such view of



the matter, the argument put forth by the plaintiffs' counsel that Amirthavally @ Veerammal would not be entitled to donate the entire A schedule property in favour of the first defendant under Ex.B1, as such, cannot be countenanced in any manner.

WEB COPY

22. The first defendant's counsel is not questioning the customary law that was prevailing in the Union Territory of Pondicherry prior to 01.10.1963, particularly, the legitim right that was followed as a custom by the native Hindus qua the father's property or the mother's property. However, the point is whether the said custom would still remain in force after the advent of the Hindu Succession Act, particularly, after the same had been made applicable to the Union Territory of Pondicherry with effect from 01.10.1963. When considering the provisions of law contained in Sections 4 and 14 of the Hindu Succession Act 1956, as above pointed out, as rightly contended by the first defendant's counsel, there is no question of legitim right/disposable quota being made applicable to the female's property and accordingly it is found that the legitim right/disposable quota in respect of the female's property shall not be allowed to be continued qua the female's property and if viewed otherwise, the same would amount to putting the clock back and thereby the same would also render Section 14 of the Hindu Succession Act conferring the absolute right on the female over the property held by her enacted by the parliament crushed and defeated. Therefore, it is found and held that the donation deed Ex.B1 cannot be questioned by the plaintiffs on the footing that the same is subject to the right of legitim/disposable quota available to them under the customary law followed in Puducherry prior to 01.10.1963.

23. Various decisions have been cited by the plaintiffs' counsel for the proposition that the customary law had been in vogue and followed in the Union Territory of Pondicherry and is still being followed therein. In this connection, he would rely upon the decisions reported in

- 1) 1979 SCC Online Mad 54 (Ramalingam Vs. ManickaGounder & Ors)
- 2) 1981 SCC Online Mad 160 (Pandurangan vs. Sarangapani & Another)
- 3) 1986(1) MLJ 160 (Maniamai Alias Rajambal vs. Mangalakshmy & Ors)
- 4) 1993 (2) LW 387 (T.L. Sadagopan & Others vs. T.N.K. Ramanujam & Ors)
- 5) 2000 11 CTC 334 (Chitra Devi Vs. Chembagavalli)



WEB COPY

- 6) 2002 (3) LW 669 (Krishnamoorthy Gounder Vs. Sitarama Gounder & Ors)
- 7) 2004 (3) CTC 81 (Viswanathan & Anr vs. Savarimouthurayan & Ors)
- 8) Judgment dated 18.01.1996 passed in O.S. No.51 of 1991 on the file of the I Addtional Subordinate Court, Pondicherry (Thayanayagi Vs. Vaithianathan & Ors)

However, as rightly contended by the first defendant's counsel, in all the abovesaid decisions, if we consider or analyse whether the issue has been dealt with as to whether the legitim right or disposable quota followed in the Union Territory of Pondicherry could be made applicable even after the commencement of the Hindu Succession Act in the Union Territory with effect from 01.10.1963, the answer would be no.

24. On the other hand, in the decision rendered by this Court in A.S.No.270 of 2008 dated 21.04.2017 (Gowri vs. Subbu Mudaliar and others), while dealing with the property belonging to the male, it has been held in the light of the Section 4 of the Hindu Succession Act, the same having overriding effect of all the customs hitherto followed in the Union Territory of Pondicherry, proceeded to determine that with effect from 01.10.1963, only the Hindu Succession Act 1956 alone would apply to the Hindus residing in the Union Territory of Pondicherry except the Renouncants as provided under Section 2-A of the said Act. Similar is the view taken by the Division Bench in the decision reported in 2017 SCC Online Mad 23877 (Muthaiyan vs. Poongothai & others) also dealing with property of the male and it has been held that after 01.10.1963, the customary law followed in Pondicherry cannot be applied as regards the succession to the Hindu properties and the same would be governed only by the provisions of the Hindu Succession Act 1956 and thereby held that the Hindu domicile in Pondicherry are governed by the provisions of the Hindu Succession Act whatever be their personal law before 01.10.1963. In the decision of the Apex Court reported in (2018) 3 Supreme Court Cases 117 (Theiry Santhanamal vs. Viswanathan and others) relied upon by the plaintiffs' counsel, it is found that the parties therein are Christians and it is found that as per the French Civil Code applicable by virtue of Regulation dated 06.01.1817, in terms thereof, the customary Hindu law prevailing in Pondicherry had been made applicable to the Christians also and accordingly, it has been held that the Hindu Succession Act would not be applicable to the Christians in view of Section 2(1)(c) of the Act and in such view of the matter, as rightly contended by the first defendant's counsel, when the parties in the case covered



