

(1992) 02 KAR CK 0044

In the Karnataka High Court

Case No : Regular First Appeal No. 377 of 1988

Sharadamma

APPELLANT

Vs

Jayashree

RESPONDENT

Date of Decision : 12-02-1992

Acts Referred:

Payment of Gratuity Act, 1972 — Section 4 (1), 6 (1)
Provident Funds Act, 1925 — Section 5

Citation : (1992) 2 DMC 452 : (1992) ILR (Kar) 2277

Hon'ble Judges : L. Sreenivasa Reddy, J; K.A. Swami, J

Bench : Division Bench

Advocate : M.N. Seshagiri, for the Appellant; A.Y.N. Gupta, for the Respondent

Judgement

K.A. Swami, J

1. This Appeal arises out of a suit for partition and separate possession of the plaintiffs' share in the suit schedule properties. The appellants are the plaintiffs and respondents are the defendants. The relationship between the plaintiff and the defendants is not in dispute. Plaintiff-1 is the second wife of late K.L.Srinivasan. Plaintiffs-2 to 6 are the children of first plaintiff and late K.L.Srinivasan. The defendants 1 to 4 are the children of late - K.L. Srinivasan through his first wife. The first plaintiff was married to K.L. Srinivasan after the death of his first wife. It is also not in dispute that the suit schedule properties as described in Schedule-A and Schedule-B to the plaint are the properties of late K.L.Srinivasan. However, in the written statement, the defendants contended that apart from the properties described in suit schedule "A" and "B", the first plaintiff received a sum of Rs. 1,68,278.88 from the Central Bank of India, K.G.Road Branch, Bangalore and Life Insurance Corporation of India, Bangalore which was payable to the legal representatives of late K.L.Srinivasan consequent to his death, in the rejoinder filed by the plaintiffs, it was specifically stated that the plaintiffs received the following amounts :

Provident Fund

...

Rs. 98,650.32

Gratuity

...

Rs. 12,704.32

Insurance

...

Rs. 38,000.00

In addition to this, it is not disputed before us that a sum of Rs. 5,496/- was also received - by the first plaintiff by way of interest accrued on the provident fund amount. Thus, in all, the first plaintiff received Rs. 1,55,300.64. In addition to this, in the rejoinder, the plaintiffs further claimed that they had incurred the following expenditure :

a)

For annual ceremony

...

Rs. 3,000.00

b)

K.E.B. Bills

...

Rs. 271.48

c)

Towards debt of Sri C.G.Gopala Shastry

...

Rs. 20,000.00

d)

Repayment of festival advance obtained by the deceased Sri K.L.Srinivasan to the Central Bank of India, Bangalore

...

700.00

e)

Telephone Bills

...

1,350.88

f)

House-tax paid to Municipal Corporation

...

2,394.00

g)

Unpaid bills (domestic) of Sri K.L.Srinivasan paid

...

890.35

h)

Domestic expenditure from April, 1982 to January 1984 for plaintiffs and defendants

...

17,600.00

Total

...

Rs .46,206.71

The plaintiffs contended that the aforesaid sum of Rs. 46,206.71 was to be adjusted in the amount if any found to be payable to the defendants.

2. Schedule "A" to the plaint relates to a building-site measuring 45" x 95" with a R.C.C. building thereon bearing Bangalore Corporation Door No. 266 situated in 44th Cross, 9th Block, 5th Main, Jayanagar, Bangalore. Schedule "B" consists of movables.

3. The trial Court, on the basis of the pleadings of the parties, framed the following issues:-

(1) Whether the sum of Rs. 1,68,278.88 Ps. received by the plaintiffs from Central Bank and L.I.C. of India on the death of the late K.L.Srinivasan constitute family amounts and liable for partition?

(2) Whether the deceased mother by name Smt. Nagarathnamma of the defendants is also entitled to a share in the said sum of Rs. 1,68,278.88 Ps?

(3) Whether the defendants are entitled to claim interest on the share amount

claimed by them?

(4) If so, at what rate?

(5) Whether the suit is not properly valued for purpose of payment of Court fee?

(6) In what share the parties are entitled in the event of partition?

(7) What decree or order?

4. In support of the case of the plaintiffs, they examined one M.S. Raghunathan, an employee of the Central Bank of India, Bangalore City, Bangalore as P.W.1 and plaintiff-1 gave evidence as P.W.2. They also produced 11 documents which are marked as Exhibits P1 to P11.

