



WEB COPY

S.A.NO.225 OF 2020

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 23.10.2024

CORAM:

THE HON'BLE MR.JUSTICE R.SAKTHIVEL

S.A.NO.225 OF 2020

AND

CMP NO.4690 OF 2020

V.Ravichandran

... Appellant / Appellant /
Defendant

Versus

1.V.Gandhimathi

2.V.Banumathi

... Respondents / Respondents /
Plaintiffs

PRAYER: Second Appeal filed under Section 100 of Code of Civil Procedure, 1908 praying to set aside the Judgment and Decree dated October 3, 2019 made in A.S.No.55 of 2018 on the file of the Additional Sub Court, Puducherry confirming the Judgment and Decree dated April 3, 2017 made in O.S.No.1181 of 2005 on the file of the I Additional District Munsif Court, Puducherry.

For Appellant : Mr.D.Gopal
For Respondents : Ms.V.Kamala Kumar



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JUDGMENT

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This Second Appeal is directed against the Judgment and Decree dated October 3, 2019 passed in A.S.No.55 of 2018 by the 'learned Principal Sub Judge [Additional Sub Judge (FAC)], Puducherry' [henceforth 'First Appellate Court' for brevity and convenience] confirming the Judgment and Decree dated April 3, 2017 passed in O.S.No.1181 of 2005 by the 'learned I Additional District Munsif at Puducherry' [henceforth 'Trial Court' for brevity and convenience].

2.For the sake of convenience, hereinafter, the parties will be referred to as per their array in the Original Suit.

PLAINTIFFS' CASE:

3.The plaintiffs and the defendant are daughters and son respectively of the couple, Varadharasu Pillai and Saraswathi Ammal. The said Varadharasu Pillai executed a registered Will on June 19, 1989 making devise of his properties. In the said Will, an extent of 2 *kawnies* and 84 *kuzhies* morefully described in the schedule thereunder was set apart for the benefit of the plaintiffs. Thereafter, the said Varadharasu



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Pillai revoked the above said Registered Will, by another Registered Will dated November 8, 1989 wherein the Suit Property has altogether been omitted. Varadharasu Pillai passed away on January 2, 1990 and his wife Saraswathi Ammal passed away on January 14, 1995. After their demise, the plaintiffs and the defendant are entitled to 1/3 share each in the Suit Property. Accordingly, the plaintiffs seeking 2/3 share in the Suit Property, filed the Suit for partition.

DEFENDANT'S CASE

4.The defendant in the Written Statement denied the allegations made by the plaintiffs that the defendant has no ownership or title over the disputed property. He asserted that the property originally belonged to their father, Varadharasu Pillai, who executed a Registered Will on June 19, 1989 bequeathing the Suit Property to the defendant, which was later revoked by executing a second Will on November 8, 1989. According to the second Will, properties were divided into two Schedules viz., 'A' and 'B'. Upon Saraswathi Ammal's death, the plaintiffs would inherit the 'A' Schedule properties equally and the defendant would receive the 'B' Schedule properties. The plaintiffs had already received financial



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assistance and Varadharasu Pillai intended for the defendant to sell the Suit property to settle any debts. After Varadharasu Pillai's death on January 2, 1990 the defendant became the absolute owner as per the family arrangement between the parties. The plaintiffs, having accepted their share including their mother's jewels, have now filed this Suit unjustly. Further, after marriage, the plaintiffs left their parents and did not support them. However, the plaintiffs received money and jewellery from the defendant during festivals and enjoyed the benefits of the Suit Property without contributing to its maintenance. The defendant took care of his mother and managed all expenses related to her medical needs and funeral. The defendant spent a significant amount of money over five lakhs on the property and family expenses. The defendant is the rightful owner of the property on the basis of family arrangements and Wills executed by their father and that the plaintiffs have no legal basis to claim possession of the Suit Property. Accordingly, he prayed to dismiss the suit.

TRIAL COURT:

5. At trial, the first plaintiff was examined as P.W.1 and Ex-A.1 to Ex-A.5 were marked on the side of the plaintiffs. The defendant was



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examined as D.W.1 and Ex-B.1 to Ex-B.12 were marked on the side of the defendant.

6.The Trial Court after considering the oral and documentary evidence, found that the Suit property was not covered under Ex-A.2 and Ex-A.3, both first and second Wills. In other words, the said Varadharasu Pillai did not execute the Will in respect of the Suit Property. Hence, the plaintiffs and the defendant are entitled to 1/3 share each in the Suit Property and accordingly, decreed the Suit and passed a preliminary decree for partition.

FIRST APPELLATE COURT:

7.Feeing aggrieved, the defendant preferred an appeal in A.S.No.55 of 2018 before the First Appellate Court. The First Appellate Court, after hearing both sides and after considering the evidence available on record, came to the conclusion that the Hindu Succession Act, 1956 would be applicable to all the parties after the demise of Varadharasu Pillai, and accordingly, the plaintiffs and defendant each are entitled to 1/3 share in the Suit Property. Accordingly, the First Appellate Court concurred with the findings of the Trial Court and dismissed the Appeal.



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8. Feeling aggrieved with the concurrent findings rendered by the First Appellate Court as well as the Trial Court, the defendant preferred this Second Appeal under Section 100 of the Code of Civil Procedure, 1908.

