



IN THE HIGH COURT OF KARNATAKA,AT DHARWAD

DATED THIS THE 22ND DAY OF JANUARY, 2026

BEFORE

THE HON'BLE MR. JUSTICE C M JOSHI

REGULAR SECOND APPEAL NO. 3126 OF 2007 (PAR)

BETWEEN:

SMT. SHARADA,
W/O. KALLAPPA NAKADI,
AGED ABOUT 65 YEARS,
OCC. HOUSEHOLD,
R/O. SHAHAPUR, BELGAUM-590 003.

...APPELLANT

(BY SRI SHREEVATSA HEGDE, ADVOCATE)

AND:

1. SMT. ANASUYA RAMAKANT PAWSAHE,
AGED ABOUT 60 YEARS,
OCC. HOUSEHOLD WORK,
R/O. BHARAT NAGAR,
BELGAUM-590 004.
2. PRASHANT RAMAKANT PAWASHE,
AGED ABOUT 28 YEARS,
OCC. PRIVATE SERVICE,
R/O. BHARAT NAGAR,
BELGAUM-590 004.

SRI LUMANNA CHOLAPPA CHOPADE
SINCE DECEASED BY HIS LRS.

3. SMT. GANGUBAI LUMANNA PATIL,
AGED ABOUT 68 YEARS,
OCC. HOUSEHOLD WORK,
R/O. 4488, CHAVAT GALLI,



BELGAUM-590 002.

4. SRI YALLAPPA LUMANNA PATIL,
AGED ABOUT 53 YEARS,
R/O. 4488, CHAVAT GALLI,
BELGAUM-590 002.
5. SRI PARASHURAM LUMANNA PATIL,
AGED ABOUT 48 YEARS,
R/O. 4488, CHAVAT GALLI,
BELGAUM-590 002.
6. SRI SHANKAR LUMANNA PATIL,
AGED ABOUT 44 YEARS,
R/O. 4488, CHAVAT GALLI,
BELGAUM-590 002.
7. SRI SHRIKANT LUMANNA PATIL,
AGED ABOUT 38 YEARS,
R/O. 4488, CHAVAT GALLI,
BELGAUM-590 002.
8. SRI MAHENDRA LUMANNA PATIL,
AGED ABOUT 38 YEARS,
R/O. 4488, CHAVAT GALLI,
BELGAUM-590 002.
9. SRI MARUTI CHANGAPPA MANNURKAR
SINCE DECEASED BY HIS LRS.
- 9(a) SRI SHYAM MARUTI MANNURKAR,
AGED ABOUT 57 YEARS,
OCC. BUSINESS.
- 9(b) SRI SURESH MARUTI MANNURKAR,
AGED ABOUT 55 YEARS,
OCC. BUSINESS.

BOTH ARE R/O. H.NO.436, NAZAR CAMP,
CROSS NO.3, VADAGAON, BELAGAVI-590 005.



...RESPONDENTS

(BY SRI S.B DEYANNAVAR, ADVOCATE AND
SMT. N.S PATTAR, ADVOCATE FOR R-1 & R-2;
SRI D. RAVIKUMAR GOKAKAKAR, ADVOCATE FOR R-9 (b &
c);
R-3, R-4, R-5, R-6, R-7 & R-8 ARE SERVED;
R-9 (a) & (d) APPEAL DISMISSED)

THIS RSA IS FILED UNDER SECTION 100 OF CPC AGAINST THE JUDGMENT AND DEGREE DATED 14.09.2007 PASSED IN R.A.NO.314/2004 ON THE FILE OF THE PRL. DIST. JUDGE, BELGAUM (R.A.21/2000 BEFORE PRL. CIVIL JUDGE (SR.DN.), BELGAUM), DISMISSING THE APPEAL AND CONFIRMING THE JUDGMENT AND DECREE DATED 29.11.1999 PASSED IN O.S.NO.149/1995 ON THE FILE OF THE II ADDL. CIVIL JUDGE (JR.DN.), BELGAUM.

