



IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 30.08.2022

Pronounced on : 30.09.2022

CORAM :

THE HONOURABLE MR.JUSTICE C.V.KARTHIKEYAN

S.A.No. 1444 of 2000

Amirthavalli

... Plaintiff/Appellant/Appellant

Vs.

1. Mangalakshmi (died)

2. Murugesan (died)

3. Chandra Murugesan

4. Angammal

5. R.Kumaresan

6. Poorani

7. Indhirani

8. Saroja

9. Iyyanarappan

10. Panjavarnam

11. R.Govindan

...Defendants/Respondents/Respondents

PRAYER: This Second Appeal is filed under Section 100 of Civil



Procedure Code, against the Judgment and Decree dated 02.02.2000 and made in A.S.No. 16 of 1999 on the file of the Principal District Judge, Pondicherry, confirming the Judgment and Decree dated 24.12.1998 and made in O.S.No. 1142 of 1996 on the file of I Additional District Munsif, Pondicherry.

For Appellant	: Mr. T.R.Rajagopalan Senior Counsel for Mr. T.R.Rajaraman
For RR 1 & 2	: Died
For RR 3 to 11	: Mr.T.P.Manoharan Senior Counsel for Mr.T.M.Naveen

JUDGMENT

The plaintiff in O.S.No. 1142 of 1996 on the file of the First Additional District Munsif Court at Pondicherry, is the appellant herein.

2. O.S.No. 1142 of 1996 had been filed by the plaintiff Amirthavalli against her elder sister Mangalakshmi and elder brother Murugesan, seeking a declaration that a settlement deed executed by their mother Ammayee Ammal on 24.05.1990 in favour of the first



defendant, Mangalakshmi is valid only to the extent of 1/8th share and is liable to be reduced to 1/8th share leaving the rest of 7/8th share of the suit property liable for partition between the plaintiff and the first defendant and for a decree of partition of the 7/8th share and also for injunction and for costs.

3. By Judgment dated 24.12.1998, the I Additional District Munsif, Pondicherry, dismissed the suit. Thereafter, the plaintiff Amirthavalli had filed A.S.No. 16 of 1999 before the Principal District Court at Pondicherry. By Judgment dated 02.02.2000, the learned Principal District Judge, Pondicherry, dismissed the Appeal Suit. The plaintiff then filed the present Second Appeal.

4. Pending the Second Appeal, both the respondents/defendants/ Mangalakshmi and Murugesan died and their legal representatives were brought on record as 3rd to 10th respondents. Subsequently, the 11th respondent Govindan was also brought on record by order dated 14.06.2002 in C.M.P.No. 16807 of 2021. He claimed to be a purchaser of a portion of the suit schedule property pending the Second Appeal.

5. The Second Appeal had been admitted on the following two



substantial questions of law:-

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“1. Whether the impugned donation dated 24.05.1990 in favour of the first respondent is hit by the doctrine Reserve and valid only to the extent of 1/8th?;

2. When the impugned donation deed is not valid to the extent of 7/8th as the parties are governed by the customary Hindu Law, is the learned Principal District Judge right in dismissing the suit for partition as if the law applicable is only the Hindu Succession Act?”

O.S.No. 1142 of 1996 [I Additional District Munsif, Pondicherry]:

6. The plaintiff claimed that the properties mentioned in the schedule belonged to her mother Ammayee Ammal, wife of Gopal Gounder. The first defendant was the elder sister of the plaintiff and the second defendant was the elder brother of the plaintiff. It was stated that the first defendant had control of Ammayee Ammal and obtained a settlement deed with respect to the suit schedule property. The settlement



deed was registered in the Sub Registrar Office, Villianur. The plaintiff claimed that the document is hit by the doctrine of Reserve as, under the Customary Hindu Law in Pondicherry, the daughters are the heirs of the mother and a mother can execute a settlement deed only with respect to 1/8th undivided share of her property and the balance 7/8th share has to be partitioned among the daughters.

7. It was also stated that the first defendant refused to partition the property and claimed that her rights had been settled in Court in a suit with the second defendant. Holding out that the document is effective only for 1/8th share and claiming partition of the balance 7/8th share, the suit had been filed.

8. In the written statement, the first defendant denied the averments that the settlement deed had been procured by her from her mother. She further denied that her mother could have settled only 1/8th share and the balance 7/8th share should be partitioned. She further stated that the second defendant in collusion with the plaintiff had filed O.S.No. 587 of 1991 which was dismissed and the consequent Appeal in A.S.No.



