

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 19TH DAY OF DECEMBER, 2025

BEFORE

THE HON'BLE DR. JUSTICE K.MANMADHA RAO

REGULAR SECOND APPEAL NO.458 OF 2018 (DEC/INJ)

BETWEEN:

1. CHIKKATHAYAMMA
W/O SHIVANNA
AGED MAJOR
R/O KOTHATHI VILLAGE,
MANDYA TALUK & DISTRICT-571 401
SINCE DEAD BY LR
MAHADEVAPPA
SINCE DEAD BY LRS

1(a) KAMALAMMA
W/O LATE MAHADEVAPPA
AGED ABOUT 67 YEARS

SINCE DEAD REP. BY APP1(B)
WHO IS ALREADY ON RECORD

1(b) DEEPU
S/O LATE MAHADEVAPPA
AGED ABOUT 37 YEARS

BOTH ARE R/AT KOTHATHI VILLAGE
MANDYA TALUK & DISTRICT-571 401.

...APPELLANTS

(BY SRI. VINAY D HOSMATH, ADVOCATE;
V/O DTD 20.08.2025 A1(B) IS THE LR'S OF DECEASED A1(A))

AND:

1. MAHADEVIAIAH
S/O MALLANNA

AGED MAJOR,
R/AT DHANAGUR VILLAGE
KASABA HOBLI,
MALAVALLI TALUK,
MANDYA DISTRICT 571 430.

2. VEERAPPA
S/O RUDRAPPA
AGED MAJOR,
R/AT MEGALAPURA VILLAGE
KASABA HOBLI,
MALAVALLI TALUK,
MANDYA DISTRICT 571 430.

3. RAMANNA
S/O LATE HANMAIAH,
AGED MAJOR,
R/O MEGALAPURA VILLAGE,
KASABA HOBLI,
MALAVALLI TALUK,
MANDYA-571 430.

...RESPONDENTS

(BY SRI. K S SUBBAKRISHNAMURTHY, ADVOCATE FOR C/R1
AND R2 (ABSENT);
SRI SADANAND SHASTRI, ADVOCATE FOR R3)

THIS REGULAR SECOND APPEAL IS FILED UNDER
SECTION 100 OF CPC, PRAYING TO CALL FOR RECORDS AND
SET ASIDE THE JUDGMENT AND DECREE PASSED BY LEARNED
SENIOR CIVIL JUDGE AT MALAVALLI IN R.A.NO.35/2012
DATED 20.11.2017 WITH EXEMPLARY COST AND RESTORE
JUDGMENT AND DECREE PASSED BY CIVIL JUDGE (JR.DN.)
MALAVALLI IN O.S.NO.09/1987 DATED 05.07.2001 AND
AWARD COSTS IN THE INTEREST OF JUSTICE AND EQUITY.

THIS APPEAL HAVING BEEN HEARD AND RESERVED FOR
JUDGMENT ON 08.12.2025 AND COMING ON FOR

PRONOUNCEMENT THIS DAY, JUDGMENT WAS DELIVERED
THEREIN AS UNDER:

CORAM: HON'BLE DR. JUSTICE K.MANMADHA RAO

CAV JUDGMENT

This RSA is filed seeking to set aside the Judgment and Decree dated 20.11.2017 on the file of the learned Senior Civil Judge at Malavalli in R.A.No.35/2012,('the first appellate Court' for short) with exemplary cost and restore the Judgment and Decree dated 05.07.2001 in O.S.No.9/1987, on the file of the Civil Judge (Jr. Division) at Malavalli ('the trial Court' for short).

2. The appellants herein are the LR's of defendant No.1 before the trial Court and respondents before the first appellate Court. Respondents herein are the plaintiffs and appellants before the Courts below.

