IN THE HIGH COURT FOR THE STATE OF TELANGANA

AT HYDERABAD

THE HON'BLE SRI JUSTICE G.M.MOHIUDDIN

APPEAL SUIT No.152 OF 2021 and X-OBJ No.47 of 2021

DATE: 09.10.2026

Reserved on: 21.08.2026

Pronounced on : 09 .10.2026
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Between:
APPEAL SUIT No.152 of 2021
(CNR No. HBHC010253342021)
Narsinga Madhu Kumar

....Appellant

And

Mandava Varoodhini and others

....Respondents

X-OBJ No.47 of 2021
(CNR No. HBHC010328372021)
Mandava Varoodhini

....Cross Objector

And

Narsinga Madhu Kumar and others

....Respondent

COMMON JUDGMENT

Heard Sri Srinivasa Rao Madiraju, learned counsel for the appellant and for the respondent in X-Objections; Smt.K.Jayasree, learned counsel for the respondents and for the Cross-objector and perused the record.

2. A.S.No.152 of 2021, is preferred by Narsinga Madhu Kumar, who is the defendant No.1 in O.S.No.10 of 2014 filed by

Smt. Mandava Varoodhini seeking partition, separate possession and declaration in respect of the properties described in the A, B and C Schedules. The appeal assails the judgment and decree dated 31.12.2020 passed by the learned II Additional District Judge, Nalgonda at Suryapet (for short, 'trial Court'); whereas, X-OBJ No.47 of 2021, is preferred by Smt. Mandava Varoodhini, who is the plaintiff in the said suit.

Factual Matrix

3. The respondent No.1/plaintiff and appellant/defendant No.1 are sister and brother and are the children of late Sri Narsinga Somaiah. Their father died on 22.03.2013. According to the respondent No.1/plaintiff, their mother, Smt. Rajya Laxmi, had predeceased their father, and they are the only legal heirs of late Sri Narsinga Somaiah. The respondent No.1/plaintiff accordingly claimed that both of them were entitled to equal shares in the properties left behind by their father.

4. The respondent No.1/plaintiff instituted O.S.No.10 of 2014 before the learned II Additional District Judge, Nalgonda at Suryapet, seeking partition and separate possession of the Plaint-A and B Schedule properties and a declaration in respect of the Plaint-C Schedule properties.

5. The Schedule properties of Plaint A, B, and C are tabulated hereunder for ready reference:

Schedule	**Description of the property**	**Extent**
Plaint A	Item No.1	Agricultural dry land, Ac.3.26 guntas, in Sy.Nos.148 and 144/A/2, situated at Jajireddygudem Village and Mandal, Nalgonda District.
	Item No.2	Residential RCC roofed house bearing No.4-151, with open place, admeasuring 400 sq. yards, at Jajireddygudem Village and Mandal, Nalgonda District.
	Item No.3	Residential house bearing No.1-6-141/35/3/3, with open place, admeasuring 181 sq. yards, Sreeram Nagar Colony, Suryapet Town and Mandal, Nalgonda District.
	Item No.4	Residential house bearing No.2-186/1, with open place, admeasuring 150 sq. yards, out of Plot No.186, situated at Almasguda Village, Saroornagar Mandal, Ranga Reddy District.
Plaint B	Item No.1	Amount of Rs.10,82,075/- lying in S.B. A/c No.52123899251 of late Narsinga Somaiah with State Bank of Hyderabad, Suryapet Branch, with interest.
	Item No.2	Amount of Rs.5,49,613/- lying in S.B. A/c No.15522191008198 of late Narsinga Somaiah with Oriental Bank of Commerce, Suryapet Branch, with interest.
	Item No.3	Policy amount of Rs.1,00,000/- along with maturity amount, bonus, interest etc. under Jeevan Mitra Policy No.643161306 of late Narsinga Somaiah with Life Insurance Corporation of India, Suryapet Branch.

Plaint-C Schedule Properties comprise gold and silver ornaments stated by the plaintiff to be kept in Locker No.22 with the Oriental Bank of Commerce, Suryapet Branch.

