



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. 5626 OF 2009 (DEC/INJ)

BETWEEN:

1. SMT. LIMBATAI,
W/O. NEMU PATIL,
AGED ABOUT 75 YEARS,
OCC. HOUSEHOLD WORK,
R/O. SOUNDALAGA,
NOW R/AT. HUNNARAGI-591201,
TALUK: CHIKODI, DIST. BELAGAVI.

SINCE DECEASED BY HER LR,
SOU. INDUTAI, W/O. SHAMARO PAWAR/APPELLANT NO.2

2. SOU. INDUTAI, W/O. SHAMARO PAWAR,
AGED ABOUT 55 YEARS,
OCC. HOUSEHOLD WORK,
R/O. SIDDENERLI-416 216,
TALUK: KAGAL, DIST. KOLHAPUR.

...APPELLANTS

(BY SRI B S KAMATE, ADVOCATE)

AND:

1. APPA TUKARAM SAVAGAVE,
AGED ABOUT 70 YEARS,
OCC. AGRICULTURE,
R/O. SOUNDALAGA-591 201,
TALUK: CHIKODI, DIST. BELGAUM.

SINCE DECEASED BY HIS LRS.

- 1(a). BALASAHEB S/O. APPA SAVAGAVE,



AGED ABOUT MAJOR,
OCC. AGRICULTURE,
R/O. SOUNDALAGA,
TALUK: CHIKODI, DIST. BELGAUM.

1B. ANANDA S/O. APPA SAVAGAVE,
AGED MAJOR,
OCC. AGRICULTURE,
R/O. SOUNDALAGA,
TALUK: CHIKODI, DIST. BELGAUM.

2. BABURAO TUKARAM SAVAGAVE,
AGED ABOUT 60 YEARS,
OCC. AGRICULTURE,
R/O. SOUNDALAGA-591 201,
TALUK: CHIKODI, DIST. BELGAUM.

...RESPONDENTS

(BY SRI ANAND ASHTEKAR, ADVOCATE)

THIS RSA IS FILED UNDER SECTION 100 OF CPC, AGAINST THE JUDGEMENT AND DECREE DATED 14.08.2009 PASSED IN R.A.NO.49/2003 ON THE FILE OF THE FAST TRACK COURT-I, CHIKODI, DISMISSING THE APPEAL, FILED AGAINST THE JUDGMENT DATED 16.03.1999 AND THE DECREE PASSED IN O.S NO. 55/1994 ON THE FILE OF THE CIVIL JUDGE (JR.DN) INPANI, DECREETING THE SUIT FILED FOR DECLARATION AND PERMANENT INJUNCTION.

THIS RSA HAVING BEEN HEARD AND RESERVED ON 02.12.2025, 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 appeal by the appellants/defendant Nos.1 and 2 arises out of the concurrent findings of the trial Court in O.S.No.55/1994



dated 16.03.1999 and the First Appellate Court in R.A.No.49/2003 dated 14.08.2009, whereby the suit filed by the plaintiffs against the defendants came to be decreed holding that they are the absolute owners of the suit schedule property as per the Will executed by their maternal uncle Nemu Hari Patil and as a consequence, the defendants were restrained from causing obstruction to the plaintiffs' possession and enjoyment.

2. The factual matrix of the case as may be found from the records is as below:

a) The testator Nemu Hari Patil was adopted by one Hari Patil. After death of Hari Patil, Nemu succeeded to the suit schedule property as adopted son of Hari Patil.

b) It was contended that Nemu Hari Patil had executed a registered Will dated 17.04.1976 and he died on 15.01.1991. After the death of Nemu Hari Patil, the plaintiffs as legatees of the Will, inherited the property and became owners of the same.

c) They contended that they are in actual possession and enjoyment of the suit schedule property and the defendants having



no right, title or interest in the suit schedule property are obstructing their possession and enjoyment.

d) They also contended that the defendants claimed that they are the wife and daughter of deceased-Nemu Hari Patil in order to grab the property. But in fact, Nemu Hari Patil died unmarried and issueless. They contended that Nemu Hari Patil was residing with the mother of the plaintiffs, who was none else than his sister. It was the plaintiffs and their mother, who looked after the deceased-Nemu Hari Patil till his death and therefore, out of his love and affection, Nemu Hari Patil had executed Will in favour of the plaintiffs.

e) They contended that at the time of executing the Will, he was in sound and disposing state of mind and he executed the Will out of his own volition.

f) After the death of Nemu Hari Patil, the plaintiff gave an application to the Revenue Authorities to enter their name in respect of the suit schedule property and despite objections by the defendants, the name of the plaintiffs were entered. The matter was carried in appeal and the Assistant Commissioner held that the



plaintiffs have to approach the Civil Court for declaration of their right.

g) When there was obstruction by the defendants, the plaintiffs have approached the Court seeking declaration as above.

