



IN THE HIGH COURT OF KARNATAKA, AT DHARWAD

DATED THIS THE 15TH DAY OF DECEMBER, 2025

BEFORE

THE HON'BLE MR. JUSTICE C M JOSHI

REGULAR SECOND APPEAL NO.101495 OF 2022 (DEC/INJ)

BETWEEN:

SRI. BALAPPA S/O. SHIDLEPPA MADAR,
AGE: 57 YEARS, OCC. AGRICULTURE,
R/O. HEBASUR, TQ. HUBBALLI,
DIST. DHARWAD-581209.

...APPELLANT

(BY SRI. RAJASHEKAR I. SAVADATTI, ADVOCATE AND
SMT. POOJA R. SAVADATTI, ADVOCATE)

AND:

SMT. DURGAWWA W/O. HULLAPPA HULAGI,
AGE: 69 YEARS, OCC. HOUSEHOLD,
R/O. TUPPADKURATTI, TQ. NAVALAGUND,
DIST. DHARWAD-582208.

...RESPONDENT

(BY SRI. ARAVIND D. KULKARNI, ADVOCATE)

THIS RSA IS FILED UNDER SECTION 100 OF CPC, PRAYING TO SET ASIDE THE JUDGMENT AND DECREE DATED 20.04.2022 IN R.A.NO.21/2020 PASSED BY THE III ADDITIONAL SENIOR CIVIL JUDGE AND JUDICIAL MAGISTRATE FIRST CLASS AT HUBBALLI, THE JUDGMENT AND DECREE DATED 10.12.2019 IN O.S.NO.417/2016 PASSED BY THE COURT OF I ADDITIONAL CIVIL JUDGE AND JUDICIAL MAGISTRATE FIRST CLASS AT HUBBALLI, IN THE INTEREST OF JUSTICE AND EQUITY.

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



ORAL JUDGMENT

(PER: THE HON'BLE MR. JUSTICE C M JOSHI)

Heard the learned counsel appearing for the appellant and the respondent.

2. Being aggrieved by the judgment of dismissal in O.S.No.417/2016 and R.A.No.21/2020 by the Trial Court and the First Appellate Court, the plaintiff is before this Court in second appeal.

3. The factual matrix that is relevant for the purpose of the present appeal may be summarized as below:

(a) It is the case of the plaintiff that one Shidleppa was the propositus and he had two wives by name Fakiravva and Karevva. The plaintiff happens to be the son born to Fakiravva and one Dyavappa was born to the said Karevva. Shidleppa died on 22.08.1984 and Fakirava died on 10.09.1973. Karevva died on 08.08.1984. Thereafter, the plaintiff and Dyavappa had succeeded to the suit schedule property as joint owners and thereafter, Dyavappa also died on 25.07.2007 issueless. His wife Sharanavva entered her name in the revenue records. Therefore,



the plaintiff filed O.S.No.136/2009 for relief of partition and separate possession of the suit schedule property. The said suit came to be decreed on 03.06.2011 allotting 1/3rd share in the suit schedule property to the plaintiff. The remaining 2/3rd share was allotted to the share of Sharanavva W/o. Dyavappa. Being aggrieved, the plaintiff filed R.A.No.70/2011 and the said appeal came to be dismissed. The plaintiff had filed FDP No.9/2015 for effecting the final decree proceedings but the proceedings came to be dismissed for non-prosecution. However, FDP No.2/2025 was filed by the defendant, who claims to be legatee under the Will executed by Sharanavva. During pendency of such final decree proceedings, the plaintiff filed O.S.No.417/2016 contending that the alleged Will executed by Saranavva in favour of the defendant is illegal and void and she could not have executed the Will covering the share of the plaintiff as declared in culmination of O.S.No.136/2009. In the said suit, the plaintiff prayed that the Will executed by the said Sharanavva is illegal, void and that the plaintiff has become the absolute owner of the suit schedule property.



4. The said suit was resisted by the defendant contending that Sharanavva had executed a registered Will in favour of the defendant on 08.01.2015 and therefore, the defendant has become the owner of the suit schedule property under testamentary succession and therefore, the suit is liable to be dismissed.

5. On the basis of the contentions, the following issues were framed by the Trial Court:

"ISSUES

1. *Whether the plaintiff proves that Will dated 08.01.2015 executed by Late Sharanavva is not valid, null and void?*
2. *Whether the plaintiff proves that he is the absolute owner of the suit property?*
3. *Whether the plaintiff proves that, he is only nearest LR of late Sharanavva?*
4. *Whether the plaintiff proves that the defendant has obstructed him to the peaceful possession and enjoyment of the suit property?*
5. *Whether the suit is properly valued and Court fee paid is proper?*



6. Whether the plaintiff is entitled to the relief's sought for?

7. What order or decree?"

6. The plaintiff was examined as PW1 and Ex.P1 to Ex.P.9 were marked and one witness was examined as PW2. The defendant examined himself as DW1 and Ex.D1 to Ex.D4 were marked and three witnesses were examined as DW2 to DW4.