3. The brief facts of the case are as follows:-

It is the specific case of the plaintiffs that the plaintiff No.1 is the absolute owner of land bearing Sy.No.51/6 measuring 04 guntas, and plaintiff No.2 is the absolute

owner in possession and enjoyment of lands bearing Sy.No.136 measuring 01 acre 24 guntas and Sy.No.135/3 measuring 03 guntas, situated at Megalapura Village, Malavalli Taluk. The suit schedule properties are the self-acquired properties of one Inoru @ Shivanna s/o Rudrappa of Megalapura Village, who was in possession and enjoyment thereof till his death. The plaintiffs derived title over the suit schedule properties under a registered Will dated 07.02.1983 executed by the said Inoru @ Shivanna in a sound and disposing state of mind, voluntarily and of his own free will, before the Sub-Registrar, Malavalli. Under the said Will, the properties were bequeathed in favour of plaintiffs No.1 and 2 with a direction to perform his obsequies and last rites and thereafter enjoy the properties for their livelihood. The testator had no issues and had become a saint after his wife, namely defendant No.1, deserted him and left Megalapura Village about 30 to 40 years prior.

4. The plaintiffs submitted that they were close relatives of the deceased Inoru @ Shivanna and had been

assisting him in cultivation of the suit lands and in his day-to-day affairs during his lifetime. After his death, in terms of the recitals of the Will dated 07.02.1983, the plaintiffs performed the obsequies and last ceremonies of the deceased and thereafter continued cultivation of the suit schedule properties by raising crops as absolute owners in peaceful possession and enjoyment. The plaintiffs assert that no other person has any right, title or interest over the suit schedule properties and that the testator had full authority to deal with the same. The defendant No.1/wife of the Inoru @ Shivanna, having deserted the deceased long back and having lived separately for about 30 to 35 years, has no subsisting claim over the properties.

5. Pursuant thereto, the plaintiffs made an application before Tahsildar/defendant No.2 for change of khata and RTC entries in their names, which was registered as RRT No.878/83-84. However, defendant No.2 failed to conduct the enquiry in accordance with law and principles of natural justice. On 27.05.1983, statements were improperly recorded by a clerk of the

Taluk Office, and despite objections by plaintiff No.2 regarding the absence of his advocate, he was compelled to give his statement and was cross-examined. Thereafter, defendant No.2 dismissed the petition filed by the plaintiffs' and ordered mutation in favour of defendant No.1, despite recording a finding that the Will was executed in favour of the plaintiffs and that they were in possession. Aggrieved by the order of the Tahsildar, the plaintiffs preferred an appeal in R.Mis.No.37/83 before the Assistant Commissioner/ defendant No.3, Mandya. The same was dismissed by defendant No.3 without proper consideration scrutinizing the records, confirmed the order of defendant No.2.

6. Aggrieved by the order of the defendant No.3, the plaintiffs filed a revision petition in RA No.49/84-85 before the Special Deputy Commissioner, Mandya Sub-Division, which came to be dismissed as not maintainable, holding that a civil suit alone would lie as per the order of the revenue authorities for change of khata. Consequently, the plaintiffs have been constrained to file the suit seeking

declaration of title and cancellation of the illegal acts and orders of the revenue authorities for protection of their absolute ownership and possession over the suit schedule properties.

7. *Per contra*, defendant No.1 appeared through her counsel, while defendants No.2 and 3 appeared through the learned Assistant Government Pleader. Subsequently, the suit of the plaintiff came to be dismissed as against defendants No.2 and 3.

8. The defendant No.1 filed her written statement contending that she is the legally wedded wife of late Inoru @ Shivanna and, after his death, she stepped into his shoes and became the absolute owner in possession and enjoyment of the suit schedule properties. The plaintiffs had earlier instituted RRT proceedings before the Tahsildar, Malavalli, in RRT No.787/83-84, wherein, after affording opportunity to adduce evidence, the Tahsildar dismissed the proceedings holding that defendant No.1 is the owner in possession and enjoyment of the property.

The appeal preferred by the plaintiffs before the Assistant Commissioner, Mandya, and the further appeal before the Deputy Commissioner, Mandya, were also dismissed, thereby confirming the order of the Tahsildar and recognizing the ownership and possession of defendant No.1.

9. It is contended that the revenue authorities examined the capacity, right, and title of the parties and held defendant No.1 to be the absolute owner and she is a widow. The plaintiffs, with an ulterior motive, filed the suit and RRT proceedings to harass defendant No.1 that the alleged Will is silent about defendant No.1 and is a concocted document without legal sanctity, that the property is valued at Rs.20,000/-, exceeding the pecuniary jurisdiction of the Court and that defendant No.1 has executed a sale deed in favour of M.R.Shivaswamy s/o Shivarudrappa for Rs.20,000/-, who is in possession and sought dismissal of the suit.