3. Defendant Nos.1 and 2 having appeared before the trial Court have filed their written statement contending as under:

a) Nemu Hari Patil has never executed any Will in favour of the plaintiffs and the one alleged by the plaintiffs is concocted one.

b) They contended that the suit schedule property is deemed to be an ancestral property of the Nemu Hari Patil and the defendants, who are wife and daughter of Nemu Hari Patil, have vested interest in the suit schedule property and the legality, propriety and the authority of the said Will is seriously disputed by the defendants.

c) They contended that under the guise of the Will dated 17.04.1976, the plaintiffs are trying to grab the suit schedule property.



d) They also contended that defendant No.1 is legally wedded wife of Nemu Hari Patil and the marriage was solemnized as per the rites and ceremonies prevailing in Maratha Community and defendant No.1 could not pull on with Nemu Hari Patil, though there was no differences between her and Nemu Hari Patil but the differences were with his mother. It is contended that out of the wedlock, defendant No.2 was born on 21.09.1950 and there was an error in reporting the date to the School Authorities, which was mentioned as 01.07.1949.

e) All the records, including the Voter List etc., are showing that defendant No.1 is the wife of Nemu Hari Patil and defendant No.2 is the daughter. They contended that defendant No.2 is known by name Gangutai, Indutai and Balabai and all the names refer to defendant No.2 only. Conspicuously, the alleged Will does not mention anything about defendant Nos.1 and 2 and that is one of the strong suspicious circumstances. They contended that defendant Nos.1 and 2 living separately from the deceased-Nemu Hari Patil would not divest their rights to claim succession and inheritance in the property owned by Nemu Hari Patil.



f) It is contended that the property held by Nemu Hari Patil are the property inherited by him from the adoptive family and therefore, defendant Nos.1 and 2 have right in the suit schedule property and as such, Nemu Hari Patil could not have bequeathed the entire property to the plaintiffs.

g) Thus, alleging that the Will is concocted one, is created only for the purpose of usurping the property, which legitimately belonged to the defendants, they sought for dismissal of the suit.

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

“ISSUES

1. Whether the plaintiffs prove the due and voluntary execution of will dtd: 17.4.1976 by the deceased Nemu Hari Patil in their favour in respect of the suit property?
2. Whether the plaintiffs prove their lawful possession of the suit property as on the date of the filing this suit?
3. Whether the defendants prove that the deceased Nemu Hari Patil had no authority and capacity to execute the will in respect of the suit property?



4. Whether the plffs. are entitle for the reliefs of declaration and injunction sought for?

Additional Issue No.1:- Whether, the defendants prove that, the defendant No.1 is legally wedded wife of Nemu Hari Patil and defendant No.2 is legally born daughter to them?

5. What decree or order?"

5. Plaintiff No.2 was examined as PW1 and three witnesses were examined as PW2 to PW4. Ex.P1 to Ex.P30 were marked. On behalf of the defendants, defendant No.2 was examined as DW1 and three witnesses were examined as DW2 to DW4. Ex.D1 to Ex.D6 were marked.

6. After hearing the arguments, the trial Court decreed the suit as prayed. Being aggrieved, the defendants approached the First Appellate Court in R.A.No.49/2003 and by the impugned judgment dated 14.08.2009 the appeal came to be dismissed. Aggrieved by the same, defendants have approached this Court in this regular second appeal.

7. At the time of hearing on admission, the following substantial questions of law were framed by this Court:



“i. Whether the trial Court as well as the first Appellate Court have committed a serious error in ignoring the material evidence of the defendants and consequently doubting the relationship of the defendants with the testator?

ii. Whether both the Courts have committed a serious error in coming to the conclusion that the disputed will in question has been specifically proved?”

