



A.S.No.547 of 2016

THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on 19.07.2023	Delivered on 12.10.2023
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CORAM:

THE HONOURABLE MR JUSTICE R.SUBRAMANIAN
AND
THE HONOURABLE MRS JUSTICE R.KALAIMATHI

A.S.No.547 of 2016
and
C.M.P.No.13876 of 2016

1.Batmavady (died)
2.Sivanandame
3.Djeanthi
4.Sivabalane
5.Sivachanemougam

...Appellants

Vs.

1.Sarala
2.Sivacoumare (died)
3.A.Venkatesan

...Respondents

(R2 died. 1st appellant brought on record as LR of the deceased viz., Sivacoumare and 1st appellant died, appellants 2 to 5 and R1 are LR of the 1st appellant vide Court order dated 28.07.2022 in A.S.No.547 of 2016)

Prayer: First Appeal filed under Section 96 of C.P.C., r/w. Order XLI Rule 1 of C.P.C., against the judgment and decree of the learned III-Additional District Judge, Puducherry dated 30.06.2016 in O.S.No.41 of 2013.



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For Appellant : Mr.T.Saikrishnan

For Respondents : Mr.R.Ganeshkumar for R1 and R3
R2 - died

J U D G M E N T

(Judgment of the Court was made by R.SUBRAMANIAN, J.)

The plaintiffs in O.S.No.41 of 2013 on the file of the III-Additional District Judge, Puducherry are on appeal, aggrieved by the decree and judgment dated 30.06.2016, in and by which, the suit for partition was decreed in part, granting a preliminary decree in respect of Western half of the suit property alone. The Trial Court had dismissed the suit in respect of the Eastern portion of the suit property, since it had upheld the settlement deed dated 31.01.2001 executed by late Dhanaraj @ Danaradjou in favour of his daughter / 1st defendant.

2.The plaintiffs, who are the wife, sons and daughter of late Dhanaraj @ Danaradjou sought for a preliminary decree to the effect that they are entitled to 1/7th share each over and above the 1/8th portion and for a declaration that the settlement deed dated 31.01.2001 executed by



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Dhanaraj @ Danaradjou in favour of the 1st defendant is null and void to the extent of 7/8th share and for other reliefs.

3. According to the plaintiffs, the suit property belonged to one Irrusammal, who had under a deed of donation dated 27.10.1959 settled it on Dhanaraj @ Danaradjou, son of Arunagiri. The plaintiffs would claim that the said Dhanaraj @ Danaradjou died on 18.07.2006, leaving behind the plaintiffs and the defendants 1 and 2 to succeed to his estate. The plaintiffs would also contend that the 3rd defendant attempted to disturb their possession on 19.02.2013, claiming that he had entered into a registered agreement of sale with the 1st defendant in respect of a portion of the property. On such a claim being made, the plaintiffs, applied for an encumbrance certificate and upon getting the same, found an entry to the effect, the said Dhanaraj @ Danaradjou had executed a settlement deed in favour of the 1st defendant on 31.01.2001 and the 1st defendant had entered into a registered agreement of sale, agreeing to sell a portion of the property to the 3rd defendant on 18.02.2013.



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4.The plaintiffs would also contend that the settlement deed is unbelievable and it is a handy work of the 1st defendant. It was also claimed that the settlement was not acted upon and the said Dhanaraj @ Danaradjou continued to be in possession of the property. The plaintiffs also sought recourse to the customary Hindu Law in Puducherry and contended that the said Dhanaraj @ Danaradjou could not have disposed of more than 1/8th of the property by way of Will or settlement. The Doctrine of Legitim available under the French Law was sought to be applied to contend that the settlement deed could be valid only in respect of 1/8th share in the property and nothing more.

