IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on 01.03.2019	Delivered on 25.03.2019

CORAM:

THE HONOURABLE MR.**JUSTICE R.SUBRAMANIAN**

C.S.No.409 of 2014

1. B.Brinda
2. Sashikala Mahipala Maruthi
3. G.B.Latha Sabari
4. G.B.Vydahi
5. G.B.Jhansi
6. G.B. Sabari Das ... Plaintiffs

Vs

1. G.B.S. Naidu (alias) G.S.Bhaskara Rao Naidu
2. G.B.Srinivasan
3. G.S.Shobana ... Defendants

Prayer : Plaint filed under Order IV Rule 1 of the Original Side Rules read with Order VII Rule 1 of the Code of Civil Procedure 1908, praying for the following judgment and decree:-

(a) To declare that the settlement deed 18.06.2014 registered as Document No.1832 of 2014 before the Sub-Registrar, Mylapore, Chennai purporting to deal with Schedule A property is null and void and not binding on the plaintiffs;

(b) For partition to divide and separate possession of the

Plaintiffs share representing 6/8 share in Plaint Schedule mentioned properties; or alternatively: For sale of plaint schedule mentioned properties through Court (Public) Auction and distribute 6/8th share out of the said sale proceeds to the Plaintiffs representing their share of 1/8 each in Plaint Schedule mentioned properties, and;

(c) To appoint and consequently direct Advocate Commissioner to divide the Plaint schedule properties by metes and bounds and put the plaintiffs in effective possession;

(d) directing the defendants to pay to the plaintiffs future Mense profits representing plaintiffs share of 6/8 in Plaint Schedule mentioned properties from the date of the Plaint till delivery of possession to plaintiffs their share of 1/8th each in the Plaint Schedule mentioned properties;

(e) directing the 2nd and 3rd defendants to pay the plaintiffs their share of 6/8 on the charges for Use and Occupation of the Plaint Schedule 'A' mentioned properties by the 2nd & 3rd defendants;

(f) directing the defendants to submit accounts on the income including rental income received from the Plaint Schedule mentioned properties since 1999; and

(g) grant cost of the suit.

For Plaintiffs : Mr.V.Raghavachari

For Defendants : Mr.Ar.L.Sunderasan, Senior Counsel for M/s. BFS Legal

J U D G M E N T

The suit has been filed by the plaintiffs for a declaration that the settlement deed dated 18.06.2014, registered as Document No.1832 of 2014, executed by the 1st defendant in favour of the 2nd defendant is null and void, for partition and separate possession of the plaintiffs' 6/8 share in the suit schedule properties and for other reliefs. The plaintiffs are the children of the 1st defendant, the 2nd defendant is one of the sons of the 1st defendant and the 3rd defendant is the wife of the 1st defendant.

2. According to the plaintiffs, the suit B Schedule properties belong to the grandfather of the plaintiffs Srihari Naidu, the suit 'C' schedule properties belong to the mother of the plaintiffs Tmt.Satyavathi. The suit 'D, 'E' and 'H' schedule properties stand in the name of the 2nd defendant. The F and G Schedule properties stand in the name of the 3rd defendant. The suit 'A' schedule property stands in the name of the 1st defendant. The plaintiffs would contend that the suit A schedule property was allotted to the grandfather of the plaintiffs Srihari Naidu by the Madras Co-Operative House Construction Society on 24.12.1956. Subsequently after the death of Srihari Naidu,

the Sale Deed in respect of the property came to be executed in the name of the 1st defendant on 26.11.1983. It is the further case of the plaintiffs that the grandfather of the plaintiffs Srihari Naidu, purchased 'B' schedule property under a Sale Deed dated 16.05.1955. The plaintiffs' grandfather was an affluent person and the 1st defendant is the only son. It is also pleaded that the plaintiffs' grandfather Srihari Naidu had substantial land holdings in Kovur Village, Nellore District, Andhra Pradesh, and he had acquired the farm land in Survey No.202/2, which is shown in schedule 'B' to the plaint, under the Sale Deed dated 16.05.1955. The 1st defendant who had seven children had to take care of the entire family. The 1st defendant was employed as Assistant Public Prosecutor, later he became a District Munsif and retired during the year 1991.