8. During the pendency the appeal, appellant No.1/defendant No.1 died and appellant No.2 is treated as her legal representative. So also, respondent No.1/plaintiff No.1 died and his legal representatives are brought on record.

9. The learned counsel for the appellants would submit that the trial Court and the First Appellate Court could not have doubted the relationship of defendant No.1 with Nemu Hari Patil. He submits that the testimony of the DW2, DW3 and DW4 especially, DW3-Yamunabai could not have been discarded by the trial Court and the First Appellate Court. It is submitted that the marriage of defendant No.1 and Nemu Hari Patil was never denied by anybody at any point of time and after such a long time, the plaintiffs are denying the relationship of husband and wife. It is submitted that the school records of the defendant No.2 clearly establish that she is the



daughter of Nemu Hari Patil and therefore, at this length of time, doubting the parenthood of defendant No.2 would not be proper. It is submitted that when nothing is available on record to show that the relationship of Nemu Hari Patil and defendant No.1 was not doubted and when the records revealed that they lived as husband and wife for considerable long time, such evidence could not have been discarded by the trial Court and the First Appellate Court.

10. Secondly, he submits that the Will is ridden with many suspicious circumstances. He submits that the participation of one of the plaintiffs at the time of the execution of the Will by Nemu Hari Patil itself is one of the suspicious circumstances. It is pointed out that the Will does not mention anything about defendant Nos.1 and 2 and therefore, it raises doubt when the other evidence available on record show their relationship.

11. Thirdly, it is submitted that the rightful inheritance of defendant No.2 has been disrupted by the said Will without any reason. Hence, it is submitted that it also raises doubt about the veracity of the Will.



12. *Per contra*, the learned counsel appearing for the respondents submits that the documents produced by the defendants specifically show that it was Nemagonda Patil but not Nemu Hari Patil. He submits that Nemagonda Patil and Nemu Hari Patil are two different persons and therefore, the contention of the learned counsel appearing for the appellants cannot be accepted.

13. Secondly, he submits that averments in the Will that the deceased Nemu Hari Patil did not have any wife or children goes to show that the relationship of the defendants was not admitted by Nemu Hari Patil himself. It is submitted that it is only the contention taken up in the Will that has been reiterated by the plaintiffs.

14. Thirdly, he submits that the execution of the Will by Nemu Hari Patil has been established as required under law, i.e., under Section 63 of the Indian Succession Act, 1925 and under Section 68 of the Indian Evidence Act, 1872, by examining the attesting witnesses and as such, document at Ex.P.1 being a Registered Will has been proved as required under law.

15. Fourthly, he submits that the documents produced by the defendants nowhere establish that the defendants are the wife



and daughter of Nemu Hari Patil. But on the contrary their documents depict that they are the wife and daughter of Nemagonda Patil. It is pointed out that the name of Nemu Hari Patil is also not found in any of the documents. Hence, it is submitted that the trial Court as well as the First Appellate Court were justified in saying that the Will has been proved by the plaintiffs beyond all suspicious circumstances and therefore, the contentions of the learned counsel appearing for the appellants cannot be accepted.

16. He also submits that the anvil on which the Will has to be proved is explained by this Court in the case of ***Sri J.T. Surappa & Another Vs. Sri Satchidhanandendra Saraswathi Swamiji Public Charitable Trust & Others***¹ and it is necessary to test the evidence on record in the light of the five steps enunciated in the said judgment.

Re. the first substantial question of law:

17. This aspect relates to the relationship between the deceased Nemu Hari Patil and the appellants/defendants. It is the case of the

¹ 2008 ILR KAR 2115



plaintiffs/respondents herein that Nemu Hari Patil had gone in adoption and he had the suit schedule property inherited from the adoptive family. It is their case that Nemu Hari Patil was never married defendant No.1 and as such, defendant No.2/appellant No.2 herein cannot be his daughter. The plaintiffs contend that Nemu Hari Patil had executed a Will in favour of the plaintiffs in respect of the suit schedule property and in the said Will he never mentioned about defendant No.1 to be the wife and defendant No. 2 to be his daughter. If at all the defendants were the wife and daughter of Nemu Hari Patil, it would have been mentioned in the Will.

