



A.S.No.890 of 2018

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on	02.09.2022
Pronounced on	31.10.2022

CORAM

THE HON'BLE Ms. JUSTICE R.N.MANJULA

**A.S.No.890 of 2018
and
CMP.No.23198 of 2018**

1.K.Kumar

2.K.Ramesh

...Appellants

Vs.

1.Gowri

2.S.Tamilselvi

3.J.Baby

...Respondents

Prayer :- Appeal filed under Section 96 of the Civil Procedure Code against the judgment and Decree dated 27.06.2018 made in O.S.No.48 of 2013 on the file of the II Additional District Judge, Puducherry.

For Appellants : Mr.T.M.Naveen
for M/S.K.P.Jotheeswaran

For Respondents : Mr.B.R.Shankara Lingam for RR1 & 2
: Mr.M.Sridhar for M/S. G.Moorthy for R3



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JUDGMENT

This appeal has been preferred challenging the judgment of the II Additional District Judge, Puducherry dated 27.06.2018 made in OS.No.48 of 2013.

2.The appellants are the plaintiffs who filed the suit for various reliefs namely declaration, partition and separate possession in respect of their alleged 7/40th share of the suit property for each along with permanent injunction.

3.The first and third defendants filed a written statement along with counter claim praying for dismissal of the suit and grant the relief of mandatory injunction, past and future mesne profits. The 2nd defendant had also filed a written statement along with the counter claim to dismiss the suit and grant the reliefs of mandatory injunction and recovery of possession. The learned trial Judge had dismissed the suit filed by the plaintiffs and allowed the counter claim of defendants 2 and 3. Aggrieved over the same, the plaintiffs have filed this appeal by challenging the decree and judgment made in OS.No.48 of 2013.

**4. The short facts of the plaintiffs' case are as hereunder:**

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The plaintiffs are the sons of the 1st defendant and 2nd & 3rd defendants are their sisters; their paternal grandfather namely Cannaippamodely @ Kanniappa Mudaliar domiciled at Puducherry and he owned several landed properties in Puducherry and Tamilnadu; during his life time he disposed some of his properties situated at Puducherry and Tamilnadu; after his life time the properties left out by him were inherited by the plaintiffs' father Kasinatha Mudaliar. Kasinatha Mudaliar, plaintiffs and 1st & 3rd defendants were managing and cultivating the said properties; out of the joint family earnings derived from the said properties, plaintiffs' father purchased several landed properties in Puducherry and Tamilnadu; the plaintiffs being male members of the family had exerted their physical labour to develop the properties; the 1st item of the suit property was purchased in the name of plaintiffs' father on 19.08.2004 under a registered sale deed; the 2nd item of the suit property was purchased in the name of the 1st defendant who is the mother of the plaintiffs and the sale deed dated 04.10.1990; the marriage of defendants 2 and 3 were held in a grand manner and they were given with *shridhana* properties and they are well placed in life; though the 2nd item of the suit property was



purchased in the name of the 1st defendant/ mother, the property was purchased with the joint family income;

4.1. The 2nd defendant's husband is a cinema producer who used to be close with the parents of the plaintiffs and the 1st defendant used to stay at the house of the 2nd defendant at Chennai; on 19.12.2012 when the 2nd defendant was doing cultivating activities in the suit properties, he came to know that the 2nd and 3rd defendants had applied for transfer of pattas in their names; on enquiry the plaintiffs came to know that their father had executed a Will on 04.09.2008 and bequeathed four items of suit property including suit item No.1 in favour of the 1st defendant; after the demise of their father, the 1st defendant had executed a settlement deed in favour of the 2nd defendant in respect of the suit 1st item on 11.05.2012; the 1st defendant settled the 2nd item of the suit property in favour of the 3rd defendant under a settlement deed dated 11.05.2012; as per the customary Law applicable to the natives of Puducherry, the father of the plaintiffs cannot exceed his disposable quota of 1/8th undivided share in the suit first item; hence the Will executed by the father in respect of the 1st item of the suit property will not bind the interest of the plaintiffs; hence, the 1st defendant cannot get title in respect of the



1st item of the suit property beyond 1/8th of the undivided share; so she cannot execute a settlement deed in favour of the 2nd defendant also in excess of 1/8th share in respect of the 1st item of the suit property;

