

A.S.No.1110 of 2015

IN THE HIGH COURT OF JUDICATURE AT MADRAS

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RESERVED ON : 21.02.2025

PRONOUNCED ON : 13.03.2025

CORAM

THE HONOURABLE MR.JUSTICE V.SIVAGNANAM

A.S.No.1110 of 2015
and M.P.No.1 of 2015

1.K.Regina

2.G.Kabeerdoss

...

Appellants

Vs.

1.A.Venkatesh

R.Anandhakrishnan (died)

2.D.Mohan

3.D.Elangovan

4.A.Santhanalakshmi

5.M.Saridha

6.P.Sujatha

7.A.Prakash (died)

8.Mrs.Vangi

9.Minor Harshitha

...

Respondents

(RR8 & 9 brought on record as LR's
of the deceased 7th respondent viz.

(A.Prakash) vide Court order

dated 26.07.2022 made in CMP

No.13292 of 2016 in A.S.No.1110/2015)

PRAYER : First Appeal has been filed under Section 96 r/w Order 41 Rule 1
of CPC against the Judgement and Decree dated 30.04.2015 passed in
O.S.No.14 of 2011 on the file of the District Court at Karaikal.



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For Appellants ... Mr.PL.Narayanan
Senior Advocate
for Mr.J.Ravikumar

For Respondent ... Mr.T.Sai Krishnan
Nos.1 to 3

Respondent Nos.4 to 9 ... Set exparte

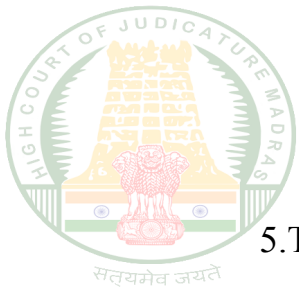
JUDGMENT

Aggrieved over the Judgement and Decree dated 30.04.2015 passed in O.S.No.14 of 2011 on the file of the District Court at Karaikal, the defendants 1 and 2 have preferred the first appeal.

2.For the sake of convenience, the parties are referred to as per their rankings in the trial Court.

3.Suit for declaration of title and for delivery of vacant possession of the suit properties.

4.The defendants 1 & 2 in O.S.No.14 of 2011 on the file of the District Court, Karaikal, are the appellants herein and the plaintiff is the 1st respondent herein.



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5.The plaintiff's case is as follows:

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The suit properties originally belonged to Rajagopal Naidu. The third defendant Anandhakrishnan is the son of Rajagopal Naidu. The plaintiff is the second son of Aandhakrishnan (3rd defendant), who was born on 28.02.1990. One A.Prakash is the 1st son of the 3rd defendant born on 07.11.1985. Rajagopal Naidu, father of the third defendant and Original owner of the suit properties, executed a Will on 15.07.1951 in the presence of Nothaire Shanmugarajaganapathy. The Will was registered as document No.36, RV 177 on 25.09.1952. The Will relates to the immovable properties of Rajagopal Naidu viz., house, house sites, garden, wetlands, dry lands, etc., he gave a life estate in all the properties in favour of his four sons namely Kanagaraj, Jeganathan, Jankiraman and Ananthakrishnan (3rd defendant) and they equally shares the properties and enjoy the same without powers of alienation and after the death of the four sons, the testator Rajagopal Naidu had made a gift of those properties to the male descendants of the four sons to be enjoyed by them absolutely with all powers of alienation. Therefore, the plaintiff is an absolute owner of ½ share in the plaint schedule properties. The first defendant purchased the entire suit properties from the third defendant on 08.12.1989 by way of a registered sale deed with the Sub Registrar Office of Karaikal with registered No.1225/1989. The second defendant is the

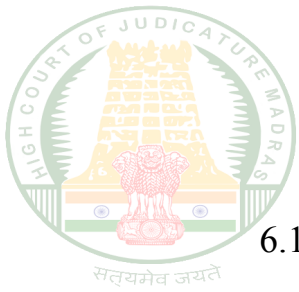


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husband of the first defendant. The defendants 4 & 5 with some arrangement

with the defendants 1 & 2 enjoying the suit properties. Therefore, they were impleaded as a necessary parties as defendants 4 & 5 in the suit. The sale of plaintiff's $\frac{1}{2}$ share will not bind the plaintiff. Therefore, he filed a suit for declaration declaring that the plaintiff is the absolute owner of the suit properties and directing the defendants 1, 4 & 5 to hand over vacant possession of the same to the plaintiff and thus, pleaded to allow the suit.