6. The case of the respondent No.1/plaintiff, in substance, was that late Narsinga Somaiah and his three brothers had partitioned their ancestral properties about twenty years prior to the institution of the suit, and that Item Nos.1 and 2 of the Plaint-A Schedule properties had fallen to the share of late Somaiah. According to the respondent No.1/plaintiff, Item No.3 was purchased and constructed by late Somaiah with the aid of joint family funds and his own earnings. It was further her case that Item No.4 was purchased by late Somaiah with joint family funds in the name of defendant No.1.

7. With regard to the Plaint-B Schedule amounts, the respondent No.1/plaintiff contended that the bank deposits belonged to late Somaiah and that, after his death, she and defendant No.1 were each entitled to a co-equal share. She also claimed an equal share in the LIC policy benefits.

8. In respect of the Plaint-C Schedule properties, the respondent No.1/plaintiff claimed that the gold and silver ornaments belonged to her, her husband and her son and had been kept in the bank locker of her father. Respondent

No.1/plaintiff accordingly sought a declaration of her ownership over the said ornaments.

9. Defendant No.1 contested the suit. His case was that Item No.1 of the Plaint-A Schedule property had originally belonged to his grandfather and had been gifted to him, pursuant to which the property was mutated in his name. With regard to Item No.2, he contended that the property had already been sold by his father and his brothers to Laxmi Narayana. He contended that Item No.3 was the self-acquired property of late Somaiah. In respect of Item No.4, his specific case was that the property was his self-acquired property, purchased from his own funds by availing a housing loan from LIC Housing Finance against the security of his salary.

10. With regard to Plaint-B Item No.1, appellant/defendant No.1 contended that out of the amount of Rs.10,82,075/-, an amount of Rs.7,44,500/- had been transferred by him from his own account to his father's account and that the said amount continued to belong to him. He further contended that the amounts transferred by him had been utilised by his father for lending money to third parties on interest. In respect of the LIC policy, defendant No.1 contended that he had received the amount as the nominee under the policy. As regards the Plaint-C Schedule properties, his case was that the ornaments

belonged to him and his wife and that the plaintiff had no right or interest therein.

11. The trial Court framed the necessary issues. Before the trial Court, the plaintiffs examined PW-1 and PW-2 and got marked Exs.A1 to A13. Whereas, the defendants examined DW-1 and got marked Exs.B1 to B17. Upon consideration of the pleadings, oral and documentary evidence and the submissions of the parties, the trial Court passed the impugned judgment and decree dated 31.12.2020, wherein it partly decreed the suit for partition and separate possession, with the following observation:

> *(1) In the result, preliminary is decree is passed with regard to item Nos.1 to 3 of plaint-A schedule property;*
> *(2) That the plaint-A schedule property shall be divided into two equal shares, and plaintiff is entitled for one such share and the 1st defendant is entitled for one such share.*
> *(3) Decree is hereby passed that the plaintiff is entitled to half share out of the amount covered by item Nos. 1 and 2 of plaint-B schedule property and the defendants 2 and 3 are directed to pay half of the amount to the plaintiff and the remaining half amount to the 1st defendant.*
> *(4) As the defendant already received an amount of Rs 2,52,877/- covered by item No.3 of plaint-B schedule, the 1st defendant is directed to Rs.1,26,439/- to the plaintiff with interest @ 12% from the date of suit till the time of payment.*
> *(5) The suit with respect to plaint-C schedule property is hereby dismissed.*
> *(6) In view of the relationship between the parties and in view of the peculiar facts of the case and as the plaintiff could not succeed entirely in the suit, each party is directed to bear their own costs.*

12. Aggrieved by the said judgment and decree, appellant/defendant No.1 preferred A.S.No.152 of 2021. The respondent No.1/plaintiff, in turn, preferred X-OBJ No.47 of 2021 under Order XLI Rule 22 CPC, principally questioning the rejection of her claim in respect of Item No.4 of the Plaint-A Schedule and the Plaint-C Schedule properties.