126 of 1992 was also dismissed. She therefore claimed that the property was the absolute property of a mother, who had ever right to alienate the same. She stated that the suit had been filed only after she filed E.P.No. 127 of 1996 to recover possession. She therefore stated that the suit should be dismissed.

9. On the basis of the above pleadings, the following issues were framed:-

“1. Whether the suit has not been properly valued and correct Court fees has not been paid?;

2. Whether the plaintiff is entitled to a declaration as prayed for?;

3. Whether the plaintiff is entitled to a preliminary decree for partition as prayed for?;

4. Whether the plaintiff is entitled to the grant of a permanent injunction as prayed for?; and

5. To what reliefs are the parties entitled



to?”

10. During trial, the power of attorney of the plaintiff was examined as PW-1 and the husband of the first defendant was examined as DW-1. The plaintiff marked Exs. A-1 and A-2. Ex.A-2 dated 24.05.1990 was the settlement donation deed by Ammayee Ammal in favour of the first defendant Mangalakshmi. The defendants marked Exs. B-1 to B-8. Exs.B-1 and B-2 were the sale deed with respect to the suit schedule properties in favour of Ammayee Ammal dated 31.08.1973 and 19.11.1979 respectively. Ex.P-3 is a copy of the settlement donation deed dated 24.05.1990 and which had been filed also as Ex.A-2. Ex.B-4 is a sale deed dated 11.06.1991 executed by Ammayee Ammal in favour of Kumaresan. Exs.B-5 to B-8 related to O.S.No. 587 of 1991 and A.S.No. 126 of 1992.

11. On the basis of the pleadings and evidence produced, the I Additional District Munsif answered the first issue in favour of the plaintiff but answered the other issues against the plaintiff.

12. The I Additional District Munsif found that the parties are



governed by the Customary Hindu Law as prevalent in Pondicherry. It was therefore stated that they are governed by the principle of legitim which stipulated that the father can give away only 1/8th share of his property and the balance constituted, legitim of the heirs. It was therefore held that the mother Ammayee Ammal could have settled only 1/8th share of the suit properties. It was however found that there was evidence that Ammayee Ammal was also possessed of other properties. Holding that it was therefore not possible to find out the total holding which could be divided among the parties and particularly taking into consideration, Ex.B-4 sale deed by Ammayee Ammal, the I Additional District Munsif dismissed the suit. It must be stated that there was a clear finding that the parties were actually governed by the Customary Hindu Law prevailing in Pondicherry for the purposes of succession and dispossession.

A.S.No. 16 of 1999 [Principal District Court, Pondicherry]:

13. The plaintiff then filed the aforementioned Appeal Suit before the Principal District Munsif Court at Pondicherry. The learned Principal District Judge in his Judgment dated 02.02.2000 framed the



following points for determination:-

“1. Whether the claim of the appellant that the impugned donation deed dated 24.05.90 in favour of the first respondent is hit by the “Doctrine of reserve” and has to be reduced 1/8th?

2. Whether the appellant would be entitled for seeking partition covered in the impugned donation deed dated 24.05.1990 in equal shares among herself and the respondent?”

14. The learned Principal District Judge found that under the provision under Customary Hindu Law as applicable in Pondicherry, the holder of a property can dispose by way of settlement or some other gratuitous deed only 1/8th share. It was found that Ex.B-4 was a sale deed and therefore that cannot be taken into consideration.

15. However, the learned Principal District Judge in his discussion whether Customary Hindu Law was applicable to the parties to the suit,



found that no evidence had been adduced on that particular aspect. It was specifically held that there was no iota of evidence to show that the appellant was one of the descendants of such indigenous family which was living at Pondicherry, at the time when French took up Administration.

16. It was found that the properties had been purchased by Ammayee Ammal in 1973 and 1979 under Exs.B-1 and Ex.B-2 after the introduction of the Hindu Succession Act, 1925 to Pondicherry and therefore, taking recourse to Section 4 of the Hindu Succession Act, it was held that the Customary Hindu Law would not be applicable to the appellant and on that ground dismissed the Appeal Suit.