5.The 1st defendant filed a written statement and it was adopted by the 3rd defendant. It was contended that the said Dhanaraj @ Danaradjou, having obtained the property from his mother, Irrusammal had an absolute right over the property and hence, the settlement deed is valid. It was contended by the 1st defendant that the Doctrine of Legitim, which is a Doctrine borrowed from the French Law though in vogue among Hindus in Puducherry would cease to apply upon introduction of the Hindu



Succession Act to Puducherry on 01.10.1963. It was contended that upon the execution of the settlement deed, the 1st defendant became entitled to the property covered by the settlement deed and therefore, if at all the plaintiffs are entitled to a share, it would be only in the remaining portion of the property, which is not covered by the settlement deed. It was also contended that the settlement deed has been duly executed and properly registered, the same would confer absolute title on the 1st defendant to the properties covered by the settlement document. The claim that the settlement deed was not acted upon was also stoutly denied by the defendants 1 and 3. The 2nd defendant remained exparte.

6.On the above pleadings, the Trial Court framed the following issues:-

- 1.Whether the plaintiffs are entitled to 1/7th share each in the suit property ?*
- 2.Whether it is possible to declare that the Settlement Deed dated 31.01.2001 as null and void?*
- 3.Whether the suit is barred by limitation?*
- 4.To what other reliefs, plaintiffs are entitled to?*



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7.At trial, the 5th plaintiff was examined as P.W.1 and Exs.A1 to A10 were marked. A4 is the copy of the settlement deed executed by the said Dhanaraj @ Danaradjou in favour of the 1st defendant and A5 is the copy of the agreement of sale entered into by the 1st defendant with the 3rd defendant. Certain revenue records were also produced. The 1st defendant was examined as D.W.1.

8.The Trial Court, upon consideration of the evidence on record concluded that the Doctrine of Legitim cannot be extended beyond 01.10.1963. It therefore, rejected the plea that Dhanaraj @ Danaradjou could not have executed a settlement in respect of more than 1/8th of his estate. The Trial Court also found that since execution of the settlement deed has not been specifically denied, the evidence of D.W.1 would be sufficient to prove the said document.

9.The learned Trial Judge also rejected the contention of the plaintiffs that the settlement deed was not acted upon based on the



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admission of P.W.1 that the 1st defendant was put in possession of the property, which was settled on her. On the above evidence, the learned Trial Judge concluded that the plaintiffs would be entitled to 1/7th share each in the Western half of the property, since the Eastern half had already been settled in favour of the 1st defendant. Aggrieved, the plaintiffs are on appeal.

10.We have heard Mr.T.Sai Krishnan, learned counsel for the appellants and Mr.R.Ganeshkumar, learned counsel appearing for the respondents 1 and 3.

11.The 2nd respondent / Sivacoumare died pending appeal without any issues, his mother / 1st appellant was recorded as his legal representative. Subsequently, the 1st appellant also died. Appellants 2 to 5 and the 1st respondent were recorded as legal representatives of the deceased 1st appellant.



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12.Mr.T.Sai Krishnan, learned counsel appearing for the appellants would vehemently contend that the Trial Court was not right in concluding that the law relating to legitim / disposable quota would not apply to Hindus in Puducherry after the extension of the Hindu Succession Act to Puducherry on and from 01.10.1963. In support of his submission, the learned counsel would rely upon an article of Hon'ble Mr.Justice David Annoussamy published in the year 1978 in (**20 JILI (1978) 535**) wherein, the Author had dealt with the concept of legitim at length and while pointing out that the concept of right by birth under the Mithaksara School of Hindu Law was not in vogue in the French Territories but, the concept of Legitim, which was essentially a concept of French Law applied to Hindus living in Puducherry.

13.The learned counsel would draw our attention to the observations of the learned Author, which reads as follows:-

Impact of new laws

Hindu Succession Act

It was expected that with the extension of the Indian laws to this part of the country the local custom of legitim