in the Apex Court decision, abovestated, being Christians and the applicability of the Hindu Succession Act not affecting them in view of Section 2(1)(c) of the Act, accordingly, it is found that the customary Hindu law which was in vogue and applicable to the Christians was followed. Therefore, the abovesaid decision would not, in any manner, be helpful to uphold the contention of the plaintiffs that despite the advent of the Hindu Succession Act 1956 to Puducherry with effect from 01.10.1963, the customary law in vogue in Puducherry prior to 01.10.1963 is still being continued. When such an interpretation cannot be allowed, particularly in the light of the Section 4 of the Hindu Succession Act 1956 and Section 3 of the Pondicherry (Laws) Regulation 1963, in my considered opinion and as rightly contended by the first defendant's counsel, the decision of the Apex Court reported in (2018) 3 Supreme Court Cases 117 is found not to be applicable to the case at hand.

25. In the decision relied upon by the plaintiffs' counsel reported in 1986(1) MLJ 160 (Maniamai Alias Rajambal vs. Mangalakshmy & Ors)160, therein the plaintiff (female) is found to have claimed title to the suit properties through her husband Rangasamy Gounder contending that as per the Hindu law as prevailing in Puducherry, there was no joint family between the father and sons and during the lifetime of the father, the sons do not get any right by birth and Rangasamy Gounder having died on 23.10.1951 leaving the plaintiff and three daughters, it is put forth that the plaintiff inherited the entire properties left by her husband as his sole heir and after the advent of the Hindu Succession Act 1956 to Puducherry on 01.10.1963, the operation of the provisions of the said Act would apply and thereby the plaintiff became the owner of the suit properties and on that basis, the plaintiff has laid the suit for declaration of title to the suit properties, for recovery of possession and for permanent injunction against the defendants.

26. The defendants in that suit had contended that Rangasamy Gounder was not the exclusive owner of the suit properties and that the same belongs to his father and brother, namely, Subbaraya Gounder and Govindasamy, and contended that in view of the existence of the communaute during the period 1941 and 1951, all the acquisitions in the name of Rangasamy would amount to communaute properties and thereby contended that the plaintiff is not entitled to claim absolute title to the suit property and sought for the dismissal of the plaintiff's suit. It is found that the abovesaid suit had been dismissed by the trial court and challenging the same, the plaintiff had preferred the first appeal before the High Court. When the matter was taken up for consideration by the Division Bench, the following points were formulated for determination.



WEB COPY

- 1) Whether the suit properties were acquired during the regime de la co-pro-priete familiale ?
- 2) Whether the suit properties are the self acquisitions of Rangasamy?
- 3) Whether the plaintiff's right, if any, in the suit properties got enlarged by virtue of Section 14 of the Hindu Succession Act?

and after analysing the evidence adduced in the matter, the Division Bench proceeded to hold that the plaintiff's husband Rangasamy Gounder was in the possession till his death of all the suit properties and after his demise, it was only the plaintiff who was in the possession of the same and accordingly further held that the plaintiff's husband Rangasamy Gounder always treated his properties as his own and enjoyed as such to which there was no demur either from Subbaraya or Govindasamy and thereby held that the plaintiff was in the possession of the suit properties and also concluded that the appellant/ plaintiff will take the properties with absolute right by virtue of the Section 14(1) of the Hindu Succession Act. Therefore, even in the abovesaid decision, the Division Bench has invoked Section 14(1) of the Hindu Succession Act and made it applicable to the female Hindu residing at Pondicherry and such being the position when it is found that in the abovesaid decision also, the Division Bench had only invoked the provisions of Hindu Succession Act, qua the property of the female and not applied the customary law in vogue in Pondicherry, accordingly, it is found that after the advent of the Hindu Succession Act 1956, when admittedly the suit property is the self acquired property of Amirthavally @ Veerammal, the same being her absolute property by virtue of Section 14(1) of the Hindu Succession Act 1956, it has to be held that she is entitled to settle the same in entirety to the first defendant under Ex.B1 donation deed and therefore, there is no question of customary Hindu law i.e. legitim/disposable quota being made applicable to such donation deed.