S.A.No. 1444 of 2000:

17. The appellant then filed the present Second Appeal. The Second Appeal had been admitted on the following two substantial question of law:-

“1. Whether the impugned donation dated 24.05.1990 in favour of the first respondent is hit by the doctrine Reserve and valid only to the



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extent of 1/8th?;

2. When the impugned donation deed is not valid to the extent of 7/8th as the parties are governed by the customary Hindu Law, is the learned Principal District Judge right in dismissing the suit for partition as if the law applicable is only the Hindu Succession Act? ”

18. Both the substantial questions of law surround whether the settlement deed dated 24.05.1990 executed by Ammayee Ammal, mother of the plaintiff and the defendants to the suit with respect to the suit schedule properties in favour of the first defendant was hit by the Doctrine Reserve and can be held valid only upto 1/8th share and whether the denial of relief of partition to the plaintiffs/appellant was correct. Since discussion on both the questions of law overlap, they are addressed together.

19. For the sake of convenience, the parties are referred as plaintiff and defendants.



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20. The appellant was the plaintiff and the first and second respondents were the defendants. Both the respondents had died and their representatives were brought on record as third to tenth respondents. It must also be pointed out that pending the Second Appeal, the eleventh respondent was brought on record. He claimed that he had purchased a substantial portion of the suit property.

21. The plaintiff Ammayee Ammal is the younger sister of the defendants Mangalakshmi and Murugesan. Their mother Ammayee Ammal had purchased the suit schedule properties by sale deeds, Exs. B-1 and B-2. Ex.B-1 was a copy of the sale deed dated 31.08.1973. Ex.B-2 was a copy of another sale deed dated 11.09.1979.

22. It is the case of the plaintiff that the first defendant Mangalakshmi had influenced Ammayee Ammal and obtained a settlement deed dated 24.05.1990 marked as Exs.A-2 /B-3 with respect to the suit schedule property by which the suit schedule properties were settled absolutely in her favour. Holding that the parties were governed by the Customary Hindu Law as applicable to residents of Pondicherry, the suit had been filed stating that Ammayee Ammal can execute a



settlement deed only with respect to 1/8th share and therefore, the balance 7/8th share was available for partition and separate possession.

23. The entire discussion would therefore revolve on the claim of the parties to seek recourse to the Customary Hindu Law as was prevalent in Pondicherry and also it would apply to females.

24. Mr.T.R.Rajagopalan, learned Senior Counsel, pointed out that a counter affidavit filed in support of an interlocutory application was taken as the written statement of the first defendant and pointed out that in the written statement, there has been no specific denial of the assertion that the parties were not governed by the Customary Hindu Law and therefore, urged that this Court should hold that the parties are actually governed by the Customary Hindu Law. It must however be pointed out that in the written statement, the first defendant had also very specifically denied that the settlement deed Ex.A-2/B-3 was valid with respect to 1/8th share alone and that the balance 7/8th share was therefore available for partition. Therefore, on the basis of that particular assertion in the written statement even though the first defendant had not specifically



denied that the parties were not governed by the Customary Hindu Law still by denial of claim for partition of 7/8th share also, there is an implicit denial of that fact.

25. The learned Principal District Judge, Pondicherry, in the course of his Judgment, held that the plaintiff had not produced any evidence to show that she or the defendants were governed by the Customary Hindu Law.

26. Mr.T.P.Manoharan, learned Senior Counsel for 3rd to 11th respondents contended that with the introduction of the Hindu Succession Act, 1956 to Pondicherry on and from 01.10.1963 there was a necessity to prove that Customary Hindu Law was actually applicable by a family who seeks recourse to it.

27. On merger of French settlement in Pondicherry, Maha, Yanam and Karaikal with India, the Indian Succession Act, 1925 relating to inheritance, succession and dispossession was also introduced to those



areas on and from 01.10.1963.

28. Section 4 of the Hindu Succession Act 1956 is as follows:-

“Section 4. (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 in so far as it is inconsistent with any of the provisions contained in this Act.”

29. A reading of the said provision makes it very clear that the legislature had expressed a clear intention that customary practice as was prevalent in any part of the Country can no longer prevail and the



codified Hindu Law alone would prevail with respect to any matter for which specific provision was provided in the Act. The Act gives a right to a Hindu female to possess properties absolutely and to deal with it absolutely without any restriction or falter. Further reference can be made to Section 14 of the Hindu Succession Act, 1956.