3. According to the plaintiffs, but for the income from the lands in 'B' Schedule property, other ancestral properties, the rental income from the three dwelling units in the 'A' schedule property and the rental income from a shop in the Corporation Commercial Complex, situate at 3rd Cross Street, Raja Annamalai Puram, it would have been impossible for the 1st defendant to run the family. It is also claimed that the plaintiffs 1 to 4 have supplemented

their respective salaries to the family till they got married. Therefore, according to the plaintiffs, the income from the ancestral properties and the salaries of the plaintiffs besides the income from the business of the 1st plaintiff were utilised for purchase of the house property at Kovur Village in Nellore District, Andhra Pradesh described in the 'C' schedule in the name of the mother of the plaintiffs Tmt.Satyavathi.

4. It is further claimed that the mother of the plaintiffs never treated the 'C' Schedule property as her own and it was always treated as property belonging to the family. The mother of the plaintiffs Tmt.Satyavathi, had died on 08.07.1997. Therefore, according to the plaintiffs, they are entitled to 1/8th share each in the 'C' schedule property. It is the further contention of the plaintiffs that all the children of the 1st defendant had contributed to the family income and the well being of the family by supplementing their salaries and by administering the farm lands and the house property, situate at Kovur Village under schedule 'B' and 'C' properties besides the business at shop No.8 in the Corporation Commercial Complex, situate at 3rd Cross Street, Raja Annamalai Puram, since the 1st defendant was preoccupied with the Government Job as an Assistant Public Prosecutor and as a District

Munsif. It is the further case of the plaintiffs that the income from various sources were pooled in as common funds to meet out the family expenses, apart from purchase of properties shown in the plaint 'C' to 'I' Schedules.

5. In essence, it is the contention of the plaintiffs that the suit 'A' and 'B' schedule properties are ancestral properties belonging to the family and the Suit 'C' to 'I' schedule properties were properties purchased in the name of the mother, the 2nd defendant and the 3rd defendant, from and out of the income from the ancestral properties. Therefore, according to the plaintiffs, all the properties would part take care of the ancestral properties and the plaintiffs would be entitled to 1/8th share each in the suit properties. It is also contended that the 3rd defendant, who is the wife of the 2nd defendant was only a house-wife and she has no independent source of income to have purchased the 'F' schedule properties. It was also claimed that the suit "D', 'E', and 'H' schedule properties also belonged to the family though they stood in the name of the 2nd defendant.

6. Insofar as 'I' Schedule properties are concerned they are movable properties in which also the plaintiffs

claimed 1/8th share, contending that the fixed deposits which form part of Item 1 of 'I' schedule was made out of the income from the family properties and the Jewels and other valuables belonged to the mother and therefore they are entitled to 1/8th share in the said properties also. It is further claimed that the 1st defendant had in fact executed a Will on 18.09.2001 registered as Document No.1819 of 2001, bequeathing the properties equally to four children namely 1st, 2nd and 5th plaintiffs and the 2nd defendant. It is also claimed that the plaintiffs 1, 2 and 5 were not married in an affluent families. It is further claimed by the plaintiffs that the married life of plaintiffs 2 and 5 had ran into rough weather and they have been living separately.

7. According to the plaintiffs, plaintiffs 3, 4 and 6 got married to persons of their choice and the said marriages were not accepted by the 1st defendant initially. However, the misunderstanding was later ironed out and all of them shared the healthy relationship. While things stood thus, the plaintiffs, to their shock and surprise, came to know that the defendants 2 and 3 had extracted a document of settlement on 21.02.2011 by coercing the 1st defendant. The 3rd defendant and her close friends were witnesses to the execution of the document also. After having obtained the settlement deed, the defendants 2 and 3

ill-treated the 1st defendant without providing proper food. This was brought to the notice of the 1st plaintiff in 2013 and the 1st plaintiff attempted her best to resolve the issue, but the defendants 2 and 3 did not take heed to the attempts made by the 1st plaintiff. The plaintiffs would also alleged that the 1st defendant came over Bangalore during March 2014 and during his stay in Bangalore with the 1st plaintiff, the first defendant explained the circumstances under which he was forced to execute a settlement deed in respect of the 'A' schedule property in favour of the 2nd defendant. The 1st defendant however cancelled the settlement deed dated 21.02.2011 registered as document No.429 of 2011 on 28.04.2014. However, again on 18.06.2014, the 2nd defendant prevailed upon the 1st defendant to execute another settlement deed settling the 'A' Schedule property on him.