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would stand abolished. The main Act in the field namely, the Hindu Succession Act, 1956 was extended with effect from 1 October 1963, but it contains no provision which would affect the right of legitim. Section 30 dealing with the testamentary succession only reiterates the power of a Hindu to dispose of his properties by will or testament, the power which was once open to question, but the property capable of disposal is left in that section to be determined by the law in force, that is to say, as far as Pondicherry is concerned, the custom relating to legitim. But the substitution of Hindu Succession Act to the old customary successoral law raises two questions regarding the legitim. The first question which arises now is whether the daughters have a right of legitim in the estate of their father and whether the sons have the same right in the estate of their mother since they are now heirs with equal rights. The right conferred under the Hindu Succession Act is only in respect of intestate properties. The fact of having equal rights in such properties cannot be extended so as to give a right to properties disposed of to which the right of legitim would imply. Such a right has been found to exist as a customary one in Pondicherry and the customary right has to be applied as it is and cannot be stretched to other categories. If the daughters are made forced heirs, there is no reason for not extending the same privilege to other Class-I heirs. Such an extension would constitute an attempt on the right of disposal of a person and that can be achieved only through an Act of legislature. It is true that the right of legitim as it exists creates a disparity among the Class-I heirs as determined by the Hindu Succession Act. But in the rest of India-, there is another breach of equality among the Class-I heirs. The Commission on the Status of Women in India in its recommendation (chapter IV—12) pointed out that the continuance of the Mitakshara coparcenary perpetuated unequal treatment between brothers and sisters, in spite of the equal inheritance rights conferred by the Hindu Succession



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Act. The commission observed that the female heirs were often deprived even of their small share by the father renouncing his share in the comparcenary or transforming his self-acquired property into joint family property. But in Pondicherry this kind of inequality does not exist. As the sons do not acquire any right by birth, the father being the sole owner of the property till his death, the daughters get equal shares in the totality of his patrimony as it is on the date of his death.

Another question which would arise is how to compute the legitim when all Class-I heirs are not forced heirs. In the French law as well as in the old Hindu law the categories of forced heirs and Class-I heirs were co-extensive, but the fact of some Class-I heirs not being forced heirs raises the question whether it is to be calculated according to the share of the forced heirs as per the old law or as per the Hindu Succession Act. In order to understand exactly what is at stake, let us consider a simple concrete case. The propositus (a man) has by way of liberality disposed of 6/8th of his estate and left with him surviving two sons and two daughters. In the intestate portion, namely, 2/8th, each child would take $\frac{1}{4}$, as per the Hindu Succession Act. The disposable quota being only 2/8th the remaining 6/8th is subject to reduction. Only the sons are the forced heirs; if allowed to get each $\frac{1}{2}$ share as per the old laws, they will divide between themselves that 6/8th; if on the contrary they are allowed each $\frac{1}{4}$ as per the Hindu Succession Act, they will get only each 5/32; both together they will take only 5/16, and the remaining 3/16 can neither be claimed by daughters who are not forced heirs and it would be added for practical purposes to the disposable quota. None of these two solutions appear satisfactory. Allowing to each son $\frac{1}{2}$ share when they are entitled statutorily only to $\frac{1}{4}$ is difficult of acceptance; increasing the disposable quota of the father appears also to



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be dangerous in view of the exorbitant power he enjoys in the management of the family properties. In fact, as stated earlier, since the sons have no right by birth in the ancestral properties, they cannot claim partition as a matter of right, and the father has the full right of disposal. To counter balance these privileges of the father, there exists a right of legitim for the sons. One cannot increase the disposable quota without limiting otherwise the powers now enjoyed by the father. If the courts, in order to escape the complications arising out of the determination of the legitim were tempted to ignore altogether the custom of legitim they will also have, for the reasons just now put forth to refuse to recognize the power of a Hindu father as it stands now in Pondicherry. Can a court of law make such a departure? Will not the wisdom embodied in the doctrine of stare decisis stand in the way? How long will it take for the question to be fully settled by the higher courts? The remedy lies instead in an appropriate step by the legislature, either in granting the right of legitim to all Class-I heirs or in cancelling the right of legitim now enjoyed by certain categories of heirs with corresponding modifications in the right of management of the father.