18. Keeping aside the Will, which is disputed by the defendants, it is necessary to look into the evidence on record concerning the relationship between the parties. Law in respect of the relationship of the husband and wife is quite settled. It may be noted that the evidence that is required to prove a relationship of husband and wife is basically that of the marriage. The rituals of the marriage



constitute one of the necessary ingredients of proving such relationship. The proof regarding the rituals gets faded as the time lapses. The efflux of time would result in a presumption that there exists a relationship of husband and wife, if such relationship is accepted by the neighbours and the society and that they lived together as husband and wife for quite long time. The standard of evidence that is required to prove the relationship in respect of a marriage which is in the recent past cannot be the same. As it is required when such relationship dates back to several years and several decades. In the case on hand, the plaintiffs are disputing the relationship of Nemu Hari Patil and the defendants after his death and claiming that he had executed a Will in their favour. It is in this background that the evidence that was led by the plaintiffs and defendants needs to be appreciated.

19. Before venturing into the findings by the trial Court as well as the First Appellate Court, it would be



appropriate to consider the documentary evidence which was placed on record by the plaintiffs.

20. Exhibit P1 is the Will allegedly executed by Nemu Hari Patil and as noted supra, it does not mention anything about the defendants. On the contrary, it mentions that he has no wife or children.

21. The next document which reflects upon the such relationship is, the Ration Card which is produced at Exhibit P18. Evidently, Exhibit P18 does not mention the name of the defendant Nos. 1 and 2. But on the contrary, it mentions the name of the plaintiffs.

22. Exhibit P19 is the extract of the Voter List for the year 1983. In this also the name of Nemu Hari Patil is mentioned in respect of House No. 712/1 and it does not contain the name of the defendants. Exhibit P20 is the extract of the Voter List for the year 1993 and it shows that in House No. 1 /256, name of one Ambabai, Utham and Kalpana, (wife of Utham), are mentioned along with one



Siddagouda Peeragouda Patil. In other words, Ambabai is the wife of Siddagouda Peeragouda Patil, aged about 50 years and Siddagouda was aged about 70 years. Utham is the son of Ambabai and Siddagouda; and Kalapana is the wife of Utham.

23. Exhibit P21 happens to be the extract of the Births and Deaths of a Hunnargi Village. In this, it is mentioned that birth of a female child is recorded on 15.05.1973 and father's name is shown as Siddagouda Peeragouda Patil and mother's name is shown as Limbabai. The birth was informed to the concerned authorities by none else than the said Siddagouda. It is also relevant to note that it was the second child born to them and Limbabai was aged about 30 years at that time. It appears that this document has some relevance with reference to the oral testimony, which would be discussed later. The Exhibit P28 shows that defendant No. 1, Limbabai Dattu Shintre, had stood for an election of a Co-operative Society at Hunnaragi. This Model Ballot Paper of the Elections for the



year 1997-1998, do not mention the husband's name of defendant No. 1 to be Nemu Hari Patil, but it mentions the father's name of Limbabai.

24. It is pertinent to note that in the cross-examination of DW1, she has admitted that she had stood for elections and her name is shown as Limbabai in the Model Ballot Paper. Therefore, it can safely be said that defendant No.1 was also known as Limbabai and Limbathai. Exhibit P29 is the Panchayat extract of House No. 54 of Hunnargi and it mentioned the holder's name to be Limbabai daughter of Dattu shintre and it pertains to the year 1995-1996.

25. The next important document is Exhibit P30. In this document, which is a Birth Extract for the year 1965-11, on 28.11.1965, the birth of a child by name Utham was recorded. Name of father is shown as Nemagonda Patil and mother's name is shown as Limbabai aged about 30 years. It also mentioned that it was her second delivery.



26. Coming to the documents produced by the defendants, Exhibit D1 appears to be a Census Report which is in Marathi. In this, name of Balabai is shown as daughter of Nemu Hari Patil. Extract of the school records belonging to defendant No.2, who is also known as Gangutai Patil and her father's name is shown as Namagonda. The date of birth is shown to be 01.07.1949 and that she had appeared for the SSLC examination. Exhibit D3 is the List of the Office Bearers of Mahilamandala Hunnaragi, wherein the name of Limbabai Nemagonda Patil is shown to be one of the Office Bearer. The aspect that she was a member of the Mahilamandala is admitted by DW1.