8. It is also claimed that attempts made by the parties to make the 2nd defendant see reason and agree for amicable partition of the suit properties failed and hence the plaintiffs have come forward with the present suit, seeking a declaration that the settlement deed dated 18.06.2014 is null and void and is not binding on the plaintiffs and for the consequential relief for partition

and separate possession.

9. The suit is resisted by the 1st defendant contending as follows:

9.1. Insofar as the suit 'B' Schedule property concerned the 1st defendant would contend that his father Dr.Srihari Naidu was not affluent person and he did not have any farm land or estates. According to the 1st defendant, while the said Srihari Naidu was a District Veterinary Officer in Nellore, he had purchased an extent of 1 acre 75 cents of land at Kovur, consisting of two pieces of land at different locations. It is claimed that Srihari Naidu, died on 03.10.1956, after the advent of the Hindu Succession Act and as such 'B' Schedule Property purchased by Srihari Naidu on 16.05.1955 had devolved on the 1st defendant under Section 8 of the Hindu succession Act, and the 1st defendant as the only son became the absolute owner of the property.

9.2. Insofar as 'C' Schedule properties are concerned, the 1st defendant would claim that when he was practicing as an Advocate in the Madras High Court, he had purchased about 700 sq.ft. of house site at Kovur in the name of his wife, who had no source of income and her children were also minors at that point of time.

Therefore, according to the 1st defendant, the 'C' Schedule property is also self-acquired property of the 1st defendant.

9.3. Insofar as the Schedule 'D' properties are concerned, it was claimed that the 'D' Schedule properties does not belong any of the defendants.

9.4. Insofar as the properties mentioned in Schedule 'E' to 'H', the 1st defendant had contended that the properties were purchased by the 2nd defendant on different dates, when the 2nd defendant was working abroad and the properties were purchased by raising bank loans and therefore, the properties mentioned in schedule 'E' to 'H' are the self-acquired properties of the defendants 2 and 3 and they belong to them absolutely.

9.5. Insofar as the 'I' Schedule property is concerned, the 1st defendant would claim that the fixed deposit is kept in State Bank of India, R.A. Puram Branch, is the pension benefits of the 1st defendant. The plaintiffs are not entitled to any share in the same. It is also claimed that the 1st defendant does not hold any locker in the Bank.

9.6. As regards 'A' Schedule property, the 1st defendant would contend that he became a member of the Raja Annamalai Puram Cooperative House Construction Society in the year 1958. Pointing out that his father Srihari Naidu died even in the year 1956, the 1st defendant would contend that the hire purchase agreement with the Society was entered into by him in 1958 and he paid the entire consideration for the property and got the conveyance of the property. Therefore, according to him, he is the absolute owner of the 'A' Schedule property and his father Srihari Naidu, though had applied for allotment died even before the allotment was made.

9.7. Claiming that whatever is claimed to be ancestral property namely, an extent of 1 acre and 75 cents at Kovur Village in Nellore District of Andhra Pradesh, cannot be held to be a sufficient nucleus for purchase of the other properties. The 1st defendant would contend that the very basis of the claim of the plaintiffs that lands in Kovur Village, are the ancestral property of the family and the income there from formed the nucleus for purchase of the other properties cannot hold water. It is the further case of the 1st defendant that even the said property extent of 1 acres 75 cents in Kovur Village was purchased by his father Srihari Naidu in the year 1955 and as such after his death on 03.10.1956, the property devolved on him under

Section 8 of the Hindu Succession Act as his absolute property and the same cannot be termed as ancestral property at all.

9.8. It is also claimed that whatever income that came from the said 1.75 acres of land in Kovur Village was just enough for maintaining the large family of the 1st defendant. Therefore, there was no surplus income to invest in purchase of the property. The 1st defendant would further contend that the consideration for the purchase of 'A' Schedule property came out of his professional income as a lawyer and thereafter as an Assistant Public Prosecutor. On the above contentions, the 1st defendant sought for dismissal of the suit.