14.Mr.T.Sai Krishnan, learned counsel for the appellant would also draw our attention to the judgment of the Hon'ble Division Bench of this Court in **Krishnamoorthy Gounder Vs. Sitarama Gounder** reported in **2002 (3) LW 66** wherein, a declaration was granted to the effect that the plaintiffs can challenge the liberalities of the father, only after his life time while dismissing the suit for partition. He would also rely upon the judgment of



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the Hon'ble Supreme Court in ***Bhagwati Prasad Vs. Chandramaul*** reported in ***AIR 1966 SC 735*** to contend that even if Legitim is not applicable, if the plaintiffs are able to show that the settlement deed was not acted upon, they can rest their case and seek appropriate share. The learned counsel for the appellant would further point out that the defendant has not examined the attestors to the settlement deed, which was marked as Ex.A4 and therefore, according to the learned counsel for the appellant, the provisions of Section 68 have not been complied with.

15.Contending contra, Mr.R.Ganeshkumar, learned counsel appearing for the respondents 1 and 3 would submit that Doctrine of Legitim would not apply to the Hindus in Puducherry after the extension of the Hindu Succession Act to Puducherry with effect from 01.10.1963. According to the learned counsel, upon extension of the Hindu Succession Act, 1956 to the French Territories in India, any law or custom or usage that was in vogue, prior to such extension, would stand automatically abrogated in view of Section 4 of the Hindu Succession, which provides that any law, usage, custom as past of the law or any text, rule or interpretation of Hindu



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law in force immediately before the commencement of Hindu Succession Act will cease to have effect in respect of a matter for which provision is made under the said Act.

16. The learned counsel for the respondents would also submit that the decision of the Hon'ble Division Bench in *Krishnamoorthy Gounder Vs. Sitarama Gounder* reported in *2002 (3) LW 66* cannot be treated as a precedent for the proposition that the principles of legitim would apply to the Hindus even after 01.10.1963, since according to the learned counsel, the Hon'ble Division Bench did not go into that aspect or consider the effect of Section 4. Drawing our attention to the judgment of the Hon'ble Division Bench in *Krishnamoorthy Gounder Vs. Sitarama Gounder*, the learned counsel would point out that the applicability of legitim was, in fact, conceded by the learned counsel, who appeared for the contesting respondents in the said case. Our attention is drawn to Paragraph 16 & 17 of the judgment of the Hon'ble Division Bench, which reads as follows:-

"16. Mr. T. Murugesan, learned Senior Counsel appearing for the contesting respondents, submitted that



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under the French Customary System of Hindu Law, a person cannot claim any right in the properties of his father during his life time, that only after the life time of the father, he could challenge any gratuitous transfer on the principle of legitim. According to the learned Senior Counsel, the plaintiff Krishnamoorthy does not have any present right to challenge the donations of the first defendant Sitarama Gounder. The learned Senior Counsel referred to Sanner Hindu Law translation and also Article by Justice David Annoussamy on French Legal System published by the Institute of Comparative Law and Jurisprudence, National Law School of India University, Bangalore.

17.In Sanner on Hindu Law it is stated as follows:-

“The theory of common property of father and sons so far as the ancestral patrimony is concerned, is abandoned in our Establishments of the Coramandel Coast. It is to the chief of the family that belongs in reality, in the judicial sense of the word, the properties deriving from ancestors and he is



alone qualified to exercise by principle, the right of free disposition which confers on him his title as owner. It is admitted that the sons have rights, if not in presenti, at least in future on those properties, i.e. A reserve which they can claim at the opening of their father's succession, against those who have benefitted by the liberalities of the deceased.

So far as the alienation by onerous title agreed on by the father, even for his exclusive benefit they are out of control of the sons. Save, be it understood, that, if it concerns about sham deeds and without prejudice to the right which the French legislation grants to interested parties to provoke the interdiction of their father, or to provide him with a judicial counsel, in the case provided by the Code Civil.

The same observation applies to the suit for partition, which the commentators of Mitakshara gave formerly to the son when, due to mental weakness, or by prodigality, the chief of the family frittered away the ancestral patrimony. The interdiction or the appointment of a judicial counsel being unknown procedures in olden days, it was necessary to avoid the dangers of an administration more disastrous to the sons, by allowing them to ask immediately their share in family patrimony. But now as they have the rights to resort to the means of protection, defined by



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Chapters I and II of Title XI of Code Civil, they cannot be allowed to proceed by way of partition suit, i.e. To exercise rights which did not belong to them till the father is alive.”

