Theiry Santhanamal vs Viswanathan . on 18 January, 2018

Equivalent citations: AIR 2018 SUPREME COURT 556, 2018 (3) SCC 117, (2018) 1 WLC(SC)CVL 386, AIR 2018 SC (CIV) 1921, (2018) 2 RECCIVR 55, (2018) 2 MAD LW 43, (2018) 1 SCALE 366, (2018) 3 ANDHLD 32, (2018) 126 CUT LT 384, (2018) 185 ALLINDCAS 39 (SC), (2018) 1 CURCC 244, (2018) 128 ALL LR 760, 2018 (2) KCCR SN 153 (SC)

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Bench: Ashok Bhushan, A.K. Sikri

NON-REPOR

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 3227 of 2006

THEIRY SANTHANAMAL .....APPEL

VERSUS

VISWANATHAN & ORS.

.....RESPONDE

JUDGMENT

A.K. SIKRI, J.

The property with which this appeal is concerned is described in the suit as 'B' Schedule Property (henceforth, referred to as the 'suit property'). The said suit property originally belonged to Mr. Mariasusai Mudaliar who was grandfather of respondent nos. 3 to 5 and father of Oubegaranadin (since deceased). Mariasusai Mudaliar died intestate on October 23, 1953 leaving behind two sons viz. Oubegaranadin and Simon.

2) In 1959, the suit property and other properties which were inherited by the two sons of Mr. Mariasusai Mudaliar, came to be partitioned between them by a registered deed of partition dated March 23, 1959. Under the said deed of partition, Oubegaranadin was allotted certain properties.

3) After the partition between the two brothers, as aforesaid, some difficulties in the enjoyment of the allotted properties arose which necessitated the two brothers to exchange between themselves

certain properties. Under the Exchange Agreement dated March 15, 1971, the suit property came to be allotted to Oubegaranadi.

4) On getting the suit property under the said exchange and in respect of the other properties got under the partition dated March 23, 1959, Oubegaranadin and his sons, namely, respondent nos. 3 to 5 entered into a Deed of Partition dated March 15, 1971. Under the said deed, respondent nos. 3 to 5 were allotted larger share jointly, since they were minors, and to expend money towards education and maintenance. Further, it was also recited that respondent nos. 3 to 5 would take the suit property as allotted to them, absolutely.

5) Nearly after three years from the date of having entered into a partition with his sons, Oubegaranadin filed a suit on February 02, 1974 (being O.S. No. 70 of 1974) against respondent nos. 3 to 5 and another, on the file of the learned Additional Subordinate Judge, Pondicherry (now known as 'Puducherry'), praying that he be declared the absolute owner of the suit property and the Partition Deed dated March 15, 1971 be nullified. Respondent Nos. 3 to 5 were minors when the suit was instituted and they were sought to be represented through their mother and guardian, respondent no. 6 herein. Based on the statement of the guardian (respondent no. 6) who submitted to the decree thereupon, the learned Additional Subordinate Judge, Puducherry, decreed the suit as prayed for, vide judgment and decree dated June 24, 1974.

6) Oubegaranadin claiming himself to be the absolute owner of the suit property, sold of the portions thereof, namely, Nos. 76C and 76D at Mahatma Gandhi Road, Puducherry to respondent nos. 1 and 2 under sale deed dated March 29, 1980.

7) On the other hand, respondent no. 3, on the strength of having allotted the suit property along with his two younger brothers (respondent nos. 4 and 5) under the Partition Deed dated March 15, 1971, sold his 1/3 rd share in the suit property to the appellant herein vide registered Sale Deed dated December 11, 1980. Thereafter, on December 11, 1980, respondent no. 4 also sold his 1/3rd share in the suit property to the appellant on the basis of the joint allotment of the suit property under the deed of partition dated March 15, 1971. Even respondent no. 5, while he was still minor, executed a sale deed in favour of the appellant, acting through respondent no. 6 as his guardian in respect of his 1/3 rd share in the suit property.