9.9. The defendants 2 and 3 though filed a separate written statement would substantially adopt the written statement filed by the 1st defendant. However, in respect of Suit 'D, E, F and H' schedule properties, defendants 2 and 3 would contend that all those properties were purchased out of the income of the 2nd defendant and by borrowing from Banks and other Financial Institution and they are all separate properties of 2nd and 3rd defendants and the plaintiffs are not entitled to claim any share in the said properties.

10. On the above pleadings, the following issues were framed by this Court,

1. Whether the plaintiffs have paid the appropriate Court Fee in respect of the Suit Claims?

2. Whether the Schedule A mentioned property is an ancestral property or absolute property of the first defendant which he was entitled to deal with as per his wish?

3. Whether any Decree can be passed in respect of Schedule B and C properties which have been sold years before filing of the present suit?

4. Whether Schedule I property (Bank Account) has any Ancestral Income deposited in the same and if so, to what extent?

5. Whether Schedule E to H are self acquired properties of the second and third defendants?

6. To what other reliefs?

11. At trial, the first plaintiff was examined as

P.W.1 and the 6th plaintiff was examined as P.W.2 and Exhibits P1 to P31 were marked on the side of the plaintiffs. The 1st defendant was examined as D.W.1 and the 2nd defendant was examined was D.W.2 and Exhibits D1 to D13 were filed on the side of the defendants.

12. I have heard Mr.V.Raghavachari, learned counsel appearing for the plaintiffs and Mr.AR.L.Sunderasan, learned Senior Counsel appearing for M/s.BFS Legal for the defendants 1 to 3.

Issue No.1

13. This issue relates to the Court Fee paid in the suit. The plaintiffs have valued the suit at Rs.17,15,53,000/- and had paid a Court Fee of Rs.13,075/-. Originally the suit was valued at Rs.17,52,000/- and a Court Fee of Rs.13,000/- was paid. Subsequently, after introduction prayer “a” namely, prayer for declaration that the settlement deed dated 18.06.2014 is invalid the plaintiffs valued the said relief at Rs.1,000/- and paid a Court Fee of Rs.75/-. Therefore, the total Court Fee paid was at Rs.13,075/-. The suit is one for partition, the Court Fee was paid under Section 37(2) of the Court Fees Act, claiming that the plaintiffs are in joint possession or deemed to be in joint possession of the suit property.

14. It is settled law that the plaint allegations alone should be looked into for the purpose of determining the Court Fee and the defence on the defendants is immaterial. From the plaint allegations, it could be gathered that the plaintiffs' consistent case is that, the suit properties are joint family properties having been purchased from and out of the ancestral nucleus and they are in joint possession of the said properties also. Therefore, I do not find any error in the valuation of the Suit and the Court Fee paid. Therefore, issue No.1 is answered in favour of the plaintiffs and against the defendants.

Issue No.2

15. This issue relates to the character of the suit 'A' Schedule property. While the plaintiffs would claim that the suit 'A' Schedule property is the ancestral property belonging to the family, the 1st defendant would contend that it is his separate property and as such, the plaintiffs have no right over the same. In order to buttress their claim regarding the character of 'A' Schedule property, the plaintiffs would fall back on the purchase of 1.75 acres of land shown in 'B' Schedule by their grandfather Srihari Naidu under Ex.A1 on 16.05.1955. According to them, their grandfather Srihari Naidu was a District Veterinary Officer and belonged to a very affluent

family which had lot of lands in Nellore District of Andhra Pradesh. Unfortunately for the plaintiffs they are not able to produce any proof of their claim that their grandfather Srihari Naidu, owned vast extent of land in Nellore District of Andhra Pradesh. The only evidence that is available to show that Srihari Naidu was possessed of some property in Nellore District of Andhra Pradesh is Ex.A1 Sale Deed which shows that he has purchased 1acre 75 cents of land shown in B Schedule to the suit on 16.05.1955.