27. Exhibit D4 happens to be the marriage Invitation Card of defendant No.2, wherein it is stated that Gangutai, alias Indutai was the daughter of Nemagonda Hari Patil and she is the granddaughter of Dattu Nana Shintre. Conspicuously, the name of defendant No. 1 is not mentioned in this invitation card.



28. It is pertinent to note that the document at Exhibit P19, the Voters List shows the age of Nemu Hari Patil to be 73. The voters extract for the year 1993 Exhibit P20 shows the age of Amababai as 50 years in the year 1993. If that is so, the age of the mother of the child born on 15.05.1973 as per Exhibit P21 shown as 30 years and it happens to be the second delivery of the child. Child has to be held to be not that of defendant No.1. Exhibit P30 shows that in November 1965, Limbabai was aged about 30 years and it was her second child, that was born on 28.11.1965. If these two documents, that is Exhibit P30 and Exhibit 21 are compared, it appears that in the year 1973 and in the year 1965 the age of the mother cannot be 30 years and it cannot be second delivery. In other words, the Exhibit P21 and Exhibit P30 are unreliable unless a proper explanation is offered in this regard. However, it is relevant to note that the name of Nemu Hari Patil finds place in the Voters List of the year 1983 pertaining to the house belonging to the plaintiffs. The Voters List at Exhibit P20 in



respect of Siddagouda Peeragouda Patil, Ambabai Siddagouda, Utham Siddaguoda cannot be said to be pertaining to defendant No.1. Obviously, Limbabai was staying and was possessing the house bearing No. 54. But the one mentioned for Siddagouda is 1/256. Thus, from the documentary evidence available on record, which is produced by the plaintiffs, it can safely be said that Nemu Hari Patil was not staying with Limbabai when his name can be found in the Voters List of the house belonging to the plaintiffs. But it doesn't show that Limbabai was not his wife. This takes us to oral testimony of the witnesses.

29. Defendant No.1 deposed before the trial Court as DW1. She states that her parents' place is Hunnargi and she is married to Nemu Hari Patil. She states that the ceremonies were performed and she narrates those ceremonies in detail. She states that after marriage she lived with Nemu Hari Patil for 2 years and out of the wedlock, defendant No. 2 was born. She was born at Hunnargi in the year 1950. She contends that she had



differences with the mother-in-law and therefore, she left the matrimonial home and started staying with her father in her parental house. She states that Nemu Hari Patil was never residing with the plaintiffs and this statement is falsified by the Voters List which has been produced by the plaintiffs.

30. In her examination-in-chief, she also states that she is working as the President of the Mahilamandal Hunnaragi and her name is entered in the Voters List of Hunnaragi Village. In all the records, her name is shown as wife of Nemu Hari Patil. Interestingly, the defendants do not produce any Voters List which shows that her name is mentioned as Limbabai wife of Nemu Hari Patil, despite, she states that her name appears in the Voters List. She states that the villagers had recognised her as a wife of Nemu Hari Patil and in none of the records her name was shown as daughter of Dattu Shintre. Again this aspect is falsified by the Panchayat extract which is at Exhibit P29. She also



denies that she was never married to one Siddagouda of Hunnaragi, Siddu Boje or Doulu Patil of Hunnargi.

31. In the cross examination, which is elaborate, she is not known in the village as daughter of Dattu Shintre. She admits that in an earlier suit filed by the Bank for recovery of the loan, she had appeared and her name was shown as Limbabai Dattu Shintre and the said suit was filed in the year 1994-1995. She also admits Exhibit P29 the house property extract wherein her name is shown as Limbatai Dattu Shintre. She admits the Model Ballot Paper concerning Lakshmi Narayana Milk Diary, Hunnaragi, where she was known as Limbabai Dattu Shintre. She vehemently denies that she had lived with Siddagouda Peeragouda Patil and that she has given birth to a child from him. Therefore, it is clear that the contention of the plaintiffs that she lived as the wife of Siddagouda Peeragouda Patil is not proved. Though she denies the suggestion in the cross examination that Nemu Hari Patil was residing with the plaintiffs and his sister Dhondubai for last 50 years, she says that he was



residing in a separate house and she do not know the panchayat number of the said house. She states that death of Nemu Hari Patil was informed by one Yamunabhai and then she attended the funeral.