30. Section 14 of the Hindu Succession Act, 1956 is as follows:-

“14. 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 subsection, “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 or 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 or 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. ”

31. The law recognises that a Hindu female can hold properties and more importantly had further recognised that if life interest alone is granted in lieu of maintenance or under other stated circumstances as provided under Section 14(1) of the Act, such life interest would blossom into absolute title.

32. It is thus clear that after the introduction of the Hindu Succession Act 1925 to Pondicherry, the law applicable to natives of Pondicherry relating to inheritance succession and dispossession drastically changed. However, the legislature was aware of the rights



enjoyed and therefore made it imperative that those who sought to continue with Customary Hindu Law as applicable should register themselves as renoncants. A specific procedure was stipulated for that purpose. If such a procedure had been adopted then there can be applicability of Customary Hindu Law as was earlier prevalent. Otherwise the provisions of Hindu Succession Act, 1925 will apply in all force.

33. In **2016 (4) MLJ 562 [M.Kadirvelu and Others Vs. G.Santhanalakshmi and Others]**, a learned Single Judge of this Court had held in paragraph 50 is as follows:-

“50. Therefore, it is clear that unless the parties had pleaded and proved that they were renouncants, they are not entitled to claim the benefits of Section 2(2A) of the Hindu Succession Act, 1956. Without any pleading to the effect that they were renouncants, they cannot claim the benefit of the said Section. ”



34. This observation of the learned Single Judge was pointed out by Mr.T.R. Rajagopalan, learned Senior Counsel on behalf of the plaintiff / appellant that necessary pleadings is sufficient and there could not be strict requirement of registration as renoncants.

35. However, in Paragraph Nos. 32 to 34 of the very same Judgment, the learned Single Judge had also stated as follows:-

“32. Under Section 4(2) of the Pondicherry (Administration) Act, the Central Government was empowered by order to make such adoptions and modifications, for the purpose of facilitating the application of any 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. But, the Central Government was to pass such an order within three years from the appointed date. Section 8 of the Act empowers the Central Government to issue notifications extending any enactment which is in force in a



State, to Pondicherry with such restrictions and modifications as it deems fit.

33. Thereafter, the Pondicherry (Laws) Regulation, 1963, was issued by the President in exercise of the powers conferred by Article 240 of the Constitution, with a view to extend certain laws to the Union Territory of Pondicherry. Section 3 of the said Regulation declared that the Acts as they are generally in force in the territories to which they extend, shall also extend to and come into force in Pondicherry on the 1st day of October 1963, subject to the modifications specified in the First Schedule. The First Schedule to the Regulation contained a lot of enactments. The Hindu Succession Act, 1956 is one of the Parliamentary enactments included in the First Schedule to the Regulation of the year 1963. But, as seen from the First Schedule, the Hindu Succession Act, 1956 was extended to Pondicherry and it came into force in Pondicherry on the 1st day of October 1963, subject to one modification. The modification was that a separate Sub-Section, namely Sub-Section (2A) was inserted under Section 2 of the Hindu



Succession Act, 1956. This new Sub-Section reads as follows:

"Section 2(2A): Notwithstanding anything contained in Sub-Section (1), nothing contained in this Act shall apply to the renouncants of the Union Territory of Pondicherry."

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

36. In **2017 4 CTC 503 [Gowri Vs. Subbu Mudaliar and others]**, a learned Single Judge of this Court while examining applicability of the Hindu Succession Act, 1956 to residents of Pondicherry had held as follows:-

"36. Therefore, this Court is of the view that in view of Section 4 of the Hindu Succession Act, which is overriding effect of all the customs Hindu Succession Act alone apply to the Hindus



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residing in the Pondicherry except renouncants who renounced their personal status and adopted French Law”.