10. Based on the pleadings, the trial Court has framed following issues for consideration:-

i. Whether the plaintiff 1 and 2 prove that they are the absolute owner of the suit schedule properties A and B respectively by virtue of the Will executed in their favour by Inoru @ Shivanna, dated: 7.2.1983?

ii. Whether the plaintiffs prove that the defendant-1 had deserted Inoru @Shivanna and is residing at Kothathi village since 30-35 years?

iii. Whether the plaintiffs are in lawful possession and enjoyment of the suit properties?

iv. Whether the defendant proves that the Will executed in favour of the plaintiffs by Inoru @ Shivanna contended is concocted one as contended in para-2 (page-5) written statement?

v. Whether the plaintiffs are entitled to the relief of permanent injunction as prayed?

vi. Whether the suit is properly valued and the court fee paid is proper?

vii. What order or decree?

11. In order to substantiate his claim, the plaintiff No.2 got examined himself as PW-1 and three other witnesses as PW-3 and got marked the documents as per

Exs.P1 to Ex. P6. On the other hand, the defendants neither adduced evidence nor marked any documents.

12. The trial Court based on the pleadings, oral and documentary evidence dismissed the suit of the plaintiffs and held as under :-

37. Looking to the documents Ex.P1 and the document Exs.P2 and P3 and the signatures shown in Ex.P1 and in the signature shown in Exs.P2 and P3 are entirely different. The learned counsel for the plaintiff vehemently argued that after the desertion of the 1st defendant, Inoru Shivanna became saint. Whereas in the sale deed the husband of the defendant name is shown as Inoru @Shivanna. The signature shown in exs.P2 and P3 and the signatures shown in Ex. P1 of Inoru @Shivanna is entirely different. The evidence given by PWS-3 and 4 and the evidence of PWS-1 and 2 are contrary to each other. Therefore, the plaintiff has not proved that the Will is genuine. Therefore, the defendants proved that the plaintiffs have concocted the Will to grab the property of the defendant No.1. When the plaintiff has not proved the Will, the defendant proved the Will executed by Inoru @ Shivanna is a concocted one.

13. Assailing the said Judgment and decree of the trial Court, the plaintiffs have preferred an appeal in R.A.No.35/2012.

14. The first appellate Court has framed following issues for its consideration:-

(i) Whether the impugned judgment and decree is illegal, perverse and opposed to law, facts and probabilities of the case? If so, the impugned judgment and decree needs to be interfered with by this court?

(ii) What Decree or Order?

15. The first appellate Court after considering the facts and circumstances and appreciating the oral and documentary evidence, set aside the judgment and decree of the trial Court and held as under:-

29. Upon careful perusal of the materials available on record it clearly discloses that, the plaintiffs by producing original Will and also examining the scribe and attesting witnesses complied with the requirement of Section 63 and 68 of Indian Evidence Act. Apart from that, the Ex.P1 Will is a registered document. Hence, as per Section 71 of Evidence Act, the attestation by the

attesting witnesses can be inferred under Section 71 of Indian Evidence Act.

30. It is pertinent to note that, the defendant No.1 has not entered into witness-box to disprove the claim of plaintiff. The defendant in her written statement has also contended that, she has executed sale deed in favour of one M.R.Shivaswamy and said M.R.Shivaswamy is in possession of the same. In order to establish the said aspect, the defendant No.1 has also not produced the documents. Furthermore, the defendant No.1 not adduced evidence to show that, she is residing with Inoru @ Shivanna at Megalapura till his death. The Trial Court by taking risk of comparing the signature of deceased Inoru @ Shivanna appearing on the Ex.P1 Will with signature appearing on the Ex.P2 & P3 sale deeds, wrongly come to a conclusion that, the Will is forged document. According to me, the approach of the Trial Court is not in accordance with Law. The contents of Ex.P6, which is the voters list pertaining to Malavalli constituency for the year 1977 clearly discloses that, during the year 1977 the defendant No.1 was not residing with deceased Inoru @ Shivanna. If really the defendant No.1 was residing with deceased Inoru @ Shivanna certainly, the name of defendant No.1 ought to have mentioned in the voters list. The contents of Ex.P6 also probablizes the case put forward by the plaintiffs. The Trial Court without considering the oral as well as documentary evidence placed on

record by the plaintiffs wrongly dismissed the suit of the plaintiffs. The entire approach of the Trial Court in dismissing the suit is incorrect.