16. Mr.V.Raghavachari, learned counsel appearing for the plaintiff would however contend that the suit 'A' Schedule property was originally allotted to Srihari Naidu by the Madras Co-operative House Construction Society on 24.12.1956. Relying upon the correspondence between the Madras Co-operative House Construction Society and the plaintiffs' grandfather which have been produced as Exs.P3 to P9, Mr.V.Raghavachari, would contend that the suit 'A' Schedule property was originally allotted to Srihari Naidu and he had paid the entire consideration. Since Srihari Naidu died on 03.10.1956, the sale deed came to be executed in favour of the 1st defendant subsequently on 26.11.1983. Therefore, according to Mr.V.Raghavachari, the suit 'A' schedule property is the ancestral property and the plaintiffs would have a share in the said property.

17. Contending contra, Mr.AR.L.Sunderasan, the learned Senior Counsel appearing for the defendants would submit that no doubt true 'A' Schedule property was allotted to Srihari Naidu, but even before the allotment could be finalised Srihari Naidu, died on 03.10.1956. Thereafter, according to Mr.AR.L.Sunderasan, the 1st defendant paid the entire cost of the land and building to Madras Co-operative House Construction Society, which is subsequently renamed as Raja Annamalai puram Co-operative House Construction Society, under Ex.D2 series. The payments were made over the period of several years by the 1st defendant and last such payment was made pursuant to Ex.D4 in the year 1978. According to Mr.AR.L.Sunderasan, learned Senior Counsel, the entire consideration for the sale of the 'A' Schedule property was paid by the 1st defendant out of his own sources of income. Therefore, the said property cannot be considered to be ancestral property in which the plaintiffs would have a right by birth.

18. Drawing my attention to the contents of Exs.D2, D3 and D4, Mr.Ar.L.Sunderasan, learned Senior Counsel would submit that the said documents conclusively demonstrate that the entire sale consideration for the 'A' Schedule property was paid by the 1st defendant only and there is no scope for contending that 'A' schedule property is

ancestral property and the same was purchased out of the income from the 'B' Schedule property.

19. Mr.V.Raghavachari, would draw my attention to the oral evidence of the 1st defendant, wherein the 1st defendant had given certain evasive answers and had even refused to reply to certain questions terming them as unnecessary and contend that the 1st defendant is burking facts from the Court. In order to substantiate their claim that the suit 'A' Schedule property is ancestral property belonging to the family, the plaintiffs must prove that:

(1) Family was possessed of ancestral property;

(2) The income from the ancestral property was substantial;

(3) There remained a surplus after defraying the regular family expenses;

(4) It was that surplus that was utilised for purchase of the properties.

20. Unless the above four requirements are established by the plaintiffs, the 'A" Schedule property cannot be said to be the ancestral property. If we scan the evidence to find out whether the above requirements have been satisfied by the plaintiffs, the answer, in my considered opinion will be negative. The reasons are as follows:

21. Neither P.W.1 nor P.W.2 are competent to speak about the properties that were held by Srihari Naidu or his father Sengalvara Naidu, D.W.1 would admit that Sengalvara Naidu was a Government Pleader in the Madras Presidency, that alone cannot be sufficient evidence to conclude that Sengalvara Naidu` had left behind lot of properties or a vast estate which was inherited by Srihari Naidu. The only evidence that is available is the purchase of 1 acre 75 cents of land by Srihari Naidu on 16.05.1955, thereafter the 1st defendant has purchased the suit 'C' Schedule property on 02.05.1983, in the name of his wife. Admittedly the suit 'C' Schedule property the house site which did not yield any income.

22. The case of the plaintiffs that the suit 'B' Schedule properties yielded so much of income and from that income, the 1st defendant was able to support his large family consisting of seven children and give them the best of education and also purchase the 'A' Schedule property is quite unbelievable. The evidence of P.Ws.1 and 2 to the effect that the income from the 'B' Schedule properties measuring about 1 acre 75 cents was so much that it was used for educating the children in Presentation Convent, one of the prestigious institutions in Chennai and there remained a surplus to enable the 1st defendant to purchase

properties is preposterous. There is no evidence of the income from the 'B' Schedule property to show that the said income was sufficient to meet the expenses of the family and there was a surplus which could be said to have been utilised for the purchase of the 'A' Schedule property.

