



AS Nos.479 and 480 of 2016

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on 04.10.2023	Delivered on 02.11.2023
---------------------------	----------------------------

CORAM:

THE HONOURABLE MR.JUSTICE **R.SUBRAMANIAN**
and
THE HONOURABLE MRS.JUSTICE **K.GOVINDARAJAN THILAKAVADI**

A.S.Nos. 479 and 480 of 2016
and Connected Miscellaneous Petitions

AS No.479 of 2016

1. Kalaivanan
2. Vijayalakshmi
3. Sornamala
4. Sangeetha
5. Sarojini ... Appellants/Defendants 1 to 5

Vs

1. Sagayamarie Rayar
D/o. Late Joseph Amalarayan Rayar,
No252, Rue De Blards 38530, Chapareilan, France,
Rep. by her Power of Attorney,
Vijayan, S/o. Vaithilingam,
No.32, Parivallal Street, Shanthi Nagar,
Lawspet, Pondicherry. ... 1st Respondent/Plaintiff
2. Frncois Marie Antoine Rayar
S/o. Late Joseph Amalarayan Rayar,
No.7, Rue Dela Paix, 78130,
Les Mureaux, France.



AS Nos.479 and 480 of 2016

3. Marie Victor Djeearaj Rayar
S/o. Late Joseph Amalarayan Rayar,
No.20, Lotissement La Marie,
13109, Simiane - Collongue,
France.

... Respondents 2 & 3/
Defendants 6 & 7

This appeal is filed under Section 96 r/w Order 41 Rule 1 of the Code of Civil Procedure, to set aside the judgement and decree dated 21.03.2016, passed in O.S.No.127 of 2012 and counter claim, on the file of the III Additional District Judge, Puducherry.

AS No.480 of 2016

1. Kalaivanan

2. S.Muthukrishnan ... Appellants/Defendants 1 &2

Vs

1. Sagayamarie Rayar
D/o. Late Joseph Amalarayan Rayar,
No252, Rue De Blards 38530, Chapareilan, France,
Rep. by her Power of Attorney,
Vijayan, S/o. Vaithilingam,
No.32, Parivallal Street, Shanthi Nagar,
Lawspet, Pondicherry. ... 1st Respondent/Plaintiff

2. R.Rajendiran

3. S.Sekar

4. M.Natarajan ... Respondents 2 to 4/
Defendants 3 to 5



AS Nos.479 and 480 of 2016

5. Frncois Marie Antoine Rayar
S/o. Late Joseph Amalarayan Rayar,
No.7, Rue Dela Paix, 78130,
Les Mureaux, France.

6. Marie Victor Djeearaj Rayar
S/o. Late Joseph Amalarayan Rayar,
No.20, Lotissement La Marie,
13109, Simiane - Collongue,
France.

... Respondents 5 & 6/
Defendants 6 & 7

This appeal is filed under Section 96 r/w Order 41 Rule 1 of the Code of Civil Procedure, to set aside the judgement and decree dated 21.03.2016, passed in O.S.No.132 of 2012 and counter claim, on the file of the III Additional District Judge, Puducherry.

For Appellants : Mr.S.Subbiah, Senior Counsel
(in both the Appeals) Assisted by Mr.A.V.Arun
for Mr.P.Raja

For Respondents : Mr.Prakash Adiapadam, for R1
(in both the Appeals)

R2 & R3 - served - No appearance
(in AS No.479/16)

RR2 to 4 - Notice Dispensed with
(in AS No.480/16)

RR 5 & 6 - Served - No appearance
(in AS No.480/16)



AS Nos.479 and 480 of 2016

COMMON JUDGEMENT

(Judgment of the Court was delivered by R.SUBRAMANINA, J.)

These two Appeals are at the instance of the alienees of certain properties from one Mrs.Marie Louise Rayar, widow of Joseph Amalarayan Rayar. Two suits were laid by the first respondent in both the Appeals seeking a declaration that seven Sale Deeds executed by Mrs.Marie Louise Rayar, during the years 2010, 2011 and 2012 as void and for partition and separate possession of her 1/3rd share in the said properties.

2. According to the plaintiff in both the suits, the suit properties subject matter of both the suits were purchased in the year 1965 and 2005 by her mother late Mrs.Marie Louise Rayar, during the subsistence of a marriage with Joseph Amalarayan Rayar, father of the plaintiff. Claiming that both Joseph Amalarayan Rayar and Marie Louise Rayar, were French Nationals and hence the French Code Civil would apply to them, the plaintiff pleaded that the properties acquired by Mrs.Marie Louise Rayar belonged to the community and Mrs.Marie Louise Rayar did not have an absolute right of disposition over the said properties. Citing the



AS Nos.479 and 480 of 2016

French Code Civil, it was contended by the plaintiff that if Mrs. Marie Louise Rayar, had exercised her option of retaining a 1/4th share, she would be entitled to 1/4th share and in the absence of such exercise of option, she would only be entitled to the usufructs. On her death, the property devolved on her two sons and a daughter viz. the plaintiff and defendants 6 and 7 in both the suits. Therefore, according to the plaintiff, the alienations made by Mrs. Marie Louise Rayar, in favour of the defendants 1 to 5 in both the suits are invalid and will not bind the plaintiff or the other legal heirs of the deceased Mrs. Marie Louise Rayar.

3. The suits were resisted by the purchasers contending that neither Joseph Amalarayan Rayar nor Mrs. Marie Louise Rayar, who were married on 18.01.1961 at Pondicherry, were French Nationals. Citing the Treaty of Franco Indian Cession between the Republic of India and France, it was contended that unless it is shown that a person domiciled in Pondicherry at the time of enforcement of Treaty of Franco Indian Cession had exercised his option to retain the French Nationality, within a period of six months, from the notified date he/she would automatically become an Indian National in view of Article V of the Treaty of Franco Indian Cession. It was contended that since neither the husband nor the



AS Nos.479 and 480 of 2016

wife were shown to have exercised their option, they would not be French Nationals and after the extension of the Indian Succession Act to Puducherry, during the year 1981 the same would apply.