6.The defendants 1, 4 & 5 contested the suit and filed their written statements. The defendants denied all the allegations contained in the plaint and contended that Rajagopal Naidu domiciled in Karaikal is governed by the provisions of Article 971 to 974 of French Code Civil. He had executed the Will dated 15.07.1951 in the presence of witnesses viz., Notaire, Shanmuga Rajaganapathy. At the time of execution of the Will, all persons domiciled in Karaikal were governed by the French Code Civil since Karaikal was then a French territory under the rule of the French Government. The Will had been registered on 25.09.1952 as per the rules prescribed by the French Government. Till the death of Rajagopal Naidu, Karaikal had not attained independence and therefore, none of the laws in force in the union of India was extended to Karaikal.



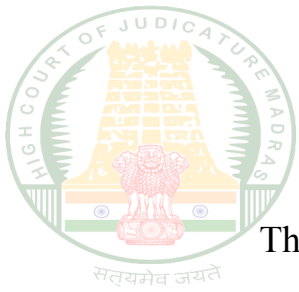
6.1.Under the Will aforesaid, Rajagopal Naidu had given life estate

over his immovable properties to his four sons, namely, Kanagaraj, Jaganathan, Janakiraman and Anandakrishnan, so that, they could equally enjoy the properties without rights of giving, transferring or selling the same during their respective lifetime. The testator had stated in the Will that after the death of his four sons, the male children born to them would get the said properties with the full rights to give, transfer and sell. The bequeathal under the Will in favour of the unborn children of the sons of the testator is not valid under the provisions of Article 906 of the French Code Civil. Article 906 reads as follows:

"To be capable of receiving a donation inter vivos, it is sufficient that one should be conceived at the time of donation.

To be capable of receiving under a Will, it is sufficient that one should be conceived at the time of the death of the testator.

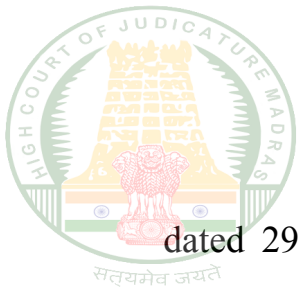
Nevertheless, the donation or Will can only take effect in case child, at his birth, is likely to live."



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Therefore, the bequeath under the Will in favour of the male children of the four sons of the testator, who were not conceived at the time of the death of the testator, was not valid under law that was in force at the time of the execution of the Will.

6.2. Even if it is to be construed as a gift in the Will, the male descendants, to whom the gift was intended, should be conceived at the time of donation as per the provisions of Article 906 of French Code Civil. The Will is valid to the extent of bequeathal in favour of the four sons of the testator and they get full rights over the properties bequeathed to them. Accordingly, the four sons including the father of the plaintiff got the said properties in equal shares and had become the owners thereof with the rights of alienation on the death of their father. Having so acquired the properties under the Will, the aforesaid four sons had effected partition by metes and bounds among themselves even before the execution and registration of the deed of partition No.03/1987 dated 29-06-1987. Each one of them became the absolute and exclusive owner of the properties allotted to them under the oral and mutual partition among themselves. They were in exclusive possession and enjoyment of the respective properties allotted to them under the said oral partition. They formally created the registered partition deed No.488/1987

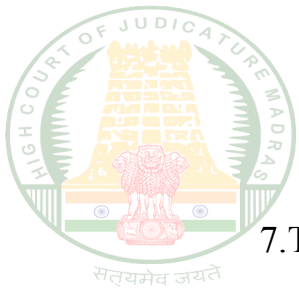


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dated 29-06-1987. The male children born to them have no right, title or

interest whatsoever over the properties of their respective father. Therefore, the plaintiff does not have any title, right or interest whatever over the suit properties which were rightly and legally transferred to the defendant by his father, R.Anandhakrishnan, (the 3rd defendant).

6.3.The sale of the suit properties by the 3rd defendant, being the absolute and exclusive owner of the same, to the first defendant under the registered deed of sale No.1225/1989 dated 8.12.1989 is perfectly valid in law. The sale deed properly conveyed title over the suit properties in favour of the first defendant. The fact that the plaintiff was in the womb at the time of the sale does not have any legal bearing on the sale transaction by the 3rd defendant in favour of the first defendant. Since the bequeathal in favour of the male descendants of the four sons of the testator, Rajagopal Naidu, was invalid under the French law, neither the plaintiff nor his brother, A. Prakash, acquired any interest or title over the suit properties. The first defendant having become the absolute and exclusive owner of the entire suit properties by virtue of the sale dated 8.12.1989 has been in possession and enjoyment of the same to the total exclusion of the plaintiff and his brother. The sale deed dated 08.12.1989 is not void abinitio and thus, pleaded to dismiss the suit.



