



OSA.No.183 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON 03.02.2026	PRONOUNCED ON 24.02.2026
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CORAM
THE HONOURABLE MR. JUSTICE C.V. KARTHIKEYAN
AND
THE HONOURABLE MR. JUSTICE K.KUMARESH BABU

OSA. No.183 of 2019

1.B.Brinda
2.Sashikala Mahipala Maruthi
3.G.B.Latha Sabari
4.G.B.Vydahi
5.G.B.Jhansi (Died)
6.G.B.Sabari Das
7.G.Dakshnamurthy
8.D.Deepak
9.D.Sunitha

... Appellants

(Appellants 7 to 9 are brought on record as legal heirs of the deceased 5th appellant vide order of the Court dated 24.01.2025 made in CMP.No.1352 of 2025 in O.S.A.No.183 of 2019)

Vs

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

... Respondents

PRAYER:- Original Side Appeal has been filed under Section 15 (1) of



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Amended Letters Patent, 1865 and Order XXXVI Rule 1 of the Original Side Rules, against the judgment and decree dated 25.03.2019 in C.S.No.409 of 2014.

For Appellant : Mr.V.Raghavachari Sr., counsel
for Ms.V.Srimathi

For Respondent : Mr.P.V.Balasubramaniam Sr., counsel
for M/s.B.F.S., Legal

JUDGMENT

(Order of the Court was made by Mr.K.KUMARESH BABU.,J.)

This Original Suit Appeal has been filed by the plaintiffs challenging the judgment and decree passed by the learned Single Judge, whereby the suit for partition was decreed only in respect of the Schedule 'C' property and dismissed insofar as the other schedule properties are concerned. For the sake of convenience and clarity, the parties are referred to as per their ranking before the learned Single Judge.

2) The brief facts leading to the filing of the present appeal are that, one late Srihari Naidu was the owner of certain properties, including the Schedule 'B' property. He is the father of the first defendant and the



grandfather of the plaintiffs and the second defendant. The third defendant is the wife of the second defendant. The Schedule 'A' property was originally allotted to Srihari Naidu and subsequently stood in the name of the first defendant. The Schedule 'C' property stood in the name of the mother of the plaintiffs. The Schedule 'D', 'E', 'G', and 'H' properties stood in the name of the second defendant, and the Schedule 'F' property stood in the name of the third defendant.

3) Claiming that all the schedule properties are ancestral in nature and belong to the joint family, the plaintiffs filed the suit seeking partition and separate possession of their alleged shares. The learned Single Judge, framed the following issues:-

(i) whether the plaintiffs have paid the appropriate Court Fee in respect of the Suit Claims?

(ii) 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?

(iii) Whether any Decree can be passed in respect of Schedule B and C properties which have been sold year before filing of



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the present suit?

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

(v) Whether Schedule E to H are self acquired properties of the second and third defendants?

(vi) To what other reliefs?.

The learned Single Judge upon consideration of the materials on record, granted partition only in respect of the Schedule 'C' property and dismissed the suit in respect of the remaining properties. Aggrieved by the same, the present appeal has been filed.

4) Heard Mr. V. Raghavachari, learned Senior Counsel appearing on behalf of Ms. V. Srimathi, learned counsel for the appellants, and Mr.P.V.Balasubramaniam, learned Senior Counsel appearing on behalf of M/s. BFS Legal, learned counsel appearing for the respondents.



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5) The learned Senior Counsel appearing for the appellants submitted that the plaintiffs and the second defendant are the children of the first defendant and that the third defendant is the wife of the second defendant. It was submitted that the Schedule 'B' property was purchased by Srihari Naidu on 16.05.1955, which was the source of income for purchase of the other properties in Schedule and, upon his demise, it devolved as ancestral property. It was contended that Srihari Naidu was allotted the Schedule 'A' property by the Madras Co-operative House Construction Society on 24.12.1956 and that, although the sale deed was subsequently executed in favour of the first defendant on 26.11.1983, the property retained its ancestral character, as the same was purchased from the income of 'B' Schedule. It was also contended that the Schedule 'C' property stood in the name of the mother of the plaintiffs, who died intestate on 08.07.1997, and therefore devolved upon her legal heirs.

6) The learned Senior Counsel further submitted that the plaintiffs had contributed to the family by assisting in administering agricultural lands and house properties and that the income from Schedule 'A' and 'B' properties, along with the salaries of the plaintiffs, constituted the joint family nucleus.



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According to the appellants, the Schedule 'C' to 'I' properties were acquired out of such joint family income, and therefore they are ancestral in nature. It was further contended that the Schedule 'F' property, though standing in the name of the third defendant, could not have been purchased by her independently as she had no independent source of income. Similarly, the Schedule 'D', 'E', 'G', and 'H' properties standing in the name of the second defendant were allegedly purchased out of the income derived from Schedule 'A' and 'B' properties.