37. Mr.T.R.Rajagopalan, learned Senior Counsel relied on *1993 2 LW 387 [T.L. Sadagopan etc. and others Vs. T.N.K.Ramanujam and others]*, wherein, a Division Bench of this Court had held as follows:-

“22.With great respect to the learned Judges, we must point out that the proposition is erroneous. Once the two tier system in civil status is recognised, it cannot be held that all Hindu nationals would be governed by the customary Hindu law of Pondicherry. As rightly held by the trial court, the customary law is applicable only to those Hindus who were adopting the customary law prevailing in Pondicherry and it would not apply to Hindus who did not choose to change their personal law which was applicable to them in the place of their origin. When admittedly the parties were Sourashtra Brahmins belonging to Madurai, the



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normal presumption in Hindu Law is that they were governed by the personal law which was prevalent in Madurai, unless there is evidence on record to prove that the family had adopted the customary law prevailing in Pondicherry. It is not as if the family had been living in Pondicherry for several generations. The best that could be said on the evidence is that Nannayya Bagavathar's father had some properties in Pondicherry in addition to his properties in Madurai and Nannayya Bagavathar was born in Pondicherry. The fact that almost all the marriages in the family had taken place in Madurai and all the brothers of Nannayya died at Madurai, would only show that the family had not given up their place of origin, even if it assumed that they had migrated to Pondicherry. Even in the event of a migration by a Hindu from one territory to another, the personal law is carried by him and he will be governed thereby. In Mayne's Hindu Law & Usage, 12th Edition at page 72, the following passage is found:

It becomes the personal law, and a part of the status of every family which is governed by it.



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Consequently, where any such family migrates to another province, governed by another law, it carries its own law with it, including any custom having the force of law.

23. In *Mallathi Anni v. Subbaraya Mudaliar* I.L.R. 24 Mad. 650, a Division Bench of this Court held that migration by the widow of a Hindu subject of French India to British India, and acquisition of British Indian domicile, does not change the character of the estate held by the widow, and if she does not adopt the system of law prevalent among Hindus in British India, the property inherited by her from her husband will be held by her according to the customary law of French India.

24. In *P. S. Venkataraman v. Srimathi A.S. Janaki* (1939)1 M.L.J. 520, Justice Venkataramana Rao referred to the passage in Mayne's Hindu Law extracted above and observed, Therefore in every case where the question arises what is the law by which a person is governed, regard should be had to the law of the class or family to which he belonged. Of course, if he did not belong to any particular



class or family it would be the general doctrine of Hindu Law prevalent in that province wherein he resided. Once it is determined what the personal law of a person is, it will continue to be of obligatory force on him.

The learned Judge held that where "a person migrates from one part of India to another, prima facie, he would carry his personal law, but it would also be open to him to renounce that law and be governed by the law prevailing in the locality to which he had migrated, but that must be affirmatively proved. He held that it must be distinctly shown that the person had intended to change and in fact changed his personal law."

38. It was pointed out by Mr.T.R.Rajagopalan, that it had been held that when a person migrates from one part of India to another, he/she would carry his/her personal law but he/she also has an alternate, namely to renounce that law and be governed by the law prevailing in the locality to which he/she had migrated. It was agreed that this position was recognised and it was therefore contended that the parties to the suit carried their personal laws with them and there cannot be any abrogation



of such rights and it was therefore contended that if Customary Law were to be applicable, the settlement deed complained of should be interfered with to the extent of 1/8th share.

39. Mr.t.R.Rajagopalan also relied on **2002 (3) LW 669** *[Krishnamoorthy Gounder Vs. Sitarama Gounder and others]*, wherein, a Division Bench of this Court had held as follows:-

“11. It is conceded that the parties are not governed by the Mitakshara School of Hindu Law, but by the Customary Hindu Law obtaining in Pondicherry.”

40. This Judgment was relied to hold that there must be a definite denial of an averment in the plaint that the parties are not governed by the Customary Hindu Law. But it must be pointed out that the first defendant had denied that the settlement deed was valid only for 1/8th share, which obviously indicates a clear denial of the fact that the parties were governed by Customary Hindu Law.



41. Mr.T.R.Rajagopalan, then relied on **2004 (3) CTC 81**
[Viswanathan and another Vs. Savarimouthurayan and others],
wherein, a Division Bench of this Court had held as follows:-

“9. Prior to the applicability of Indian Succession Act 1956 in the State of Pondicherry, Christians were governed by customary law which was by then applicable to Hindus. Even such customary law applicable to Hindus has to be applied to the Christians also. However, the Hindu Succession Act 1956 would not apply to Christians as expressed in Sec. 2(1)(c) of the Hindu Succession Act 1956. So, the law of succession applicable to the Christians in the State of Pondicherry is not the succession Act as envisaged in the Hindu Succession Act 1956, but it is customary law amongst Hindus which was prevalent in the State of Pondicherry, namely, as the law of succession. Even in the present case, the law of succession applicable to the parties is Hindu customary law, prevalent in Pondicherry. Hence to decide the rights of the parties in this case, we have to find out what is the right of the



plaintiffs in the properties of the 1st defendant till his death on the basis of Hindu customary law prevailed in Pondicherry State. ”

42. It was therefore urged by Mr.T.R.Rajagopalan that the Customary law amongst Hindus which was prevalent as the law of succession should be held applicable to the parties in the suit.