7.The trial Court, upon the above pleadings, framed the following

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1). Whether the suit is not properly valued and proper court fee is not paid?

2). Whether there is no cause of action for the suit?

3). Whether the Will dated 15.07.1951 does not confer any right on the plaintiff in view of the fact that he was not conceived at that day?

4).Whether the suit is bad for non-joinder of necessary party?

5).Whether the plaintiff is the absolute owner of the $\frac{1}{2}$ share in the suit properties?

6).Whether the plaintiff is entitled for a decree of declaration as prayed for?

7).Whether the plaintiff is entitled for a decree for evicting defendants one, four and five from the suit properties and consequently for recovery of vacant possession?

8. To what relief the plaintiff is entitled?



WEB COPY 8. On the side of the plaintiff, two witnesses were examined as PW1 & PW2 and Exs.A1 to Ex.A14 were marked. On the side of the Defendants, two witnesses were examined as DW1 & DW2 and Ex.B1 was marked.

9. The trial Court, upon considering the oral and documentary evidence on record, decreed the suit as prayed for with costs. Aggrieved over by this judgment and decree, the defendants 1 & 2 preferred the appeal.

10. The points for consideration before this Court are,

i) Whether the plaintiff is entitled for declaration of title over the plaint schedule properties and entitled for recovery of possession?

ii) Whether the Will dated 15.07.1951 confer any right on the plaintiff?

iii) To what relief?

11. The learned counsel for the appellants/defendants 1 & 2 submitted that the judgment and decree passed by the trial Court is against law and

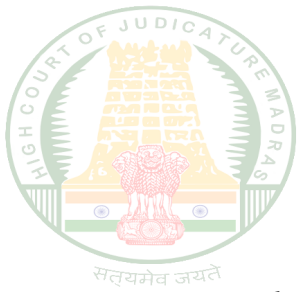


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weight of evidence, probabilities of the case and contended that the impugned judgment and decree passed by the courts below suffer from want of jurisdiction in view of the legal bar prevailing in the regions of Pondicherry, Karaikal, Mahe, Yanam where the French Code Civil governs the rights of the citizens who were under French regime and continue to live thereafter which restrains and debars the son or daughter of the father in filing any suit with regard to share in the property during the lifetime of the father. Therefore, the judgment and decree are illegal and invalid besides without jurisdiction.

11.1. Further, the learned counsel for the defendants 1 & 2 contended that Article 906 of the Code of French Civil disentitles and disqualified the first respondent/plaintiff from making any claim with regard to the suit properties by basing upon the Will dated 15.7.1951 executed by Rajagopal Naidu who died on 28.7.1951 within two weeks and on which dates, the first respondent/plaintiff was not born and that, the first respondent/plaintiff was born on 28.02.1990 much after 38 years since demise of the deceased Rajagopal Naidu inasmuch as the said Article 906 of French Code Civil warrants physical existence of the beneficiary on the date of death of the testator. The said Article 906 of French Code Civil is extracted as under.



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906. In order to be capable of receiving anything by a donation inter vivos, it is necessary to have been conceived at the time of the donation. To be capable of receiving anything under Will, it is only necessary to be conceived at the death of the testator (z).

But the donation inter vivos or the will only take effect if the child is born viable. (C.725, 1048).

Hence, the judgment and decree is illegal and invalid besides contrary to Article 906 of the French Code Civil and reiterated the other grounds raised in the grounds of appeal and thus, needed to set aside the judgment and decree of the trial Court and allow the appeal.

12.To support his argument, the learned counsel for the defendants 1 & 2 relied on the following judgments:

1.(2014) 6 Supreme Court Cases 335 (Union of India Through Director of Income Tax Vs. Tata Chemicals Limited)

2.(2018) 3 Supreme Court Cases 117 (Theiry Santhanamal Vs. Viswanathan and others)