THIS RSA HAVING BEEN HEARD AND RESERVED ON 31.10.2025, COMING ON FOR PRONOUNCEMENT OF JUDGMENT THIS DAY AT BENGALURU BENCH, COURT DELIVERED THE FOLLOWING:

CAV JUDGMENT

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

This second appeal arises out of the judgment and decree passed by the learned II Additional Civil Judge (Jr.Dn.), Belgaum, in OS.No.149/1995 dated 29.11.1999, which came to be confirmed by the First Appellate Court i.e., Principal District and Sessions Judge, Belgaum in RA.No.314/2004 (Old No.RA.No.21/2000 before the



Principal Civil Judge (Sr.Dn.), Belgaum) dated 14.09.2007.
The defendant No.1 in the said suit is before this Court in appeal.

2. The factual matrix in brief that is relevant for the purpose of this appeal may be summarized as below:

(a) Plaintiff No.1 and defendant No.1 are sisters, their mother was Tulasabai and father was Laxman. Sister of the plaintiff No.1 and defendant No.1 by name Fakira died unmarried. Therefore, the properties that were held by Laxman and his wife Tulasabai have devolved upon plaintiff No.1 and defendant No.1. The relationship between the parties is not in dispute.

(b) It is a case of the plaintiffs that deceased Laxman had about 06 properties which were under his cultivation and enjoyment and out of which 05 properties are the suit schedule properties. The suit schedule properties are as below:



Sl.No.	R.S.No.	Acres. Gs.	Assessment Rs. Ps.
1.	107/6	0-18	03.10
2.	107/8	0-11	01.78
3.	107/9	0-10	01.48
4.	106A/10B	0-14-8	00.44
5.	106A/9	0-13	00.23

(c) Out of the above 5 properties, Item Nos.1 and 4 properties were under the tenancy. Rest of the properties were under the ownership of Laxman. Apart from this, Tulasabai had also purchased one property, which was her self acquired property bearing Sy.No.106A/10A/1 measuring 9.12 guntas. (This property was bequeathed to husband of plaintiff No.1 and is not part of this suit.)

(d) The plaintiffs contended that the propositus died long back and her sister Fakira also died unmarried. On the death of Laxman, the suit schedule properties



devolved upon plaintiff No.1, defendant No.1 and Tulasabai. The said Tulasabai died on 05.03.1998.

(e) Tulasabai had executed a registered *Will* in respect of her undivided $1/3^{\text{rd}}$ share in the suit schedule properties on 24.06.1989. She bequeathed her undivided $1/3^{\text{rd}}$ share in the suit schedule properties in favour of plaintiff No.2, (who is none else than the son of plaintiff No.1) and defendant No.2 and defendant No.3, who were the sons of sister and the brother of son-in-law. Names of these legatees came to be entered in the record of rights under M.E.No.6165 dated 17.03.1990 and the same was challenged by defendant No.1 before the Assistant Commissioner. The Assistant Commissioner set aside the certification of the said mutation entry and remanded the matter for fresh enquiry, stating that the parties have to resolve their disputes before the Civil Court.



(f) Plaintiffs contended that there is no partition in respect of the suit schedule properties between the plaintiff No.1 and the defendants at any time. The plaintiffs demanded their share by mutual partition. However, the defendants did not cooperate for the same and as such, they were constrained to file the suit for partition of their respective shares.

(g) They contended that plaintiff No.1 is entitled for $1/3^{\text{rd}}$ share in the suit schedule properties and plaintiff No.2 has also become the owner of the properties given to him under the registered *Will* executed by Tulasabai and he is entitled for his share. Defendant No.2 and defendant No.3 have become owners to the extent of the properties which were bequeathed to them by the said Tulasabai and as such, they are included as parties to the suit. The plaintiffs sought for the partition of their shares.