16. In support of his case, learned counsel for the appellants has raised following substantial question of law for consideration of this Court:-

i. Whether the Lower Appellate Court is right in denying the suit contrary to evidence and facts on record.

ii. Whether the Lower Appellate Court has rightly assessed the genuineness of the signature on the will Ex.P1 signature on Ex.P2 & P3 sale deeds.

iii. Whether the Lower Appellate Court is right in coming to the conclusion that the Plaintiff's have successfully proved the will, ignoring the provisions of Sec. 63 & 68 of The Evidence Act.

iv. Even otherwise the Judgment & Decree of the Lower Appellate Court is contrary to law and evidence on record.

17. The learned counsel appearing for the appellants would contend that the first appellate Court has erred in allowing the appeal by setting aside the judgment and decree of the trial Court without appreciating the facts

and evidence on record and also failed to see that statements of attesting witnessed and scribe are not in accordance with sections 63 & 68 of the Indian Evidence Act, which are contrary and not in accordance with PW-1 and PW-2.

18. Further the appellants filed IA No.1/2022 under Order I Rule 10 r/w. section 151 of the Civil Procedure Code, 1908, to permit the appellants to implead proposed respondent No.3 i.e., Ramanna S/o. Late. Honnaiah in the present appeal.

19. The Deepu, S/o. Late. Mahadevappa- appellant No.1(b), duly authorized to represent the other appellants, states that appellant No.1(a) is his sister, is duly authorized and conversant with the facts of the case. It is stated that the respondents filed the suit for declaration of ownership and for permanent injunction in respect of the suit schedule properties, contending that they are in possession pursuant to a registered Will dated 07.02.2013 alleged to have been executed by Inoru @ Shivanna in

their favour. The said Will was denied by the defendant contending that it is a concocted document. The trial Court dismissed the suit, however, the first appellate Court set aside the said judgment and decreed the suit by the impugned judgment and decree.

20. It is further stated that at this stage, the proposed party sought to be impleaded is claiming to be the owner in possession of the suit schedule properties on the basis of a registered sale deed, though no documents are produced. It is alleged that he is attempting to interfere with the possession of the appellants with the help of henchmen, which the appellants are unable to resist. Under these circumstances, the present application is filed seeking permission to bring the said person on record as respondent No.3.

21. This Court, considering the reasons stated in the accompanying affidavit, allowed IA No.1/2022 vide order dated 01.12.202 and permitted to bring proposed respondent No.3 on record.

22. Heard learned counsel appearing for the appellants as well as learned counsel appearing for respondent No.3 and perused the materials on record.

23. Having considered the contentions advanced, it is observed that in view of the impleadment of proposed respondent No.3, it is evident that the rights and contentions of the impleaded respondent No.3 were neither before the trial Court nor before the first appellate Court. The claim put forth by impleaded respondent No.3, asserting ownership and possession based on an alleged registered sale deed, directly affects the adjudication of rights over the suit schedule properties and therefore, his presence is necessary for effective adjudication of the dispute.

24. It is observed that since the impleaded respondent No.3 has not been afforded an opportunity to place his pleadings and evidence on record, the matter requires reconsideration by the trial Court after affording opportunity to all the parties.

25. In the result, this Court proceeds to pass the following Order:

i) The present appeal is remitted back to the trial Court for fresh consideration.

ii) The trial Court shall permit respondent No.3 to file his written statement before the trial Court within four weeks from the date of commencement of trial and lead evidence. The appellants and other respondents shall also be given full opportunity to adduce evidence and advance their contentions.

iii) The trial Court is directed to record the evidence of both the parties, including the impleaded respondent No.3, and conclude the matter on merits, in accordance with law.

iv) The parties are directed to appear before the trial Court without waiting for any further notice.

*v) The trial Court shall endeavor to decide the suit as expeditiously as possible **within a period of eight months** from*

the date of receipt of the copy of this order.

vi) Registry is directed to send back the TCR to the trial Court forthwith.

vii) There shall be no order as to costs.

Accordingly, Regular Second Appeal is ***disposed of.***

**Sd/-
(DR.K.MANMADHA RAO)
JUDGE**

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