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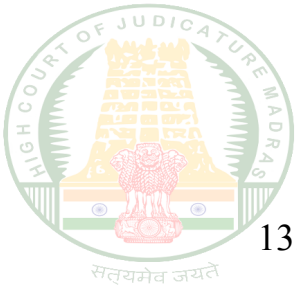
13. The learned counsel for the first respondent/plaintiff submitted that as per Article 906 of the French Code Civil, it is clear that only life estate was given to the sons and the Will specifically interdicts his sons from creating any encumbrances over the properties. To that extent, the Sale Deed executed by the father of the Plaintiff is illegal and void ab-initio as the Plaintiff's father cannot claim any better right or title than what was vested on him by the Will of Late Rajagopal Naidu. Article 906 of the French Code Civil while lays down that for a valid bequest that the beneficiary should be alive at the time of the death of the Testator, it does not prohibit a bequest of the vested remainder in favour of a person yet to be born. Even assuming for a moment, the case of the 1st Defendant/1st Appellant to be correct without admitting the same that the Plaintiff cannot claim title through the Will as it is contrary to Article 906, the net effect is that the sons of Late Rajagopal Naidu could never claim absolute right as they were given only life interest. After their lifetime, their heirs would naturally inherit the properties as per law of succession. Thus looked at from any angle, the 3rd Defendant namely the Plaintiff's father did not have any right or title over the suit properties to sell the same and therefore, the Sale Deed dated 08.12.1989 is illegal and void ab initio.



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WEB COPY 13.1. Further, the learned counsel for the first respondent/plaintiff

submitted that French Code Civil is not at all applicable to the parties, as it is applicable only to Renoncants and not to all those who lived in the Pondicherry area, even assuming for a moment without admitting that French Code Civil is applicable, it should be construed as applicable in its entirety and not only with respect to Art.906. Under the French Civil Code, a male cannot dispose of his entire property through any mode of transfer including by Will as his right of disposal is restricted by disposable quota and by the doctrine of legitim. That is his heirs get a legitimate right in the property and the right of the owner to dispose his property is restricted to a share in the property depending on the number of legal heirs as per Article 913. Only $\frac{1}{2}$ share can be alienated in case of one child. $\frac{1}{3}^{\text{rd}}$ in case of two children. Only $\frac{1}{4}^{\text{th}}$ share can be alienated in case of three or more children. Hence, the subject will is not valid inasmuch as it violates Art. 913 Of French Code Civil and hence the sale deed executed on that basis is not valid. At any rate, only life estate was given to the 3rd defendant and while so, the 3rd defendant cannot alienate the title in property to the 1st defendant/1st Appellant.



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13.2. The learned counsel for the first respondent /plaintiff further

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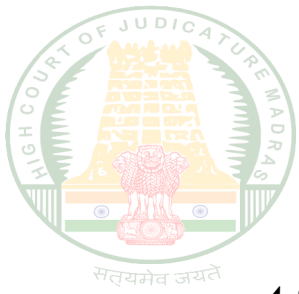
contended that French Code Civil is not applicable in the present case in as much as the Testator was a native of Vallam Village, Thanjavur district and not native of Karaikal. DW-1 has accepted this in cross-examination. DW1 G.Kabeerdas, the 2nd defendant and husband of 1st Defendant has stated “ராஜகோபால் நாயுடுவிற்கு பூர்வீகம் தஞ்சாவூர் என்றால் சரிதான்”, It was suggested to him in cross examination that French Civil Code is not applicable. He was governed by Hindu Succession Act and other laws as applicable to Hindus in the territory of India and it is pertinent to state that the French Code Civil is applicable only to Renouncants and not to migrants like Late Rajagopal Naidu and thus, pleaded to dismiss the appeal.

13.3.To support his argument, the learned counsel for the first respondent/plaintiff relied on the following judgments:

1.1993 (2) Law Weekly 387 (T.L.Sadagopan etc., and 7 others Vs. T.N.K.Ramanujam and 10 others.

2.2000 (II) CTC 334 (Chitra Devi Vs. Chembagavalli)

3.2016 SCC Online MAD 16684 (M.Kadirvelu and 3 others Vs.G.Santhanalakshmi and 37 others)



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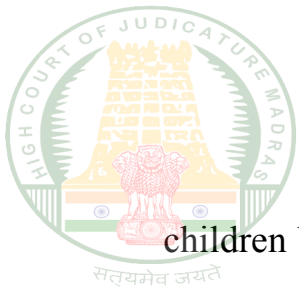
***4.The Judgment of this Court dated 12.10.2023 in
A.S.No.547 of 2016.***

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14.The learned counsel for the respondents 2 & 3/defendants 4 & 5 supported the judgment and decree of the trial Court and contended that French Civil Code 906 will not be applicable in this case. The trial Court rightly held that the Will confer right upon the plaintiff and divided the suit as prayed for and there is no valid ground for interference and it has no merit and thus, pleaded to dismiss the appeal.