4.2. Though the 2nd item of the suit property was purchased in the name of the 1st defendant, it is from and out of the joint family income; as per the Hindu Customary Law in Puducherry, the 1st defendant cannot dispose by way of gift beyond 1/8th undivided share in suit item No.2; hence, the settlement deed executed by the 2nd defendant on 11.05.2012 in respect of the suit 2nd item also will not bind the plaintiff's interest in respect of the remaining 7/8th undivided share; hence the plaintiffs have filed the suit to declare that the Will dated 04.09.2008 executed by the father in favour of the 1st defendant and the two settlement deeds executed by the 1st defendant dated 11.05.2012 in favour of defendants 2 and 3 in respect of the suit item Nos.1 and 2 as null and void and also for a preliminary decree for partition and separate possession of the plaintiffs 7/40th share each in the suit properties and for permanent injunction restraining the 2nd and 3rd defendants from interfering with the plaintiffs possessions over the suit properties.



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5. The defendants resisted the suit by submitting their written statement along with counter claim in the following lines of defence:-

The plaintiffs have not filed any document to prove that their father, grandfather were domiciled at Puducherry and the 1st defendant was having her permanent residence only at Manaveli, Sellancherry Madurai, Cuddalore and she was residing there till the year 2004; only subsequent to her marriage, she migrated to Puducherry and living with her husband; the 2nd plaintiff was also residing at Manaveli, Sellancherry Madurai, Cuddalore till the year 2012 and he had migrated to Puducherry during January 2012 and presently residing there; hence the applicability of Customary Hindu Law of Puducherry domicile will not arise.

5.1. The plaintiffs and their father Kasinatha Mudaliar had executed a partition deed dated 22.05.2003 among themselves and in which the 'A' schedule property was allotted to their father and 'B' & 'C' schedule properties to the plaintiffs 1 and 2 respectively. Hence the plaintiffs cannot make any claim with regard to the joint family income or joint family properties. The 1st item of the property was purchased



by the plaintiffs' father out of his own source of income on 19.08.2004 and the 2nd item was purchased by the 1st defendant with her own income on 04.10.1990, hence the parents of the defendants 2 and 3 are entitled to alienate the property belonging to them in whatever manner they wanted to dispose. The applicability of Customary Law or any other law other than Hindu Succession Act will not arise. The suit properties were under the management of the plaintiffs and defendants 2 and 3. But they had taken undue advantage of their management of the properties and filed the vexatious suit by making false claim in respect of the suit properties and hence defendants 2 and 3 have claimed the relief of declaration, mandatory injunction and permanent injunction.

6. On the basis of the above pleadings the learned trial Judge has framed the following issues:

"1. Whether it is possible to declare the Will dated 04.09.2008 as null and void?

2. Whether it is possible to declare the settlement deed dated 11.05.2012 in respect of suit first item as null and void?

3. Whether it is possible to declare the Settlement deed



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dated 11.05.2012 in respect of suit 2nd item as null and void?

4.Whether each plaintiff is entitled 7/40 equal share in the suit properties?

5.Whether permanent injunction restraining D2, D3, their men, assignees from interfering with the peaceful possession of plaintiff is possible?

6.Whether there is any partition of suit properties as per the partition deed dated 22.05.2003?

7.Whether mandatory injunction directing the plaintiff to vacate and hand over possession of 2nd item to D3 possible?

8.Whether plaintiff 1 and 2 are jointly liable to pay Rs.50,000/- towards past mesne profits for unlawful occupation of 2nd item?

9.Whether mandatory injunction directing the plaintiffs to vacate and hand over possession of 1st item to D2 is possible?

10.Whether plaintiff 1 and 2 are jointly liable to pay Rs.50,000/- towards past mesne profits from 20.05.2013 for unlawful possession of item No.1? and

11.What are the other reliefs, plaintiffs are entitled to?"



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7. During the course of trial on the side of the plaintiffs, the second plaintiff himself has examined as PW.1 and exhibits Ex.A1 and Ex.A35 were marked. On the side of the defendants, the first defendant examined herself as DW.1 and the 3rd defendant herself examined as DW.2 and two other witnesses were examined as DW.3 and DW.4 and exhibits EX.B1 to B20 were marked and during cross examination of DW.1, EX.A36 was marked.