3. On service of summons, defendant No.1 appeared before the trial Court and filed the written statement. Defendant Nos.2 and 3 did not appear despite service of summons and therefore, they were placed *ex-parte*.

4. Defendant No.1 in the written statement took up following contentions:

(a) Defendant No.1 admitted the relationship between the parties and the fact that Fakira died unmarried. Defendant No.1 denied the *Will* alleged to have been executed by Tulasabai and termed the same to be false, sham and fabricated.

(b) It is contended that the land bearing Sy.No.107/6 measuring 0.18 guntas was of the ownership of one Ravindra Bembalgi and Laxman was the tenant. On the advent of the Land Reforms Act, Tulasabai, mother of plaintiff No.1 and defendant No.1 filed Form No. 7 and got declared as the



occupant of the said land and therefore, it is a tenanted land and is not of the ownership of the deceased Laxman. It is contended that defendant No.1 has paid the occupancy price on 24.10.1990.

(c) The land bearing Sy.No. 106/A/10 measuring 0.14 guntas was of the ownership of a Legade family and it was a tenanted land. Defendant No.1 had filed CP.No.8821/1991 before the High Court of Karnataka, Bengaluru and the owner Vardichand Legade had also filed OS.No.373/1983 before the I Additional Civil Judge (Jr.Dn), Belgaum and it was stayed as the modified issue of tenancy is involved in the matter. It was contended that the tenancy issue was not decided yet.

(d) Defendant No.1 admitted that the remaining lands i.e., Sy.Nos.107/8, 107/9 and 106/A/9 are ancestral lands of the family of plaintiff No.1 and defendant No.1.



(e) Defendant No.1 also denies about the challenge to the ME.No.6165 and that the Assistant Commissioner had remanded the matter directing cancellation of the ME.No.6165.

(f) It is admitted that there is no partition in the family. But it is denied that suit schedule properties are the joint family properties. However, it is the case of defendant No.1 that 03 of the lands are ancestral properties and 02 others are tenanted properties, regarding which the dispute is still pending.

(g) It was contended that Sy.No.107/6 and 106A/10B are the tenanted lands and since, the tenanted lands are granted under the Karnataka Land Reforms Act and therefore, they cannot be transferred by any deed and any such transfer including the *Will* is hit by the provisions of KLR Act and as such, the suit deserves to be dismissed.



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

ISSUES:

- (1) Whether the Plaintiffs prove that the Suit properties are joint family properties of Plaintiffs and Defendants?
- (2) Whether Plaintiffs prove that they have $\frac{1}{3}^{\text{rd}}$ share each in the Suit properties as alleged?
- (3) Whether the Plaintiffs prove that the deceased Smt. Tulusabai had executed her last valid *Will* on 24/06/1989 bequeathing her $\frac{1}{3}^{\text{rd}}$ share in the Suit properties in favour of Plaintiff No.2?
- (4) Whether the Defendant No.1 proves that the claim in respect of Rs. no. 107/6 and 106/A/10B under alleged *Will* is hit by Karnataka Land Reforms Act?
- (5) Whether Plaintiffs are entitled for partition and separate possession of their legitimate shares in the Suit Properties?
- (6) What Order or decree?



6. Plaintiff No.1 got herself examined as PW.1 and two witnesses were examined as PWs 2 and 3 and Exs.P1 to P6 were marked in evidence. The husband of defendant No.1 as her PA holder was examined as DW.1 and Exs.D1 to D4 were marked in evidence.

7. After hearing the arguments, the trial Court held Issue No.1 and Issue No.4 in the affirmative, remaining issues partly in the affirmative and partly decreed the suit. The trial Court held that the *Will* has been proved by the plaintiffs and Section 21 of the Karnataka Land Reforms Act, applies in respect of the tenancy lands and therefore, Tulasabai could not have bequeathed her share in those properties to non-family members. The trial Court also holds that the *Will* binds only 1/3rd share of the Tulasabai in the ancestral properties and as such, decreed the suit only in respect of the ancestral properties.

