



IN THE HIGH COURT OF KARNATAKA, DHARWAD BENCH

DATED THIS THE 6TH DAY OF DECEMBER, 2024

PRESENT

THE HON'BLE MR. JUSTICE SREENIVAS HARISH KUMAR

AND

THE HON'BLE MR. JUSTICE T. G. SHIVASHANKARE GOWDA

REGULAR FIRST APPEAL NO.100123 OF 2018 (PAR/POS)

BETWEEN:

1. SRI. JAYADEV S/O ASHOKRAJ TEGGINMANI,
AGE: 46 YEARS, OCC: (SENIOR MERCHANDISER, EMBI,
INTERNATIONAL PUBLIC FREEZONE ISMAILIA EFIPT)
2. SMT. MANJULA W/O RAMESH KUNDARGI,
AGE: 44 YEARS, OCC: TEACHER,
R/O: TYAGORE ROAD, GADAG.

- APPELLANTS

(BY SRI. SATHISH M. S., ADVOCATE)

AND:

1. SRI. VIJAYARAJ S/O ASHOKRAJ TEGGINMANI,
AGE: 37 YEARS, OCC: EMPLOYEE, R/O. BWC ROAD,
3RD FLOOR, D BLOCK, SINDE COMPLEX,
NEELIZAN ROAD, HUBLI-2.
2. SRI. AMITRAJ S/O ASHOKRAJ TEGGINMANI,
AGE: 32 YEARS, OCC: GOVT. EMPLOYEE,
R/O. BWC ROAD, 3RD FLOOR, D BLOCK,
SINDE COMPLEX, NEELIZAN ROAD, HUBLI-2.

- RESPONDENTS

(BY SRI. NAGPRASAD S. KINI, ADVOCATE FOR R1 & R2)

THIS REGULAR FIRST APPEAL IS FILED UNDER ORDER XLI
RULE 1 READ WITH SECTION 96 OF THE CODE OF CIVIL PROCEDURE
1908, PRAYING TO SET ASIDE THE IMPUGNED JUDGMENT AND
DECREE PASSED BY THE PRINCIPAL SENIOR CIVIL JUDGE AND CJM,
GADAG IN O.S. NO.123/2014 DATED 31.01.2018 & ETC.

THIS APPEAL, COMING ON FOR FINAL HEARING, THIS DAY,
JUDGMENT WAS DELIVERED THEREIN AS UNDER:

CORAM: THE HON'BLE MR. JUSTICE SREENIVAS HARISH KUMAR
AND
THE HON'BLE MR. JUSTICE T. G. SHIVASHANKARE GOWDA





ORAL JUDGMENT

(PER: THE HON'BLE MR. JUSTICE SREENIVAS HARISH KUMAR)

The plaintiffs in O.S. No. 123/2014 on the file of Prl. Sr. Civil Judge, Gadag, have preferred this appeal. Their suit was to declare that the will dated 19.11.2010 said to have been executed by their father in favour of the defendants as null and void, and to effect partition and allot 1/3rd share to each of them in the suit property which is described as a house bearing no.129, MIG-1, KHB Colony, Gadag.

2. They stated that the property belonged to their father Ashokraj Tegginamani (for short 'Ashokraj') having been allotted to him by Karnataka Housing Board on 20.03.1989. According to them when their father and mother were alive, a woman by name Sumangala was a maid servant in their house. As she was very honest and sincere, their father treated her, and her children i.e., the defendants very well and performed the marriage of the first defendant also. Their mother died in the year 1995



and as their father's health deteriorated, he was admitted to Vivekananda General Hospital in Hubli. The second plaintiff was attending on the father in the hospital and taking care of his health. As the plaintiffs were aware of love and affection that the defendants were showing towards their (plaintiffs') father, they had entrusted the responsibility of looking after their father to the defendants. Making use of that situation, the defendants were able to obtain a will executed by their father in respect of suit property. The will was bogus and not genuine. The plaintiffs also came to know that the defendants had obtained the revenue records of the suit property transferred to their name based on the will. The said will does not affect their interest and therefore it was required to be declared as null and void.

3. The defendants refuted the allegations in the plaint that their mother was a maid servant in the house of Ashokraj and that the will executed by him was bogus and fabricated. They contended that they are the children of



Ashokraj. The first wife of Ashokraj was Akkamahadevi and as she was mentally unstable and ill, she was not able to perform her marital obligations. She was taken to her parental house at Gajendragad. In this kind of a situation the parental family of Akkamahadevi agreed for Ashokraj contracting a second marriage and thus Sumangala, the daughter of Shadaksharappa Valishettar became his wife. Their marriage was performed according to Hindu rites and customs. The defendants stated that they are the children born in the wedlock of Ashokraj and Sumangala. They also stated that the plaintiffs and their mother never lived with their father Ashok Raj and instead he lived with them till his death on account of cancer. They stated very specifically that when their father fell ill none of the plaintiffs turned up to see him and actually they looked after their father till his death on 05.02.2011. They stated that the will dated 19.11.2010 was voluntarily executed by their father Ashokraj when he was in sound state of mind. The will is not bogus as has been stated by the plaintiffs



and therefore the plaintiffs cannot claim right, title or interest in the suit property.