43. Mr.T.R.Rajagopalan also relied on **2017 8 MLJ 451** [*Muthaiyan Vs. Poongothai and Others*] wherein a Division Bench of this Court had held as follows:-

“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



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French nationals of Indian Origin have opted to become Renoncants under the above regulation dated 21.09.1981 of the erstwhile French Government. There are Renoncants who are Indians and there are French Nationals who are not Renoncants. Hindu French Nationals who are not renoncants cannot be excluded from the application of the Hindu Succession Act, 1956, if they are domiciled in the Union Territory of Puducherry and acquired properties therein. The law of succession for French Nationals, who are Indians, can only be the Hindu Succession Act, 1956. The Hindu Marriage Act, Hindu Adoption and Maintenance Act, 1956, Hindu Minority and Guardianship Act, 1956, the Parsi Marriage and Divorce Act, 1936, the Child Marriage Restraint Act, 1929 are all applicable to the French Nationals who are Hindus as defined under the Statutes. The Renoncants are governed by the French Code Civil only for the purpose of marriage, divorce, Adoption and succession, and for all other purposes they are governed by the laws of the land or State as they are protected by the law



of the land/State. The exclusion clause found in Section 2A of the Hindu Succession Act, 1956 cannot be hyper-extended to any other category of persons except the renoncants domiciled in the former French Establishments. To treat all French Nationals and French Citizens as Renoncants and all Renoncants as French Citizens are only a misnomer in law.

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

27. It is evident from the above that if a Hindu died after 01.10.1963, the law of



Succession to the properties is as per the Hindu Succession Act and the repealed Customary Hindu Law cannot be applied. In other words, after the application of Hindu Succession Act on 01.10.1963 to the State of Pondicherry, the Hindus domiciled in Puducherry are governed by the provisions of the Hindu Succession Act, whatever be their personal law before 1st October 1963. Therefore, we are of the view that those Hindus, who are domiciled at Pondicherry will be governed by Hindu Succession Act after 01.10.1963, unless they accrue any right under the Customary Hindu law before 01.10.1963. In so far as 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.”

44. It was contended that no issue was framed regarding applicability of Coromandal law.

45. I hold that whether an issue was framed or not the burden was on the plaintiffs to prove that fact.

46. It was further contended that the plaintiff as the daughter of Ammayee Ammal, was a forced heir of her mother and therefore the mother can settle only 1/8th share of the property.

47. Placing reliance on the aforementioned Judgments, the learned Senior Counsel again urged that there since was no specific denial in the written statement that the parties were not governed by the Customary Hindu Law as applicable to Pondicherry the Court must recognise that



the Customary Hindu Law as applicable to Pondicherry applies to the parties and therefore, the settlement deed Ex.A-2 /B-3 should be deemed to be valid only upto 1/8th share and the balance 7/8th share should be held to be available for partition.

48. Mr.T.P.Manoharan, learned Senior Counsel however fell back to Section 4 of the Indian Succession Act and urged that with the applicability of Indian laws to the Union Territory of Puducherry on and from 01.10.1963, unless the residents of Pondicherry had stipulated that they would be governed by the French Law, the provisions of the Hindu Succession Act, 1925 would apply.

49. It therefore follows that the issue should now be examined on the basis of the pleadings and proof.

50. The plaintiff in the plaint, had stated as follows:-

“..... On the one hand the first defendant taking advantage of the proximity with the deceased lady unduly influenced the deceased by misrepresentation and got document



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executed in her favour and on the other parties being Hindus the said instrument which is gratuitous in nature is hit by doctrine of reserve as it obtains under the Customary Hindu Law in Pondicherry, the daughters are the apparent heirs to the mother as per Customary Hindu Law in Pondicherry which applies to the parties, any instrument by which the deceased mother purported to benefit one of the two heirs in full is liable to get reduced to 1/8th only leaving the rest namely 7/8th to be partitioned between the daughters. As such this position is very clear and therefore any instrument executed by the deceased Ammayee Ammal purporting to be a donation as on 24.05.90 and registered in No.712/90 on the file of Sub Registrar, Villianur is liable to be reduced to 1/8th and the 7/8th of the property covered by the said instrument is liable for partition.”