8) From the facts noted uptill now, it gets revealed that in respect of the property which had fallen in the share of Oubegaranadin, partition was effected between him and his sons (respondent nos. 3 to 5) vide Partition Deed dated March 15, 1971. However, in the suit for declaration filed by him thereafter, he got the decree vide which the said partition suit was nullified. Thereafter, claiming himself to be the complete and exclusive owner of the property, Oubegaranadin sold part of those properties (Nos. 76C and 76D, Mahatma Gandhi Road, Puducherry) to respondent nos. 1 and 2 therein. On the other hand, respondent nos. 3 to 5, still claiming themselves to be the owner of the properties, on the basis Partition Deed dated March 15, 1971, sold their respective portions to the appellant herein. Thus, the appellant as well as respondent nos. 1 and 2 have purchased the same suit property. Which sale is to be recognised is the question. The answer to this now hinges upon the validity of the decree dated June 24, 1974 vide which the partition deed dated March 15, 1971 was

nullified and Oubegaranadin was declared as the absolute owner of the suit property. However, as would be noticed hereinafter, validity of the Partition Deed dated March 15, 1971 itself is in issue.

9) Proceeding further to complete the factual narration, it so happened that respondent nos. 3 to 5 instituted a suit, as indigent persons on January 03, 1983 (O.P. No. 1 of 1983) before the Principal Subordinate Judge, Puducherry against their father Oubegaranadin, their mother (Defendant No. 6) as well as the respondent nos. 1 and 2 to whom Oubegaranadin had sold part of the property. In this suit, respondent nos. 6 to 9 as well as appellant, Selvanathan (since deceased whose legal heirs are respondent nos. 10 to 13 herein) and one Mr. M.B. Vaithilingam (since deceased whose legal heirs are respondent nos. 14 to 16 herein), were also impleaded as defendants. In this suit, respondent nos. 3 to 5 sought decree for declaration of title in respect of not only the suit property but also other properties. They also sought declaration to the effect that decree dated June 24, 1974 passed in the favour of their father was not binding and be set aside. As a consequence, they also sought declaration that sale deed dated March 29, 1980 executed by their father in favour of respondent nos. 1 and 2 be set aside. They went to the extent of seeking cancellation of three sale deeds dated December 11, 1980, December 11, 1980 and April 29, 1981 executed by them in favour of appellant herein.

10) In the plaint it was averred by respondent nos. 3 to 5 that they were children of Oubegaranadin and respondent no. 6 herein and their succession was governed by French Civil Law. They also traced the history of events (which have already been noted above). It was contended that as far as suit for declaration, i.e. O.S. No. 70 of 1974 filed by Oubegaranadin is concerned, he had obtained the decree therein by fraudulent misrepresentation of facts and that their mother (respondent no. 6), who represented them in the said suit, was coerced to submit to the decree and, therefore, such a decree was not binding on them. Likewise, insofar as three sale deeds executed by them in favour of the appellant are concerned, it was alleged that their father coerced them to sell the property to the appellant which were voidable.

11) Respondent nos. 1 and 2 resisted the suit by contending that decree passed in O.S. No. 70 of 1974 was valid decree which was not obtained by fraud or misrepresentation and since Oubegaranadin was the absolute owner of the properties in question he had right to sell the same and, therefore, sale deed executed in their favour in respect of property nos. 76C and 76D was valid. The appellant also resisted the suit by contending that he had purchased the property from respondent nos. 3 to 5 for a valuable consideration and had also paid the full consideration.

After purchasing the same he had leased out the property and was collecting rents. The appellant, therefore, pleaded that sale deed in his favour was valid and sale deed in favour of respondent nos. 1 and 2 by Oubegaranadin was illegal.

12) On the basis of pleadings, issues were drawn by the trial court. Parties led their evidence and after hearing the arguments, the trial court passed the judgment and decree dated January 17, 1986 holding that decree passed in O.S. No. 70 of 1974 was valid since no prejudice had been caused to the interest of the then minors, i.e., respondent nos. 3 to 5 herein. He also held that three sale deeds executed by respondent nos. 3 to 5 were not under coercion but were executed to meet the family

debts and out of necessity. Since, respondent nos. 3 to 5 have been left without any property, the learned Subordinate Judge, opined that an additional 10% of the sale consideration for the suit property and 5% of the sale consideration for the land be paid over by the appellant and respondent nos. 1 and 2 to respondent nos. 3 to 5 and on the said basis, quantified the sum to be paid.

13) Aggrieved by the partial decree of suit, as full relief prayed for not having been granted, respondent nos. 3 to 5 preferred the appeal (A.S. No. 1052 of 1986) on the file of the High Court of Madras. Respondent nos. 1 and 2 preferred cross-objection insofar as the sale consideration in respect of the land (it is not the subject matter of the present appeal). Insofar as the direction to pay an additional 10% of the sale consideration for the building to respondent nos. 3 to 5, the appellant preferred an independent appeal in A.S. No. 335 of 1987 in the High Court of Madras.