Submissions on behalf of the appellant/defendant No.1

13. The learned counsel for the appellant, assailing the impugned judgment and decree, advanced the following submissions:

i) That the trial Court failed to properly appreciate Exs.B1 to B17 filed on behalf of appellant/defendant No.1. According to the learned counsel, the said documents establish that Item No.1 of Plaint-A schedule property is the absolute property of appellant/defendant No.1, having been acquired by him through gift from his grandfather, and that the revenue records, pattadar passbook and title deed stand in his name.

ii) That the trial Court erred in placing reliance upon the alleged admission of DW1 that his father got Ac.3.26 Gts in the partition. According to the learned counsel, even if such admission is taken into consideration, the same does not confer any right upon the respondent

No.1/plaintiff over Item No.1 of Plaint-A schedule property. It was further contended that the plaintiff had taken away the original pattadar passbook and other documents belonging to late Sri Somaiah.

iii) That the Item No.2 of Plaint-A schedule property was sold by late Sri Somaiah and his brothers to Laxmi Narayana and, therefore, the respondent No.1/plaintiff cannot claim any share therein. The plaintiff did not produce any document to establish that Item No.2 continued to be the property of late Sri Somaiah.

iv) That the Item No.3 of Plaint-A schedule property is the self-acquired property of late Sri Somaiah, who purchased the site under registered Sale Deed No.2231 of 1991 and constructed the house from his salary, savings and by availing housing loan from Andhra Bank. The respondent No.1/plaintiff failed to establish the existence of any joint family nucleus or joint family income for purchase of the site or construction of the said house.

v) That the Item No.4 of Plaint-A schedule property was purchased by appellant/defendant No.1 by availing housing loan from LIC Housing Finance, Secunderabad, against the security of his salary. He had been working as a Software Engineer since January, 2006. The original

registered sale deed was lodged with the mortgage bank. The respondent No.1/plaintiff failed to establish that late Sri Somaiah contributed any amount towards the purchase of Item No.4. Therefore, the finding of the trial Court that Item No.4 is the self-acquired property of appellant/defendant No.1 is correct and does not call for interference.

vi) As regards Item No.1 of Plaint-B schedule property, appellant/defendant No.1 had transferred an amount of Rs.7,44,500/- from his Account No.20017856431 with SBI, Moosarambagh, to the account of his father, which constitutes a part of the amount covered by Item No.1 of Plaint-B schedule. The said amount was sent to his father for lending to third parties on interest and the balance amount represents interest accrued thereon. Therefore, according to the learned counsel, the entire amount covered by Item No.1 of Plaint-B schedule belongs exclusively to appellant/defendant No.1 and the plaintiff is not entitled to any share therein.

vii) As regards Item No.2 of Plaint-B schedule property, although the account stood in the name of late Sri Somaiah, appellant/defendant No.1 had incurred expenditure towards the medical treatment of his father

and had also spent an amount of Rs.2,00,000/- towards cremation and performance of the Dashadina Kharma. The respondent No.1/plaintiff did not share such expenditure. Therefore, the respondent No.1/plaintiff is not entitled to claim half share in Item No.2 of Plaint-B schedule property.

viii) That the LIC policy amount was paid to appellant/defendant No.1 as he was the nominee under the policy. It was contended that, under the terms of the policy and the provisions of the LIC Act, the Corporation was bound to settle the claim in favour of the nominee and, accordingly, the amount was paid to appellant/defendant No.1. The learned counsel submitted that the trial Court erred in directing appellant/defendant No.1 to pay half of the said amount to the plaintiff.

ix) That the respondent No.1/plaintiff is not in possession of the suit properties and, therefore, is liable to pay ad valorem court fee and not fixed court fee. The trial Court erred in holding that the fixed court fee paid by the respondent No.1/plaintiff was sufficient.

x) That the gold and silver ornaments shown in Plaint-C schedule belong exclusively to the wife of

appellant/defendant No.1 and the respondent No.1/plaintiff has no right, title or interest therein. The trial Court rightly dismissed the suit insofar as Plaint-C schedule properties are concerned and, therefore, the cross-objections filed by the respondent No.1/plaintiff in that regard are liable to be dismissed.

xi) That the car bearing Registration No.AP24AT3140 was purchased by appellant/defendant No.1 in the name of his father and, after the death of his father, he became entitled to the same. The husband of the respondent No.1/plaintiff illegally took away the said car. Though the car is not the subject matter of the present suit, the conduct of the respondent No.1/plaintiff and her husband, according to the learned counsel, disentitles the respondent No.1/plaintiff from claiming any equitable relief.