51. The first defendant in the written statement, had stated as follows:-



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“..... I vehemently deny the allegation that taking advantage of the proximity with the deceased lady, unduly influenced the deceased by mis-representation and got document executed in my favour and further deny the allegation that the parties being Hindus the said instrument is hit by doctrine of reserve as it obtains under the Customary Hindu Law in Pondicherry.

4. I stoutly deny the allegation that any instrument by which the deceased mother purported to benefit one of the heirs in full is liable to get reduced to 1/8th only leaving 7/8 to be partitioned. The daughters and as such the instrument executed by Ammayee Ammal purporting to be a donation deed as on 24.05.1990 and registered in No.712/90 on the file of Sub Registrar, Villianur is liable to be reduced to 1/8 share and 7/8th share of the property is covered by the said instrument is liable for partition.”

52. It is thus seen that the first defendant had specifically denied

that the settlement deed is hit by the Doctrine of Reserve. It had also



been specifically denied that the benefit accrued to her had to be restricted to 1/8th share leaving the balance 7/8th to be partitioned.

53. The supporting oral evidence by both the sides is very disappointing. Neither the plaintiff nor the first defendant grazed the witness box. On behalf of the plaintiff, her power of attorney agent tendered evidence. On behalf of the first defendant, her husband tendered evidence.

54. It is the contention of Mr.T.R. Rajagopalan, learned Senior Counsel that the aforementioned denial in the written statement is not sufficient compliance of the requirement under Order VIII of the Code of Civil Procedure.

55. It must be however be kept in mind that there has actually been a denial. There has been a specific denial of the averment that the settlement deed should be limited only to 1/8th share. The only interference from such denial is that the parties are not governed by the Customary Hindu Law. The burden was on the plaintiff to prove that the



parties are actually governed by the Customary Hindu Law as applicable to Pondicherry.

56. The First Appellate Court Judge had rightly found that there no evidence was adduced on that aspect.

57. The incidental point, namely, whether dispossession by a Hindu female would also be limited to 1/8th share is to be answered that they have the same rights as that of a male and their dispossession, if they are governed by the Customary Hindu Law would be limited to 1/8th share and otherwise they can deal with their property absolutely. From the denial in the paragraph extracted above, it is evident that the first defendant had conveyed the fact that she had denied the allegation that the benefit under the settlement deed should be restricted to 1/8th share only. Further in Paragraph No.8, she had stated as follows:-

“I submit that the suit property is absolute property of my mother and as such she had every right to alienate the same at her will. While it is so, the question of the petition alleged, resene, disposapal quote and partition will not arise at all. Hence, the claim of the petitioner is not tenable either under law or on



facts and hence the suit itself has no legal fact to stand.”

58. Thus there has been a further denial that the benefit under the settlement deed should be interfered with to the extent of 1/8th share.

59. In view of the above discussion the following aspects emerge:-

I) A Hindu female governed under the Customary Hindu Law as applicable to Pondicherry can dispossess of a property only to the extent of 1/8th share;

II) However after introduction of the Hindu Succession Act, 1956, Section 4 has an overriding effect and a Hindu female is entitled to a property absolutely and can deal with the same in any manner she claims;

III) for applicability of the Hindu Customary Law, the procedure of registration as a renoucant must be followed and there is no automatic presumption of applicability of the Hindu Customary Law.

60. In view of the above reasons, I hold with respect to the first substantial question of law that the impugned settlement deed dated



24.05.1990 is not hit by the Doctrine of Reserve and is a document conveying the property under the document absolutely to the first defendant.

61. I further hold with respect to the second substantial question of law that the Principal District Judge was correct in dismissing the suit for partition since the law applicable is only the Hindu Succession Act, 1956.

62. The Second Appeal is therefore dismissed but in the circumstances without costs.

30.09.2022

Index :Yes/No
Internet:Yes/No
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C.V.KARTHIKEYAN, J.

vsg

To

1. Principal District Court, Pondicherry.
2. I Additional District Munsif, Pondicherry.



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**Pre-Delivery Judgment made in
S.A.No. 1444 of 2000**

30.09.2022