8. Being aggrieved by the judgment of the trial Court, defendant No.1 approached the First Appellate Court



in Regular Appeal. The First Appellate Court by the impugned judgment dismissed the appeal. A cross appeal filed by respondent Nos.1 and 2 also came to be dismissed. Being aggrieved, defendant No.1 is before this Court in Second Appeal.

9. This Court while admitting the appeal, has framed the following substantial questions of law:

(1) Whether bequeathing of the tenanted property by Smt. Tulasabai in favour of persons out side the "family" as contemplated under the Karnataka Land Reforms Act, 1961 (for short "the Act") is hit by Section 21 of the Act as amended in 1974?

(2) Whether both the courts have committed error in not looking to the aspect of suit being for partial partition of the property without including the joint family properties?

Arguments:

10. Learned counsel appearing for the appellant/defendant No.1 submits that the suit schedule properties are the joint family properties of plaintiff No.1 and defendant No.1. Out of the 05 suit schedule properties, 03 were ancestral properties and 02 were the tenanted



lands which were under the tenancy of Laxman. He submits that the *Will* executed by Tulasabai is shrouded in suspicious circumstances. It is submitted that there are about 06 suspicious circumstances and in fact, those circumstances are not satisfactorily explained by the plaintiff No.2. He submits that the other properties were at Sulage village and they should have been included in the suit schedule and as such, the suit is hit by the non-inclusion of all the properties and a suit for partial partition is not sustainable. He submits that Exs.D9 to 11 are the records in respect of the properties situated at Sulage Village and they are not included by the plaintiffs in the suit.

11. In this regard, he places reliance on the judgment in the cases of **KAVITA KANWAR Vs. PAMELA MEHTA¹**, **STATE OF HARYANA VS. HARNAM SINGH (deceased) THROUGH LRS AND OTHERS²**, **S.SATNAM SINGH VS. SURINDER KAUR AND ANOTHER³** and lastly,

¹ (2021) 11 SCC 209

² (2022) 2 SCC 238

³ 2009 AIR SCW 249



on **SWARNALATHA AND OTHERS VS. KALAWATH AND OTHERS⁴**.

12. *Per contra*, learned counsel appearing for the respondents/plaintiffs, contended that the partition is ordered only in respect of three of the properties. The tenanted lands are not part of the decree. He submits that the *Will* is held to be valid and proved in accordance with law by the trial Court as well as the First Appellate Court and this question of fact cannot be gone into in the second appeal. He submits that the learned counsel appearing for the appellant has not advanced his arguments on the substantial questions of law framed by this Court and his main thrust of the argument was on the *Will* of Tulasabai. Therefore, he submits that the judgment of the trial Court as well as the First Appellate Court deserve to be upheld.

13. Regarding the substantial questions of law, he submits that those questions have been answered by the

⁴ 2022 1 SCR 847



trial Court adequately and therefore, there is no need for re-agitation of the same before this Court.

Analysis:

14. It is pertinent to note that apart from the two substantial questions of law, the parties have argued the matter at length on the proof concerning the *Will* executed by Tulasabai, which is at Ex.P6. It appears that the thrust of the argument between the parties is only in respect of the *Will* executed by Tulasabai and its appreciation by the trial Court as well as the First Appellate Court. With this background, let me consider the contentions raised by the parties.

Re. first substantial question of law:

15. It is to be noted that the first substantial question of law really was not raised by the appellant in the appeal memo. The bequeathing of the tenanted property by Tulasabai in favour of plaintiff No.2 and defendant Nos.2 and 3 and also the husband of the plaintiff No.1 was not



raised by the appellant even in the arguments also. It is worth to note that the said question has been held by the trial Court in favour of the appellant to the extent of the properties granted by the Land Tribunal under the provisions of KLR Act. The trial Court in its judgment has placed a reliance on a judgment of this Court in the case of ***R. PRAKASH VS. THE LAND TRIBUNAL, BANGALORE SOUTH TALUK***⁵. In the said judgment, this Court had relied on another judgment in the case of ***TIMMAKKA KOM VENKANNA NAIK VS. LAND TRIBUNAL***⁶, wherein, this question was dealt with and it was held that under Section 21(1) there is a bar against the subdivision or subletting of the land held by a tenant or assignment of any interest there under. The Court interpreted a *Will* as an assignment of the rights and therefore, it held that such a bequeath in favour of an outsider is invalid. The trial Court has rightly relied upon the said judgments and came to the conclusion that the properties which were under tenancy and the