5. Defendants examined Harini Subrahmanyam as D.W.1 and the third defendant gave evidence as D.W.2. They also produced 12 documents which were marked as Exhibits D1 to D12.

5.1. On appreciating the evidence on record, the trial Court answered issue No. 1 partly in the affirmative and issues 2, 3 and 5 in the negative. It held that issue No. 4 did not arise for consideration. Accordingly, the trial-Court passed a decree in the following terms:

"The suit of the plaintiff is hereby decreed. It is hereby declared that a sum of Rs. 1,34,300/- in the hands of the plaintiffs and also "A" and "B" schedule properties are the joint family properties available for partition and the plaintiffs are entitled to 6/10 shares from all these properties and the defendants are entitled to 4/10 shares from all these properties.

The plaintiff is directed to surrender the F.D. receipt in favour of the fourth defendant, which may be taken into account by the defendants while settling their own shares among themselves.

The plaintiff is liable to clear of the dues of Gopal Shastry, if any.

The plaintiff shall get her 6/10 shares in the suit "A" and "B" schedule properties, by effecting partition of the same by metes and bounds by appointment of a Commissioner and before claiming her 6/10 shares, she shall clear of the arrears of the defendants 4/10 shares in the total sum of Rs. 1,34,300/- to the defendants.

Draw a decree accordingly."

6. In this Appeal preferred by the plaintiffs, the grievance is confined to that portion of the decree by which, share is granted to the defendants in the amounts relating to provident fund, gratuity and the interest accrued on the provident fund and also disallowance of certain amount of expenditure incurred by the plaintiffs as enumerated earlier.

7. The trial Court out of the several items of expenditure claimed by the

appellants, has allowed the following sums:

Amount spent on annual ceremony

...

Rs. 3,000.00

K.E.B. Bills

...

271 .48

House-tax covered by Exhibits P6 to P8 amounting to

...

1,994.00

Sundry expenses and milk bills covered by Exhibits P9 and P10 amounting to

...

698.35

The trial Court has also allowed the claim of the plaintiffs that they had deposited a sum of Rs. 4,000/- in a fixed deposit in the name of the 4th defendant. The trial Court has disallowed the sum of Rs. 20,000/- claimed to have been paid by the plaintiffs to one Sri C.G.Gopal Shastry to discharge the debt alleged to have been incurred by late K.L.Srinivasan. It has also disallowed the repayment of festival advance obtained by the deceased K.L.Srinivasan through the Central Bank of India amounting to Rs. 700/-. The trial Court has also disallowed the telephone bills claimed by the plaintiffs amounting to Rs. 1,350/- and the unpaid domestic bills of K.L.Srinivasan amounting to Rs 890.35. The trial Court has also disallowed the domestic expenditure claimed to have been incurred by the plaintiffs from April, 1982 to January, 1984 amounting to Rs. 17,600/-. Thus, the present Appeal is confined to the aforesaid disallowing of various expenditures incurred by the plaintiffs and the share awarded to the defendants in the amount pertaining to provident fund, gratuity and the interest accrued on the provident fund.

7.1. In this Appeal the share awarded to the defendants in the insurance amount of Rs. 38,000/- received by the first plaintiff has not been challenged.

8. In the light of the contentions urged on both sides, the following points arise for consideration:-

(1) Whether the first plaintiff is entitled to claim exclusively the sum of Rs. 98,650.32 being the provident fund amount due to late K.L.Srinivasan and the interest accrued thereon amounting to Rs. 5,946/- as the nominee of late K.L.Srinivasan?

(2) Whether the first plaintiff is entitled to receive absolutely for herself the gratuity amount of Rs. 12,704.32 payable to late K.L.Srinivasan?

(3) Whether the first plaintiff is entitled to receive absolutely for herself a sum of Rs. 4,500/- being the death relief fund paid to first plaintiff on the death of K.L.Srinivasan by the Central Bank?

(4) Whether the plaintiffs have proved that they have discharged the debt of Rs. 20,000/- alleged to have been incurred by late K.L.Srinivasan from C.G.Gopala Sastry?

(5) Whether the trial Court is justified in law and on facts in disallowing the telephone bills, unpaid domestic bills of late . K.L.Srinivasan, house tax of Rs. 400/-, repayment of festival advance obtained by K.L.Srinivasan and a sum of Rs. 17,600/- domestic expenditure from April, 1982 to January, 1984 incurred by the plaintiffs?