Submissions on behalf of the respondent No.1/cross-objector/plaintiff

14. The learned counsel for the respondent No.1/plaintiff, assailing the impugned judgment and decree, advanced the following submissions:

i) That the trial Court committed serious irregularity and illegality in rejecting the claim of the respondent

No.1/plaintiff for partition in respect of Item No.4 of Plaint-A schedule property. According to the learned counsel, the said property was purchased by late Sri Somaiah with joint family funds, though it was nominally purchased in the name of appellant/defendant No.1. Appellant failed to establish that he paid the entire sale consideration of Rs.32,50,000/-. Ex.A11 sale deed reflects the consideration as Rs.12,25,000/-, whereas the balance amount was contributed by late Sri Somaiah from the joint family funds. Therefore, Item No.4 of Plaint-A schedule property is a joint family property and the respondent No.1/plaintiff is entitled to half share therein.

ii) That the trial Court committed serious irregularity and illegality in rejecting the claim of the respondent No.1/plaintiff for declaration in respect of Plaint-C schedule properties, comprising gold ornaments weighing 121 grams and silver articles weighing 450 grams, which were kept in Locker No.22 with the 3rd defendant-bank. The respondent No.1/plaintiff is in possession of the key of the said locker. According to the learned counsel, the ornaments belong to the plaintiff, her husband and her son. Appellant/defendant No.1 admitted in his evidence that, as on 14.11.2012, he had no children and that his

son was born on 05.12.2012. Therefore, the contention of appellant that the ornaments belonged to his wife and children cannot be accepted.

iii) That the trial Court ought to have decreed the suit in its entirety. There is no dispute regarding the relationship between the parties. Late Sri Somaiah died intestate, leaving behind the respondent No.1/plaintiff and appellant/defendant No.1 as his legal heirs. Therefore, according to the learned counsel, all the suit schedule properties were liable to be partitioned equally between the plaintiff and Defendant No.1.

iv) That the trial Court ought to have appreciated the contention of the respondent No.1/plaintiff that there is a statutory presumption of joint family status and that, in the absence of rebuttal evidence adduced by appellant/defendant No.1 in support of his claim of self-acquisition, the suit schedule properties were liable to be treated as joint family properties and partitioned equally between the respondent No.1/plaintiff and appellant/defendant No.1.

v) That Late Sri Somaiah purchased the suit schedule properties with joint family funds, apart from his own earnings. Therefore, according to the learned counsel, all

the suit schedule properties were liable to be partitioned in accordance with the claim of the respondent No.1/plaintiff.

vi) That the trial Court ought to have taken note of the conduct of appellant/defendant No.1, who, according to the learned counsel, managed to obtain the matured amount of Rs.2,52,877/- from the 4th defendant in an improper and illegal manner, taking advantage of the fact that his name was shown as nominee under the LIC policy, without producing the original policy bond, Ex.A12, which was filed by the respondent No.1/plaintiff before the trial Court. The said amount is liable to be shared equally between the respondent No.1/plaintiff and appellant/defendant No.1, being the legal heirs of late Sri Somaiah.

vii) That the trial Court, having not accepted the contention of appellant/defendant No.1 that the ornaments in Plaint-C schedule belonged to his wife and children, ought to have allowed the claim of the respondent No.1/plaintiff. The trial Court had rejected I.A.No.436 of 2014 filed by the respondent No.1/plaintiff seeking appointment of an Advocate Commissioner for making an inventory of Locker

No.22 on 13.02.2020. The said finding is perverse and contrary to the record.

viii) That the trial Court ought to have appreciated that, in the absence of any valid proof of payment by appellant/defendant No.1 of the entire sale consideration of Rs.32,50,000/- towards purchase of Item No.4 of Plaint-A schedule property, the said property ought to have been held to be a joint family property and partitioned between the parties.

ix) That the court fee paid by the respondent No.1/plaintiff is proper and sufficient. The respondent No.1/plaintiff is a co-sharer and is deemed to be in joint and constructive possession of the joint family properties. Therefore, the trial Court rightly held that the fixed court fee paid by the respondent No.1/plaintiff was sufficient.