8. After conclusion of the trial and after considering the materials available on records, the learned trial Judge had dismissed the suit filed by the plaintiffs and decreed the counter claim filed by defendants 2 and 3. Aggrieved over the same the plaintiffs have preferred this appeal.

9. Heard the submissions made by either side learned counsel and perused the materials available on record.

10. The learned counsel for the appellants submitted that the suit properties were situated in Puducherry and succession of the properties is governed by the law in force at Puducherry; the Hindu



Customary Law i.e. Coromandel Hindu law is applicable to the parties to the suit and the learned trial Judge without applying the law applicable to the parties had dismissed the suit and allowed the counter claim; in view of the practise and customs adopted in Puducherry, the parents of the plaintiffs cannot make any gratuitous transfers in respect of the suit properties beyond an undivided 1/8 share; the customary law governing the Puducherry natives is applicable irrespective of the fact where the properties are situated; there are enough materials to show that the plaintiffs, defendants and their father are all natives of Puducherry and they were governed by the Puducherry customary law.

10.1 As per the Customary Law applicable to the natives of Puducherry, the parents of the legal heirs cannot make any gratuitous transfer beyond an undivided 1/8th share; the learned trial Judge had mixed the customary law and the French Civil Court law and arrived at a wrong conclusion that the parties to the suit are governed by the Hindu succession Act, 1956; the appellants did not plead themselves as '*renouncants*' and hence the question of exercising option by the '*renouncants*' would not be applicable to the facts of the case; the Court below ought to have applied the Hindu Customary Law applicable



to the natives of Puducherry or Coromandel Hindu law; the learned trial Judge had misconstrued the relevant provisions of the Hindu Succession Act and the Customary Law; hence, the judgment and decree of the learned trial Judge should be set aside.

10.2. In support of his above contentions, the learned counsel for the appellants cited the following judgments:

Sl. No	Citations submitted by the appellants' counsel	Reported in
1	Ramalingam Vs. Manicka Gounder & others	1981 (94) LW 36
2	Krishnamoorthy Gounder Vs. Sitarama Gounder & Others	2002(3) LW 669 (DB)
3	Thananjayan @ Murugesan & Others Vs.Palani @ Boologanathan & others	2012(2) LW 673
4	Palani @ Boologanathan & others Vs.Thananjayan @ Murugesan & others	judgment made in Rev.A.No.75 & 76/2017 in S.A.Nos.209 & 210/1998
5	M.Kadirvelu & others Vs. G.Santhanalakshmi & Others	2016 (3) LW 385
6	S.R.Srinivasa & Others Vs. S.Padmavathamma	(2010) 5 SCC 274
7	Bhanwar Singh Vs. Puran & Others	(2008) 3 SCC 87
8	Darshan Singh Vs. Ram Pal Singh & Another	1992 Supp (1)SCC 191
9	Theiry Santhanamal Vs. Viswanathan & Others	(2018) 3 SCC 117
10	Oriental Insurance Co.Ltd Vs. Siby George & Others	(2012) 12 SCC 540

11. Per contra, the learned counsel for the respondents submitted that after the coming into force of the Hindu Succession Act, as per Section 4 of the Hindu Succession Act, 1956, any custom or usage which was in force immediately before the commencement of the Act would cease to have any effect and that will not be applicable



to Hindus; the parties are Hindus by religion and hence they cannot plead that the Hindu Succession Act is not applicable to them; as per Section 14 of the Hindu Succession Act the properties of the female Hindus are absolute properties and hence she has every right to dispose the same in accordance with her will and pleasure during her life time and further there was a partition taken place between the plaintiffs and their father as early as on 22.05.2003 and in which, the plaintiffs have got their respective shares and thereafter they cannot claim that they remained as joint family members; the share allotted to the father by partition deed, should be treated as his self acquired property and hence he was at liberty to execute a Will in favour of his wife, the first defendant, in respect of his share and the plaintiffs cannot question the same.

11.1 In fact, the 1st defendant had executed a sale deed and sold some of the properties in favour of the 2nd plaintiff on 22.05.2003 itself; on the same day she had also executed another settlement deed in favour of the 1st plaintiff; the plaintiffs who themselves have obtained sale deed and settlement deed from the 1st defendant cannot state that the properties in the name of the 1st defendant was purchased from and out of the joint family income; so the 1st



defendant had self acquired properties and she had given those properties to all her children including defendants 2 and 3 and that cannot be denied by the plaintiffs by making any false claim over the same.