14) The learned Single Judge of the High Court vide judgment dated March 19, 1988 reversed the judgment of the Trial Court on certain counts and allowed A.S. Nos. 1052 of 1986 and A.S. No. 335 of 1987. Holding that respondent nos. 3 to 5 were the absolute owners and Oubergaranadin had no right over the same property, it was concluded that the judgment and decree passed in O.S. No. 70 of 1974 was fraudulent and not binding on respondent nos. 3 to 5 and that respondent nos. 3 to 5 were entitled to be declared owners of the suit property subject to sale deeds executed by them. Though, the learned Single Judge held that in view of the fact that the appeal preferred by respondent nos. 3 to 5 are allowed, respondent nos. 1 and 2 are not liable to pay any compensation and, ultimately, dismissed the cross-objection.

15) Aggrieved by the said judgment, respondent nos. 1 and 2 filed LPA Nos. 113 to 115 of 1999 before the Division Bench of the High Court. These appeals are allowed by the Division Bench vide impugned judgment dated March 04, 2004 in the following terms:

> “20. In view of the foregoing discussion, the judgment and decree allowing the appeal in A.S. No. 1052/86 is set aside. Equally the dismissal of Cross Objection filed by the Appellant regarding the levy of compensation cannot be sustained, as the Learned Judge himself found that such a decree for damage by the trial court cannot be sustain. Though the appellants have challenged the judgment and decree made in A.S. No. 335/1987 filed by the 10 th defendant, the appellants are not aggrieved persons and hence we are inclined to dismiss the appeal in L.P.A. No. 114/1999. Accordingly, L.P.A. Nos. 113 and 115 of 1999 are allowed and L.P.A. No. 114/1999 is dismissed. No costs.”
>
> 16) The High Court has held that by Regulation dated January 06, 1817, the French Code was applicable and by Regulation dated April 24, 1880, Civil Procedure Code was made applicable to Puducherry. As per the said French Code, customary Hindu Law was applicable. Applying that law, the High Court has concluded that since Oubegaranadin was the absolute owner of the said property, as per Hindu law sons cannot seek partition in the property of their father. Therefore, the Partition Deed dated March 15, 1971 was not a valid instrument and the findings of the Single Judge that Oubegaranadin had lost his right by virtue of partition deed is contrary to law.

> 17) It may be mentioned at this stage that the entire suit property belonged to Oubegaranadin absolutely, which fell in his share after partition between him and his brother Simon.

However, Oubegaranadin partitioned the said property by executing Deed of Partition dated March 15, 1971. Under this partition deed, some of the properties were given by Oubegaranadin to his sons, namely, respondent Nos. 3 to 5. Respondent Nos. 3 to 5, therefore, claim their right on the basis of this partition deed. No doubt, Oubegaranadin got that partition deed cancelled by filing a suit in this behalf ad obtaining decree therein. However, as per the High Court, the first question was as to whether respondent Nos. 3 to 5 were entitled to claim any right under the partition deed dated March 15, 1971.

18) The High Court noted that the family of Oubegaranadin, and his children i.e. respondent Nos. 3 to 5, belong to Christianity in religion. The High Court further noted that by Regulation dated January 06, 1817, the French Code to the exception of the Code of Criminal Procedure, containing the totality of the substantive and objective laws of France, including the personal law, have been made applicable to Puducherry. According to Section 3 of the said Regulation, Indians, whether Hindus, Muslims or Christians would continue to be governed by usage and customs of their respective castes. In that way, French law has become the law of the land though in matter of personal law it was applicable only to settlers and their descendants. The Regulation dated April 25, 1880 made the provisions of Code of Civil Procedure, 1908 (CPC) relating to civil status, namely, the declaration of births and deaths of marriage applicable to Puducherry territory, but a saving clause left it open to Indians to marry as per their customs. The said saving clause did not apply to Christians who were from that time governed by French law in respect of marriage and divorce but in respect of all other matters pertaining to personal law. Christians continue to be governed by the customary Hindu Law.