15. I have taken note of the respective contentions urged and the material placed on record.

Consideration by this Court

Item No.1 of Plaint-A Schedule

16. The specific case of appellant/defendant No.1 is that Item No.1 of Plaint-A schedule originally belonged to his grandfather, Narsing Ramaiah, and that the same was gifted to him. In support of the said contention, he relied upon the revenue

records, pattadar passbook, title deed and mutation entries. However, admittedly, no gift deed or proceedings relating to the alleged mutation were produced before the trial Court. Further, the reliance on Ex.B1, which is the pahani and Ex.B2 which is the copy of the B-Register, does not advance his case as the entries in revenue records are primarily maintained for fiscal purposes and, by themselves, do not confer or extinguish title.

17. More importantly, DW1, in his cross-examination, admitted that, in the partition between his father and his brothers, his father, i.e., late Sri Somaiah, was allotted Ac.3.26 Gts. He further admitted that the very same extent of Ac.3.26 Gts which fell to the share of his father is Item No.1 of Plaint-A schedule. The said admission assumes significance, as it militates against the specific case of appellant/defendant No.1 that the property was gifted to him by his grandfather and that he was its absolute owner. On the contrary, the admission establishes that the property in question had fallen to the share of late Sri Somaiah in the partition between him and his brothers.

18. Further, the respondent No.1/plaintiff relied upon Ex.A1 pahani, which stood in the name of late Sri Somaiah. The trial Court also noticed that the proceedings relating to the alleged mutation had not been produced and that the Tahsildar, under

Ex.A8, reported that the relevant file was not available. Thus, in the absence of any documentary evidence evidencing the alleged gift in favour of appellant/defendant No.1, coupled with the admission of DW1 that Item No.1 had fallen to the share of late Sri Somaiah in the partition, the contention of appellant/defendant No.1 that he was the absolute owner thereof cannot be accepted. Therefore, the trial Court was justified in holding that Item No.1 of Plaint-A schedule was not the exclusive property of appellant/defendant No.1 and that the plaintiff was entitled to a share therein.

Item Nos.2 and 3 of Plaint-A Schedule

19. The respondent No.1/plaintiff contended that Item Nos.2 and 3 of Plaint-A schedule were purchased and constructed by late Sri Somaiah with joint family funds. However, the trial Court, observed that late Sri Somaiah was a Government Teacher and had retired as a Head Master. It was further noticed that the site relating to Item No.3 was purchased under registered Sale Deed No.2231/1991 and that the house was constructed by availing a housing loan from Andhra Bank. PW1, in her cross-examination, also admitted that Item No.2 was lying vacant and that Item No.3 had been purchased by her father. PW-1 further admitted that her father had availed a loan

for construction of the house and that, prior to her marriage, she was dependent upon her father.

20. Further, the respondent No.1/plaintiff did not adduce any satisfactory evidence to establish that there was sufficient joint family nucleus or income from joint family properties from which Item Nos.2 and 3 could have been acquired or constructed. Mere proof that late Sri Somaiah was a Government employee and had savings would not establish that the properties were acquired out of joint family funds. In the absence of evidence establishing the existence of sufficient joint family nucleus and its utilisation for acquisition or construction of the said properties, the finding of the trial Court that Item Nos.2 and 3 were the self-acquired properties of late Sri Somaiah cannot be faulted.

21. However, since late Sri Somaiah died intestate, these self-acquired properties devolved upon his legal heirs, namely the respondent No.1/plaintiff and appellant/defendant No.1, in equal shares. Therefore, the trial Court rightly included Item Nos.2 and 3 in the preliminary decree and directed division thereof between the legal heirs in equal shares.

22. It is to be noted that the contention of the respondent No.1/plaintiff that Item Nos.2 and 3 were joint family properties is also not established. At the same time, the contention of

appellant/defendant No.1 that Item No.2 had been sold to one Laxmi Narayana is also not established, as no documentary evidence was produced to substantiate the alleged sale. Mere assertion in the pleadings or oral evidence, without supporting documentary evidence, cannot establish the alleged alienation. Therefore, the finding of the trial Court that the alleged sale of Item No.2 was not proved is affirmed.