4. The trial court framed nine issues and after appreciating oral and documentary evidence held that the will was executed by Ashokraj. Execution would get established from the evidence of DW2 to 4. From the answer given by PW1 in the cross examination, it becomes clear that Ashokraj was healthy and mentally sound at the time when he executed the will. The assertion of the plaintiffs that they met the medical expenses of their father has no documentary proof. The defendants are the children of Ashokraj through his second wife Sumangala and therefore the plaintiffs cannot take a stand that the will is null and void and does not bind their interest in the suit property. With these findings the trial court dismissed the suit.

5. Sri M.S. Satish, learned counsel for the appellants/ plaintiffs argued that the findings of the trial court to dismiss the suit are erroneous. The trial court has not



noticed the fact that the defendants are illegitimate children of Ashokraj. Although the plaintiffs stated in the plaint that defendants' mother was a maid servant in the house of Ashokraj, the evidence shows that Ashokraj married Sumangala during the lifetime of his first wife and therefore Sumangala cannot be called a legally wedded wife. Ashokraj was suffering from cancer during his last days and it is doubtful that he had sound disposing state of mind. The defendants admit that Ashokraj was suffering from cancer. In this view inspite of the fact that the defendants examined the attestors to the will, the suspicious circumstances surrounding the will should have been noticed by the trial court. There is no discussion in this regard. The plaintiffs are the natural successors to the suit property. The will does not disclose the reason for excluding the plaintiffs from the bequeath made under the will. This is also a good circumstance to doubt the will. As the trial court's findings cannot be sustained, the appeal deserves to be allowed and the suit decreed in terms of the prayer in the plaint.



6. On the other hand, Sri Nagaprasad S.Kini, learned counsel for the respondents 1 and 2/ defendants argued that the suit property absolutely belonged to Ashokraj and he had every right to execute the will. The answers given by PW1 in the cross examination are sufficient enough to dislodge the plaintiffs' suit. They have made a false statement in the plaint that Sumangala was a maid servant, the fact was that she married Ashokraj according to customary practices of their religion. The will discloses reason for excluding the plaintiffs from the suit property. They never cared for their father. The first plaintiff is staying abroad and the second plaintiff never visited her father when he was hospitalized. This has come in evidence. Second plaintiff i.e., PW1 has clearly has admitted that she had no document in proof of her statement that she met the hospital expenses. The attestors and the scribe to the will examined as DW2 to 4 have clearly stated that Ashokraj was in a sound state of mind when he executed the will. Evidence shows that the attestation was in the presence of the testator. The



defendants were able to prove execution of the will in accordance with law. There are no suspicious circumstances. In fact the plaint does not contain any averment that the will is shrouded with suspicious circumstances. In this view the appeal is devoid of merits and the judgment of the trial court is to be sustained.

7. Though the trial court has framed as many as nine issues, the deciding issue is no.4 which obligated the defendants to prove the execution of the will dated 19.11.2010. Since it was argued by the appellants' counsel that the will was surrounded by suspicious circumstances, though there is no issue in this regard, that aspect can be examined here. Therefore the two questions to be answered in this appeal are:

- (1) *Whether the trial court has correctly held that execution of the will by Ashokraj has been proved in accordance with law?*



(2) Is the will surrounded by suspicious circumstance as has been argued by appellants' counsel?

8. Point No.1: The plaintiffs have clearly stated in the plaint itself that the suit property was acquired by Ashokraj and the same is not disputed by the defendants. In this view, issue no.3, "whether the defendants prove that the suit property is the self acquired property of their father Ashokraj?" was unnecessary. The plaintiffs have stated that the defendants created the will by obtaining signature of their father on a blank paper. The defendants refuted the same and stated that the will was executed by Ashokraj on 19.12.2010. Ex.D.25 is the original will which is unregistered. To prove the will in accordance with law, the defendants examined two attesters namely Sangappa Balikai as DW2 and Abdul Gafar Betageri as DW4. DW3 is the scribe of the will. On perusal of the evidence given by DW2 and 4 it becomes clear that they were requested by Ashokraj to be the attesters to his will and that they saw Ashokraj affixing his signature in their presence and that



they too attested the will in the presence of Ashokraj. DW3 has also clearly deposed that he was requested by Ashokraj to scribe the will and he drafted the will in accordance with instructions given by Ashokraj. DWs2, 3 and 4 have corroborated the testimonies of each other. They have not been discredited in the cross examination. Thus there is proof with regard to execution of will by Ashokraj. The trial court has appreciated the evidence referring to the evidence of all the witnesses. Reappreciation of evidence by us also takes to concur with the findings of the trial court. There is proof for due execution of the will by Ashokraj. The plaintiffs' assertion that the will was a product of creation by the defendants cannot be accepted. Therefore point no.1 is answered in affirmative.