32. The testimony of DW2, who is none other than defendant No. 2 is on similar lines. She states that she is also called as Balabai and she was admitted to the school and in the school records, the name of her father was shown as Nemagonda. She states that Nemagonda is none else than Nemu Hari Patil. According to the defendants, the date of birth is shown as 01.07.1949 in the school records. But in fact the date of birth of defendant No.2 is contended to be 21.09.1950. Obviously, the two birth extracts produced by the plaintiffs do not pertain to either the year 1949 or the year 1950.

33. DW3- Yamunabai appears to be the cousin of the said Nemu Hari Patil. Though she states that she is his sister, in the cross-examination it is elicited that she is a



cousin. She has supported the case of the defendants contending that Nemu Hari Patil was married to defendant No. 1 and that the defendant No. 2 was born out of the wedlock of Nemu Hari Patil and the defendant No.1. She states that she was aged 15 years at the time of the marriage of defendant No. 1 and Nemu Hari Patil. Conspicuously, she states that she do not know about the number of brothers in the genitive family of Nemu Hari Patil and she do not know about the genitive father of Nemu Hari Patil and his brothers. She states that genitive mother was one Kashi Bai and that she is not daughter of sister of Kashi Bai. She also states that she is not the daughter of the genitive uncle of Nemu Hari Patil. Therefore, the relationship between Yamunabai and Nemu Hari Patil is not clearly stated by her either in the examination-chief or in the cross-examination and therefore, it is difficult to accept that she had the knowledge about the plaintiffs and knowledge about the relationship of defendant No.1 with Nemu Hari Patil.



34. DW4 happens to be another witness who is aged about 70 years and claims to be present at the marriage of defendant No. 1 and Nemu Hari Patil. He states that the marriage was performed in the year 1948 at Sadalaga. He speaks about the various rituals that were conducted during the marriage and in a cross-examination he states that he do not know how many children defendant No.1 has got and he denies that Utham is the son born to defendant No. 1 from Siddagouda.

35. From the above oral testimonies of the witnesses, it is evident that when the plaintiffs have denied the relationship of defendant No. 1 with Nemu Hari Patil and with certain clarity they have established that Nemu Hari Patil had never recognised defendant Nos. 1 and 2 as wife and daughter. It was the burden of proving that Nemu Hari Patil was unmarried, appears to have been discharged by them. Moreover, it is an admitted fact by defendant No.1 that she resided with Nemu Hari Patil only for 2 years and thereafter, she never resided with him. It is also evident



that defendant No.1 was known as Limbabai daughter of Dattu Shintre and she never proclaimed herself to be the wife of Nemu Hari Patil. Therefore, for years, defendant No.1 had distanced herself from such a relationship. This takes us to a requirement of a clinching evidence to show that defendant No.1 Limbatai had lived with Nemu Hari Patil as a wife at least for few years, during which she had begotten defendant No.2. The discrepancy in the name of the father of the defendant as Nemagonda is clear. Nowhere defendant No. 2 was mentioned to be daughter of Nemu Hari Patil. She was known as daughter of Nemagonda. Except the marriage invitation card, where the name of Nemgonda again is shown and she happens to be the granddaughter of Dattu Shintre, the name of Nemu Hari Patil is not mentioned. The question whether Nemagonda and Nemu Hari Patil are one and the same has not been established by the defendants by any evidence. Nemu Hari Patil and Nemagonda Patil are to be shown to be one and the same person in order to take mileage of the school



records of defendant No.2 and the marriage invitation card. Therefore, from the available evidence on record, the relationship of defendant No.1 and the school records with Nemu Hari Patil appears to be weak and unacceptable. On the part of the plaintiffs, they have made an effort to place on record that Limbabai had lived with one Siddagouda and she had begotten children from them. But the Birth Extracts of the children do not instill confidence in the said proposition.