POINT NO. 1

9. It is not in dispute that a sum of Rs. 98,650.12 and interest accrued thereon amounting to Rs. 5,946/- were received by the 1st plaintiff, this amount was to be paid to late K.L.Srinivasan. It is claimed by the 1st plaintiff that late K.L.Srinivasan nominated the first plaintiff as this nominee to receive the aforesaid sum; therefore, in the light of the provisions contained in Section 5 of the Provident Funds Act, 1925 the first plaintiff is entitled to receive it absolutely to the exclusion of others, as such the other defendants have no right to claim any share in it. Late K.L.Srinivasan was an employee of the Central Bank of India. He died on 16th March 1982 while in service before attaining the age of superannuation. In this case, there is no evidence placed on record to show that the provisions of the Provident Funds Act, 1925 were made applicable to the Provident Fund of the employees of the Central Bank of India. We proceed to examine this case on the assumption that the provisions of the Provident Funds Act, 1925 are applicable to the Provident Fund created by the Central Bank of India. In order to claim benefit of the provisions contained in Section 5 of the Provident Funds Act, the person claiming it, has to prove that he or she has been nominated in accordance with the Rules of the Fund. In the rejoinder filed by the plaintiffs, they did not specifically claim that the first plaintiff was nominated by Sri K.L.Srinivasan. On the contrary, they specifically pleaded after stating the amount received as Provident Fund thus:-

"Plaintiffs, in law, are entitled to the provident fund, gratuity, they are not liable for shares....."

Thus the plaintiffs did not claim that the first plaintiff was made the nominee by K.L.Srinivasan to receive the provident fund. The documents produced in the case are also not to the effect that the first plaintiff was nominated by K.L.Srinivasan. Exhibit D5 is the application made by the first plaintiff and also all other heirs of late K.L.Srinivasan for payment of provident fund amount. It is

signed by the first plaintiff and two other major heirs of late K.L.Srinivasan viz., Miss Sheela defendant-2 and Mr.S.Srinath - defendant-3. The relevant portion of the application reads thus:-

"Mrs. Sharada Srinivasan is the guardian and on behalf of minor including Padma daughter of K.L.Srinivasan's first wife. We now request you to settle the dues to deceased and pay the amount of provident fund and gratuity to the first named herein Mrs.Sharada Srinivasan second wife of the deceased. Death certificate is enclosed."

No doubt in the letter of indemnity Exhibit D9 executed by the first plaintiff, she has stated that she is the nominee of K.L.Srinivasan. Apart from this, there is no other evidence. Of course, D.W.2 (defendant No. 3) has stated in examination-in-chief that his father had also nominated his step-mother to receive the provident fund and L.I.C. amounts. Sri Seshagiri, learned Counsel for the appellants, on the basis of the admission of D.W.2 and the statement contained in Exhibit D9, contended that the fact that first plaintiff was made the nominee by late K.L.Srinivasan was admitted. Therefore, the Court must act upon the admission of the third defendant.

10. Section 5 of the Provident Funds Act specifically states that the nomination must have been made duly in accordance with the Rules of the Fund. Whether the first plaintiff was duly made the nominee in accordance with the Rules of the Fund is a matter of records. Therefore, it was incumbent upon the first plaintiff to produce the said records or at least to request the Court to call for those records from the authority who was in the custody of the same. No such evidence was adduced nor any attempt was made to call for the records from the custody of the authority. If really, first plaintiff was nominated by late K.L.Srinivasan duly in accordance with the Rules of the Fund as required by Section 5 of the Provident Funds Act, the plaintiffs could not have failed to Put forth that plea in the rejoinder and there was no need to make an application signed by all the major heirs of deceased K.L.Srinivasan for payment of the Provident Fund. The application Exhibit-D5 was made for and on behalf of all the heirs of deceased K.L.Srinivasan. Therefore, it is not possible to accept the case of plaintiff No. 1 that she was duly nominated by late K.L.Srinivasan in accordance with the Rules of the Provident Fund amount. Hence, we are of the view that plaintiff No. 1 has failed to prove that she was duly nominated by late K.L.Srinivasan in accordance with the Rules of the Fund to receive the Provident Fund amount. That being so, the further question as to whether u/s 5 of the Provident Funds Act, plaintiff No. 1 is entitled to retain the Provident Fund amount with interest accrued on it received by her to the exclusion of other heirs of K.L.Srinivasan, does not arise for consideration because very pre-requisite for application of the provisions of Section 5 of the Provident Funds Act is not established by the first plaintiff. Point No. 1 is accordingly answered in the negative.