27. In the other decisions relied upon by the plaintiffs' counsel as above pointed, as rightly contended by the first defendant's counsel, there has been no specific determination as to whether the customary Hindu law should be followed even after the applicability of the Hindu Succession Act 1956 to the Union Territory of Pondicherry with effect from 01.10.1963. Therefore, it is found that the abovesaid decisions are not applicable, as such, to the case at hand.

28. In such view of the matter, as rightly contended by the first defendant's counsel, the customary Hindu law which was in



force in the Union Territory of Pondicherry prior to 01.10.1963 cannot be superimposed on Section 14 of Hindu Succession Act 1956 and accordingly, it is found that the first appellate court has totally erred in applying the legitim right / disposable quota to the donation deed Ex.B1 executed by Amirthavally @ Veerammal. The reasonings of the first appellate court that inasmuch as the plaint 'A' schedule property had been acquired by Amirthavally @ Veerammal on 14.08.1944 when the French Legal system was in vogue in Pondicherry, therefore, only the said system should be made applicable to her property cannot at all be countenanced, particularly when the customary Hindu law practiced in Puducherry had ceased to be in force in view of the overriding effect of Hindu Succession Act 1956 over the customary law in vogue in Puducherry as per Section 4 of the Hindu Succession Act, and the same could also be gathered as above noted from Section 4 of the Puducherry (Laws) Regulation 1963.

29. On the point of limitation, according to the first defendant's counsel, the suit is hopelessly barred by limitation. As above discussed, it has been held that the plaintiffs are not entitled to invoke the principle of legitim/disposable quota to the donation deed executed by Amirthavally @ Veerammal after the advent of the Hindu Succession Act 1956 with effect from 01.10.1963. Even assuming for the sake of arguments that the plaintiffs are entitled to apply the principle of legitim/disposable quota to the abovesaid donation deed, as rightly contended by the first defendant's counsel the donation deed deemed valid insofar as the disposable quota is concerned i.e, 1/8 share and the plaintiff would be entitled to seek the relief only with reference to the remaining extent i.e 4/5 share out of 7/8 share in the plaint 'A' schedule property, if at all the plaintiff seek for partition, at the foremost the plaintiffs should have sought for setting aside of the donation deed in the manner known to law. Therefore, it is found that the donation deed being only a voidable document as such and without the prayer by the plaintiffs seeking for setting aside of the voidable document as per law, the plaintiffs are not entitled to seek for partition qua the plaint 'A' schedule property. In such view of the matter, the plaintiffs should have sought for the setting aside of the donation deed within 3 years, when the facts entitling the plaintiffs to have the abovesaid instrument cancelled or set aside as provided under Article 59 of the Limitation Act or when the plaintiffs seek to obtain any other declaration, they should have laid the suit when the right to sue first accrues as provided under Article 58 of the Limitation Act, 1963. On a reading of the plaint, it is found that the plaintiffs are fully aware of the donation deed even on the date of the execution of the same i.e 23.03.1974. Therefore, if three years period is