7. After hearing arguments, the Trial Court dismissed the suit. Being aggrieved, the plaintiff approached the First Appellate Court in R.A.No.21/2020, which also came to be dismissed by the impugned judgment.

8. The Trial court as well as the First Appellate Court have come to the conclusion that the registered Will executed by Sharanavva in favour of the defendant has been proved and therefore, the suit of the plaintiff came to be dismissed. In coming to such conclusion, the Trial court as well as the First Appellate Court have examined the evidence on record, including the witnesses, who had attested the Will/Ex.D1 and that it being a registered Will, the evidence being sufficient, it has to be



accepted. Both the courts also observed that the Will binds only in respect of the share which was entitled by Sharanavva.

9. Now the learned counsel appearing for the appellant submits that the Will does not mention that it pertains only to the share belonging to Sharanavva despite the decree passed in O.S.No.136/2009. His grievance is that, the Will executed by Sharanavva in favour of the defendant was to bind only to the extent of her $\frac{2}{3}^{\text{rd}}$ share, which is declared in O.S.No.136/2009 and she could not have included the entire property i.e. Survey No.284 measuring 4 Acres 13 guntas. Therefore, he submits that the Will to the extent that it was referring to the $\frac{1}{3}^{\text{rd}}$ share of the plaintiff has not been clarified by the Trial Court as well as the First Appellate Court.

10. Learned counsel appearing for the respondent submits that the decree in O.S.No.136/2009 having attained finality, the property that was held by Shrivanna was only to the extent of $\frac{2}{3}^{\text{rd}}$ share in Survey No.284. At any stretch of imagination she could not have alienated the property for which she was not the owner. Therefore, despite the Will states that she has bequeathed the entire property, she was not the owner



to that extent and as such, it binds only to the extent of 2/3rd share held by Sharavanna. Therefore, he submits that the dismissal of the suit by the Trial Court as well as the First Appellate Court cannot be interfered with. It is also submitted that in paragraph 37 of the judgment of the Trial Court, it observes as below:

*"37. The deceased Sharanavva had executed ExD1 registered Will and relinquished 2/3 share in favour of her mother defendant, who had taken care of her. The deceased Sharanavva has got every right to dispose of the property as her Will and wish. Under such circumstances it cannot be said that, the Will dated 08.01.2015 executed by deceased Sharanavva in favour of defendant is illegal, null and void. Further, the plaintiff failed to prove that, he is the absolute owner of the suit schedule property and also he alone is the nearest legal heir of the Sharanavva. Hence, issue No.1 to 3 are answered in the **Negative.**"*

11. The judgment of the First Appellate Court shows that it has reiterated the findings of the Trial Court and has come to the conclusion that the Will has been proved, but the Will covers only 2/3rd share of Sharanavva and it cannot bind the 1/3rd share of the plaintiff herein. It is necessary to note that in no way the



decree passed in O.S.No.136/2009, which has been confirmed in R.A.No.70/2011 is disturbed. The findings in the said suit and the appeal have determined that Sharanavva had only $2/3^{\text{rd}}$ share in Survey No.284. If Sharanavva had no right, title or interest in respect of the remaining $1/3^{\text{rd}}$ share, which was allotted to the share of the plaintiff, she could not have alienated that much of the property to anybody else. Despite the Will mentions that she has bequeathed the entire property, she didn't have any right, title or interest in respect of the $1/3^{\text{rd}}$ share belonging to the plaintiff herein. The $1/3^{\text{rd}}$ share is intact.

12. Therefore, when there is an observation by the Trial Court and the First Appellate Court that Sharanavva didn't have any right in respect of the $1/3^{\text{rd}}$ share, which was held by the plaintiff, nothing remains to be decided again. It would suffice to say that it is clarified that the decree passed in O.S.No.136/2009 and R.A.No.70/2011 would hold the field despite the dismissal of the present suit i.e., O.S.No.417/2016. With this observation, this Court is of the view that no substantial question of law arises and as such the appeal is dismissed.



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RSA No. 101495 of 2022**

13. In view of disposal of the appeal, pending interlocutory applications, if any, do not survive for consideration and disposed of.

**SD/-
(C M JOSHI)
JUDGE**

YAN,
CT:PA,
LIST NO.: 1 SL NO.: 18