⁵ 1987 (2) KLJ 337

⁶ 1987 SCC Online Kar 172



occupancy rights of which were granted to Tulasabai are not susceptible for a bequeath under the *Will* of Tulasabai.

16. By holding so, it restricted the decree only in respect of the ancestral properties i.e., the Sy.No.107/8, 107/9 and 106A/9. In fact, this finding is in favour of the appellant and it excludes two of the suit schedule properties from the purview of the *Will*. Therefore, the first substantial question of law is redundant and it is not necessary for this Court to delve more into that. Hence, the same is answered in the 'affirmative'.

Re. second substantial question of law:

17. Learned counsel appearing for the appellant submits that by way of additional grounds in the appeal memo, the appellant has raised the question of partial partition. He contends that the propositus Laxman and Tulasabai had certain properties at Sulage Village and those properties are not included in the suit. He submits that Exs.D9 to 11 show that certain properties were standing in



the name of Tulasabai at Sulage Village and those properties should have been included in the suit. Therefore, the suit is one for partial partition and no reason is assigned by the plaintiffs to show as to why the properties at Sulage are not included and hence, the suit is not maintainable.

18. It is trite law that a suit for partial partition is maintainable provided proper explanation or reasons are assigned and it is disclosed by the plaintiffs. There cannot be any doubt on this aspect and in a *catena* of judgments, the Courts have held that a suit for partial partition is not maintainable unless the same is proved and properly explained.

19. A careful perusal of the written statement filed by defendant No.1 show that there is no such ground raised by defendant No.1 regarding partial partition. The plaint nowhere mentions that there were any other properties at Sulage Village and therefore, it was before the First appellate Court that such contention was raised. Perusal of



the written statement of the appellant shows that no such ground was raised and there is no whisper about the properties that were possessed by Tulasabai at Sulage Village. No doubt, Exs.D9 to 11 show that certain properties did exist in the name of Tulasabai at Sulage Village. The cross-examination of PW.1 shows that it was suggested that there are certain properties in the name of Tulasabai at Sulage Village. PW.1 in her cross-examination dated 22.06.1999, in the very first paragraph, denies that there were any such ancestral properties at Sulage Village. She denies that Sy.No.3B/11 belonging to the father of Laxman was there at Sulage Village. Though she admits that there were some properties belonging to Laxman at Sulage Village, but she do not know whether the properties are standing in the name of Laxman at present or not.

20. It is pertinent to note that the existence of a property at Sulage Village should have been raised by defendant No.1 in the written statement but such a contention was not at all raised by the defendant and as



such, there is no such issue concerning the question of partial partition. Existence of ancestral property bearing Sy.No.3B/11 was raised for the first time in the cross-examination of PW.1 on 22.06.1999. The power of Attorney Holder of defendant No.1 contends that Sy.No. 111, 3/B/11 and 33/11 are there at Sulage Village as per Exs.D9 to 11 and these properties are not shown by the plaintiffs. This evidence of DW.1 happens to be bereft of any support of the pleadings. Thus, it is clear that the contention of defendant No.1 that there were other properties belonging to the joint family, which are not subject matter of the suit was raised for the first time in the cross-examination of PW.1 and in the testimony of DW.1 in his examination-in-chief.