9. Point No.2: Actually there is no issue in this regard. In view of the fact that the plaintiffs who are legitimate children of Ashokraj are excluded from bequeath, it is necessary to examine whether the will was surrounded by



suspicious circumstances or not. Though the plaintiffs have stated that Sumangala was not the wife of Ashokraj, their stand to this effect cannot be accepted. The answers given by PW1 in the cross examination clearly indicate that his mother was not able to lead matrimonial life with her father. She has clearly admitted that defendants were born in the wedlock between her father and Sumangala. Ex.D.2 is the ration card issued to Ashokraj which PW1 admitted. In Ex.D.2 names of six persons are written. Sumangala is shown as wife of Ashokraj and the defendants are also shown as son and daughter of Ashokraj. In this view an inference can be drawn that Sumangala was not a maid servant, but she was the second wife. In spite of the fact that Ashokraj married Sumangala, the said marriage cannot be recognized in the eye of law because the first wife of Ashokraj was alive at the time when he married Sumangala. For this reason the defendants cannot be called legitimate children of Ashokraj, however they are entitled to succeed to the self acquired property of their father. If Ashokraj had died



intestate, suit property would have been succeeded by the plaintiffs as well as the defendants. The will deviated natural course of succession. The main reason that the plaintiffs have given to doubt the will is that their father was not keeping good health and that he was not in a sound disposing state of mind. The defendants state that their father Ashokraj was suffering from cancer and was being treated Vivekananda General Hospital, Hubli. In the plaint it is stated that the plaintiffs attended their father during his illness and when PW1 was questioned in the cross examination whether she possessed any document for having provided treatment, her clear answer was that she had no such document. On the other hand, defendants have produced documents. In Ex.D.58 signature of Sumangala is found. In all the medical records issued by Vivekananda General Hospital, Hubli the names of Sumangala and the defendants can be seen. They were shown as persons attending on the patient. The trial court has found that the plaintiffs have failed to prove that they looked after their father during his illness.



10. It is not forthcoming that the defendants played a major role in getting the will executed in their favour, in fact the plaintiffs have not pleaded so. The attesters have clearly stated that Ashokraj was quite healthy and had the knowledge of what he was doing at the time when he executed the will. DW2 was questioned that Ashokraj was suffering from heart disease in the year 2009. DW2 admitted the question but stated further that he had taken treatment. When DW3 was cross examined he too was questioned with regard to the illness of Ashokraj. He clearly refuted the suggestion that health condition of Ashokraj was not good as he had suffered heart attack in the year 2009. Very strangely a suggestion was given to DW3 that Ashokraj was able to move about and attend to his own work. DW3 admitted the suggestion. From this kind of a suggestion given by the learned counsel for the plaintiffs, the inference that can be drawn is that even the plaintiffs were aware that Ashokraj was physically fit and could attend to his own work. His other part of evidence is that he was mentally fit at that time. DW4 has clearly



stated that he knew Ashokraj for about 25-30 years by then. This witness has not at all been cross examined with regard to mental and physical condition of Ashokraj. Thereby the evidence of DW4 in his examination in chief that Ashokraj was maintaining good health and had complete knowledge of his actions on the day he executed the will has remained unassailed. Therefore a clear inference can be drawn that Ashokraj was physically and mentally fit when he executed the will inspite of his illness.

11. Now if Ex.D.25 is read, the reason for exclusion of the plaintiffs from the bequeath can be made out. It is clear statement of Ashokraj in the will that his first wife Akkamahadevi and two children through her deserted him very long back and therefore he desired to give away his property to the children born to him through Sumangala. He has also mentioned in the will that he underwent heart bypass surgery and was suffering from cancer. During that time the defendants looked after him with utmost care and concern and therefore he wanted to give away



his property to the defendants. The will contains reasons for excluding the plaintiffs. These reasons cannot be simply disbelieved. Therefore it can be concluded very well that the will was free from all suspicious circumstances. Point No.2 is answered in negative.

12. From the above discussions it can be very well concluded that the trial court's conclusion to dismiss the suit is not incorrect. There is another point to be mentioned here. It was enough for the plaintiffs to seek declaration of title over the suit property stating that the will was created. Having claimed a relief to declare the will as null and void, very curiously, rather strangely they claimed another relief to effect partition of the property into three shares and to allot shares to the defendants in the notional share of their father. If according to the plaintiffs Sumangala was just a maid servant and that the defendants were not the children of Ashokraj, there was no need to seek a decree for effecting partition and to give shares to the defendants in the notional share of their



father. The way the plaintiffs claimed the reliefs shows that they suppressed the truth that the defendants are the children of their father Ashokraj through his second wife. The plaintiffs themselves have dislodged their case. Therefore the appeal being devoid of merits is dismissed with costs.

Sd/-
(SREENIVAS HARISH KUMAR)
JUDGE

Sd/-
(T. G. SHIVASHANKARE GOWDA)
JUDGE

BVV
LIST NO.: 1 SL NO.: 26