11.2.In the various judgments of the High Court and the Hon'ble Supreme Court, it has been held that the Customary Law has ceased to have any effect after the Hindu Succession Act was brought into force; the learned trial Judge has rightly analysed the facts and applied the law; in fact, the plaintiffs had filed the appeal only against the judgment and decree passed in the suit and they have not filed any other appeal challenging the counter claims allowed in favour of defendants 2 and 3; hence the appeal itself is not maintainable and should be dismissed.

12. In support of his above contentions, the learned counsel for the respondents cited the following judgments:

Sl. No	Citations submitted by the respondents' counsel	Reported in
1	Gowri Vs. Subbu Mudaliar	judgment made in AS.No.270 of 2008 dated 21.04.2017
2	Venkateswarane Sivadjy Vs. Alice Viala	judgment made in AS.No.95 of 2018, dated 12.01.2022



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13. The Point for consideration that would arise in this appeal would be mainly on the following questions of facts and law and it is listed as hereunder:

- (i) Whether the parties to the suit are not governed by the Hindu Succession Act, 1956?
- (ii) Whether the plaintiffs and their forefathers are natives of Puducherry and for whom, the Coromandel Customary Law alone should be applicable even after the enforcement of the Hindu Succession Act, 1956?
- (iii) Whether the 1st defendant has got disposable right in respect of the suit items 1 and 2, for executing settlement deeds dated 11.05.2012 in favour of the defendants 2 and 3?
- (iv) Whether the judgment and decree of the learned trial Judge is fair and proper ?

14. Since the points 1 to 4 are inter-connected, all the points are taken together for a common discussion. The relationship between the plaintiffs and the defendants is not in dispute. The 1st defendant is the



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mother of the plaintiffs 1 and 2 and the defendants 2 and 3 are daughters of the 1st defendant. So the dispute is between the brothers and sisters. The claim of the brothers is that their father Kasinatha Mudaliar did not have any right to make any gratuitous transfer during his life time beyond 1/8th share of the first item of the suit property; and similarly the 1st defendant's mother also does not have any right to make any gratuitous transfer in respect of the first and second items of the suit properties beyond 1/8th share and hence, the Will executed by the plaintiffs' father dated 04.09.2008 in favour of the 1st defendant and the two settlement deeds executed by the 1st defendant dated 11.05.2012 in favour of defendants 2 and 3 should be declared as null and void.

15. In fact, the first item of the suit property has been purchased in the name of the plaintiffs' father by virtue of a sale deed dated 19.08.2004 and the second item of the suit property was purchased by the 1st defendant by virtue of a sale deed dated 04.08.1990. The said facts were not disputed. However it is claimed by the appellants that those properties have been purchased from and out of the joint family income and the properties stood in the name of the 1st defendant cannot be treated as her self acquired property. But the



appellants did not dispute that there was a partition deed entered into between themselves and their father on 22.05.2003 by Ex.B1 and in which, the parties have been allotted with their respective shares.

16. Having executed a family partition deed, it cannot be claimed by the plaintiffs that they remain as a joint family. For any extraneous reasons if the plaintiffs claim that they were the joint family members that would only show that they try to appropriate the law of Hindu Succession Act. Having claimed that they remained as joint family members, they are estopped from claiming that they are not bound by the Hindu Succession Law and that they are only governed by the Coromandel Customary Law existed in the union territory of Puducherry. However, the materials available on record namely the partition deed would only show that the properties of the father have been partitioned between the father and his sons and thereafter they remained as only separate families.

17. In fact, the first item of the suit property was purchased by their father Kasinatha Mudaliar on 19.08.2004 which is subsequent to the partition. It is claimed by the appellants that even if it is



considered as the self acquired properties of the father, the father did not have any disposable right in respect of the said property beyond an undivided 1/8th share. Similar arguments were taken in respect of the second item of the suit property also which was purchased in the name of the 1st defendant on 04.10.1990. The plaintiffs claimed that the second item of the suit property cannot be considered as the self acquired property of the mother, though it was purchased in her name.