19) The High Court also pointed out that though Hindu Succession Act, 1956 was made applicable in Puducherry, insofar as Christians are concerned, they continued to be governed by customary law, inasmuch as, Hindu Succession Act was not applicable to Christians by virtue of Section 2(1)(c) thereof which made the Act applicable only to Hindus. Therefore, Christians in Puducherry continued to be governed by customary law, i.e. customary Hindu law that was prevalent in Puducherry as the law of succession. Thus, rights of the parties were to be determined on the basis of the said Hindu customary law. Taking extensive note of this customary Hindu Law in Puducherry, as per various decisions as well as Book on Hindu Laws by French writer J. Sanner, the High Court has come to the conclusion that during the lifetime of the father, sons cannot ask for partition of the ancestral property or property of the father. It further held that still the father is entitled to distribute or give away his properties to his children. However, according to the High Court, it could not be done in the manner it was done in the instant case and Partition Deed dated March 15, 1971 was not a valid document.

20) Before proceeding further, it would be appropriate to mention as to how different parties were described in the original suit and their respective position in these proceedings:

Name	In Original Suit	Before this Court

Oubegaranadin	Defendant No.1	Since deceased
Thierysanthamal	Defendant No.10	Petitioner
Viswanathan	Defendant No.4	Respondent No.1
A Andal	Defendant No.5	Respondent No.2
Savarimouthurayan	Plaintiff No. 1	Respondent No.3
John Kennedy	Plaintiff No. 2	Respondent No.4
Robert Kennedy	Plaintiff No. 3	Respondent No.5
Marie Rosalie	Defendant No.2	Respondent No.6
Kumar Manjini	Defendant No.3	Respondent No.7
Babu	Defendant No.8	Respondent No.8
RathinavelMudaliar	Defendant No.9	Respondent No.9
Mrs Elizabeth	Defendant No.6 (Selvanthan)	Respondent No.10
Joseph Elango	Defendant No.6 (Selvanthan)	Respondent No.11
Albert	Defendant No.6 (Selvanthan)	Respondent No.12
Francis	Defendant No.6 (Selvanthan)	Respondent No.13
Rukmaniammal	Defendant No.7 (M.B. Vaithilingam)	Respondent No.14

21) Mr. K. Ramamoorthy, learned senior counsel appearing for the appellants, advanced the following propositions:

(a) The partition deed dated March 15, 1971 is valid in law.

(b) It was submitted that the appellant was not disputing the legal position that as per customary Hindu law during the lifetime of their father, sons cannot ask for partition. His submission, however, was that it is not respondent Nos. 3 to 5 (sons) who asked for partition. On the contrary, Oubegaranadin himself executed the partition deed.

Therefore, this partition deed was valid in law. The High Court wrongly applied French Code and Hindu Succession Act had already come into force in Puducherry.

(c) The decree in OS No. 70/1974 is not binding on the plaintiffs as Order XXXII Rule 7 CPC had not been followed. Submission in this behalf was that sub-rule 1A was added to Rule 7 of Order XXXII by the Act of 1976. In Tamil Nadu, earlier State of Madras (Puducherry), amendment to this effect

was inserted way back in the year 1910, which is in the following form:

> "(1A) Where an application is made to the Court for leave to enter into an agreement or compromise or for withdrawal of a suit in pursuance of a compromise or for taking any other action on behalf of a minor or other person under disability and such minor or other person under disability is represented by counsel or pleader, the counsel or pleader shall file in Court with the application a certificate to the effect that the agreement or compromise or action proposed is in his opinion for the benefit of the minor or other person under which a minor or other person under disability is a party shall recite the sanction of the Court thereto and shall set out the terms of the compromise as in Form No. 24 in Appendix D to this Schedule." (Dis No. 1647 of 1910)" On the basis of the above, submission was that the judgment and decree in OS No. 70 of 1974 was passed without following the procedure contained in Order XXXII Rule 7 CPC and, therefore, not valid in law. According to the learned senior counsel, the decree in the said suit was a consent decree and, therefore, leave of the Court should have been obtained, as required under Order XXXII Rule 7(1A) CPC.
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> (d) The mortgage deed dated October 22, 1979 A10 by Defendant Nos. 1 to 4 and 5 is not valid as Defendant No.1 has no title;
>
> (e) The sale deed dated 1980 by Defendant No.1 in favour of Defendant Nos. 4 and 5 is not valid.
>
> (f) The sale deeds by plaintiffs to Defendant No.10 are valid
>
> (g) In view of the fact that Defendant No.4 and Defendant No.5 are barred by the principles of res judicata, the findings of the Single Judge cannot be challenged by them. He also cited the following judgments in support of the submission predicated on res judicata: Badri Naraya Singh v. Kamdeo Prasad Singh & Anr.1; Lonankutty v. Thomman & Anr.2; Narayana Prabhu Venkateswara Prabhu v. Narayana Prabhu Krishna Prabhu (Dead) By LRs.3; and Sri Gangai Vinayagar Temple & Anr. v.