reckoned from the date of the donation deed, the plaintiffs should have laid the suit for setting aside the same or for any other declaration with reference to the same within 3 years from 23.03.1974 i.e on or before 22.03.1977. Assuming for the sake of arguments that the plaintiffs were not aware of the execution of the donation deed on the date of the deed as such, however, as rightly put forth by the first defendant's counsel, the plaintiffs having come to know of the donation deed on the demise of Amirthavally @ Veerammal on 09.10.1984, particularly when the plaintiffs have clearly averred in the plaint that the first defendant is enjoying the plaint 'A' schedule property and refusing to give any share in the same as well as the income from the same from the date of the death of Amirthavally @ Veerammal, it is evident that the plaintiffs are fully aware of the donation deed executed in favour of the first defendant by Amirthavally @ Veerammal. If three years period is reckoned from the date of death of Amirthavally @ Veerammal, the plaintiffs should have laid the suit, as contended by the first defendant's counsel, on or before 08.10.1987. The abovesaid aspects have been rightly considered by the trial court and held that the suit laid by the plaintiffs is clearly barred by limitation. However, the first appellate court would, on the premise that the plaintiffs are entitled to lay the suit within a period of 30 years as provided in the French Code Civil and accordingly proceeded to hold that the plaintiffs suit is not barred by limitation.

30. However, according to the counsel appearing for the first defendant's counsel, the abovesaid view of the first appellate court is totally erroneous particularly in the light of the decision of the Apex Court reported in 2013 (3) MWN (Civil) 588 (Gowthamchand Jai Vs. Arumugam @ Tamilarasan). The abovesaid decision was rendered with reference to the law of limitation provided under Article 2262 contained in French Code Civil vis-a-vis Pondicherry (Extension of Laws) Act 1968 and it has been held that after the passing of 1968 Act, all the Central laws made applicable to the Union Territory of Pondicherry and thereby outlined that as the Law of Limitation is governed by the Limitation Act 1963 that would be applicable in Puducherry and not French Code Civil and for arriving at the abovesaid determination, the Apex Court has relied upon the decision rendered by the Apex Court earlier reported in 2001 4 SCC 713 (Syndicate Bank v. Prabha D. Naik and another). The principles of law with reference to the same had been outlined by the Apex Court in extenso and the same is extracted below for a better understanding of as to how the Apex Court has determined that it is only the Limitation Act 1963 that would be applicable to Puducherry and not French Code Civil Law as it had been determined that Section 29(2) of the Limitation Act 1963 cannot be made applicable to Article 2262 of the French Code



Civil and thereby outlined the position of law that Pondicherry (Extension of Laws) Act, 1968, as amended, has adopted several such legislations in the State of Pondicherry, hence the Act which governs the limitation is the general law of the land that is the Indian Limitation Act 1963 and thereby consequently held that it is not Article 2262 of the French Code Civil that applied to the suit in question, but Section 54 of the Indian Limitation Act, 1963 on the appreciation of the facts and circumstance of the case involved in the said decision.

8. 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 15.12.1962. Section 4 of the Pondicherry (Administration) Act, 1962 deals with continuance of existing laws and their adaptation, which reads as under:

"4.Continuance of existing laws and their adaptation.- (1) All laws in force immediately before the appointed day in the former French Establishments or any part thereof shall continue to be in force in Pondicherry until amended or repealed by a competent Legislature or other competent authority:

Provided that references in any such law to the President or Government of the French Republic shall be construed as references to the Central Government, references to the Governor of the French Establishments in India, to the Commissioner of the Republic for the French Establishments in India, to the Chief Commissioner for the French Establishments, to the Chief Commissioner of the State of Pondicherry or to the Chief Commissioner, Pondicherry shall be construed as references to the Administrator of Pondicherry and references to the State of Pondicherry shall be construed as references to Pondicherry.



WEB COPY

(2) For the purpose of facilitating the application of any such law in relation to the administration of Pondicherry and for the purpose of bringing the provisions of any such law into accord with the provisions of the Constitution, the Central Government may, within three years from the appointed day, by order, make such adaptations and modifications, whether by way of repeal or amendment, as may be necessary or expedient and thereupon every such law shall have effect subject to the adaptations and modifications so made."

9. By the Fourteenth Amendment to the Constitution, which came into force on 20.12.1962, in the First Schedule to the Constitution under the heading "II. The Union Territories", after entry 8, the following entry was inserted, namely:

"9. Pondicherry : The territories which immediately before the sixteenth day of August, '96, were comprised in the French Establishments in India known as Pondicherry, Karaikal, Mahe and Yanam." Later, by the Pondicherry (Alteration of Name) Act, 2006, instead of "Pondicherry", the word "Puducherry" was inserted with effect from 1.10.2006.