23. Even assuming that the 'A' Schedule property was purchased out of the income from 'B' Schedule property, the 'B' Schedule property cannot be treated as ancestral property of the family. The 'B' Schedule property was in fact purchased by the father of the 1st defendant on 16.05.1955 and he died on 03.10.1956. At the time of his death, the Hindu Succession Act, had came into force. Therefore, the devolution of property was only under Section 8 of the Hindu Succession Act. Hence, the 1st defendant being the only son had inherited the property as his absolute property under Section 8 and not as a Co-parcener under Section 6. Therefore, any income there from also absolutely belonged to the 1st defendant and it cannot lie in the mouth of the plaintiffs to claim that 'A' Schedule property having been purchased from out of the income of the 'B' Schedule property should be treated as ancestral property. When the 'B' Schedule property itself cannot be treated as ancestral property, there is no question of treating the 'A' schedule property which was

purchased by the 1st defendant in the year 1983 by paying the installments for over a period of 20 years from 1958, as ancestral property belonging to the family.

24. A perusal of the Exhibit D2, a series of receipts issued by the Raja Annamalai Puram Cooperative House Construction Society Ltd., would show that the 1st defendant had paid the installments right from the year 1957 till the year 1978. From some of the receipts, it is seen that often the payments have been made belatedly along with penal interest. No doubt true that the original allotment of the property was made by the Madras Co-operative House Construction Society in favour of the father of the 1st defendant. But the father of the 1st defendant Srihari Naidu died as early as on 03.10.1956, even before the allotment could be finalised. The correspondence relied upon by the learned counsel appearing for the plaintiffs, had taken place between Srihari Naidu and the Madras Co-operative House Construction Society, during the month of September, October, December 1956. In fact Exs. P3, P8 and P9 have emanated after the death of Srihari Naidu. Therefore, the said correspondence cannot, in my considered opinion, form the basis to conclude that the suit 'A' Schedule property is the ancestral property of the family. Hence, Issue No.2 is answered against the plaintiffs and in favour of the 1st defendant.

Issue No.3

25. As regards the 'B' Schedule property it has already been concluded while discussing issue No.2, that 'B' Schedule property is the separate property of the 1st defendant, he having inherited the same under Section 8 of the Hindu Succession Act, on the death of his father. Therefore, the plaintiffs cannot claim any right over the 'B' Schedule properties.

26. As regards 'C' Schedule property, the same stands in the name of the mother of the plaintiffs, who died, admittedly, intestate on 08.07.1997. Though the 1st defendant would claim that he had sold the 'C' Schedule properties there is no evidence of such sale. Therefore, the plaintiffs as the children of the Late Sathyvathi, would be entitled to a share in the 'B' Schedule property along with defendants 1 and 2. On the death of their mother Late Satyavathi, property would devolve on the six plaintiffs and defendants 1 and 2 equally.

27. Therefore, each of the plaintiffs would be entitled to 1/8th share in the suit 'C' Schedule property. Issue No.3 is answered accordingly.

Issue No.4:

28. The claim of the plaintiffs is that the suit schedule 'I' property particularly the amounts lying in the Bank Account with State Bank of India, Raja Annamalai Puram Branch, represents the income from the ancestral properties. And therefore, the plaintiffs are entitled to their share therein.

29. While considering issue No.2, I have held that there was neither any ancestral property nor any income there from for the family and therefore, the amounts lying in deposit in the State Bank of India, Raja Annamalai Puram Branch, cannot be held to be the ancestral property in which the plaintiffs can stake a claim, even during the life time of the 1st defendant. The 1st defendant claims that it represents his retirement benefits. The said plea is accepted

30. As regards item No.2 of Schedule 'I' namely diamonds, gold jewellery, silver wares/articles and other ancestral valuables are kept in the safe locker linked to the Bank Account No.10029848080, the 1st defendant had categorically denied that he has any locker in the State Bank of India, R.A.Puram Branch. The plaintiffs' evidence on the availability of the said jewelry is also not convincing. Hence I conclude that the plaintiffs have not

made out the existence of item 2 of 'I' schedule. Issue No.4 is also answered against the plaintiffs.

Issue No.5

31. Issue No.5 requires to be recast.

32. It should read as

"Whether the schedule D to H are the self-acquired property of the 2nd and 3rd defendants?"