DISCUSSION AND DECISION:

9. This Court has heard the submissions made on either side and perused the materials available on record.

10. Mr. D. Gopal, the learned Counsel for the appellant/defendant argues that both, the plaintiffs and the defendant are residing in Pondicherry and the Suit Property is situated in Pondicherry. Hence, the old customary Hindu Law would be applicable to both parties. As per the old customary Hindu Law, the plaintiffs are not entitled to any share in the Suit Property. The Trial Court and the First appellate Court miserably failed to consider the said fact and decreed the Suit erroneously. Accordingly, he prays to allow the Second Appeal.

11. Ms. V. Kamala Kumar, the learned Counsel for the respondents / plaintiffs contends that though the parties and the Suit



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Property are in Pondicherry, the Hindu Succession Act, 1956 alone would be applicable to the case on hand. To that effect, learned Counsel relies on the Judgment of this Court in **Gowri Vs. Subbu Mudaliar and Ors.** reported in **2017 (4) CTC 503**. In the said case, specific question of law was framed as to *whether Customary Hindu Law, which were vogue in Pondicherry could still be given statutory recognition de hors the enactment of Hindu Succession Act, 1956?* And the same was answered as follows:

*“34.This Court having regard to the fact that the judgment of the Division Bench of this Court relied upon in **Krishnamurthy v. Sitaram Gounder**, 2002 (3) Law Weekly 669 wherein the parties themselves conceded thereby Customary Hindu Law not governed by the Mitakshara Hindu Law as decided by both Division Benches. Similarly the judgment of the another Division Bench reported in **Viswanathan v. Savarimuthurajan**, 2004 (3) CTC 81, wherein the Customary Law was applicable only to the Christian Law governed to the Christians are customary as stood prior to the Hindu Succession Act. Both the judgments would not be useful to decide the question of law as to whether the Pondicherry (Extension) Laws Act 1963 prevail over the Hindu Succession Act. Whereas the Judgment of the Division Bench in **Pauline Luca v. Jerome Pascal**, AIR 1977 Mad. 270 and **T.S.Sadagopan (Deceased) v. T.N.K.Ramanujam**, 1993 (2) MLJ 481 of this Court and the judgment of the learned single*



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*Judge in **M.Kadirvelu v. G.Santhanalakshmi** 2016 (2) MWN (Civil) 449 : 2016 (4) MLJ 562, appears to be correct law with regard to the applicability of the Act. Further, the Legislators also in their wisdom has clearly carved out only exception to renouncants. If the entire Hindus who are the native of Pondicherry are governed by the Customary Law as contended by the learned Senior Counsel, the Legislators would not have been even extended the Hindu Succession Act to the Pondicherry.*

35.The contention of the learned Senior Counsel that the Hindus residing in Pondicherry are governed by the Customary Hindu law cannot be accepted for another simple reason, that Act 39/2005 Hindu Succession Act was enacted by giving equal status to the daughters on par with the sons in a coparcenary system. If the contention of the learned Senior Counsel is accepted, the very purpose of bringing the Act 39/2005 giving equal status to the daughters on par with the sons in joint Hindu family itself would be defeated.

36.Therefore, this Court is of the view that in view of Section 4 of the Hindu Succession Act, which is overriding effect of all the customs Hindu Succession Act alone apply to the Hindus residing in the Pondicherry except Renoncants, who renounced their Personal status and adopted French Law. . . .”

12.The main question needs to be answered in this Second Appeal is whether customary Hindu Law is applicable in this case.



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Admittedly, the plaintiffs and the defendants are Hindus who have not renounced their personal status or adopted French Law. Hence, in view of the overriding effect of Section 4 of Hindu Succession Act, 1956, the Hindu Succession Act, 1956 alone would be the applicable law in this case. Therefore, the contention of the defendant that the plaintiffs are not entitled to share in the Suit Property does not hold good.

13.The other contention that the plaintiffs' marriages were performed in a grand and pompous manner requiring funds borrowed as debts, has not been proved by the defendant. Admittedly, father of the plaintiffs and the defendant passed away leaving Ex-A.2 and Ex-A.3 – Wills. Perusal of Ex-A.2 and Ex-A.3 - Wills would show that Ex-A.2, the first Will was revoked by the subsequent Will Ex-A.3 and that Ex-A.3 have no mention of the Suit Property. In other words, the father did not execute any Will in respect of the Suit Property, and passed away leaving behind the Suit Property. Hence, the plaintiffs and the defendant, as legal heirs under Section 8 of the Hindu Succession Act, 1956, are entitled to 1/3 share each in the Suit Property. The Trial Court as well as the First Appellate Court concurrently held that Hindu Succession Act, 1956 would be the applicable law, and that the plaintiffs and the defendant are entitled



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to 1/3 share each in the Suit Property. This Court is of the view that the aforesaid findings are factual findings recorded based on evidence and documents and there is no question of law, much less substantial question of law, in this Second Appeal. Hence, the Second Appeal must fail.

14.In the result, the Second Appeal is dismissed. No costs.

Consequently, connected Civil Miscellaneous Petition is closed.

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Index : Yes
Neutral Citation : Yes
Speaking Order : Yes
TK

To

1.The Additional Sub Court
Puducherry.

2.The I Additional District Munsif
Puducherry.



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R.SAKTHIVEL, J.

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