4. It was also contended that there was no question of forming a communité légale between them and they would be governed by the provisions of the Indian Succession Act, which was extended to Puducherry on and from 01.04.1982. It was also pleaded that assumption of French Nationality is not a matter of presumption and the same will have to be proved like any other fact. It was also pleaded that the suits were barred by limitation.

5. On the above pleadings, the learned Trial Judge framed the following issues in OS No.127 of 2012:

1. Whether the French Law is applicable in the instant suit;

2. Whether the suit property is a community property;

3. Whether the sale deed of plot No.86 dt. 17.10.2011 registered on 17th October 2011 in favour of Sangeetha wife of Namachivayam, the fourth defendant the sale of plot No.87 also dated 17.10.2011 also



AS Nos.479 and 480 of 2016

registered on 17.10.2011 in favour of Sangeetha w/o.Namachivayan, the fourth defendant, the sale deed of plot No.58 dated 17.10.2011 and registered on the same date of 17.10.2011 and registered on the same date of 17.10.2011 in favour of S.Sarojini wife of Sambandan, the fifth defendant the sale deed of plot No.52, 53 dated 26.04.2012 registered on 2.5.2012 in favour of M.Kalaivanan S/o.S.Muthukrishnan, the first defendant, the sale deed of plots No.54,55,56,89,90,91 & 92 dated 26.04.2012 and registered on 27th April 2012 in favour of M.Kalaivanan S/o.Muthukrishnan the first defendant the sale deed of plot No.57 dated 7.5.2012 and registered on 7.5.2012 in favour of G.Vijayalakshmi w/o.R.Muthunarayanan, the second defendant, the sale deed of plot No.88 dated 7.5.2012 and registered on 7.5.2012 in favour of M.Sornamala w/o. Sekar the third defendant are all null and void and to be cancelled;

4. Whether the 6th defendant and the 7th defendant are entitled for any share in the property;

5. Whether Marie Louis Rayar & Joseph Amalarayan Rayar were Indian Citizens and government by the Indian Succession Act;

6. Whether the suit is barred for misjoinder and non joinder of parties;

7. Whether the suit is barred by limitation; and

8. To what other relief the plaintiff, 6th defendant



AS Nos.479 and 480 of 2016

and 7th defendant are entitled?

The following issues were framed in OS No.132 of 2012:

1. *Whether the French Law is applicable in the instant suit;*
2. *Whether the suit property is a community property;*
3. *Whether the sale deed dated 30.12.2012 executed by late Rayar Marie Louise in favour of first defendant is valid or null and void;*
4. *Whether the 6th defendant and the 7th defendant are entitled for any share in the property;*
5. *Whether the Marie Louis Rayar & Joseph Amalarayan Rayar were Indian Citizens and government by the Indian Succession Act;*
6. *Whether the suit is barred for misjoinder of parties;*
7. *Whether the suit is barred by limitation;*
8. *To what other relief the plaintiff, 6th defendant and 7th defendant are entitled?*

6. The suits were tried separately though both the suits ought to have been tried together. Except the suit property and the prayer, the pleadings in both the suits were substantially the same.



AS Nos.479 and 480 of 2016

7. At Trial the Power Agent of the plaintiff was examined as P.W.1 and Exs. A1 to A25 were marked. On the side of the defendants, D.Ws.1 to 7 were examined and Exhibits B1 to B20 were marked.

8. The learned Trial Judge, upon a consideration of the evidence on record concluded that the deceased Mrs. Marie Louise Rayar is a French National and as such the French Code Civil would apply to her. Upon such conclusion, the learned Trial Judge held that the Sale Deeds executed by Mrs. Marie Louise Rayar, which were impugned in the suits are not valid and the plaintiff and defendants 6 and 7 in the suits would be entitled to 1/3rd share each in the suit properties. Since the defendants 6 and 7 had laid a counter claim by paying Court Fee, the learned Trial Judge granted a preliminary decree in their favour also. Aggrieved, the defendants 1 to 5 in both the suits are on Appeal.

9. We have heard Mr. S. Subbiah, learned Senior Counsel assisted by Mr. A. V. Arun, for Mr. P. Raja, appearing for the appellants in both the Appeals and Mr. Prakash Adiapadam, learned counsel appearing for the first respondent in both the Appeals.



AS Nos.479 and 480 of 2016

10. Mr.S.Subbiah, learned Senior Counsel appearing for the appellants would vehemently contend that there is no evidence to prove the fact that Mrs.Marie Louise Rayar had in fact exercised her option as required under Article V of the Treaty of Franco Indian Cession dated 28.05.1956 entered into between the Republics of France and India. Drawing our attention to Article IV of the Treaty of Franco Indian Cession, the learned Senior Counsel would contend that all French Nationals domiciled in Puducherry after the date of the entry into force of Treaty of Franco Indian Cession, i.e. 16.08.1962 will automatically become Indian Nationals, of course subject to the exceptions under Article V. Those persons domiciled in the French Territory were given an option to make a written declaration within six months from the date of entry into force of the Treaty of Franco Indian Cession choosing to retain their Nationality and such persons will never acquire Indian Nationality. He would also draw our attention to the specific provision in Article V to the effect that a choice of the husband will not affect the Nationality of the spouse. Therefore, according to the learned Senior Counsel, unless it is shown that Mrs.Marie Louise Rayar, had by her own volition made a declaration required under Article V, she would not acquire French Nationality and on and from 16.08.1962, she would be an Indian



AS Nos.479 and 480 of 2016

National and since all the properties subject matter of both the suits were acquired after the said date, they would not form part of the property of the community.

11. Arguing further the learned Senior Counsel would submit that the provisions of the French Code Civil would apply only to French Nationals living in Puducherry and not to the others, who become Indian Citizens after the cessation of Territories by France to Republic of India with effect from 16.08.1962. The learned Senior Counsel would also draw our attention to the provisions of the Indian Succession (Extension to Puducherry) Act 1980, which came into force with effect from 01.11.1982, to buttress his contention that it is the Indian Succession Act 39 of 1925 which would apply to Christians in Puducherry from the date of its extension viz. 01.11.1982.