As regards 'D' Schedule property, it is the contention of the defendants that the same does not belong to any of the defendants. The plaint description of the 'B' Schedule property is as follows:

Schedule 'D': *(Covered under Sale Deed dated 15.11.1999 reg. Doc. No.2956/1999-SRO, Mylapore)*

All that piece and parcel of the property bearing Flat No.6, in the First Floor of the Building together with 1/8th undivided share in the Total Land of 4450 sq.ft., bearing Plot No.219, initial Door No.26, Old Door No.3, Present Door No.5, 7th Main Road, Raja Annamalaipuram, Chennai 600 028, comprised in Old R.S.No.3940, present R.S.No.3940/38 Block No.86 of Mylapore

Village, Mylapore-Triplicane Taluk, Chennai District, measuring an extent of 4450 sq.ft., and bounded on the

North by :Seventh Main Road,
R.S.No.3940/35

South by : Plot No.134, Door No.7
Canal Bank Road,
R.S.No.3940/49,

East by : Plot No.220, Old door No.25, New
No.2, R.S.No.3940/37

West by : Plot No.218, Old Door No.27, New
No.4, R.S.No.3940/39

situate within the Registration District of Chennai Central and Registration Sub District of Mylapore.

33. However, Ex.D11 which is a loan sanctioned order issued by the State Bank of India, Raja Annamalai Puram Branch in favour of the 2nd defendant would show that the property proposed to be purchased by the 2nd defendant is Flat F in the 2nd floor of Door No.3, 7th Main Road, R.A.Puram, Chennai 600 028. Therefore, there is a mistake in the description of the 'D' Schedule property. Both the 1st defendant as well as the defendants 2 and 3 in their written statement had pointed out that the 'D' Schedule

property is not correctly described and the 'D' Schedule property as described in the plaint does not belong to any of the defendants. Despite such a plea and evidence, the plaintiffs have not come forward with an application seeking amendment of the plaint. Even otherwise, the evidence available on record would show that the 'D' Schedule property has been purchased by the 2nd defendant out of his separate income. Ex.D11 is the loan sanction order dated 30.09.1999 issued to the 2nd defendant. It discloses that State Bank of India has sanctioned a loan of Rs.16.75 lakh in favour of the 2nd defendant for purchasing the house property.

34. Mr.V.Raghavachari, learned counsel would however contend that the Bank sanctioned the loan to the 2nd defendant only because the 1st defendant had guaranteed the said loan, hence the 'D' Schedule property should be taken to be the property belonging to the family. Merely because the father guaranteed repayment of a loan taken by the son, the property cannot be treated as a joint family property. There is no evidence to show that the income from the so called ancestral properties was used for purchase of "D" Schedule property. I therefore, conclude that 'D' Schedule property is the separate property of the 2nd defendant.

35. 'E' 'F' and G schedule properties are vacant house sites which have been purchased by the 2^{nd} defendant and 3^{rd} defendant, under various Sale Deeds dated 05.12.2007 marked as Ex.P16 to P18, during the year 2007. The only claim of the plaintiffs is that all these properties were purchased from and out of the income of the family which was possessed of ancestral property. While deciding Issue No.2, it has been concluded that the family was not possessed of any ancestral property yielding substantial income, to enable purchase of property. Moreover, these purchases are in the name of the daughter-in-law and a junior member of the family to which no presumption could be attached. Unless there is direct evidence to show that the funds of the family were utilised to purchase these properties, they cannot be held to be ancestral properties belonging to the family. Hence Issue No.5 is also decided against the plaintiffs and in favour of the defendants.

36. In fine, I conclude that the plaintiffs are entitled to a decree for partition and separate possession of their $6/8^{th}$ share in the suit 'C' Schedule properties alone and the suit in respect of other properties will stand dismissed. There will be preliminary decree declaring the $6/8^{th}$ share of the plaintiffs in the suit 'C' Schedule properties and for mense profits in respect of the

suit 'C' Schedule properties alone. Considering the relationship between the parties, there shall be no order as to costs.