21. It is trite law that a contention if it is to be determined in the form of an issue has to be raised by the defendant in the pleading and on such contention, evidence has to be led. Thus, when the written statement is totally silent and it never whispers about any property that existed



in the name of Laxman or Tulasabai at Sulage Village, the said contention in the evidence is not justified. Any evidence cannot be considered by the Court unless there are pleadings. Even in the cross-examination of PW.1, only the existence of one property at Sulage Village was suggested. Though PW.1 admits that certain properties did exist at Sulage Village, she says that at present there are no such properties.

22. Under these circumstances, the defence that the suit is hit by the principles governing the partial partition are applicable to the case on hand, cannot be sustained. Such a contention appears to be an afterthought only. When the PW.1 entered the witness box, nothing prevented defendant No.1 to raise such a contention by way of an amendment to the written statement and also by seeking framing of an additional issue. Under these circumstances, a contention which is bereft of any pleading cannot be raised at a subsequent stage and raise the said aspect in a second appeal. The appellant is trying to build her case without a



foundation. Hence, at any stretch of imagination, it cannot be held that the suit is hit by the principles governing the law regarding partial partition.

23. Learned counsel appearing for the appellant has raised the question as to whether the evidence regarding the *Will* has been properly appreciated by the Courts below or not.

24. A perusal of the judgment of the First Appellate Court shows that it did not appreciate the evidence on record afresh. It squarely relied on the appreciation of the evidence made by the trial Court and holds that such appreciation is proper and correct. Such approach of the First Appellate Court regarding the appreciation of the evidence concerning a *Will* is not in accordance with the requirements of law, where the First Appellate Court was bound to re-appreciate the evidence and then consider the reasons assigned by the trial Court.



25. Learned counsel appearing for the appellant/defendant No.1 contends the following suspicious circumstances which render the *Will* executed by Tulasabai at Ex.P6 is invalid,

(a) He contends that Tulasabai has disinherited defendant No.1 and therefore, it is one of the suspicious circumstances.

(b) He raises the contention of active participation of defendant No.1 who is beneficiary under the Will and therefore, it is suspicious. He points out that PW.2 said that after execution they went to the office of the Sub-Registrar and even PW.2 and other witnesses is suspicious.

(c) The witness advocate T.Y. Honagekar signed the *Will* on 27.06.1989 but the *Will* was signed by the Testatrix on 24.06.1989. He points out that it was presented for registration before the Sub-Registrar on 27.06.1989.

(d) Consequently, the endorsement of the Medical Officer Dr.M.S.Pushalkar bears the date as 25.06.1989.



(e) He contends the presence of PW.1, the legatee under the said *Will* at the time of the execution of the *Will* show that he actively participated regarding execution of the *Will*. Therefore, on above grounds, it is submitted that the *Will* is full of suspicious circumstances and the provisions and the Sub-Registrar had not followed Rule No.73(1) of the Registration Rules.

26. A perusal of the impugned judgment of Trial Court would show that it considers the evidence concerning the *Will* at length in paragraph No.16 onwards. It comes to the conclusion that there are no such suspicious circumstances and the witnesses are deposing after lapse of more than 10 years and therefore, minor discrepancies in the testimonies are quite possible and as such, the *Will* has been proved by the propounder of the *Will* i.e., the plaintiff No.1.

27. Regarding the first suspicious circumstance raised by the learned counsel for the appellant, the trial Court holds that Tulasabai had not disinherited anybody



under the *Will*. It is pointed out that Tulasabai had bequeathed only her 1/3rd share in the suit schedule properties in favour of plaintiff No.2 and defendant Nos.2 and 3 and she had bequeathed her self acquired property in favour of the husband of plaintiff No.1. He points out that the remaining property in which defendant No.1 had a share remained with her and it was only the one third share of the Tulasabai, which was subject matter of the *Will*. Therefore, the trial Court holds that there is no such disinheritance of the properties by virtue of the *Will*. It was her undivided share in the property which was bequeathed to plaintiff Nos.2 and 3.