23. As regards Item No.3, appellant/defendant No.1 further claimed that late Sri Somaiah had executed a Will in his favour. However, the alleged Will was not produced before the trial Court. DW1 admitted that he had not filed the said Will and that he did not know with whom it was kept. In the absence of production of the alleged Will and proof of its execution and testamentary disposition, the claim of appellant/defendant No.1 that Item No.3 had been bequeathed to him cannot be accepted. Thus, Item No.3 remained part of the estate of late Sri Somaiah and, upon his intestate death, devolved upon the legal heris in equal shares.

Item No.4 of Plaint-A Schedule

24. The respondent No.1/plaintiff contended that Item No.4 of Plaint-A schedule was purchased by late Sri Somaiah with joint family funds, though the property was nominally purchased in the name of appellant/defendant No.1. The trial Court, however,

found that Item No.4 stood in the name of appellant/defendant No.1 under registered Sale Deed, Ex.A11. It is also not in dispute that appellant/defendant No.1 was working as a Software Engineer at the relevant time and had availed a housing loan from LIC Housing Finance, as evidenced by Ex.B3. Ex.A11 reflects the sale consideration as Rs.12,25,000/-, whereas appellant/defendant No.1 claimed that the actual consideration was Rs.32,50,000/- and that the balance amount was met from his own funds and the housing loan.

25. The respondent No.1/plaintiff did not produce any documentary or other cogent evidence to establish that late Sri Somaiah had contributed any amount towards the purchase of Item No.4. No evidence was adduced to establish the source of the alleged joint family funds, the availability of any sufficient joint family nucleus, or the extent of any alleged contribution made by late Sri Somaiah towards the purchase consideration. Mere assertion that the property was acquired with joint family funds, without establishing the source and utilisation of such funds, is not sufficient to displace the registered title standing in the name of appellant/defendant No.1. Therefore, the cross-objections insofar as they relate to Item No.4 of Plaint-A schedule are liable to be dismissed.

Item Nos.1 and 2 of Plaint-B Schedule

26. Item No.1 of Plaint-B schedule represents the balance lying in Savings Bank A/c No.52123899251 of late Sri Somaiah with the State Bank of Hyderabad, Suryapet Branch, whereas Item No.2 represents the balance lying in Savings Bank A/c No.15522191008198 of late Sri Somaiah with the Oriental Bank of Commerce, Suryapet Branch. Both the accounts stood in the name of late Sri Somaiah.

27. Appellant/defendant No.1 contended that, out of the amount lying in Item No.1, a sum of Rs.7,44,500/- belonged exclusively to him, as the said amount had been transferred by him from his own bank account to the account of his father. In support of the said contention, he relied upon Ex.B4, a bunch of NEFT transaction receipts. The trial Court, on examination of Ex.B4, found that the amounts had indeed been transferred from the account of appellant/defendant No.1 to the account of late Sri Somaiah. However, the said receipts do not disclose the purpose for which the amounts were transferred. No independent evidence was adduced to establish that the amounts were entrusted to late Sri Somaiah for lending to third parties on interest, or that the amounts so advanced were subsequently recovered from the borrowers and retained by late Sri Somaiah in the said bank accounts.

28. Further, the trial Court also observed that late Sri Somaiah was a retired Government employee and had his own income and savings. In the absence of satisfactory evidence establishing that the amount of Rs.7,44,500/- continued to belong exclusively to appellant/defendant No.1 or that late Sri Somaiah was merely holding the said amount on his behalf, the claim of appellant/defendant No.1 for exclusive entitlement to the said amount cannot be accepted. The amounts standing to the credit of the bank accounts in the name of late Sri Somaiah, therefore, formed part of his estate, subject to the rights of his legal heirs.

29. The contention of appellant/defendant No.1 that he had incurred amounts towards the medical treatment of late Sri Somaiah and had also borne the funeral and obsequies expenses, and that on that account the respondent No.1/plaintiff was not entitled to an equal share in Item No.2, also cannot be accepted. Mere proof of expenditure incurred by a legal heir, in the absence of a legally sustainable claim for adjustment or reimbursement against the estate, does not by itself extinguish or reduce the share of another legal heir. Therefore, the trial Court was justified in directing that the amounts in Plaint-B schedule be divided between the legal heirs in equal shares.