15.I have considered the matter in the light of the submissions made by the learned counsel on either side.

16.On verification of the evidence on record, the fact reveals that the suit properties were originally owned by Rajagopal Naidu. Rajagopal Naidu had four sons viz., Kanagaraj, Jaganathan, Janakiraman and Ananthakrishnan. Ananthakrishnan is the third defendant. His second son is the plaintiff. Rajagopal Naidu executed a Will on 15.07.1951 bequeathing his properties in favour of his sons viz., Kanagaraj, Jaganathan, Janakiraman and Ananthakrishnan for their life estate but reminder vested interest to the male



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children born to them as per the then French System of documentation was in

force.

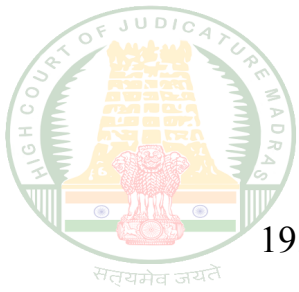
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17.Plaintiff was born on 28.02.1990 and the Will was executed on 15.07.1951. This fact is admitted by the parties.

18.Hindu Succession Act enforced in the Union Territory of Puducherry and Karaikkall with effect from 1963. Therefore, the French Code was not applicable, thereafter, it is also not disputed. The Will was executed on 15.07.1951. Therefore, the French Code was applicable at the time. Section 906 of French Code is reproduced as it is important to decide the issue. It runs as follows:

“906.In order to be capable of receiving anything by a donation inter vivos, it is necessary to have been conceived at the time of the donation. To be capable of receiving anything under Will, it is only necessary to be conceived at the death of the testator (z).

But the donation inter vivos or the Will only take effect if the child is born viable. (C.725, 1048)”



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19. In view of the above French Code, a person capable of receiving anything under Will, necessarily has to be conceived at the death of Testator.

In this case in our hand, admittedly the plaintiff was born on 28.02.1990 the testator Rajagopal Naidu died on 28.07.1951. It is evidenced by the death certificate Ex.A3. Therefore, the plaintiff is not entitled to claim share in the property bequeathed by Rajagopal Naidu to his sons.

20. Further evidence reveals that the third defendant being absolute and exclusive owner of the properties obtained from his father sold to the first defendant under the registered sale deed vide document No.1225/1989 dated 08.12.1989 is perfectly valid under law. It is evidenced by Ex.A5. The sale deed properly conveyed title over the suit property in favour of the first defendant.

21. I have considered the argument of the learned counsel for the first respondent/plaintiff that the French Code of Civil is not applicable to the parties. Though the plaintiff has not pleaded that they are governed by the Customary Hindu Law of Pondicherry, he has not let any evidence that they have followed the Customary Hindu Law of Pondicherry in their family.

Further, in the written statement para – 4, the defendant specifically pleaded



that late Rajagopal Naidu domiciled in Karaikal in accordance with the provisions of Article 971 to 974 of French Code Civil, he had executed the Will dated 15.07.1951 before Nothaire Shanmugarajaganapathy in the presence of Witnesses and they are governed by French Code Civil since the Karaikal was the French Territory under the law of French Government. For better appreciation, para 4 of the written statement is reproduced as follows:

“4. The Will referred to in paragraph 2 of the plaint had been executed by late Rajagopal Naidu, who was domiciled in Karaikal, in accordance with the provisions of Article 971 to 974 of the French Code Civil. It had been executed before the Notaire, Shanmuga Rajaganapathy n 15.07.1951 in the presence of witnesses. At the time of execution of the Will all persons domiciled in karaikal were governed by the French Code Civil since Karaikal was then a French territory under the rule of the French Government. The Will had been registered on 25.09.1952 as per the rules prescribed by the French government. Till the death of Rajagopal Naidu Karaikal has not attained independence and therefore, none of the laws in force in the union of India was extended to Karaikal.”



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WEB COPY 22. The plaintiff did not dispute this contention and not filed any reply by denying the allegations that they are governed by the French Code of Civil and they are following the Customary Hindu Law of Pondicherry in their family.

23. Admittedly, Rajagopal Naidu was domiciled in Karaikal though Rajagopal Naidu's ancestors had originated at Thanjavur but long before domiciled in Karaikal till the death of Rajagopal Naidu, he was at Karaikal till the death of Rajagopal Naidu, Karaikal was not assigned independence and the Will has been registered on 25.09.1952 as per the Rule Prescribed by the French Government. The argument placed by the learned counsel for the first respondent/plaintiff has no merit and liable to be rejected besides the judgments relied on in support of the argument is also not helpful to the plaintiff.