18. The conduct of the appellants is strange that they obtained sale deed and settlement deeds from the 1st defendant on 22.05.2003 itself. By virtue of a sale deed dated 22.05.2003 vide Ex.B2, the 1st defendant had sold one of her properties in favour of the 2nd plaintiff and by virtue of a settlement deed dated 22.05.2003, she settled one of her properties in favour of the 1st plaintiff. If the plaintiffs claim that their mother can not have full disposable right, it is not possible for the 1st plaintiff to get settlement deed from the mother by virtue of Ex.B3. So the conduct of the appellants/plaintiffs would only show that they had accepted the absolute ownership of their mother over the properties stood in her name and now for the sake of this suit, it is stated by them that the mother does not have any disposable right.



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19. The learned counsel for the appellants tried to persuade the Court that the appellants and his ancestors were domiciled at Puducherry and that they will not come under the purview of the Hindu Succession Act and in their part of the place, the Customary Law which was in force was Coromandel Hindu law of Puducherry. It is difficult to understand the argument of the learned counsel for the appellants because they neither claim the plaintiffs family as '*renouncants*' nor accept the applicability of the Hindu Succession law.

20. In this regard the attention of this Court was drawn to the judgment of this Court held in ***Thananjayan @ Murugesan and others Vs. Palani @ Boolaganathan (died) and others*** reported in **2012 (2) LW 673**. In the said case, it has been categorically held that one of the deceased in the suit namely Chakrapani Gounder @ Amavasai was a '*renouncants*' and hence by virtue of Section 2(A) of the Hindu Succession Act they did not come under the applicability of the Hindu Succession Act. If the appellants do not take a stand that they are '*renouncants*', they cannot claim that they are governed by the Coromandel Customary law of Puducherry.



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21. A brief understanding of the Coromandel customary law of Puducherry can help to resolve the issues revolving the case. The Coromandel customary law did not recognise the practise of ancestral properties, joint family properties, etc., According to the said custom it did not make any difference between the self acquired property and ancestral properties of a Hindu male. According to the said custom, irrespective of the character of the property whether it is self acquired or not, the Hindu male does not have any right to make any gratuitous transfer in excess of $1/8^{\text{th}}$ share. Even if he happened to transfer more than $1/8^{\text{th}}$ share that will not bind the interest of his legal heirs. However, the legal heirs can enforce their rights in respect of $7/8^{\text{th}}$ share only after the life time of the father.

22. Before claiming right over $7/8^{\text{th}}$ share in the suit properties the appellants have to prove that they are the subjects of Coromandel Customary law and not the Hindu Succession Act. It is vehemently claimed by the appellants that they were domiciled in the Union Territory of Puducherry. Even for the sake of arguments, if it is presumed that the appellants or his ancestors had domiciled at



Puducherry, it has to be seen how the Coromandel Hindu law is applicable to them.

23. In this regard it is relevant to cite the judgment of this Court held in ***M.Kadirvelu and others Vs. G.Santhanalakshmi and others*** reported in **2016 SCC Online Madras 16684**. In the said judgment His Lordship V.Ramasubramanian, J. as he then was had given a wide angle view of the origin, nature, scope, reasons and the applicability of the Coromandel Hindu law.

24. The historical facts behind the Coromandel Law prevailing in the part of Puducherry has been vividly explained in the said judgment and the reading of the judgment itself is sufficient to solve any conundrum revolving the applicability of Coromandel Law. In this regard it is relevant to extract paragraph Nos.28 to 34:

"28. With a view to enable the local population to renounce their personal laws and to adopt the French Code Civil, a Regulation was passed on 21.9.1881. By this Regulation, an option was given to the native Indians to renounce their personal status. Such a renunciation was to be effected by way of a declaration in the office of the Mayor of the locality. Incentives were also offered to people, who renounce their personal



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status. These incentives were in the form of political rights and the opportunities thrown up for an employment in the Government. According to Author Claude Markovits (A History of Modern India 1480-1950), people professing Christianity and people belonging to lower castes, were eager to make use of this opportunity. These persons were actually given a term namely "renouncants". These renouncants are governed by the French Code Civil in matters relating to marriage, divorce and family affairs. The 3 major enactments, namely, [The Hindu Succession Act](#), [Hindu Marriages Act](#) and the [Hindu Adoption and Maintenance Act](#) are not applicable to renouncants in Pondicherry.