30. Moreover, the interim order passed by this Court on 18.10.2023 in I.A.No.2 of 2021 in A.S.No.152 of 2021 was only an interim arrangement and was subject to the final outcome of the appeal. Therefore, any amount withdrawn by either party pursuant to the said interim order shall be duly accounted for and adjusted, as necessary, while working out the final decree. Thus, the finding of the trial Court that the amounts lying in Item Nos.1 and 2 of Plaint-B schedule form part of the estate of late Sri Somaiah, and that the legal heirs are entitled to equal shares therein, does not suffer from any perversity or infirmity warranting interference.

Item No.3 of Plaint-B Schedule – LIC Policy Amount

31. Late Sri Somaiah obtained Jeevan Mitra Policy No.643161306 from the LIC. Appellant/defendant No.1 was the nominee under the said policy. After the death of late Sri Somaiah, the LIC paid a sum of Rs.2,52,877/- to appellant/defendant No.1 on 17.09.2013. The trial Court, relying upon the judgment of the Hon'ble Supreme Court in ***Smt.Sarbati Devi and another v. Smt. Usha Devi***[1], and the decision in ***Shreya Vidyarthi v. Ashok Vidyarthi and others***[2], held that mere nomination does not confer any

[1] AIR 1984 SC 346
[2] 2016 (2) ALD 73 (SC)

beneficial or absolute interest in the policy amount upon the nominee. The nominee is entitled to receive the amount from the insurer, but the amount so received remains subject to the rights of the persons entitled thereto under the applicable law of succession.

32. In the present case, the respondent No.1/plaintiff and appellant/defendant No.1 are the only legal heirs of late Sri Somaiah. Thus, the policy amount received by appellant/defendant No.1 forms part of the estate of the deceased and is liable to be shared equally between the both the legal heirs. Therefore, the trial Court has rightly directed appellant/defendant No.1 to pay a sum of Rs.1,26,439/- to the respondent No.1/plaintiff, with interest at 12% per annum from the date of the suit till payment.

33. Further, the contention of appellant/defendant No.1 that, merely by virtue of his nomination, he became exclusively entitled to retain the entire policy amount cannot be accepted and is contrary to the legal position laid down in the aforesaid decisions.

Plaint-C Schedule Properties – Gold and Silver Ornaments

34. The respondent No.1/plaintiff claimed that the gold and silver ornaments described in Plaint-C schedule belonged to her, her husband and her son, and that the said ornaments were

kept in Locker No.22 with the Oriental Bank of Commerce, Suryapet Branch. The trial Court dismissed the claim in respect of Plaint-C schedule, principally on the ground that the respondent No.1/plaintiff failed to establish her ownership and entitlement to the ornaments claimed by her. The trial Court also noticed that no inventory of the contents of the locker was brought on record and I.A.No.436 of 2014, filed belatedly by the respondent No.1/plaintiff seeking appointment of an Advocate Commissioner for making an inventory of the locker, did not result in preparation of any such inventory.

35. The evidence on record shows that the locker stood in the name of late Sri Somaiah and appellant/defendant No.1. PW1 admitted that she did not have access to the locker and that her father and appellant/defendant No.1 were authorised to operate the same. DW1 admitted that the locker stood in the name of his father and that one key was with his father while the other key was with the bank. He further admitted that the respondent No.1/plaintiff was presently in possession of the locker key, though he alleged that she had taken the same without his knowledge. Significantly, DW1 also admitted that he had not produced any documentary evidence to establish that the ornaments described in Plaint-C schedule belonged to his wife.

36. However, the burden in the suit, insofar as the respondent No.1/plaintiff claimed a declaration of ownership over the ornaments, was upon her to establish her title and entitlement thereto. The weakness, if any, in the defence evidence cannot by itself relieve the respondent No.1/plaintiff of the burden of proving her own case. The respondent No.1/plaintiff did not produce any documentary evidence showing the purchase, ownership or acquisition of the individual ornaments claimed in Plaint-C schedule. Equally, there was no satisfactory evidence establishing which particular ornaments belonged to the respondent No.1/plaintiff, her husband or her son. In the absence of such evidence, the ownership of the ornaments claimed in Plaint-C schedule could not be satisfactorily determined.