7) It was also argued that the first defendant acted under the influence of the second and third defendants and failed to disclose his true financial position. The learned Senior Counsel contended that the first defendant did not produce any material evidence to establish his independent income sufficient to maintain the family and acquire properties. Placing reliance on Section 106 of the Indian Evidence Act, it was argued that the burden lay upon the first defendant to prove the source of income, as such facts were especially within his knowledge. It was further contended that the learned Single Judge erred in shifting the burden of proof upon the plaintiffs and in dismissing their claim in respect of the remaining properties. Accordingly,



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the learned Senior Counsel prayed for allowing the appeal and granting the plaintiffs their legitimate share in all the schedule properties.

8) Countering the arguments of the learned Senior Counsel for the Appellants, the learned Senior Counsel appearing for the respondents submitted that the learned Single Judge had rightly appreciated the evidence and correctly held that the Schedule 'A' and 'B' properties were the self-acquired properties of the first defendant. It was contended that the Schedule 'B' property devolved upon the first defendant upon the demise of his father and became his absolute property. It was further submitted that the Schedule 'D' property was incorrectly described and did not belong to the defendants. The learned Senior Counsel also submitted that the Schedule 'E' to 'H' properties were purchased by the second and third defendants independently from their own sources and did not form part of the joint family properties. It was further contended that the fixed deposit under Schedule 'I' represented the retirement benefits of the first defendant and could not be treated as joint family property. Accordingly, it was prayed that the appeal be dismissed.

9) We have carefully considered the rival submissions made by the



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learned counsels appearing on either side and perused the entire materials available on record.

10) In light of the rival contentions, the following points arise for consideration:

- (i) Whether the learned Single Judge was right in holding that the Schedule 'B' property is not ancestral property?*
- (ii) Whether the Schedule 'A', 'D' to 'F' properties constitute joint family properties, as acquired from income of 'B' schedule property?*
- (iii) Whether the plaintiffs are entitled to partition and separate possession of shares in the schedule properties as claimed?*

11) At the outset, it is not in dispute that the plaintiffs and the second defendant are the children of the first defendant and that the third defendant is the wife of the second defendant. The primary contention of the plaintiffs is that the Schedule 'B' property originally belonged to their grandfather, Srihari Naidu, and therefore constituted ancestral property. However, Ex.D1, the death certificate of Srihari Naidu, reveals that he died on 03.10.1956. The materials on record further establish that the plaintiffs



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were born much subsequent to his demise. In such circumstances, the property devolved upon the first defendant under Section 8 of the Hindu Succession Act, 1956, as his absolute property cannot be treated as ancestral property. The learned Single Judge has rightly appreciated this legal position, and this Court finds no reason to interfere with the said finding. For better understanding of the provision, Section 8 of the Hindu Succession Act is extracted hereunder,

8. General rules of succession in the case of males.-

The property of a male Hindu dying intestate shall devolve according to the provisions of this Chapter:-

- (a) firstly, upon the heirs, being the relatives specified in class I of the Schedule;*
- (b) secondly, if there is no heir of class I, then upon the heirs, being the relatives specified in class II of the Schedule;*
- (c) thirdly, if there is no heir of any of the two classes, then upon the agnates of the deceased; and*
- (d) lastly, if there is no agnate, then upon the cognates of the deceased.*

12) With regard to the Schedule 'A' property, although the allotment was originally made in the name of Srihari Naidu, the documentary evidence under Exs.D2 to D5 clearly establishes that the installments were paid by the



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first defendant and the sale deed was executed in his favour. Since the Schedule 'B' property itself became the absolute property of the first defendant, even assuming any property acquired from its income would also be his absolute property. Therefore, the contention of the plaintiffs that the Schedule 'A' property is ancestral in nature cannot be accepted.

13) There is no *lis* with regard to the 'C' Schedule property as all parties have submitted to the decree in respect of the same.

14) With regard to the remaining schedule properties, the plaintiffs have failed to establish that the said properties were acquired out of joint family nucleus. Mere assertion without supporting documentary evidence is insufficient to establish joint family character. On the contrary, the evidence on record indicates that the properties standing in the names of the respective defendants were acquired independently. The fixed deposit under Schedule 'I' has also been rightly held to represent the retirement benefits of the first defendant and cannot be treated as joint family property.

15) In view of the foregoing discussion, this Court finds that the learned Single Judge has rightly appreciated the evidence and correctly



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applied the settled principles of law. The findings rendered do not suffer from any illegality or infirmity warranting interference by this Court.

16) In the result, the Original Suit Appeal is dismissed, and the judgment and decree passed by the learned Single Judge are hereby affirmed. Considering the relationship between the parties, there shall be no order as to costs.

(C.V.K.,J.)

(K.B., J.)

24.02.2026

Index: Yes/No

Speaking Order/Non Speaking Order

Neutral Citation:Yes/No

Pbn



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and
K.KUMARESH BABU.,J.

Pbn

Pre-Delivery Judgment in
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