POINT NO. 2 :

11. In the rejoinder the 1st plaintiff has not claimed that she is entitled to receive the gratuity amount absolutely. Sub-section (1) of Section 6 of the Payment of Gratuity Act, 1972 (hereinafter referred to as the Act) provides that each employee, who has completed one year of service shall make, within such time, in such form and in such manner, as may be prescribed, nomination for the purpose of the second proviso to Sub-section (1) of Section 4 of the Act. Sub-section (2) thereof further provides that an employee may, in his nomination, distribute the amount of gratuity payable to him under the Act amongst more than one nominee. Sub-section (1) of Section 4 of the Act provides that gratuity shall be payable to an employee on the termination of his employment after he has rendered continuous service for not less than five years, (a) on his superannuation, or (b) on his retirement or resignation, or (c) on his death or disablement due to accident or disease. The second proviso thereof further provides that in the case of death of the employee, gratuity payable to him shall be paid to his nominee or, if no nomination has been made, to his heirs, and where any such nominee or heirs is a minor, the share of such minor, shall be deposited with the controlling authority who shall invest the same for the benefit of such minor in such bank or other financial institution, as may be prescribed, until such minor attains majority. On the basis of these two provisions it is contended that the 1st plaintiff has been paid the amount because she was nominated by the deceased K.L.Srinivasan as his nominee. On the contrary, the evidence on record does not establish the fact that the 1st plaintiff was nominated by the deceased K.L.Srinivasan as his nominee. It is true that D.W.2 in his evidence has stated that his father nominated the 1st plaintiff as his nominee to receive the gratuity. The 1st plaintiff herself did not claim the amount exclusively as the nominee of the deceased K.L.Srinivasan. The plaintiffs have produced Exhibit P-3 a letter dated 6-1-1987 issued by the Chief Manager, Central Bank of India, to the 1st plaintiff. It reads thus:

"STAFF/KGR/87/15 Date : 6-1 -1987. Smt. S.Sharada, C/0 Sri C.S.Subramanya Shastry, 479, Brahmin Street, "A" Division, Channapatana Town, Bangalore District.

Madam,

We are in receipt of your letter dated nil. We are giving the details in respect of gratuity and the adjustment made :-

Total gratuity amount: Rs.31 ,735=00

DUES ADJUSTED:

1. Festival advance

:

Rs.900=00

2. Income Tax remitted to Avenue Road as amount was paid by the Branch

:

Rs.31 3=00

3. Excess salary & PF adjusted

:

Rs.557=67

4. Housing Loan & PF Loan adjusted.

:

Rs.17,259=99

Rs. 19,030=66

5) Amount credited to HSS A/c No.12091

:

Rs. 12,704=34

TOTAL

:

Rs.31,735=00

Item 1, 2, 3 were adjusted on 28-1-1983 and item No. 4 adjusted on 10-2-1983 and item No. 5 credited on 10.02.1983.

Please acknowledge.

Thanking you,

Yours faithfully, Sd/-Chief Manager"

From this letter it is not possible to hold that the 1st plaintiff was made the nominee to receive the gratuity amount payable to deceased K.L.Srinivasan. Even proceeding on the basis that the letter Ex.P-3 would not have been sent unless the 1st plaintiff was made the nominee by late K.L.Srinivasan, on the interpretation of Section 6(1) and the second proviso to Section 4 of the Act, it is not possible to hold that the nominee will be entitled to receive the amount exclusively for himself or herself, as the case may be, in the case of intestate succession depriving the other heirs of the deceased. The Supreme Court had an occasion to consider a similar provision contained in Section 39 of the Insurance Act in Smt. Sarbati Devi and Another Vs. Smt. Usha Devi, Section 39 of the Insurance Act considered by the Supreme Court was as follows:

"39. Nomination by policy-holder.- (1) The holder of a policy of life insurance on his own life, may, when effecting the policy or at any time before the policy matures for payment, nominate the person or persons to whom the money

secured by the policy shall be paid in the event of his death:

Provided that where any nominee is a minor, it shall be lawful for the policy holder to appoint in the prescribed manner any person to receive the money secured by the policy in the event of his death during the minority of the nominee.