Meenakshi Ammal & Ors.4

22) Refuting the aforesaid submissions, argument advanced by learned counsel for respondent Nos. 1 and 2 was that since the customary Hindu law in Puducherry applicable to the parties do not recognise any entitlement or right of the children to claim and, therefore, demand any interest or share in the property, no partition can legally take place between the father and respondent Nos. 3 to 5. Any partition, even if effected, would, 1 AIR 1962 SC 338 2 (1976) 3 SCC 528 3 (1977) 2 SCC 181 4 (2015) 3 SCC 624 therefore, be inconsistent with the law. The father was, therefore, entitled to seek a declaration that he continued to be the absolute owner of the properties in question. The father sought such a declaration and obtained it. He submitted that in the absence of any right or any entitlement in favour of the said respondents under the customary Hindu law, the partition cannot create a right in their favour more particularly when the partition was set at naught at the

instance of the father. If at all the partition was the product of the absolute right of the father, he had the authority to recall it. This he did through judicial process. In the aforesaid circumstances, the transfer or alienation of property effected by the father towards the family necessity would stand on a higher footing compared to the alienation made by the abovesaid respondents without any authority whatsoever.

23) He also submitted that if only respondent Nos. 3 to 5 have any right to demand a share in the property in question during the lifetime of father, the question of applicability of Order XXXII Rule 7 CPC will arise. In the absence of any such right, no claim can be founded only on the basis of alleged procedural impropriety. According to him, following salient features of the case were material to decide the issue:

> (a) This is a case admittedly governed by the customary Hindu law as was obtaining in Puducherry.
>
> (b) Under the customary Hindu Law in Puducherry (which corresponds in some respects to the position obtaining in the Dayabagha School), the father is the absolute owner of the property in his hand. The sons do not derive any right in the family property by reason of their birth which is different from the position in the Mitakshara School. In other words, the sons rights arise on the demise of the father and not prior thereto.

Consequently, anything happening during the lifetime of the father does not confer any right or interest in them.

(c) The father has, thus, an unfettered power of disposition of the property in his hands. The sons do not have the right to demand partition or to ask for any share in the family property during the father's lifetime. They do not inherit any interest or right during the lifetime of the father. Consequently, during their lifetime, they have no interest in any estate which can be defended or protected.

(d) In the above context, the principle of conflict of interest or adverse interest dealt with in Order XXXII Rules 3A and Rule 7 CPC relevant in other schools of law would not be relevant in proceedings involving minors in the Union Territory of Puducherry, particularly concerning cases involving the application of customary Hindu Law.

(e) The plaintiffs have not placed reliance on the provisions of the French Civil Code in support of the argument that insofar as the partition deed dated March 15, 1971 is concerned, it complied with mandatory formalities of the Code and the Division Bench rightly rejected arguments in this regard.

24) Having regard to the respective submissions, it is clear that first and foremost it needs to be determined as to whether partition deed dated March 15, 1971 is valid in law, inasmuch as, this issue will have bearing on the remaining case.

25) As already pointed out above, the foremost question pertains to the validity of the Partition Deed dated March 15, 1971 and other arguments would arise for consideration only if the appellant is able to cross this hurdle. At this stage, it would be pertinent to point out that even after holding that during the lifetime of their father sons cannot claim partition of the properties as per the said customary Hindu Law, the High Court has accepted the fact that the father is still enabled to distribute and partition his property between the children and the descendants. As per the High Court, this can be done either by instruments inter vivos or by Will and further that the settlement or Will must comply with the formalities, conditions and rules laid down for donations inter vivos and Wills and the partitions made by donation inter vivos must include only those properties which the donor then possesses. In respect of this assertion, the High Court has referred to Article Nos. 1075 and 1076 of the French Code. From the aforesaid, the High Court has observed that the father can distribute or partition the property between the children and the descendants only by gift or family settlement between the parties themselves. According to it, the plaintiffs had not set up their claim on that basis as they did not rely on Articles 1075, 1076 or 1077 of the French Code in respect of their claim.