24. The another argument of the learned counsel for the first respondent/plaintiff is that Rajagopal Naidu has no right to dispose of the entire property. Under the French Civil Code, a male cannot dispose of the entire property through any mode of transfer including by Will as his right of



disposal is restricted by disposable quota and by the doctrine of legitim and

the Will is not valid inasmuch as it violate Article 913 of French Code Civil

and hence, the sale deed executed under the Will is not valid. This argument

of the learned counsel also has no merit. His first contention is that they are

not governed by the French Code of Civil. Since the Rajagopal Naidu has

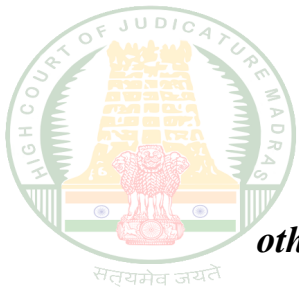
originated at Thanjavur and they are governed by Customary Hindu law of

pondicherry. Article 913 of French Civil Code runs as follows:

913.A man can only dispose of a half of his property by gift inter vivos or by will if he leaves (d) a legitimate child surviving him. If he leaves two children he can only dispose of a third.

To succeed in the event of there being no nearer relation, but the person who is in fact entitled to a share thereof as heir to the succession in the event of an intestacy.

(d)Laurent refers to Art. 785, which says that the heir that renounces is treated as if he had never been an heir, and says that the present Article, when it says "leaves" children means "children accepting the succession," and he says that any child disclaiming is not reckoned for the purposes of finding out what proportion of property the deceased may dispose of. He admits the question is treated as settled the



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other way by the Courts, but says that should not prevent him or any other commentator laying down the true principles, and he adds: "There is no longer any science of law if the science must bow to decisions. Decisions change, principles never do." This is an interesting point of view to an English lawyer, and results from a system of jurisprudence in which Courts are not bound by their own or the decisions of other Courts. (See Laurent, Vol.XII,para.21). Again, at sect, 355 of Vol.XIII., he says: "The commentators, happier than the judges, see only principles: if they are adhered to faithfully, then difficulties vanish".

If he leaves three or more he can only dispose of a quarter.

(Law, 25th March, 1896)---- An illegitimate child who has been recognized in the form required by law is entitled to a share in the réserve (e). The réserve he is entitled to is a fraction of the share he would have had if he had been legitimate; this fraction is to be ascertained by adhering to the proportion (f) existing between the share given to an illegitimate by law when a succession becomes open owing to an intestacy and that which such child would have had under the same circumstances if he had been legitimate. (C.926 and following; 1004, 1090,1094 and following (g).).



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25. On fact, on the date of execution of Will i.e. dated 15.07.1951, the plaintiff was not born. Further, on the date of sale i.e. 08.12.1989 the plaintiff was not born. Admittedly, he was born on 28.02.1990. It is specifically pleaded by the plaintiff in the plaint para – 1 that the plaintiff was born on 28.02.1990 and further, in para – 5 of the plaint specifically pleaded after three months of that sale dated 08.12.1989, the plaintiff was born on 28.02.1990. It is clear on the date of sale, the plaintiff was not born. Under these circumstances, Article 913 of French Code of Civil is also not applicable to the case on hand. On the date of birth of the plaintiff, the property was not available, previously, the property was sold. Therefore, the argument placed by the learned counsel for the first respondent / plaintiff has no merit. The judgment relied upon by learned counsel in support of his argument is also not helpful to him.

26. The observation of the trial Court that the Article 906 of French Civil Code is not relevant and appropriate to the case in hand for the reasons that the abovesaid document is only a Will is unsustainable and erroneous. Therefore, the findings of the trial Court are erroneous, illegal and liable to be set aside.



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27.Since the plaintiff has no title over the plaint schedule properties and no right to claim the suit properties, therefore, the plaintiff is not entitled for declaration of title and recovery of possession as prayed for. Accordingly, the judgment and decree of the trial Court is hereby set aside and the suit is dismissed. Accordingly, the appeal is allowed with costs. Consequently, the connected miscellaneous petition is closed.

Index/Internet: Yes / No
Speaking order: Yes/No
sms

13.03.2025

To

- 1.The District Court at Karaikal.
- 2.The Section Officer, VR Section High Court, Madras.



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V.SIVAGNANAM, J.

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Pre-delivery judgment made in
A.S.No.1110 of 2015
and M.P.No.1 of 2015