12. The learned Senior Counsel would also point out that Section 1A of the Indian Succession Act which was introduced by the Indian Succession (Extension to Puducherry) Act, 1980 excludes the applicability of the principle enactment to renoncants in Puducherry.

Insofar as the renoncants are concerned, it is the Customary Hindu Law



AS Nos.479 and 480 of 2016

that would apply and not the French Code Civil. In support of his contention that the French Code Civil will apply only to French Nationals and it cannot be applied to govern succession of the natives, who had not exercised their option within the prescribed period, the learned Senior Counsel would draw our attention to the Statement of Objects and Reasons of Act 10 of 1980, which reads as follows:

STATEMENT OF OBJECTS AND REASONS FOR ACT

NO.10 OF 1980

The question of extending the Indian Succession Act, 1925 to the Union territory of Puducherry has been engaging the attention of this Administration for quite some time. Various seminars have been conducted by this Administration on the advice of the Government of India to elicit public opinion on the proposal. After examination, it is proposed to extend the Indian Succession Act, 1925, to fall in line with other parts of the country in the matter of succession, with provision that it shall not apply to "Renoncants" as in the case of other personal laws extended to this Union territory."



AS Nos.479 and 480 of 2016

13. The learned Senior Counsel would draw our attention to the pleadings where it is claimed that the plaintiff's father and mother were French Nationals and hence the property that was purchased during the subsistence of the marriage would belong to the community. The learned Senior Counsel would also draw our attention to the evidence of P.W.1 in cross-examination, wherein he would admit that he has not filed any document to show that either Mrs.Marie Louise Rayar or her husband Joseph Amalarayan Rayar are French Nationals. He would also point out that the said witness, who is the Power of Attorney Agent of the plaintiff, had conceded that their Marriage Certificate does not show that they are French Nationals.

14. Learned Senior Counsel would point out that Ex.A7 a Sale Deed under which Mrs.Marie Louise Rayar had purchased some of the properties contains a reference to her Passport and he has claimed that it is a French Passport. Faulting the plaintiff for non-production of the passport, the learned Senior Counsel would urge us to draw an adverse inference against the plaintiff. He would also point out that there is no agreement between the spouses that existed regarding the sharing of the properties that were purchased by the spouses during the subsistence of



AS Nos.479 and 480 of 2016

the matrimony. The learned Senior Counsel would also invite our attention to the Book on Private International Law by Cheshire and North to contend that the law relating to immovable property would be governed by the law of the situs and not by the law of the testator's domicile. The learned Senior Counsel would draw our attention to the following passage in Cheshire and North's Private International Law, thirteenth edition, in support of his contention:

“We have seen earlier that, under the principle of scission, succession to immovables is governed, not by the law of the testator's domicil, but by the law of the situs.

Accordingly, where the owner of immovables dies intestate, the order of descent or distribution prescribed by the law of the situs is applied by the English Court no matter what his domicil may have been.”

15. The learned Senior Counsel would also draw our attention to the judgment of the Division Bench of this Court in ***Muthaiyan vs. Poongothai and Ors.*** reported in **2018 (1) LW 209**, in support of his contention that after the French Territories in India were ceded by the Republic of France i.e. after 16.08.1962, the locals or the natives, living in those territories would become Indian Nationals and it is the Indian



AS Nos.479 and 480 of 2016

Law that would apply to them, of course with an exception that for those persons, who had exercised their option to retain their French Nationality, the French Law would continue to apply and for those who are renoncants, the Customary Hindu Law that was in vogue in Puducherry, before 16.08.1962 would apply. He would also rely upon the judgment of Hon'ble Mr.Justice V.Ramasubramanian, in ***M.Kadirvelu & Others vs. G.Santhanlakshmi and others***, reported in **2016 (3) LW 385**, wherein the learned Judge, after referring extensively to the Article of Sri.D.Ramabathiran, a retired District Judge from Pondicherry, had held that Mitakshara School of Hindu Law would not apply to Puducherry and there is no concept of joint family. He would also conclude that all the inhabitants of Pondicherry at the enactment of the Pondicherry Administration Act, 1962 cannot be presumed to be renoncants. While doing so, the learned Judge observed as follows:

53. But, the real question is as to whether all the inhabitants of Pondicherry at the time of enactment of Pondicherry Administration Act, 1962 were renouncants or not, irrespective of the date of their migration to Pondicherry. To presume that all inhabitants of Pondicherry, on the date of the coming into the force of the Treaty of Cession, were renouncants, does not appear to be correct. By the very fact that the French



WEB COPY



AS Nos.479 and 480 of 2016

Government gave an option either to renounce their Personal Law and get assimilated into French system or to continue to be governed by the Local Customary Personal Law, would show that only those, who exercised the option, could become renouncants.

16. Relying upon the above observations of the learned Judge, the learned Senior Counsel would contend that only those persons, who had exercised their options within the time stipulated under Article V of the Treaty of Franco Indian Cession would become French Nationals and others would automatically become Indian Nationals. Our attention is also drawn by the learned Senior Counsel to the judgment of another Division Bench of this Court in ***Sandana Rene Lucien Joseph and others Vs. Sandana Vincent Maria Anthony and others***, reported in ***2018 (1) CTC 481***, wherein the Division Bench had held that in view of Section 5 of the Indian Succession Act, succession to immovable property situate within the Territory of India shall be regulated by the Law of India irrespective of the domicile of the person, who owned such immovable property, whether he or she is alive or dead. The Division Bench which considered the question of the preemptive right conferred on the siblings under French Code Civil and held that the same cannot be



AS Nos.479 and 480 of 2016

applied. In doing so, the Division Bench after referring to the judgment

of Hon'ble Mr. Justice V.Ramasubramanian, cited above held as follows:

22. Thus, as per Section 5 of the Indian Succession Act, all the immovable properties within the territory of India shall be regulated by the law of India irrespective of the domicile of the person who own such immovable property, whether he or she is alive or dead. In this case, admittedly, the immovable property purchased by the first defendant is situate within the Union Territory of Pondicherry. Even though the plaintiff and defendants 2 to 6 are French Nationals, in transactions relating to immovable property such as sale, mortgage or Will, they are governed by the local laws prevailing in the place where such property is situate. This position is very clear from the decision rendered by the Honourable Supreme Court in the decision cited supra in Sankaran Govindan case. Further, in the decision of the Division Bench of this Court rendered in (M. Kadirvelu v. G. Santhanalakshmi) reported in 2016 3 Law Weekly 385 it was held that as per Section 3 read with First Schedule to the Pondicherry (Laws) Regulation, 1963, the provisions of the Hindu Succession Act, 1956 were extended to the inhabitants of the Union Territory of Pondicherry, subject to one restriction namely in so far as renouncants are concerned, the Hindu Succession Act would not have any application. In the present case,



WEB COPY



AS Nos.479 and 480 of 2016

admittedly, there is no evidence to show that the father/first defendant is a renoucant so as to disentitle him to come within the purview of the Indian Succession Act. Even if it is the case of the plaintiff that the plaintiff and defendants 1 to 6 are renoucants and they have renounced their personal laws and got assimilated into the French System, it must be specifically pleaded and proved. In the present case, there was no pleading made by the plaintiff in the plaint to that effect. Further, we are also fortified by the decision rendered by the Division Bench of this Court in A.S. No. 589 of 2010 dated 06.09.2017 in the case of (Mathaiyan v. Poongothai) wherein it was held in para No. 25 as follows:—

“.....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



WEB COPY



AS Nos.479 and 480 of 2016

customary Hindu Law will have no application to their case.”

17. Contending contra, Mr.Prakash Adiapadam, learned counsel appearing for the respondent would submit that there is enough and more evidence to show that both Mrs.Marie Louise Rayar and Joseph Amalarayan Rayar are French Nationals. The learned counsel would draw our attention to Exs.A17 and A18 in OS No.132 of 2012 and Exs.A23 and A24 in OS No.127 of 2012 to contend that Mrs.Marie Louise Rayar was declared to be a French National by the Court of Competent jurisdiction at France. While Ex.A23 in OS No.127 of 2012 is an Identity Card issued to Mrs.Marie Louise Rayar on 16.02.2016, Ex.24 is the order of the Court of first instance dated 09.11.2011 that Mrs.Marie Louise Rayar is a French National by filiation on the premise that her husband Joseph Amalarayan Rayar had retained French Nationality and he has subscribed the option on 15.02.1963 as required under Article V of the Treaty of Franco Indian Cession. A copy of the livret de famille, which has been produced as Ex.22 is also relied upon by Mr.Prakash Adiapadam, would contend that both Joseph Amalarayan Rayar and Mrs.Marie Louise Rayar were French Nationals. Two of the



AS Nos.479 and 480 of 2016

above documents viz. the Identity Card and the Order of the Court of first instance Exs.A23 and A24) have been produced in OS No.132 of 2012 as Exs.A17 and A18.

18. An objection is taken by Mr.Subbiah, learned Senior Counsel appearing for the appellants to the effect that only photo copies of the documents have been marked and no reason has been assigned for non-production of the original. Therefore, according to him, in the absence of any reason which would justify the non-production of the originals as required under Section 65 of the Indian Evidence Act, the Trial Court was not right in admitting those documents as secondary evidence. He would also draw our attention to certain proceedings of the Trial Court which would go to show that an objection was taken to the marking of photo copies of these documents without proper reasons as required under Section 65 of the Indian Evidence Act, in support of his submissions.

19. These four documents which are photo copies were received in evidence by reopening the plaintiff's evidence in OS No.132 of 2012 and the additional proof affidavit filed by P.W.1 with reference to production



AS Nos.479 and 480 of 2016

of these documents reads as follows (cause title omitted):

WEB COPY

Additional Chief Examination Affidavit of P.W.1

I, Vijayan son of Vaithialingam, Hindu, aged 29 years, residing at No.32, Parivallal Street, Shanthi Nagar, Lawspet, Pondicherry do hereby solemnly and sincerely affirm and state as follows:

- 1. I state that I am the power agent of Ms.Sagayamarie Rayar herein and I am fully aware of the facts of the case. I was already examined as P.W.1. I am recalled for the purpose of marking additional documents.*
- 2. I state I had filed additional list of documents and the list has been accepted by this Hon'ble Court.*
- 3. I state that the following are the remaining documents.*

LIST OF DOCUMENT

1	22.11.1994	<i>Livret de Famile Notary attested Photocopy</i>	<i>Issued by officer of etat civil Pondicherry</i>
2	<i>Valid upto 16.02.2016</i>	<i>Identity Card to Marie Louise Rayar Photocopy</i>	<i>Issued by Consulat General de France at Pondicherry</i>
3	-- -- 1989	<i>Certificate of French nationality of Marie Louise Rayar Photocopy with English Translation Photocopy</i>	<i>Issued by Court of Instance Corbeil-essonne 91 France</i>
4	23.07.2013	<i>Copy of FIR in Crime No.164/2013</i>	<i>By Grand Bazaar Police Station Pondicherry</i>



AS Nos.479 and 480 of 2016

WEB COPY

The Additional proof affidavit filed in OS No.127 of 2012 reads as follows (cause title omitted):

Additional Chief Examination Affidavit of P.W.1

I, Vijayan son of Vaithialingam, Hindu, aged 29 years, residing at No.32, Parivallal Street, Shanthi Nagar, Lawspet, Pondicherry do hereby solemnly and sincerely affirm and state as follows:

- 1. I state that I am the power agent of Ms.Sagayamarie Rayar herein and I am fully aware of the facts of the case. I was already examined as P.W.1. I am recalled for the purpose of marking additional documents.*
- 2. I state I had filed additional list of documents and the list has been accepted by this Hon'ble Court.*
- 3. I state that the following are the remaining documents.*