28. The trial Court appreciates the evidence of PW.2 and PW.3 and considers their evidence at length. In paragraph No.17, the trial Court notices that the testimony of the witnesses have to be considered in the light of what they have stated before the Court after 10 years. It notices that PW.2 and PW.3 state that the writing of the *Will*, execution and registration had taken place on one day. But



on the other hand, Ex.P6 *Will* shows otherwise. In paragraph No.18, the trial Court considers the discrepancy concerning the dates of execution, registration and the endorsement by the Medical Officer in detail and it holds that it is a natural human error under which PW.2 and 3 have spoken that they went for registration on the same day.

29. The perusal of the testimony of PW.2 Narayan Yallappa Yadakavi shows that he was one of the attesting witnesses to the *Will*. He says that he went to the place of the bond writer at the instance of the Testatrix and after it was written, Tulasabai put her thumb impression after admitting the contents of the *Will* and thereafter, he and the other witness Jakappa and the advocate T.Y. Honagekar put their signatures and then they went to the Sub-Registrar's Office. In the cross-examination, nothing worth is elicited which would discredit the testimony of this witness. It is elicited that it was at about 01.00 p.m. and the *Will* was written in his presence. The testimony of PW.3



Prakash Shivaram Shinde shows that he is a bond writer and he states that he wrote the *Will* as requested by the Testatrix. He states that after writing the same he read over the contents of the *Will* to Tulasabai and she has put her thumb impression in his presence after admitting the contents and all the witnesses also put their signatures in his presence. In the cross-examination, there is a suggestion to the effect that as per the instructions of Tulasabai, he had written the *Will*. There is also a suggestion that as per the instructions of the Tulasabai, he wrote the *Will*. This suggestion to PW.2 shows that PW.3 wrote the *Will*, at the instance of Tulasabai. There is nothing which is elicited about the dates borne out of the Ex.P6.

30. The learned counsel appearing for the appellant has placed reliance on the judgment in the case of **Kavita Kanwar v. Pamela Mehta and others** (referred supra). In the said case, the Apex Court observed that when the trial Court has written the findings against the appellant after fresh appreciation of the evidence and the High Court had



affirmed such findings, it is not open for the Apex Court to go into re-appreciation of evidence again. It was also noticed that when there was no dispute about testamentary capacity and soundness of the mind of the Testatrix, the execution having been proved, the other minor suspicious circumstances as stated in para 27 of the said judgment cannot come in the way.

31. It is pertinent to note that the judgment of this Court in the case of ***Sri J.T. Surappa & Another Vs. Sri Satchidhanandendra Saraswathi Swamiji Public Charitable Trust & Others***⁷ lay down the five steps in the inquiry that is to be conducted by the Court concerning a *Will*. The Court termed those five steps as '*panchapadi*'. If we apply the principles laid down therein, it is evident that the trial Court has done this exercise exhaustively and it has come to the right conclusion.

⁷ 2008 ILR KAR 2115



32. So also the judgment of the Apex Court in the case of **H. Venkatachala Iyengar v. B.N. Timmajamma**⁸ is a judgment which acts as a beacon and lays down the principles on which a *Will* has to be appreciated. Therefore, the other judgments relied by the learned counsel for the appellant can very well be distinguished in view of the facts involved in those cases and other different circumstances which pose as the suspicious circumstances.

33. A perusal of the *Will* at Exhibit P6 would show that the *Will* is written in Marathi and the Thumb impression of the Testatrix may be found in page No.4. The *Will* is signed by the witnesses Jakappa and PW2. It is also signed by Advocate T.Y. Honagekar on 27.06.1989. The endorsement of the Doctor may be found at page No.5, wherein it is stated that Tulasabai Lakshmana Patil is physically and mentally fit to sign i.e., to give her thumb impression. It is evident that the document was presented for registration on 27.06.1989. It may be noted that