10. 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.

11. The question that we have to consider is whether, by virtue of the Limitation Act, 1963, the French Law of Limitation which had been in force



WEB COPY

till 1.1.1964, was in any manner repealed or modified by the Limitation Act, 1963. We can draw considerable sustenance from the ratio laid down by this Court in Syndicate Bank (supra), wherein, we have already indicated, this Court considered the interaction between the provisions of the Indian Limitation Act, 1963 vis-à-vis Article 535 of the Portuguese Civil Code. In that case, this Court held as follows:

"20. In any event, as noticed above, the Portuguese Civil Code, in our view, could not be read to be providing a distinct and separate period of limitation for a cause of action arising under the Indian Contract Act or under the Negotiable Instruments Act since the Civil Code ought to be read as one instrument and cause of action arising therefrom ought only to be governed thereunder and not otherwise. The entire Civil Code ought to be treated as a local law or special law including the provisions pertaining to the question of limitation for enforcement of the right arising under that particular Civil Code and not dehors the same and in this respect the observations of the High Court in Cadar Constructions that the Portuguese Civil Code could not provide for a period of limitation for a cause of action which arose outside the provisions of that Code, stands approved. A contra approach to the issue will not only yield to an absurdity but render the law of the land wholly inappropriate. There would also be repugnancy insofar as application of the Limitation Act in various States of the country is concerned: Whereas in Goa, Daman and Diu, the period of limitation will be for a much larger period than the State of Maharashtra – the situation even conceptually cannot be sustained having due regard to the rule of law and the jurisprudential aspect of the Limitation Act."

12. This Court also held that it cannot but hold that in the wake of the factum of the Limitation Act coming into existence from



WEB COPY

1.1.1964, Article 535 of the Portuguese Civil Code cannot but be termed to be impliedly repealed and it is on this score that the decision of this Court in Justiniano Augusto De. Piedade Barreto v. Antonio Vicente Da Fonseca (1979) 3 SCC 47, stood overruled. This Court also held that there is one general law of limitation for the entire country, being the Act of 1963, and the Portuguese Civil law cannot be termed to be a local law or a special law applicable to the State of Goa, Daman and Diu, prescribing a different period of limitation within the meaning of Section 29(2) of the Limitation Act and the question of saving of local law under the Limitation Act, 1963 does not and cannot arise.

13. We may, in this case, refer to the Pondicherry (laws) Regulation, 1963 (No. 7 of 1963) which deals with the regulation to extend certain laws to the Union Territory of Pondicherry. Reference may also be made to the Pondicherry (Extension of Laws) Act, 1968. By virtue of those legislations, the Indian Contract Act, 1872, the Transfer of Property Act, 1882 and various other enactments were brought into force in Pondicherry. It is, therefore, to be seen as to whether specific legislations containing the subjects under which the cause of action had arisen, would govern the field or the procedural law assuming it would have its due application in replacement of the governing statute. This question was also pointedly considered by this Court in Syndicate Bank (supra) and the Court took the view that the cause of action of the suit, namely, money lent and advanced in terms of the agreement stands squarely governed by the Contract Act read with the Negotiable Instruments Act by reason of the admitted execution of the promissory note and, as such, cannot be said to be governed by the Portuguese Civil Code. The Court held that the Portuguese Civil Code cannot be read to be providing distinct and separate period of limitation for cause of action arising under the Indian Contract Act and other related laws.

14. 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



WEB COPY

applies to the suit in question, but Section 54 of the Indian Limitation Act, 1963. Under such circumstances, as rightly held by the High Court, the suit filed beyond the period of limitation prescribed under Article 54 of the Indian Limitation Act, 1963 is clearly barred. Since the suit itself is barred by the law of limitation, the other questions of law framed by the High Court were rightly not answered. The appeal, therefore, lacks in merits and accordingly dismissed.