AS Nos.479 and 480 of 2016

LIST OF DOCUMENT

1	22.11.1994	Livret de Famile Notary attested Photocopy	Issued by officer of etat civil Pondicherry
2	Valid upto 16.02.2016	Identity Card to Marie Louise Rayar Photocopy	Issued by Consulat General de France at Pondicherry
3	-- -- 1989	Certificate of French Nationality of Marie Louise Rayar Photocopy with English Translation Photocopy	Issued by Court of Instance Corbeil-essonne 91 France
4	23.07.2013	Copy of FIR in Crime No.164/2013	By Grand Bazaar Police Station Pondicherry

20. Pointing out the fact that there is no reason whatsoever that would satisfy the requirements of Section 65 of the Indian Evidence Act, Mr.Subbiah, the learned Senior Counsel would submit that admission of these documents in evidence itself is flawed. He would further point out that soon after these documents were marked two applications were filed by the defendants in IA No.725 of 2015 in OS No.127 of 2012 and IA No. 726 of 2015 in OS No.132 of 2012 seeking to eschew these documents from the evidence. The orders passed there on have been placed before us.



AS Nos.479 and 480 of 2016

21. As far as IA No.725 of 2015 in OS No.127 of 2012 is concerned, the learned Additional District Judge by her order dated 31.07.2015, noted the fact that the document has been marked subject to objections and the objections will have to be decided at the time of deciding the suit itself. On the above premise, the learned Additional District judge dismissed the said application. However, while dealing with IA No.726 of 2015 in OS No.132 of 2012, the learned Additional District Judge relied upon the judgment of this Court in **2012 (6) CTC 648**, and allowed the application for rejecting the Xerox copies of Exs.A17 and A18. Therefore, insofar as OS No.132 of 2012 is concerned, these two documents viz. Exs.A17 and A18 are not on record. In the other suit viz.OS.No.127 of 2012, the Court ought to have decided, as to whether, the plaintiff could be permitted to produce secondary evidence in the absence of any reason that would satisfy the requirements of Section 65 of the Indian Evidence Act.

22. Mr.Prakash Adiapadam, learned counsel would submit that the Service Register of Joseph Amalarayan Rayar, husband of Marie Louise Rayar, has been produced by summoning the same from the Government of Puducherry and in the said document, there is an endorsement to the



AS Nos.479 and 480 of 2016

effect that Joseph Amalarayan Rayar had opted to be a French National.

That endorsement is dated 17.08.1980. Therefore, according to the learned counsel, this endorsement made in the Service Register would be sufficient proof of the fact that both Joseph Amalarayan Rayar and his wife Marie Louise Rayar were French Nationals and they had exercised their option. The learned counsel would submit that once the copies have been admitted, the same cannot be rejected for want of reasons. We must, at this juncture, point out that the order in IA No.725 of 2016 was subject matter of challenge before this Court in CRP No.3580 of 2015 and this Court had held that since the Court has reserved a decision on the admissibility of the documents, at the time of deciding the suit it would not interfere in revision.

23. Mr.Prakash Adiapadam, learned counsel appearing for the respondents would make an attempt to project reasons for non marking of the original documents by referring to the FIR that had been lodged on 23.07.2013 to the effect that the defendants were in fact taking care of the parents of the plaintiffs and the jewels and documents kept in the house have been taken away by the defendants. This complaint is made after the suit and the same was not pursued further. A Final Report was



AS Nos.479 and 480 of 2016

filed closing the same on the ground that the Civil Suit is pending.

Moreover, the documents viz. Exs.A23 and A24 are not specifically referred to in the said complaint.

24. As rightly pointed out by Mr.Subbiah, learned Senior Counsel appearing for the appellants, a reason for non production of the original document must be made by the party concerned at the time of production of the documents and not at the appellate stage. That too, after the marking of those documents which are copies was challenged and the Court having upheld the challenge in one case and postponed the determination of the challenge in another case.

25. On the above arguments of the counsel on either side, the following points arise for determination:

(i) Whether Mrs.Marie Louise Rayar had exercised her option to retain her French Nationality as required under Article V of the Treaty of Franco Indian Cession;

(ii) Whether the Trial Court was right in looking into the documents which were rejected in



WEB COPY



AS Nos.479 and 480 of 2016

OS No.132 of 2012;

(iii) Whether the Trial Court was right in not considering the non production of primary evidence in OS No.127 of 2012; and

iv. Whether the exercise of option by the husband viz. Joseph Amalarayan Rayar would enure to the benefit of the plaintiffs to contend that his wife is also a French National.

Point No.1:

26. Article IV and V of Treaty of Franco Indian Cession, read as follows:

Article IV: *French Nationals born in the territory of the Establishments and domiciled therein at the date of the entry into force of the Treaty of Cession shall become nationals and citizens of the Indian Union, with the exceptions enumerated under Article V hereafter.*

Article V: *The persons referred to in the previous article may, by means of a written declaration drawn up within six months of the entry into force of the Treaty of Cession, choose to retain their nationality. Persons availing themselves of this right shall be deemed never to*



AS Nos.479 and 480 of 2016

have acquired Indian nationality. The declaration of the father or, if the latter be deceased, of the mother, and in the event of the decease of both parents, of the legal guardian shall determine the nationality of unmarried children of under 18 years of age. Such children shall be mentioned in the aforesaid declaration. But married male children of over 16 years of age shall be entitled to make this choice themselves. Persons having retained French nationality by reason of a decision of their parents, as indicated in the previous paragraph, may make a personal choice with the object of acquiring Indian nationality by means of a declaration signed in the presence of the competent Indian authorities, within six months of attaining their eighteenth birthday. The said choice shall come into force as from the date of signature of the declaration.