29. The decree of 21 September 1881 enables the Indians, who so desired to renounce their personal status and to come under the purview of the French laws, with the objective of facilitating the progressive assimilation of natives and of contributing to the uplift of the pariah by fraternity. These measures, which aimed at ethnic (or cultural), not only political, assimilation marked the beginning of the process of absorption.

30. One of the important steps taken in this direction was to give French Indians the right of Universal Manhood Franchise and towards that end, the French counters in India were endowed with a Deputy, a Senator, a General council, Local councils and Municipalities. In addition, native Indians were given the right to representation, association and organisation. Culturally, those Indians, who so desired, were invited to renounce their personal status (hence become



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renouncants) and place themselves under the authority of the French Civil Code.

31. After India attained Independence, an agreement was signed in October 1954 between India and France for the defacto transfer of the French Territories, including Pondicherry in India. A Treaty of Cession was signed on 28.5.1956. The Treaty was ratified by the French Parliament in 1962. On 16.8.1962, both countries exchanged Instrument of Ratification. Consequently, de jure transfer got effected and Pondicherry, together with the enclaves of Karaikal, Mahe and Yanam became the Union Territory of Pondicherry from 01.7.1963. In the meantime, Pondicherry (Administration) Act, 1962, was passed by the Parliament, to provide for the administration of Pondicherry and matters connected therewith. Under Section 4(1) of the Pondicherry (Administration) Act, 1962, all laws in force immediately before the appointed date in the former French Establishments were directed to continue to be in force, until amended or repealed by a competent legislature. 16th day of August, 1962 was made as the appointed date.

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



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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.”

25. The above historical facts and the evolution of law would show that the French regime intended the local population of Puducherry to adopt the French life style. In order to encourage the local population to adopt the French Civil Code a regulation was passed on 21.09.1881. Through the said regulation, Options were thrown to the local population to renounce their personal law and adopt the French Civil Code. Incentives were also extended in the form of the government employment and other political rights and opportunities. Hence, a section of the local population was eager to avail those benefits by renouncing their personal law. Since they renounced their personal law and embraced the French Civil Code they were called as ‘renouncants’.

26. From the above judgment it is made clear that those people who opted to adopt the French Civil Code will be governed by French



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Civil Code in the matters relating to their marriage, divorce, family affairs and property inheritance. The learned trial Judge has also rightly applied the above judgment to the facts of this case. The renunciation and adoption of the French Civil Code can not be by any automatic presumption or assumption. But the persons who opted to renounce had to execute declarations to that effect in the office of the Mayor of the Authority within the prescribed time limit.

27. The learned trial Judge has extracted the relevant part of this judgment of this Court held in the case of ***Gowri Vs. Subbu Mudaliar and others, [AS.No.270 of 2008 decided on 23.03.2007]***. The appellants in this case cannot claim themselves as '*renouncants*', because they themselves have got a settlement deed from their mother. On the same date a partition deed was effected between the plaintiffs and their father as stated above. It is neither the claim of the appellants that they are '*renouncants*'. Their argument is that even though they are not '*renouncants*', they are still governed by the Coromandel Hindu law of Puducherry through custom.

28. It may be true that some of the natives would have



continued to practice the Coromandel Customs in the matters of property even without declaring themselves as 'renouncants'. But those persons cannot seek any legal sanction to such practice after the commencement of the Hindu Succession Act, 1956.

29. In this regard a reference about Sec.4 of the Hindu Succession Act is absolutely essential. Section 4 of the Hindu Succession Act would speak about the dis-entitlement of legal sanction for any customs and practice that were adopted prior to the commencement of the Act. Section 4 of the Hindu Succession Act, 1956 reads as under:

"Section 4 in The Hindu Succession Act, 1956

4. Over-riding 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 in so far as it is inconsistent with any of the provisions contained in this Act"

30. In the judgment of this Court in ***Gowri Vs. Subbu Mudaliar***



and others, Hon'ble Mr.Justice N.Sathish Kumar has followed

M.Kathirvelu (supra) and held is under:

"37. It is curious to note that the widow of the Sivasamy Mudaliar and one of the brothers also claimed maintenance and obtained a judgment with regard to the maintenance in the Court of First Instance at Pondicherry as per the Hindu Women Right to [Property Act](#). Thereafter, some compromise was effected and she has been given some properties and ultimately, the Court found that all of them were coparcenars and there was joint family between them. The first defendant's father Mannarsamy also found to be coparcenar along with his uncles. When the property itself was obtained as Hindu Joint Family and only Rule of Survivorship was applied as per the Mitakshara principle of law. One of the legal heirs now cannot contend that the above property is self acquired property as per the Customary Hindu Law. Ex.A-4 dated 23.12.1975 and issue Nos.1 and 2 clearly prove the factum that the parties are in fact Governed by the Mitakshara principle and not under Customary Rule of Hindu Law Practice in Pondicherry. Exhibit A-4 judgment itself clearly show that the ancestors of the family to the parties herein were governed by the principle of Hindu Law. Therefore, now they cannot contend that the Customary Law alone were vogue in their family. In view of these facts and also summarized as discussed earlier and also taking into consideration of [Section 4](#) of the Act, its overriding effect this Court hold that [The Hindu Succession Act](#) which was extended to Pondicherry alone will prevail over except



renouncants. Accordingly, this point is answered. "

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31. So, the position of the law is very clear on the point that except '*renouncants*' no other Hindus of Union Territory of Puducherry can claim that in the matters of properties that they are governed by some other Custom or Law other than the Hindu Succession Act. **Thus, the points 1 and 2 are answered.**

32. Though the learned counsel for the appellants has referred all the judgments listed supra, they are either not applicable to the facts of this case or only confirm the fact that except the '*renouncants*' of Puducherry no other Hindus of Puducherry would be governed by any other custom or by French Civil Code. In other words after the commencement of the Hindu Succession Act, no legal sanction can be given to Coromandel Customary Law or any other Customary Law for that matter. Hence, the appellants cannot approbate and reprobate by stating they were living as joint family at one stretch and also that they are followers of Customary Coromandel Law at the other stretch.

33. If any Hindu claims that they are governed by the



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Customary Law of Puducherry which was existed prior to the commencement of the Hindu Succession Act, they have to plead and prove that they are '*renouncants*' and hence they fall out of the applicability of the Hindu Law. In the case in hand, the appellants have taken uncertain stand by stating that they are still '*renouncants*', but still governed by Customary Law. The appellants who are Hindus did not prove that the Hindu Succession Act is not applicable to them and hence they have to abide by the same.

34. It is pertinent to mention that the appellants have not chosen to file any appeal challenging the judgment and decree passed in favour of the defendants 2 and 3 in the counter claim filed by them. Since the first item of the suit property was purchased by the father of the appellants by virtue of a sale deed and it is his self acquired property, he is at liberty to execute a Will in favour of his wife who is the 1st defendant herein. The contradictory stands taken by the appellants would only show that their only intention is to deprive the defendants 2 and 3 from getting the suit properties from their mother, 1st defendant.



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35. After the life time of the father of the appellants/plaintiffs, the first defendant had acquired the first item of the suit property by virtue of the Will executed in her favour by her deceased husband Kasinatha Mudaliar and by virtue of her purchase dated 22.05.2003, in respect of the second item, she acquired absolute right over the suit second item of the property. And so, she is entitled to execute the settlement deeds in favour of the 2nd and 3rd defendants and pass title in their favour respect of the first item and second item of the suit properties. The plaintiffs who have no manner of right in the suit properties have raised vexatious claim by alleging certain inapplicable customary practices and filed this suit. Thus, **point No.3 is answered.**

36. The learned trial Judge has rightly analysed the facts and applied the law appropriately and held that the defendants 2 and 3 are entitled to the suit items 1 and 2 respectively, and hence they are also entitled to the relief of recovery of possession. The learned trial Judge has rightly chosen to dismiss the suit and decree the counter claim. Thus, **point No.4 is answered.**



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In the result, the Appeal is **dismissed** and the judgment and Decree dated 27.06.2018 made in OS.No.48 of 2013 on file of the II Additional District Judge, Puducherry, is confirmed. No costs. Consequently connected miscellaneous petition is also dismissed.

31.10.2022

Index : Yes
Internet : Yes
Speaking
jrs



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A.S.No.890 of 2018

R.N.MANJULA, J.

jrs

To

The II Additional District Judge,
Puducherry.

**A.S.No.890 of 2018
and
CMP.No.23198 of 2018**

31.10.2022

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