In the light of the abovesaid position of the law enunciated by the Apex Court and when it is noted that the earlier decision of the Apex Court reported in 1979 (3) SCC 47, (Justiniano Augusto De.Piedade Barreto v.Antonio Vicente Da Fonseca), stood overruled, as rightly put forth by the first defendant's counsel, on the Indian Limitation Act 1963 coming into force in Pondicherry on 01.01.1964 as in the other parts of India, the limitation period prescribed under the French Code Civil would not no longer be applicable and accordingly, it is found that the plaintiffs, if at all they are entitled to seek for the relief of partition, they should have first sought for the cancellation of the donation deed in the manner known to law or for seeking the relief of declaration with reference to the same as per law and the plaintiffs having failed to adhere to the same within the time provided under law, it is obvious that the suit is barred by limitation.

31. When the law to be applied as regards the Union Territory of Pondicherry is only the Limitation Act 1963 as outlined by the Apex Court in the decisions referred to supra, the same is deemed to be the declared law of the land and in such view of the matter, this Court is bound to obey and follow the abovesaid dictum of law declared by the Apex Court and in such view of the matter, the decisions relied upon by the Plaintiffs' counsel reported in 1997 3 CTC 731 (Rengasamy @ Govindasamy & other vs. Deputy Collector (Revenue) cum Land Acquisition Officer Pondy) and 2017 SCC Online Mad 5206 (Saroja & Others vs. A. Ramicheane) as such, cannot be applied and in the light of the decisions of the Apex Court referred to supra, the reliance placed upon by the plaintiffs' counsel on the abovesaid decisions, cannot be appreciated. Similarly the reliance placed upon by the plaintiffs' counsel to the Puducherry Limitation (Repeal of local laws) Act 1994 also cannot be adhered to. As rightly contended by the first defendant's counsel, the abovesaid Act is found to be redundant and superfluous particularly when the law of the land qua the period of Limitation to be applied to the Union Territory of Pondicherry had been outlined by the Apex Court in the decisions referred to reported in 2001 4 SCC 713 (Syndicate Bank vs.



Prabha D. Naik & Anr) and 2013 (3) MWN (Civil) 588 (Gowthamchand Jai Vs. Arumugam @ Tamilarasan). In the light of the abovesaid position, it has to be held that the suit laid by the plaintiffs is barred by limitation.

WEB COPY

32. As above pointed out, considering the pleadings put forth in the matter both by the plaintiffs as well as by the first defendant in the plaint, in the written statement and in the reply statement, all put together, it is found that the plea of the applicability of the principle of legitim/disposable quota provided under Article 913 of French Code Civil had been raised one way or the other and accordingly, the necessary issue having also been framed by the trial court, in such view of the matter, the contention put forth by the first defendant's counsel that the first appellate court had erred in deciding the said question i.e. qua the applicability of the principle of legitim/disposable quota to the donation deed in question in the absence of any pleading with reference to the same, as such, cannot be countenanced. As above pointed out, following the applicability of the Hindu Succession Act 1963 to the Union Territory of Pondicherry with effect from 01.10.1963, the principle of legitim/disposable quota being inapplicable and cannot be followed by the native Hindus which had been hitherto followed and more over, when the right to dispose of the female's property being absolute as provided under Section 14 of the Hindu Succession Act 1956, accordingly, as above held, the principle of legitim/disposable quota is inapplicable to the donation deed executed in favour of the first defendant by Amirthavally @ Veerammal.

33. It has been held that the principle of legitim/disposable quota is not applicable in any manner to the donation deed in question. In such view of the matter, it is unnecessary to deal with the contention raised by the first defendant as regards the entitlement of the male heirs in invoking the principle of legitim to the donation deed executed by Amirthavally @ Veerammal in the presence of her daughter.