(2) Any such nomination in order to be effectual shall unless it is incorporated in the text of the policy itself, be made by an endorsement on the policy communicated to the insurer and registered by him in the records relating to the policy and any such nomination may at any time before the policy matures for payment be cancelled or changed by an endorsement, or a further endorsement or a will, as the case may be, but unless notice in writing of any such cancellation or change has been delivered to the insurer, the insurer shall not be liable for any payment under the policy made bona fide by him to a nominee mentioned in the text of the policy or registered in records of the insurer.

(3) The insurer shall furnish to the policy-holder a written acknowledgment of having registered a nomination or a cancellation or change thereof, and may charge a fee not exceeding one rupee for registering such cancellation or change.

(4) A transfer or assignment of a policy made in accordance with Section 38 shall automatically cancel a nomination :

Provided that the assignment of a policy to the insurer who bears the risk on the policy at the time of the assignment, in consideration of a loan granted by that insurer on the security of the policy within its surrender value, or its reassignment on repayment of the loan shall not cancel a nomination, but shall affect the rights of the nominee only to the extent of the insurer's interest in the policy.

(5) Where the policy matures for payment during the lifetime of the person whose life is insured or where the nominee or, if there are more nominees than one, all the nominees die before the policy matures for payment, the amount secured by the policy shall be payable to the policy-holder or his heirs or legal representatives or the holder of a succession certificate, as the case may be.

(6) Where the nominee or if there are more nominees than one, a nominee or nominees survive the person whose life is insured, the amount secured by the policy shall be payable to such survivor or survivors.

(7) The provisions of this Section shall not apply to any policy of life insurance to which Section 6 of the Married Women's Property Act, 1874 applies or has at any time applied:

Provided that where a nomination made whether before or after the commencement of the Insurance (Amendment) Act, 1946, in favour of the wife of the person who has insured his life or of his wife and children or any of them is expressed, whether or not on the face of the policy, as being made under this

Section has said Section 6 shall be deemed not to apply or not to have applied to the policy.

On interpreting the aforesaid provision, the Supreme Court has held thus:

"We approve the views expressed by the other High Courts on the meaning of Section 39 of the Act and hold that a mere nomination made u/s 39 of the Act does not have the effect of conferring on the nominee any beneficial interest in the amount payable under the life insurance policy on the death of the assured. The nomination only indicates the hand which is authorised to receive the amount on the payment of which the insurer gets a valid discharge of its liability under the policy. The amount, however, can be claimed by the heirs of the assured in accordance with the law of succession governing them."

Therefore, it is not possible to hold that a nominee u/s 6(1) read with Section 4(1) of the Payment of Gratuity Act, 1972, will be entitled to receive the gratuity amount exclusively in the case of intestate succession depriving the heirs of the deceased. The nominee will be entitled to receive the amount for and on behalf of the heirs of the deceased. The nomination is only intended for payment of gratuity amount immediately on the death of the subscriber. The nominee will be liable to disburse the said sum among the heirs of the deceased subscriber. The only effect of nomination is that the payment made by the authority to the nominee will discharge the liability of the authority. Therefore, the contention of the 1st plaintiff that she is entitled to receive and retain exclusively for herself the gratuity amount is liable to be rejected and it is accordingly rejected. Point No. 2 is accordingly answered in the negative.

POINT NO. 3 :

12. Under Exhibit D-4 the 1st plaintiff has been paid a sum of Rs. 4,500/- as the amount of relief admissible to the family of the deceased. The amount has been paid to the 1st plaintiff on 21 -4-1982 for and on behalf of the members of the family. Therefore, she is not entitled to retain the said sum exclusively for herself. All the members of the family are entitled to share it because the said sum is paid under the Staff Welfare Scheme as relief to family of employees who die in harness. Accordingly, Point No. 3 is answered in the negative.