37. However, as the contents of Locker No.22 with the Oriental Bank of Commerce, Suryapet Branch have not been brought on record, either party is at liberty to approach the trial Court for opening and inventorying the locker in the presence of both parties or their authorised representatives, in accordance with law. If any ornaments or articles are found therein, the rights and entitlement of the parties thereto shall be determined by the trial Court in accordance with law, uninfluenced by the

dismissal of the respondent/plaintiff/X-objector to Plaint-C schedule in the present suit.

Court Fee

38. Appellant/defendant No.1 contended that the respondent No.1/plaintiff was not in possession of the suit properties and, therefore, was liable to pay *ad valorem* court fee instead of fixed Court fee. However, the trial Court rightly held that Item No.1 of Plaint-A schedule was joint family property and that possession of one co-sharer is, in law, treated as possession on behalf of the other co-sharers, unless ouster is established. Since appellant/defendant No.1 failed to adduce evidence of ouster of the respondent No.1/plaintiff from joint possession, the trial Court held that the court fee paid by the plaintiff was sufficient.

39. This Court finds no infirmity in the said finding. In the absence of proof of ouster, the respondent No.1/plaintiff cannot be treated as excluded from joint possession of the joint family property. Therefore, the fixed court fee paid under Section 34(2) of the Telangana C.F. and S.V. Act is sufficient.

Conclusion

40. For the foregoing reasons, this Court is of considered view that the findings of the trial Court in respect of items of Plaint-A, Plaint-B and Plaint-C schedules, as well as the sufficiency of the court fee paid by the plaintiff, are based on the evidence and

do not warrant interference. Item No.1 of Plaint-A schedule is joint family property in which the respondent No.1/plaintiff and appellant/defendant No.1 are entitled to equal shares; Item Nos.2 and 3 are the self-acquired properties of late Sri Somaiah and devolved equally upon them; Item No.4 is the self-acquired property of the appellant/defendant No.1, in which the respondent No.1/plaintiff has no share; Item Nos.1 and 2 of Plaint-B schedule form part of late Sri Somaiah's estate and the respondent/plaintiff and the appellant/defendant are entitled to equal share therein; Item No.3 of Plaint-B schedule is likewise to be shared equally, with the appellant/defendant No.1 liable to pay the respondent No.1/plaintiff her share as directed by the trial Court; the claim in respect of Plaint-C schedule was rightly dismissed for want of proof, subject to the liberty reserved herein regarding Locker No.22; and the court fee paid by the respondent No.1/plaintiff is sufficient. In this regard, this Court finds no illegality, perversity or material infirmity in the judgment and decree passed by the trial Court warranting interference.

41. Accordingly, A.S.No.152 of 2021 and X-OBJ No.47 of 2021 are dismissed. The judgment and decree dated 31.12.2020 passed in O.S.No.10 of 2014 by the learned II

Additional District Judge, Nalgonda at Suryapet, are hereby confirmed, subject to the following directions:

I. Any amount withdrawn or received by either party pursuant to the interim orders passed by this Court in I.A.Nos.1 and 2 of 2021 in A.S.No.152 of 2021 shall be duly accounted for and adjusted by the trial Court while working out the final decree.

II. Either party is at liberty to approach the trial Court by filing an appropriate application for opening and inventorying Locker No.22 maintained with the Oriental Bank of Commerce, Suryapet Branch, in the presence of both parties or their authorised representatives. If any ornaments or articles are found therein, the rights and entitlement of the parties thereto shall be determined by the trial Court in accordance with law. Any such application shall be disposed of on its own merits, uninfluenced by the dismissal of the Plaint-C schedule claim in the present suit, and the concerned bank shall extend necessary assistance in accordance with law.

As a sequel, miscellaneous applications pending if any in the appeal, shall stand closed. No costs.

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G.M.MOHIUDDIN, J

Date: 09.10.2026

ssp