The choice of a husband shall not affect the nationality of the spouse. *The declarations referred to in the first and second paragraphs of this Article shall be drawn up in two copies, the one in French, the other in English, which shall be transmitted to the competent French authorities. The latter shall immediately transmit to the competent Indian authorities the English copy of the aforesaid declaration.*

26.1. A reading of the above Articles would show that all French



AS Nos.479 and 480 of 2016

Nationals, who had either born or domiciled in the territory of the French establishments in India, at the date of entry into force of the Treaty of Franco Indian Cession would become citizens of the Indian Union, subject to the exceptions carved out under Article V. Article V entails those persons, who are either born or domiciled in the French establishments at the date of entry into force of the Treaty of the Franco Indian Cession, to exercise their option to continue as French Nationals within a specified period viz. six months. Combined effect of Articles IV and V would be only those French Nationals, who are either born or domiciled in the Territories of the French establishment in India, who exercise an option within the period of six months from 16.08.1962 would retain their French Nationality, all others will automatically become citizens of the Indian Union. The Article also prescribes the form in which the declaration of exercise of option should be made. Therefore, unless it is established that the individual had exercised his/her option within the time stipulated under Article V, he/she would become an Indian National automatically.

26.2. Care is also taken to make the option applicable only to the individual concerned and not to his or her spouse. The exercise of option



AS Nos.479 and 480 of 2016

by the husband will not enure to the benefit of the wife and vice versa.

Insofar as the husband viz. Joseph Amalarayan Rayar is concerned, no doubt there is some evidence to show that he had exercised an option that is available in the form of an endorsement made by him, sometime in August 1980 in his service records. As far as Mrs. Marie Louise Rayar is concerned except Exs.A17 and A18 in OS No.132 of 2012 and Exs.A23 and A24 in OS No.127 of 2012, no other document is available to show that she had exercised her option. Even those documents do not show that she had exercised her option. The order of the Court of First Instance that is sought to be pressed in to service is based on filiation. As far as Exs.A17 and A18 in OS No.132 of 2017 are concerned, the Trial Court by its order dated 31.07.2005 has rejected those documents, therefore those documents cannot form the basis for the conclusion that she had exercised her option. As regards OS No.127 of 2012 is concerned, the Court had merely postponed the decision of the admissibility of the photo copies by its order dated 31.07.2015 made in IA No.725 of 2015. Unfortunately the Court while disposing of the suit had not adverted to these orders that were passed on 31.07.2005 and proceeded to rely upon these copies to conclude that Mrs. Marie Louise Rayar is a French National on the basis of these documents. This, in our considered



AS Nos.479 and 480 of 2016

opinion, cannot be approved.

WEB COPY

26.3. Section 65 of the Indian Evidence Act governs reception of secondary evidence and it reads as follows:

65. Cases in which secondary evidence relating to documents may be given.—

Secondary evidence may be given of the existence, condition, or contents of a document in the following cases: —

(a) when the original is shown or appears to be in the possession or power —
of the person against whom the document is sought to be proved, or
of any person out of reach of, or not subject to, the process of the Court, or
of any person legally bound to produce it,
and when, after the notice mentioned in section 66, such person does not produce it;

(b) when the existence, condition or contents of the



AS Nos.479 and 480 of 2016

original have been proved to be admitted in writing by the person against whom it is proved or by his representative in interest;

(c) when the original has been destroyed or lost, or when the party offering evidence of its contents cannot, for any other reason not arising from his own default or neglect, produce it in reasonable time;

(d) when the original is of such a nature as not to be easily movable;

(e) when the original is a public document within the meaning of section 74;

(f) when the original is a document of which a certified copy is permitted by this Act, or by any other law in force in [India] to be given in evidence;

(g) when the originals consist of numerous accounts or other documents which cannot conveniently be examined in Court, and the fact to be proved is the general result of the whole collection.

In cases (a), (c) and (d), any secondary evidence of the contents of the document is admissible.



AS Nos.479 and 480 of 2016

In case (b), the written admission is admissible.

WEB COPY

In case (e) or (f), a certified copy of the document, but no other kind of secondary evidence, is admissible.

In case (g), evidence may be given as to the general result of the documents by any person who has examined them, and who is skilled in the examination of such documents.

26.4. A party to a proceeding who seeks to rely upon secondary evidence has to satisfy the requirements of Section 65 of the Indian Evidence Act. We have already extracted the proof affidavit filed in support of these documents, there is not even a whisper regarding the non-availability of the originals. None of the requirements of Section 65 of the Indian Evidence Act, have been satisfied. In fact in OS No.127 of 2012 the documents have been received subject to objections and the Court had postponed the decision of the objections while passing orders in IA No.725 of 2015. Therefore, if we are to look for reasons for reception of secondary evidence, we must say that we draw a blank. In the absence of any reason which would satisfy the stringent requirements of Section 65 of the Indian Evidence Act, we do not think we can look



AS Nos.479 and 480 of 2016

into the documents particularly photo copies. We are therefore left without any evidence on the question of exercise of option by Mrs. Marie Louise Rayar as required under Article V of the Treaty of Franco Indian Cession.

26.5. Even the order of the Court of first instance dated 09.11.2011 would show that it is based on a declaration made by the ancestor viz. the grandfather of the husband Joseph Amalarayan Rayar in the year 1882 and the declaration made by Joseph Amalarayan Rayar on 15.02.1963 as required under Article V of the Treaty of Franco Indian Cession. Even assuming that the document could be looked into, it is based on a declaration made by the husband which is specifically prohibited under Article V of the Treaty of Franco Indian Cession. We are therefore unable to agree with the Trial Court when it held that Mrs. Marie Louise Rayar is a French National and she had in fact exercised her option as required under Article V.

Point No.1 is answered in favour of the appellants.