POINT NO. 4:

13. The trial Court has rejected the case of the plaintiffs that they paid a sum of Rs. 20,000/- to C.G.Gopala Shastry for discharging the debt of Rs. 20,000/- alleged to have been incurred by the husband of the 1st plaintiff K.L.Srinivasan. In support of this plea, the plaintiffs have relied upon Exhibit P.1. Exhibit P-1 is a self bearer cheque dated 19-6-1983 for a sum of Rs. 20,000/- issued by the 1st plaintiff drawn on Central Bank of India. Exhibit P-1 has not been endorsed in favour of C.G.Gopala Shastry. On the reverse of Exhibit P-1 the 1st plaintiff has signed and there is also another signature of the person who received the amount. P.W.1 an official of Central Bank of India has deposed with regard to

Exhibit P-1, in examination-in-chief itself thus:

"I am working in Central Bank of India, Bangalore City Branch, I have been summoned by the Court to produce cheque No. 030498 dated 19-6-83 for Rs. 20,000/- issued by S.Sharada payable to the bearer. One Sri D.S.Sridhar has drawn the amount mentioned in the cheque. It was paid on 20-6-1983. Ex.P-1 is the said cheque."

Therefore, it is clear that the amount was not paid to C.G.Gopala Shastry. The signature of D.S.Sridhar is found on the reverse of the cheque who, according to P.W.1 received the amount, Apart from Exhibit P-1 and the evidence of P.W.2 there is no other evidence to prove that C.G.Gopala Shastry advanced a sum of Rs. 20,000/- to K.L.Srinivasan. Of course there is the evidence of D.W.2 who has stated that C.G.Gopala Shastry has advanced Rs. 10,000/- to K.L.Srinivasan. When C.G.Gopala Shastry who is no other than the close relation of the plaintiffs and the defendants has not come forward with any claim and in the absence of any record to show that C.G.Gopala Shastry had advanced a sum of Rs. 20,000/- to K.L.Srinivasan, and in view of the evidence of P.W.1, Exhibit P-1 cannot be construed as payment to C.G.Gopala Shastry. The trial Court is justified in holding that the plaintiffs have failed to prove that a sum of Rs. 20,000/- was taken by late K.L.Srinivasan from C.G.Gopala Shastry. However, it has committed an error in coming to the conclusion on the basis of the evidence of D.W.2 that C.G.Gopala Shastry had advanced a sum of Rs. 10,000/- to K.L.Srinivasan. , Therefore, that debt has to be discharged by the 1st plaintiff. A mere assertion of D.W.2 cannot be held to be sufficient to prove that C.G.Gopala Shastry had advanced a sum of Rs. 20,000/- to the husband of the 1st plaintiff. Therefore, we are of the view that the plaintiffs have failed to prove that C.G.Gopala Shastry had advanced a sum of Rs. 20,000/- to late K.L.Srinivasan and that debt was discharged by the 1st plaintiff. Point No. 4 is accordingly answered in the negative.

POINT NO. 5 :

14. There is no evidence adduced by the plaintiffs to prove that they had paid a sum of Rs. 1,350-88 towards telephone bills. Payment of telephone bills is a matter of record. If really the plaintiffs had paid that sum, it was not difficult to produce the receipts evidencing payment. In the absence of production of receipts evidencing payment, it is, not possible to accept the case of the plaintiffs that they had paid a sum of Rs. 1,350-88 towards the telephone bills. There is also no evidence adduced to prove that the plaintiffs had paid a sum of Rs. 890-35 being the unpaid domestic bills of K.L.Srinivasan. Hence this claim also cannot be accepted. The plaintiffs have claimed that they have paid a sum of Rs. 2,394/- towards house tax to the Municipal Corporation. In support of this claim, they have produced three receipts which have been marked as Exhibit P-6 for a sum of Rs. 670/-, Exhibit P-7 for a sum of Rs. 684/- and Exhibit P-8 for a sum of Rs. 640/-, the total of which would come to Rs. 1,994/-. The trial Court has allowed the claim to the extent of Rs. 1,994/- as it is evidenced by Exhibits P-6,