⁸ AIR 1959 SC 443



execution is on 24.06.1989, signed by the Medical Officer on 25.06.1989 and it was presented for registration on 27.06.1989. The Sub-Registrar has endorsed that the *Will* was presented for registration by none else than Tulasabai herself and she admitted the execution of it on 24.06.1989 itself. In the above circumstances, it may be gathered that the *Will* was executed by the Testatrix on 24.06.1989 in the presence of the two witnesses and it was endorsed by the Medical Officer on 25.06.1989 and thereafter, it was presented for registration on 27.06.1989 on which day the advocate T.Y. Honagekar also signed the said *Will*. There was no necessity for the advocate T.Y. Honagekar to sign the said *Will*, but it is not known why he also signed it. It may be true that he assisted the said Tulasabai to present the said *Will* for registration before the Sub Registrar. This aspect has been considered by the trial Court in detail in para 18 and it holds that when the witnesses are speaking about the execution of the *Will* after nearly about 10 years, it is quite natural that the dates may not have been



correctly stated by them. It holds that the Execution of the *Will* by Tulasabai on 24.06.1989 is categorically spoken by PW2 in his deposition. It notices that PW3, the scribe has been suggested that the *Will* was written at the instructions of Tulasabai and insofar as the presence of the beneficiary at the time of the execution of the *Will* is concerned, the testimony of PW2 show that when he went as per the instructions of Tulasabai to the place of the bond writer, the said Tulasabai, plaintiff No.1 and the stamp vendor i. e., Prakash were present. There is nothing in the cross-examination which would show that plaintiff No.1 had taken active participation in the same. It may also be noted that in the *Will* itself it is mentioned that it is the plaintiff No.1 and her husband were looking after the Testatrix. Therefore, the presence of plaintiff No.1 at the time of the execution cannot be inferred to be a factor which would negate the execution of the *Will* out of the uninfluenced volition of the Testatrix. It is pertinent to note that the cross-examination of PW3 does not mention anything about



the presence of plaintiff No.1 except the one sentence in the cross-examination of PW1, where she admits that plaintiff No. 1 was present, nothing is available to show that plaintiff had influenced the Testatrix in writing the *Will* and his participation was active. Above aspects would show that except the presence of PW1 at the time of the *Will* as stated by PW2 and the discrepancy about the date on which the execution took place, date when medical officer examined and when it was presented for registration, there is nothing else which raises any doubt. It is pertinent to note that the appreciation of the evidence in a particular manner by the trial Court has to be respected. The Appellate Courts cannot replace their own views at the place of the views of the trial Court. The judgment of the Apex Court in the case of **Santosh Hazari Vs. Purushotham Tiwari dead by LRs.,**⁹ lays down and observes that the appreciation of the evidence shall be on the same lines as is done by the trial Court and only if the trial Court has gone perverse or

⁹ (2001)3 SCC 179



arbitrary, then the Appellate Court can interfere. The traversing of the evidence of the witnesses and other traversing of the evidence on record has to be done as is done by the trial Court and then the discrepancy has to be pointed out. It is pertinent to note that the trial Court had the advantage of seeing the demeanor of the witnesses and therefore, such appreciation by the trial Court stands on a higher footing than that of the Appellate Court. Therefore, the appreciation of the evidence by the trial Court in respect of the *Will* at Exhibit P6 cannot be replaced for a simple reason that another construction is possible. Under these circumstances, the exhaustive and detailed appreciation of the evidence on record by the trial Court cannot be found fault with. The trial Court in para 22 observes that the *Will* insofar as it relates to the tenanted properties cannot hold good, as it is hit by the provisions of Section 21(1) of the Karnataka Land Reforms Act. Insofar as the ancestral properties are concerned, the *Will* is binding. After observing so the trial Court culls out its entire finding in



para 22 of the impugned judgment, which cannot be found fault with. The second substantial question of law is answered accordingly.

34. In the result, the substantial questions of law and other contentions having been dealt with, the appeal is bereft of any merits and as such, the same deserves to be dismissed. Hence, the following:

ORDER

The appeal is dismissed.

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

tsn*
List No.: 19 SI No.: 3