Point Nos.2 & 3:

27. As we had already pointed out that the marking of these



AS Nos.479 and 480 of 2016

documents as secondary evidence was objected to by the defendants in two interlocutory applications viz. IA Nos.725 and 726 of 2015 in OS No.127 of 2012 and 132 of 2012 respectively. While it postponed the decision in OS No.127 of 2012, it held that the documents cannot be received in evidence in OS No.132 of 2012. Those orders read as follows:



AS Nos.479 and 480 of 2016

WEB COPY

3

IN THE COURT OF THE III ADDITIONAL DISTRICT JUDGE AT
PUDUCHERRY

PRESENT: TMT. S. MARY ANSELAM, M.A., M.L.
III ADDITIONAL DISTRICT JUDGE

FRIDAY, the 31ST day of JULY, 2015

LA. 725/2015 in O.S. No. 127/2012

- | | | | |
|----|--|-----|------------------------------|
| 1. | Kalaivanan
Rep. By his Power of Attorney
Muthukrishnan | ... | Petitioner/Defendant No. 1 |
| 2. | Vijayalakshmi | | |
| 3. | Somanala | | |
| 4. | Sangeetha | | |
| 5. | Sarojini | ... | Petitioners/Defendant 2 to 5 |
| | | Vs | |
| 1. | Sagaymarie Rayar
Rep. By Power of Attorney
Vijayan | ... | Respondent/Plaintiff |
| 2. | Mrs. Francois Marie Antoine Rayar | | |
| 3. | Marie Victor Djeamj Rayar | ... | Respondents/Defendants 6 & 7 |

This petition coming on this day for hearing in the presence of Thiru. V. Govindaradjou, Advocate for the Petitioner/Defendant 1 and Thiru. G. Mohan Keerthikumar, Advocate for the Respondent/Plaintiff and upon perusing the case records and having stood over for consideration till this day, this court made the following:

ORDER

This petition was filed under section 151 of C.P.C. praying to pass an order to reject the Xerox copies of the documents marked as Ex.A23 and Ex.A24 (without producing the originals) and for further orders.

1. The following are the averments found in the affidavit accompanying the





WEB COPY



AS Nos.479 and 480 of 2016

4

2

petition:

Petition was filed by power agent of D1. It is stated in the affidavit that at the time of marking of Ex.A23 and Ex.A24 his counsel has objected the same, since they are xerox copies and originals were not produced and such objection were not recorded in the document. Hence the petition.

3. The respondent/plaintiff has filed his counter with the following averments.

It is stated in the counter that this petition was filed at the time of D1 side arguments. It is further stated that originals of Ex.A23 has been surrendered to French Consulate. For document No.24, it requires time to procure the originals. Hence the petition deserves to be dismissed.

4. The Point for determination is:

"Whether the petitioner is entitled for an order as prayed for?"

5. No oral evidence adduced by both parties.

6. ON POINT:

Petition was filed to reject Ex.A23 and Ex.A24 which are xerox copies. Petition was filed by power agent of D1. It is stated in the affidavit that at the time of marking of Ex.A23 and Ex.A24 his counsel has objected the same, since they are xerox copies and originals were not produced and such objection were not recorded in the document. It is stated in the counter that this petition was filed at the time of D1 side arguments. It is further stated that originals of Ex.A23 has been surrendered to French Consulate. For document No.24, it requires time to procure the originals. On the side of the respondent 2002 (1) MLJ 213: is pressed into service. As per the above decision whenever an objection is raised during evidence taking stage, trial court can make a note of such objection and mark the objected document tentatively





AS Nos.479 and 480 of 2016

WEB COPY

3

subject to such objections to be decided at the last stage in the final judgment. On the side of the petitioner 2000 (1) CTC 12 is pressed into service. As per the above judgment; documents marked in that case is a copy taken from the copy of the document and the same cannot be marked. As per the judgment rendered in R.V.E. Venkatachala Gounder Va. Arulmigo Viewavarasany & V.P. an objection that the document which is sought to be proved is itself inadmissible in evidence, an objection as to its admissibility is available to be raised even at a later stage.

7. I have perused the records. In the present case Ex.A23 and Ex.A24 are marked subject to objection. Admittedly they are xerox copies. According to the respondent original of Ex.A23 has been surrendered to French Consulate and Ex.A24 requires time to procure the original. So those documents were marked subject to objection. SO 2002 (1) MLJ 233 is fitting with the facts of this case. In the present case also Ex.A23 and ex.A24 are marked by making note of such objection and the objection will be decided at the last stage in the final judgment. Now this petition was filed in the defendant side argument stage to prolong the proceedings. Hence petition is dismissed. No costs.

R. In fine, petition is dismissed. No costs.

Written down and pronounced by me in the open court on this day the 31st day of July 2015.


[S. MARY ANSELAM]
JUDICIAL ADDITIONAL DISTRICT JUDGE
PUDUCHERRY 605 006





AS Nos.479 and 480 of 2016

WEB COPY >

8

IN THE COURT OF THE III ADDITIONAL DISTRICT JUDGE AT
PUDUCHERRY

PRESENT: TMT. S. MARY ANSELAM, M.A., M.L.,
III ADDITIONAL DISTRICT JUDGE

FRIDAY, the 31ST day of JULY, 2015

L.A. 726/2015 in O.S. No.132/2012

- | | | | |
|----|-----------------------------------|-----|------------------------------|
| 1. | Kalaivanan | | |
| 2. | Muthukrishnan | ... | Petitioners/Defendants 1 & 2 |
| | | | Vs. |
| 4. | Sagayamari Rayar | | |
| | Rep. By Power of Attorney | | |
| | Vijayan | ... | Respondent/Plaintiff |
| 2. | R. Rajendiran | | |
| 3. | S. Sekar | | |
| 4. | M. Natarajan | | |
| 5. | Mrs. Francois Marie Antoine Rayar | | |
| 6. | Marie Victor Djeorij Rayar | ... | Respondents/Defendants |

This petition coming on this day for hearing in the presence of Thiru. V. Govindaradjou, Advocate for the Petitioners/Defendants 1 and 2 and Thiru. G. Mohan Keerthikumar, Advocate for the Respondent/Plaintiff and upon perusing the case records and having stood over for consideration till this day, this court made the following:

O R D E R

This petition was filed under section 151 of C.P.C. praying to pass an order to reject the Xerox copies of the documents marked as Ex.A17 and Ex.A18 (without producing the originals) and for further orders.

2. The following are the averments found in the affidavit accompanying the petition:

It is stated in the affidavit that at the time of marking of Ex.A17 and Ex.A18





WEB COPY



AS Nos.479 and 480 of 2016

9

2

his counsel has objected the same, since they are xerox copies and originals were not produced and such objection were not recorded in the document. Hence the petition.