Same is the case with regard to self acquisition of the father. As regards the acquisition of his sons, the presumption is that they are also family properties and it is for the sons to establish that the acquisition by onerous title was realised not only with the income personal to his sons, but also that they were never merged with the family patrimony. Justic David Annoussamy reiterates that the exclusive right of a Hindu father in Pondicherry is recognised, “ in respect of all properties whether ancestral or self acquired and the denial to the son of any right by birth or any right to ask for partition during the life time of his father. Till his death the father is the sole owner of all the properties with full right of disposal for valuable consideration.”

17.The learned counsel would also point out that this Court in subsequent decisions had held that the principles of legitim cannot be invoked after the extension of Hindu Succession Act to Puducherry. In



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support of his submission, the learned counsel would rely upon the judgment of a Hon'ble Division Bench of this Court in ***Muthaiyan Vs. Poongothai and others*** reported in ***2017 SCC Online Mad 23877*** wherein, the Hon'ble Division Bench after considering the judgment in ***Krishnamoorthy Gounder Vs. Sitarama Gounder*** had held that the Doctrine of Legitim will not apply after extension of the Hindu Succession Act to Puducherry on and from 01.10.1963.

18. Reliance is also placed by the learned counsel on the judgment of the Hon'ble Mr.Justice V.Ramasubramanian in ***M.Kadirvelu Vs. G.Shanthanalakshmi*** reported in ***(2016) 4 MLJ 562***. Our attention is also drawn by the learned counsel to the judgment of this Court in ***Gowri Vs. Subbu Mudaliar*** reported in ***(2017) 4 CTC 503*** and ***Amirthavalli Vs. Mangalakshmi (died) and others*** reported in ***2022 SCC Online Mad 4734*** wherein, the question relating to applicability of the French Customary Law or the Code Civil to Hindus in Puducherry was considered.

19.The learned counsel for the respondents would submit that it



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was wholly unnecessary for the defendants to examine the attestors to the instrument namely, the settlement deed marked as Ex.A4, since the execution of the document by Dhanaraj @ Danaradjou was not specifically denied. According to the learned counsel, this case would fall under the proviso to Section 68 and therefore, non-examination of the attesor cannot be fatal to the case of the defendants. We have considered the rival submissions.

20.Upon hearing the counsel, the following points emerge for consideration:-

- i) Whether the Doctrine of Legitim / disposable quota would continue to apply to Hindus in Puducherry even after extension of the Hindu Succession Act on and from 01.10.1963.
- ii) Whether non-examination of the attesor to Ex.A4, settlement deed could not be said to be fatal to the case of the defendants.

21. Point No.1:-



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Doctrine of legitim is essentially a concept of French Law. Article

913 of the French Civil Code deals with doctrine of legitim. It caps the disposable quota or liberalities at a certain portion of the estate depending on the number of dependents. Article 913, 914 & 915 prescribed the disposable quota in various contingencies. It is these restrictions, which is commonly called the Doctrine of Legitim or the Legitimate expectation of the heirs. As pointed by Hon'ble Mr.Justice David Annouswamy in his Article referred to, by Mr.T.Saikrishnan this Doctrine was applied to Hindus in the Coramandel Coast / French Territories in India with certain modification wherein, the disposable quota was acknowledged as 1/8 and it was not a fluctuating figure as provided in the French Code Civil.

22.The fact that Doctrine of Legitim applied to Hindus also cannot now be disputed but, the moot point is as to whether it would continue to apply despite the extension of Hindu Succession Act, 1956 to Puducherry on and from 01.10.1963. The Hindu Succession Act was extended to Puducherry with effect from 01.10.1963 by the Puducherry Extension of Laws Act 1963. Section 4 of the Hindu Succession Act, which provides for



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an overriding effect reads as follows:-

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"4.Overriding effect of Act.- (1) *Save as otherwise expressly provided in this Act,-*

(a) any text, rule or interpretation of Hindu Law or any custom or usage as part of that law in force immediately before the commencement of this Act, shall cease to have effect with respect to any matter for which provision is made in this Act;

(b) any other law in force immediately before the commencement of this Act shall cease to apply to Hindus in so far as it is inconsistent with any of the provisions contained in this Act."