36. However, the fact that Nemu Hari Patil had not lived with defendant No. 1 has been established by two aspects. One is that the Will executed by Nemu Hari Patil do not mention that defendant No. 1 and defendant No. 2 are the wife and daughter. Secondly, the Voters List and the Ration Card show that Nemu Hari Patil had lived with the plaintiffs in their house. Therefore, the testimony of DW1, is not convincing since she says that in none of the records her name is shown as Limbabai, daughter of Dattu Shintre. But on the contrary several documents are there to show



that she is known as Limbabai daughter of Dattu Shintre. There are several documents in this regard and admissions by defendant No.1 that she is known as Limbabai Dattu Shintre, but not as Limbabai wife of Nemu Hari Patil.

37. Under these circumstances, the trial Court is justified in holding that the relationship of the defendants with Nemu Hari Patil as wife and daughter is not available and therefore, such relationship cannot be accepted. In the result, doubting the relationship of the defendants with Nemu Hari Patil is based on the available material on record and none of the evidence has been ignored by the trial Court as well as the First Appellate Court. In the result, the first substantial question of law has to be held in the negative that there is no error in the finding.

Re. second substantial question of law:

38. The plaintiffs contend that Nemu Hari Patil had executed the Will in favour of the plaintiffs as per Exhibit P1. the property that was standing in the name of Nemu



Hari Patil was belonging to his adoptive family and he had inherited the same. This aspect is not in dispute. The trial Court in Paras 8, 9 and 10 discuss the evidence of PW1 to PW3 in detail and it has analysed the Exhibit P1 also and it comes to the conclusion in paragraph 12 that the evidence of PW2 and PW3 goes to show that PW1 was present at the time of the execution of Exhibit P1, but he had not taken any active participation in execution of the Will. It is worth to note that the trial Court, having come to the conclusion that the relationship has not been proved, the disinheritance of the defendants from the legacy of Nemu Hari Patil cannot be a suspicious circumstance. Moreover, even if it is held that defendant No.1 and defendant No.2 are the wife and daughter of Nemu Hari Patil, it is an admitted fact by DW1 that she was not staying with Nemu Hari Patil for quite long time. Within two years of marriage she had distanced herself away from Nemu Hari Patil and this definitely might have prompted Nemu Hari Patil to bequeath his properties in favour of the plaintiffs.



Therefore, disinheriting defendant Nos. 1 and 2 from the legacy of Nemu Hari Patil cannot be a suspicious circumstance. This aspect has also been considered by the trial Court. The evidence of PW2 and PW3, as analysed by the trial Court, shows that they have stated about the due execution of the Will at Exhibit P1 by Nemu Hari Patil and after he acknowledging the contents of the Will, they have signed the same. It may be noted that Exhibit P1 is a registered Will and there is nothing to indicate that the Will is concocted. The attesting witnesses as well as the scribe of the Will have been examined by the plaintiffs and their testimony is in no way impeached by the plaintiffs.

39. The trial Court, while discussing Issue Nos. 1, 3 and Additional Issue No. 1 notes that there are no such suspicious circumstances surrounding the execution of the Will. The testimony of PW2 shows that he had seen Nemu Hari Patil signing the said Will after acknowledging the contents of it and that was in the presence of another witness to the Will. Therefore, due attestation has been



proved. This finding of the trial Court has been affirmed by the First Appellate Court. Though the judgment of the First Appellate Court is cryptic and short, it cannot be said that it is incorrect. Both the Courts below have considered the necessary ingredients of Section 63 of the Indian Succession Act and Section 68 of the Indian Evidence Act and have concurrently found that the Will has been proved and there are no suspicious circumstances. Even if we examine the testimony of PW1 to PW3 in the light of the tests laid down by this Court in the case of **Sri J.T. Surappa & Another Vs. Sri Satchidhanandendra Saraswathi Swamiji Public Charitable Trust & Others** referred supra, there is nothing which would show that the Will was either concocted, it was without the consent and knowledge of the testator, or that it was obtained under suspicious circumstances. Mere presence of the plaintiffs at the time of execution of the Will cannot be a suspicious circumstance when it is clearly stated that PW1 did not know for what purpose Nemu Hari Patil had called them. It



is worth to note that under these circumstances, the second substantial question of law concerning the Will has to be held in favour of the plaintiffs. Obviously, the Courts below have not committed any error in appreciating the evidence on the record. Hence, the second substantial question of law is also held in the negative.

40. In the result, the appeal is bereft of any merits and it is dismissed.

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

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List No.: 19 Sl No.: 6