26) We may reproduce Articles 931, 1075, 1076 and 1077 of the French Code at this juncture:

> "931. Every instrument containing a donation inter vivos shall be executed before notaries in the ordinary from the contracts, and the original shall remain with them; otherwise such instruments shall be void. Civ. C. 894, 948, 949, 1339, 1340.
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> 1075. Fathers and mothers and other ascendants may make a distribution and division of their property between their children and descendants Civ.C. 745, 914, 968, 1076 et seq.
>
> 1076. These divisions may be made by donations or by wills in accordance with the formalities conditions and rules laid down for donations inter vivos and wills.
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> 1077. If all the property which are ascendants leaves at the time of his death has not been included in the division, such property as has not been included in the division, such property as has not been included shall be divided according to law. Civ. C. 723 et seq., 815 et seq., 887 et. seq."
>
> 27) Questioning the aforesaid approach of the High Court, the submission of the learned senior counsel for the appellant was that the High Court committed error in deciding the issue by applying the French Code, which was not applicable in the instant case. As per him, the Hindu Succession Act was made applicable to the territory of Puducherry in the year 1963 and, therefore, relationship of the parties was governed as per the said Succession Act and not the French Code.
>
> 28) The aforesaid argument is misconceived for more than one reason. First of all, the argument ignores that Oubegaranadin and his sons (respondent Nos. 3 to 5) are Christian by religion.

Therefore, Hindu Succession Act would not govern, even if it has been enforced in the territory of Puducherry in the year 1963. The High Court has dealt with this aspect in detail in its judgment, as pointed out above, and has come to the conclusion that insofar as Christians are concerned, old Customary Law continue to apply. No attempt was made by the learned senior counsel for the appellant to dislodge the same. Even otherwise, it is the Customary Hindu Law which has been applied to decide the case which approach is perfectly justified.

29) We also find that the plea to the effect that Hindu Succession Act to be enforced in the Union Territory of Puducherry w.e.f. 1963 and, therefore, French Code was not applicable thereafter, has taken for the first time in this Court that too during the arguments. Interestingly, even in the Special Leave Petition, it is accepted that in the plaint filed by respondent Nos. 3 to 5, it was specifically mentioned that they were governed by French Civil Law. The learned Single Judge while deciding appeals filed by the appellant herein as well as respondent Nos. 3 to 5 (plaintiffs) in the suit have also dealt with the matter in the light of French Code. Even if it is assumed that Oubegaranadin and his sons are governed by the Hindu Succession Act, this Act has no applicability to the transaction in question. The said Act governs the succession of the property when a Hindu dies interstate. The manner in which his properties would devolve on his successors is laid down in the scheme of the said Act. Here, the plaintiffs did not claim (nor could they claim) that they became owner of the property by way of succession as per the provisions of Hindu Succession Act. On the contrary, they claimed right in the property on the basis of Partition Deed dated March 15, 1971 which was executed by their father, namely, Oubegaranadin during his life time.

30) Therefore, the main issue is as to whether such a partition deed could be executed by Oubegaranadin in respect of the properties of which he was the absolute owner. It is to be borne in mind that the properties in question had fallen in the share of Oubegaranadin on the basis of partition deed dated March 23, 1959 between Oubegaranadin and his brothers. As on that date, French Code governed the field as per which customary Hindu Law applies. It is not disputed that Oubegaranadin had become the absolute owner of the property in question. Therefore, the moot question is as to whether he could give away portions of these properties to his sons by entering into a partition deed like the one he executed on March 15, 1971? Even if French Code is not applied, the aforesaid question cannot be answered with reference to the provisions of the Hindu Succession Act. Partition Deed can be entered into between the parties who are joint owners of the property. In case the father, namely, Oubegaranadin herein wanted to give property to his sons, of which he was absolute owner, it could be done by will or by means of gift deed/donation etc. The High Court was, therefore, right in observing that such a partition deed has to be construed either a gift deed or family settlement. However, the claim of the plaintiffs was not on that basis. It was not stated anywhere as to whether necessary formalities, conditions or rules laid down for donation inter vivos or gift so as to enforce said document were complied with in the absence of any pleadings, obviously no evidence was produced to this effect.

31) We, therefore, for our aforesaid reasons, agree with the conclusions arrived at by the High Court in the impugned judgment. As a result, this appeal is dismissed.

.....J. (A.K. SIKRI) .....J. (ASHOK BHUSHAN)
NEW DELHI;

JANUARY 18, 2018.