List of Witnesses examined on the side of the plaintiffs:

PW1 - B.Brinda

PW2 - G.B.Sabaridas

List of Witnesses examined on the side of the Defendants:
Nil

DW1 - G.B.S.Naidu

DW2 - G.B.Srinivasan

List of Exhibits marked on the side of the Plaintiffs:

Sl. No.	***Exhibits***	***Description of Documents***
1	Ex.P1	Certified copy of the sale deed dated 16.05.1955 along with English translation
2	Ex.P2	Series are the encumbrance certificates dated 13.05.2014 and 19.05.2014
3	Ex.P3	Certified copy of the allotment letter dated 24.12.1956
4	Ex.P4	Certified copy of the allotment letter dated 07.09.1956
5	Ex.P5	Certified copy of the letter dated 10.09.1956
6	Ex.P6	Certified copy of the letter dated 18.09.1956
7	Ex.P7	Certified copy of the letter dated 24.09.1956
8	Ex.P8	Certified copy of the letter dated 04.10.1956
9	Ex.P9	Certified copy of the letter dated 16.10.1956
10	Ex.P10	Certified copy of the letter of occupation dated 06.06.1958
11	Ex.P11	Certified copy of the sale deed dated 26.11.1983
12	Ex.P12	Certified copy of the sale deed dated 02.05.1983 along with English translation

Sl. No.	*Exhibits*	*Description of Documents*
13	Ex.P13	Computer downloaded copy of the death certificate of Tmt.G.B.Satyavati dated 17.06.2014
14	Ex.P14	Encumbrance certificate dated 28.05.2014
15	Ex.P15	Certified copy of the sale deed dated 15.12.1999
16	Ex.P16	Certified copy of the sale deed (Doc. No.14097/2007) dated 05.12.2007
17	Ex.P17	Certified copy of the sale deed (Doc.No.14101/2007) dated 05.12.2007
18	Ex.P18	Certified copy of the sale deed (Doc. No.14102/2007) dated 05.12.2007
19	Ex.P19	Encumbrance certificate dated 30.05.2014. Ex.P20 is the certified copy of the settlement deed dated 21.02.2011
20	Ex.P20	Letter dated 01.03.2001 from the first & second defendants to the plaintiff
21	Ex.P21	Encumbrance certificate dated 10.04.2014. Ex.P22 is the property tax receipt dated 08.05.2014
22	Ex.P22	Notice from the plaintiff to the first defendant dated 25.08.2001
23	Ex.P23	Computer copy of the property tax receipt dated 08.05.2014
24	Ex.P24	Cancellation of settlement deed dated 28.04.2015
25	Ex.P25	Affidavit of the 1st defendant dated 28.04.2014
26	Ex.P26	Series are the photos, memory card and the bill
27	Ex.P27	Computer downloaded copy of e-mail dated 25.11.2012 from IRCTC
28	Ex.P28	Computer downloaded copy of e-mail dated 28.11.2012 from IRCTC
29	Ex.P29	Death certificate of Balamba
30	Ex.P30	Letter sent by Brinda
31	Ex.P31	Book

List of Exhibits marked on the side of the Defendants:

Sl. No.	***Exhibits***	***Description of Documents***
1	Ex.D1	Death Certificate of Srihari Naidu dated 15.07.2014
2	Ex.D2	Series are the payment challans in respect of schedule 'A' property by the Madras Co-operative House Construction Society Limited and Raja Annamalaipuram Co-operative House Construction Society Limited
3	Ex.D3	Letter received in connection with the payments to be made for schedule A property
4	Ex.D4	Letter dated 12.03.1978 requesting payment of the entire balance of the hire purchase
5	Ex.D5	Sale deed in respect of schedule A property dated 26.11.1983
6	Ex.D6	Series are the property tax demand cards
7	Ex.D7	Series are the water tax and water charges demand notice and demand card
8	Ex.D8	EB card in respect of schedule A property
9	Ex.D9	Series are the Challans (6 Nos.) issued by Simpson Co-operative Building Society Ltd
10	Ex.D10	Statement of Accounts issued by City Bank, Chennai
11	Ex.D11	Housing loan sanction order issued by State Bank of India, R.A.Puram Branch dated 30.09.1999

Sd./-R.S.M.J
25.03.2019

//Certified to be true copy//
Dated at Madras this the day of 2019.

JJ 10/07/2019

COURT OFFICER(O.S.)

From 25th day of September 2008 the Registry is issuing certified copies of the Orders/Judgments/Decrees in this format.