34. The plaintiffs having admitted the execution of the donation deed in favour of the first defendant and therefore, as rightly contended by the first defendant's counsel, as provided under the proviso to Section 68 of the Indian Evidence Act, it shall not be necessary for the first defendant to call the attesting witnesses in proof of the execution of any document, not being a Will, which has been registered in accordance with the provisions of the Indian Registration Act, 1908, unless its execution by the person by whom it purports to have been executed is specifically denied. Insofar as the plaintiffs, as such, having not disputed the execution of the donation deed by Amirthavally @ Veerammal in favour of the first defendant and as



above discussed, they have also not challenged the same by seeking the cancellation of the deed as per law or seeking for any other declaration with reference to the same, in such view of the matter, the first defendant is not required to examine any of the attestors to the donation deed for sustaining its truth and validity and in this connection, reliance is placed by the first defendant's counsel on the decisions reported in 2019 SCC Online SC 1245 (Govindbhai Chhatabai Patel vs. Patel Ramanbhai), (2011) 11 SCC 786 (Kalyan Singh Chouhand Vs. C.P. Joshi) and (2012) 8 SCC 148 (Union of India vs. Ibrahim Uddin and another).

35. On the point whether any relief to be granted in the absence of pleading, the plaintiffs' counsel in support of his argument qua the contention raised by the first defendant's counsel with reference to the absence of pleas in the plaint qua the applicability of the principle of legitim/disposable quota to the plaint A schedule property, placed reliance upon the decision reported in 1996 2 SCR 286 (Bhagwati Prasad Vs. Chandramaul).

36. The principles of law outlined in the abovesaid decisions are taken into consideration and followed as applicable to the case at hand.

37. As regards the decisions relied upon by the plaintiffs' counsel referred to earlier, as the same had not been disposed of or dealt with in connection with the applicability of the Hindu Succession Act 1956, vis-a-vis, the customary law followed in Puducherry after 01.10.1963, in such view of the matter, the said decisions, as held earlier, are found to be not useful to determine the issue involved in this matter. On the other hand, it is found that they had been decided considering the law applicable to the parties involved in those matters and in such view of the matter, as in those decisions, the issue had not been raised as to whether the local customary law followed in Puducherry should only be applied even after the applicability of the Hindu Succession Act, 1956 had come into force to the Union Territory of Pondicherry with effect from 01.10.1963 and furthermore, when in all those cases, excepting in the decision reported in 1986 (1) MLJ 160 (Maniamai Alias Rajambal vs. Mangalakhshmy & Ors), only the male's property had been dealt with and not the female's property, in such view of the matter, those decisions, as contended by the first defendant's counsel, are not applicable to the facts of the present case. Furthermore, in the recent decision reported in 2017 SCC Online Mad 23877 (Muthaiyan vs. Poongothai) and the decision of our High Court rendered in A.S.No.270 of 2008 dated 21.04.2017, when it has been held that it is only the Hindu Succession Act 1956, which would be applicable to the Union Territory of Pondicherry



with effect from 01.10.1963 and not the customary law, which was in vogue in Pondicherry, accordingly, all put together, the contention raised by the first defendant's counsel that the judgment and decree of the first appellate court qua the plaint 'A' schedule property cannot be sustained in any manner, has to be accepted in toto.

38. In view of the abovesaid factors, the substantial questions of law formulated in this second appeal are accordingly answered against the plaintiffs and in favour of the first defendant.

39. For the reasons aforesaid, the judgment and decree dated 19.12.2008 passed in A.S.No.176/2006 on the file of the III Additional District Court, Pondicherry, reversing the judgment and decree dated 18.09.1998 made in O.S.No.610/1996 on the file of the Principal Subordinate Court, Pondicherry, as regards the plaint 'A' schedule property are set aside and consequently, the judgment and decree passed by the trial court in O.S.No.610/1996 are confirmed. Accordingly, the second appeal is allowed with costs. Consequently connected miscellaneous petition, if any, is closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

bga

To

1. The III Additional District Judge,
Pondicherry.
2. The Principal Subordinate Judge,
Pondicherry.
3. The Section Officer,
V.R. Section,
High Court, Madras.

+2ccs to M/s.T.Sathyamoorthy, Advocate, S.R.No.21181
+1cc to Mr.T.Saikrishnan, Advocate, S.R.No.20941

S.A.NO.377 OF 2009

RGN(CO)
PBS/22/10/2021