3. The respondent/plaintiff has filed his counter with the following averments.

It is stated in the counter that this petition was filed at the time of D1 side arguments. It is further stated that originals of Ex.A17 has been surrendered to French Consulate. For document No.:18, it requires time to procure the originals. Hence the petition deserves to be dismissed.

4. The Point for determination is:

"Whether the petitioner is entitled for an order as prayed for?"

5. No oral evidence adduced by both parties.

6. ON POINT.

Petition was filed to reject Ex.A17 and Ex.A18 which are xerox copies. It is stated in the affidavit that at the time of marking of Ex.A17 and Ex.A18 his counsel has objected the same, since they are xerox copies and originals were not produced and such objection were not recorded in the document. It is stated in the counter that this petition was filed at the time of D1 side arguments. It is further stated that originals of Ex.A17 has been surrendered to French Consulate. For document No.:18, it requires time to procure the originals. On the side of the respondent 2002 (1) MLJ 213: is pressed into service. As per the above decision whenever an objection is raised during evidence taking stage, trial court can make a note of such objection and mark the objected document tentatively subject to such objections to be decided at the last stage in the final judgment. On the side of the petitioner 2000 (1) CTC 12 is pressed into service. As per the above judgment, documents marked in this case is a copy taken from the copy of the document and the same cannot be marked. As per the judgment rendered in R.V.E. Venkatchala Gounder Vs.





WEB COPY



AS Nos.479 and 480 of 2016

10

3

Arulmigu Viswesvarasamy & V.P. an objection that the document which is sought to be proved is itself inadmissible in evidence, an objection as to its admissibility is available to be raised even at a later stage.

7. I have perused the records. Ex.A17 and Ex.A18 are marked without any objection. Admittedly they are xerox copies. As per 2012 (6) CTC 648; Held even if no objection is raised to marking of xerox copy of a document of which original is not produced, such xerox copy would not be admissible in evidence by virtue of section 65. Accepting the above decision, this petition is allowed. Since Ex.A17 and Ex.A18 are not marked subject to objection, in fine petition is allowed. No costs.

8. In fine, petition is allowed. No costs.

Written down and pronounced by me in the open court on this day the 31st day of July 2015.

S. Mary Anselam
[S. MARY ANSELAM]
JUDGE
IN ADDITIONAL DISTRICT JUDGE
PUDUCHERRY.





AS Nos.479 and 480 of 2016

WEB COPY

27.1. The plaintiff in both the suits allowed the said orders to become final. The defendants challenged the order in IA No.725 of 2015 which postponed the decision. This Court dismissed the Revision holding that the Trial Court has only postponed the decision. Therefore, there would not be any prejudice to the defendants. Unfortunately these two orders were completely overlooked by the Trial Court when it decided the suit, it relied on the very same documents to conclude that Mrs.Marie Louise Rayar was a French National and therefore, the French Code Civil would apply to her. On the said conclusion the Trial Court held that the alienations are invalid.

27.2. This error committed by the Trial Court is a fundamental error which should have been avoided. We come across such situations more often in the recent past, particularly after the practice of filing proof affidavits in lieu of chief examination had come into being. Courts, particularly the Presiding Officers must be alive to the situation and avoid such errors while recording evidence. Mr.Subbiah, the learned Senior Counsel appearing for the appellants would also fault the new procedure that is being adopted in recording evidence through Adhoc



AS Nos.479 and 480 of 2016

Courts or Additional Masters. We do not subscribe to his suggestion that the Court must itself record evidence. The humongous pendency of cases and the fact that the Courts are over burdened will have to be borne in mind in devising better methods to tackle the problem of pendency. Even then, the Adhoc Courts and Additional Masters are manned by Retired Judicial Officers, who are also aware of the procedure. If the Presiding Officer, be it the Judge or the Adhoc Judge, is vigilant while recording the evidence such mishaps can be prevented. We therefore, conclude that the Trial Court was not right relying upon the photo copies, in the absence of any reason assigned for non-production of originals as required under Section 65 of the Indian Evidence Act, to conclude that Mrs.Marie Louise Rayar was a French National.

Point Nos. 2 and 3 are also answered against the respondents.

Point No.4;

28. This takes us to the next question, as to whether, the exercise of option by the husband of Mrs.Marie Louise Rayar, Mr. Joseph Amalarayan Rayar would clothe her with French Nationality. Article V of the Treaty of Franco Indian Cession itself provides an answer, it very clearly states that the choice of the husband will not affect the Nationality



AS Nos.479 and 480 of 2016

of the spouse. Unless, it is shown that Mrs.Marie Louise Rayar had independently exercised her option, she cannot be held to be a French National. Once it is found that Mrs.Marie Louise Rayar is not shown to have exercised her option, she would automatically become an Indian citizen in terms of Article IV of the Treaty of Franco Indian Cession, with effect from 16.08.1962.

28.1. As we had already pointed out the properties subject matter of both the suits were purchased after 16.08.1962 and hence they would not be clothed with the character of the property of the communité to enable application of the French Code Civil, so as to nullify the alienations made by Mrs.Marie Louise Rayar. We must, at this juncture mention the feeble effort made by Mr.Prakash Adiapadam to project that the Sale Deeds were without consideration. The said plea has to be rejected solely on the ground that there is neither a plea nor evidence to support such contention.



AS Nos.479 and 480 of 2016

WEB COPY 29. In the light of the above, the Appeals will stand allowed, both the suits will stand dismissed. There shall be no order as to costs. Consequently, the connected miscellaneous petitions are closed.

(R.SUBRAMANIAN, J.) (K.GOVINDARAJAN THILAKAVADI, J.)
02.11.2023

jv

Index : Yes
Internet : Yes
Speaking order
Neutral Citation: Yes

To

The III Additional District Judge,
Puducherry.



WEB COPY



AS Nos.479 and 480 of 2016

R.SUBRAMANIAN, J.
and
K.GOVINDARAJAN THILAKAVADI, J.

jv

Pre-delivery judgment in
A.S.Nos. 479 and 480 of 2016
and Connected Miscellaneous Petitions

02.11.2023