23.The language of the said section is clear and unambiguous in as much as it provides that any text, rule or interpretation of Hindu Law or any custom or usage as a 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 a provision is made in this Act. It also provides that any other law in force immediately before the commencement of this Act shall cease to apply to Hindus so far as it is inconsistent with any of the provisions contained in the said Act.



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24. In view of the above mandate of law, the essential consequence would be that the Doctrine of Legitim would stand abrogated on and from 01.10.1963. No doubt, the Division Bench which decided ***Krishnamoorthy Gounder Vs. Sitarama Gounder*** referred to supra had recognized the concept of legitim after 01.10.1963. Unfortunately, the effect of Section 4 was not brought to the notice of the Hon'ble Division Bench.

25. A reading of the discussion extracted above would show that the fact that legitim applied was admitted by the counsel for the parties, leaving no occasion for the Division Bench to go into that question. However, subsequently, another Division Bench of this Court in ***Muthaiyan Vs. Poongothai and others*** reported in ***2017 SCC Online Mad 23877*** went into the question in detail and held as follows:-

"29. It is evident from the above that if a Hindu died after 01.10.1963, the law of Succession to the properties is as per the Hindu Succession Act and the repealed Customary Hindu Law cannot be applied. In other words, after the application of Hindu Succession Act on 01.10.1963 to the State of Pondicherry, the Hindus domiciled in Puducherry are



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governed by the provisions of the Hindu Succession Act, whatever be their personal law before 1st October 1963. Therefore, we are of the view that those Hindus, who are domiciled at Pondicherry will be governed by Hindu Succession Act after 01.10.1963, unless they acquired any right under the Customary Hindu law before 01.10.1963. In so far as French Nationals, who are renoncants, 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 renoncant and hence, Hindu Succession Act alone will apply to the plaintiff in this case. The parties to the appeal are governed only by Hindu Succession Act and customary Hindu Law will have no application to their case. We find that the Trial Court, without framing any issue as regards the applicability of Coramandel Law in this case has dealt with the same and proceeded to pass a preliminary decree in favour of the plaintiff."

26.In coming to the said conclusion, the Hon'ble Division Bench, which decided ***Muthaiyan Vs. Poongothai and Others*** had also referred to the judgment in ***M.Kadirvelu Vs. G.Shanthanalakshmi*** reported in (2016)



4 MLJ 562 wherein, the Hon'ble Mr.Justice V.Ramasubramanian, after an analysis of the entire law on the point concluded that the Customary Law or the Coramandel Hindu Law would apply only to those persons to whom the Hindu Succession Act was made inapplicable by Section 2-A of the said enactment namely, a renoncant.

27.The same question was considered by the another single Judge of this Court in ***Amirthavalli Vs. Mangalakshmi (died) and Others*** reported in **2022 SCC Online Mad 4734** wherein, Hon'ble Mr.Justice C.V.Karthikeyan after adverting to the provisions of Section 4 and after referring to the judgments in ***Krishnamoorthy Gounder Vs. Sitarama Gounder*** and ***Muthiyan Vs. Poongothai*** concluded as follows:-

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

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

ii) However after introduction of the Hindu Succession Act, 1956, Section 4 has an overriding effect and a Hindu female is entitled to a property absolutely and can deal



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with the same in any manner she likes;

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

28. Useful reference can also be made to the judgment of another single Judge of this Court in ***Gowri Vs. Subbu Mudaliyar*** reported in **2017 (4) CTC 503** wherein, the question of applicability of customary Hindu Law to a renoucant was considered by this Court and the Hon'ble Mr. Justice N. Sathish Kumar had concluded that the Customary Hindu Law could be applied only to those persons, to whom the Hindu Succession Act would not apply. It was also pointed out that in view of the Section 4 of the Hindu Succession Act, Customary Hindu Law cannot be applied to Hindus in Puducherry, who are not renoucants. Reference was also made to the judgment of ***Krishnamoorthy Gounder Vs. Sitarama Gounder***.