P-7 and P-8. For the remaining amount, no evidence has been adduced. Therefore, the trial Court has rightly rejected the claim for Rs. 2,394/- being the amount paid towards house tax and it is justified in accepting the said claim to the extent of Rs. 1,994/-. The plaintiffs have claimed a sum of Rs. 17,600/- on the ground that they had spent the said amount towards the maintenance of the family for the period from April 1982 to January 1984. P.W.2 in her evidence has specifically stated that she spent a sum of Rs. 17,500/- towards house expenses of the joint family consisting of the plaintiffs and the defendants. No doubt in the cross examination it has been elicited that she had not kept any account to show that she had spent the said sum of Rs. 17,500/- for the maintenance of the family. It is not the case of the defendants that they contributed for the maintenance of the family. In fact only defendant-3 and his sister Kumari Sheela were working. Kumari Sheela was drawing a salary of Rs. 250/- per month, whereas defendant-3 was getting a salary of Rs. 600/- per month. D.W.2 has not stated that Kumari Sheela and himself maintained the family out of their salary nor he has stated that he contributed any sum towards maintenance of the joint family. It is not in dispute that the plaintiffs and the defendants resided together in suit "A" schedule property from April 1982 to January 1984. The 1st plaintiff was the only eldest member in the family. The other members except Srinath and Sheela were minors. Therefore, it was the 1st plaintiff who was required to maintain the family and it was she who received the amount payable to K.L.Srinivasan under the provident fund, gratuity and insurance. The amount of Rs. 17,600/- claimed by the 1st plaintiff as spent towards the maintenance of the members of the joint family consisting of ten souls for a period of 22 months from April 1982 to January 1984 in a City like Bangalore, cannot be held to be unreasonable. In fact we must say that she has made a very modest claim. Therefore we are of the view that the trial Court is not justified in disallowing the sum of Rs. 17,500/- incurred by the 1st plaintiff for the maintenance of the joint family consisting of the plaintiffs and the defendants for the period from April 1982 to January 1984. The 1st plaintiff is entitled to deduct this amount out of the amount received by her. Accordingly Point No. 5 is answered as follows:

The plaintiffs have failed to prove the payment of telephone bills amounting to Rs. 1,350=88 and the alleged unpaid domestic bills of Rs. 890=35 ps of K.L.Srinivasan. However, they have proved that they had paid a sum of Rs. 1,994/- towards house tax and had incurred a sum of Rs. 17,500/- for the maintenance of the joint family consisting of the plaintiffs and the defendants for the period from April 1982 of January 1984.

15. In the light of the finding recorded on points 1 to 5, the following amounts shall be held to have been received by the 1st plaintiff which are available for partition amongst the plaintiffs and the defendants:

1) Provident Fund:

Rs. 98,650.32

2) Interest thereon:

Rs. 5,946.00

3) Gratuity amount:

Rs. 12,704-32

4) Insurance amount:

Rs. 38,000-00

5) Family relief fund:

Rs . 4,500-00

Total

Rs. 1,59,800-64

Out of this amount the 1st plaintiff had spent Rs. 3,000/- towards the annual ceremony expenses; Rs. 3,000/- for payment of electricity bills, house tax and other expenses as found by the trial Court; Rs. 17,500/- towards the maintenance of the joint family consisting of the plaintiffs and the defendants. As far as Fixed Deposit Receipt of Rs. 4,000/- taken in the name of the 4th defendant Padmavati is concerned, this amount belongs to all. Therefore, it has to enure the benefit of all. Hence, the plaintiffs alone are not entitled to retain that amount. Thus, the 1st plaintiff is entitled to deduct a total sum of Rs. 23,500/- out of Rs. 1,59,800-64 ps. Thus the amount remaining with the plaintiffs would be Rs. 1,36,300-64 ps. In this amount the plaintiffs would be entitled to 6/10 th share and the defendants would be entitled to 4/10 share. The Fixed Deposit Receipt for Rs. 4,000/- obtained in the name of the 4th defendant Padmavati will have to be adjusted in the amount payable to the 4th defendant.

16. For the reasons stated above, we modify the judgment and decree of the trial Court in the following terms:

Thus decrees passed by the trial Court awarding 6/10th share to the plaintiffs in "A" and "B" Schedule properties and 4/10th share therein to the defendants is affirmed.

The plaintiffs are entitled to 6/10th share and the defendants are entitled to 4/10th share in the sum of Rs. 1,36,300-64 ps. lying with the 1st plaintiff who shall have to disburse the share of the defendants. The 1st plaintiff is also directed to surrender the Fixed Deposit Receipt for Rs. 4,000/- taken in the name of the 4th defendant Padmavati which the 1st plaintiff is entitled to adjust out of the amount payable to the defendants. The direction of the trial Court that the plaintiffs shall clear the dues if any, of C.G.Gopala Shastry is set aside.

The division of "A" and "B" Schedule properties shall be effected through the Commissioner appointed by the trial Court.

The payment of money by the 1st plaintiff to the defendants towards their 4/10th share and the division of "A" and "B" Schedule properties shall take place simultaneously.

In the facts and circumstances of the case, the parties are directed to bear their costs throughout the proceedings.