29. Mr. T. Sai Krishnan would submit that in view of Section 30 of the Hindu Succession Act, the concept of legitim could be applied to Hindus



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in Puducherry. We are unable to concur with the submissions of the learned counsel for the reason that Section 30 only seeks to remove the disability that was imposed on a Hindu to dispose of his property by Will. That would not give a right to the heirs to question the testamentary capacity of a Hindu. A feeble attempt was made by Mr.T.Sai Krishnan to contend that the right of legitim or the legitimate expectation is a right that had vested in the heirs and therefore, the entire estate is not capable of being disposed of by the father by way of a Will. We can straight away reject the submissions, in view of the wide language of Section 4, which abrogates every custom or usage or law that was in force prior to the extension of the Hindu Succession Act to a particular territory.

30.In view of the above, we have to necessarily reject the argument of Mr.T.Sai Krishnan that the principles of legitim would apply and the settlement deed executed by Dhanaraj @ Danaradjou would be valid only to the extent of 1/8th of his estate. Hence, the first point is answered in favour of the respondents.



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31.Point No.2

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As regards second point, no doubt, the attesor to Ex.A4 settlement deed dated 31.01.2001 was not examined. This submission is essentially based on Section 68 of the Evidence Act, which requires proof of a document, requiring attestation to be made by examining atleast one of the attestors. Proviso to Section 68 reads as follows:-

"68. Proof of execution of document required by law to be attested:- *If a document is required by law to be attested, it shall not be used as evidence until one attesting witness atleast has been called for the purpose of proving its execution, if there be an attesting witness alive, and subject to the process of the Court and capable of giving evidence:*

(Provided that it shall not be necessary to call an attesting witness in proof of the execution of any document, not being a Will, which has been registered in accordance with the provisions of the Indian Registration Act, 1908 (16 of 1908), unless its execution by the person by whom it purports to have been executed is specifically denied.)

32.A reading of the proviso would show that in case of non-testamentary instrument, it shall not be necessary for the attesor to be



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examined, if the execution of the document is not specifically denied.

Mr.T.Saikrishnan would attempt to read a specific denial from the contents of paragraph 9 of the plaint. In fact, we find that a complete reading of paragraph 9 and 10 of the plaint would show that the execution of the settlement deed was never denied and there is, in fact, an admission of the same, since the prayer itself is to declare it void and non-est in the eye of law to the extent of 7/8th share only. Therefore, the contention based on Section 68 is not available to the appellants.

33.The document in question was executed in 2001 and the same is a registered instrument. Section 60(2) of the Registration Act, attaches certain presumptions to the Act of registration itself and there is no evidence on record to dislodge the said presumption. More over, P.W.1 had in fact, admitted that even during the life time of Dhanaraj @ Danaradjou, he had divided the property into two parts, created a common passage and put the 1st defendant in possession of the same. This evidence would necessarily dispell any doubt that may arise on the execution of the settlement deed.



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34.In view of the said position of evidence, we are unable to accept the submission of Mr.T.Sai Krishnan to the effect that the settlement has not been proved by examining the attesor. The case on hand would clearly fall under the proviso to Section 68 of the Evidence Act, which exempts examination of the attesting witness, if execution of the document is not specifically denied. As we could gather from the facts, we find that the execution of the settlement deed is, in fact, admitted by the plaintiffs. In view of the above, second point is also answered against the appellants.

35.In view of our answers to both the points that are framed for consideration in the appeal, this appeal will have to necessarily fail and the same is accordingly, dismissed. Cosidering the relationship between the parties, we spare costs.

(R.S.M.,J.) (R.K.M.,J.)

12.10.2023

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Internet:Yes

Index:Yes

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Nuetral Citation : Yes

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The III-Additional District Judge,
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R.SUBRAMANIAN, J.
and
R.KALAIMATHI, J.

KKN

A.S.No.547 of 2016
and
C.M.P.No.13876 of 2016

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