



IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 3RD DAY OF JULY, 2026

BEFORE

THE HON'BLE MR. JUSTICE V SRISHANANDA

REGULAR SECOND APPEAL NO. 712 OF 2018 (DEC/INJ)

BETWEEN:

SRI BASAPPA S/O CHANNABASAPPA
SINCE DECEASED BY LRS

1A. SMT. SHAKUNTHALA
W/O. BASAPPA
AGED ABOUT 50 YEARS
R/AT DEVAPURA VILLAGE
HOSADURGA TALUK
CHITRADURGA DISTRICT - 577 527

1B. SRI. MANJUNATH D.H.
S/O. LATE BASAPPA
AGED ABOUT 37 YEARS
R/AT DEVAPURA VILLAGE
HOADURGA TALUK
CHITRADURGA - 577 527

1C. SMT. ASHA
D/O. LATE BASAPPA
W/O. S. PRAKASH
AGED ABOUT 36 YEARS
R/AT SASALU SASALU POST
CHIKKANAYAKANAHALLI TALUK
TUMKURU DISTRICT - 572 214

...APPELLANTS

(BY SRI. MANU SHANKAR S.S., ADVOCATE FOR A1(A TO C))

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signed by
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Location:
HIGH
COURT OF
KARNATAKA



AND:

SRI HALASIDDAPPA
SINCE DEAD BY LRS

1. SMT SIDDARAMAKKA
W/O LATE HALASIDDAPPA
AGED ABOUT 67 YEARS
2. SRI SHEKARAPPA
S/O HALAIDDAPPA
AGED ABOUT 44 YEARS

1ST AND 2ND RESPONDENT ARE
R/AT DEVAPURA VILLAGE
MADADAKERE HOBLI
HOSADURGA TALUK
CHITRADURGA DISTRICT - 577 527

3. SMT LATHAMMA
W/O MALLESHAPPA
D/O HALASIDAPPA
AGED ABOUT 42 YEARS
R/AT MUGULUR VILLAGE & POST
KUNIGAL TALUK
TUMKUR DISTRICT - 572 130
4. SMT ANNAPURNAMMA
W/O JAYAPPA
AGED ABOUT 40 YEARS
D/O HALASIDDAPPA
R/A DEVAPURA VILLAGE
MADADAKERE HOBLI
HOSADURGA TALUK
CHITRADURGA DISTRICT
PIN-577527



5. SMT SHYLAMMA
W/O PRAKASHAPPA
AGED ABOUT 40 YEARS
R/A CHIKKABALLEKERE VILLAGE
KADUR TALUK
CHIKKAMAGALURU DISTRICT
PIN - 577 548

...RESPONDENTS

(BY SRI. GURUMURTHY M., ADVOCATE FOR R1-R5)

THIS RSA IS FILED U/S. 100 OF CPC., 1908 AGAINST THE JUDGEMENT AND DECREE DATED 13.12.2017 PASSED IN R.A.NO.75/2016 [OLD NO.29/2013] ON THE FILE OF THE SENIOR CIVIL JUDGE AND JMFC., HOSADURGA DISMISSING THE APPEAL AND CONFIRMING THE JUDGEMENT AND DECREE DATED 30.08.2012 PASSED IN OS.NO.246/2006 ON THE FILE OF THE ADDL.CIVIL JUDGE AND JMFC., HOSADURGA.

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

CORAM: HON'BLE MR. JUSTICE V SRISHANANDA

ORAL JUDGMENT

1. Heard Sri. Manu Shankar S.S., learned counsel for the legal representatives of the deceased appellant and Sri. Gurumurthy M., learned counsel counsel for respondents No.1 to 5.



2. Unsuccessful plaintiff is the appellant in the second appeal challenging the dismissal of the suit in OS No.246/2006 confirmed in RA No.75/2016.

3. Facts of the case in brief are as under:

3.1 Common prepositus of the parties is Sri. Kotarappa, who had three sons namely Halappa, Nanjappa and Channabasappa. Among them, Halappa had two sons namely Halasiddappa and Channabasappa; Channabasappa had a son by name Basappa. Nanjappa said to have died issueless. Kotarappa had totally possessed 8 acres 10 guntas of land in Devapura Village, bearing Sy.No.No.216/4.

3.2 It is further contented that there was a division of the properties by Jubani Palipatti (Oral partition). Father of the defendants got 2 acres 18 guntas of land, Nanjappa got 3-00 acres of land and so also father of the plaintiff had got 2 acres 38 guntas of land. But katha of all the properties stood in the name of Nanjappa.



3.3 Father of the defendants sold properties mentioned in the written statement for a valuable consideration of Rs.2,000/- whereas plaintiff is in possession and enjoyment of the property that has been allotted to him and Nanjappa.

3.4 Tahsildar, Hosadurga based on the application filed by the plaintiff got mutated the revenue entries in the name of plaintiff on 04.07.1988. It is further contented that, Nanjappa having died issueless, had executed a registered Will in favour of the plaintiff on 14.06.1982. After death of Nanjappa, plaintiff became the owner of the property by virtue of the registered Will and she approached the Tahsildar for mutation of the revenue entries.

3.5 At that juncture, first defendant attempted to interfere with the peaceful possession and enjoyment of the suit property taking advantage of the fact that his name was also found in the revenue records.



3.6 First defendant colluding with the revenue officials, got mutated his name in the revenue records in respect of the suit property which necessitated the plaintiff to file the suit for declaration and consequential reliefs.

3.7 Pursuant to the suit summons, defendants entered appearance and resisted the plaint averments by filing detailed written statement denying the execution of the Will by Nanjappa in favour of the plaintiff and maintained that Nanjappa having died intestate, plaintiff and defendants being the only legal representatives, are entitled for the property left behind by Nanjappa.

3.8 Further, it is the defendant who got the ownership over the suit property because it is defendant who was looking after Nanjappa.

3.9 Further, based on the rival contentions, learned Trial Judge raised necessary issues and recorded the evidence of the parties and noted that Will marked at Exhibit P9 though registered, is not proved by placing



necessary material evidence on record in the absence of examining any of the attesting witnesses. As such, dismissed the suit of the plaintiff.

3.10 Being aggrieved by the same, plaintiff filed an appeal before the First Appellate Court in RA No.75/2016.

3.11 Learned Judge in the First Appellate Court, after securing the records, heard the arguments of the parties, and on re-appreciation of the material on record, that the plaintiff failed to prove the Will. It is also noted by the First Appellate Court that plaintiff being present at the time of execution of the registered Will by Nanjappa in his favour., the Will is surrounded by suspicious circumstances as plaintiff is the beneficiary under the Will and also denying the share to the other sharers and dismissed the appeal.

4. Being further aggrieved by same, plaintiff is before this Court in the second appeal on following grounds and substantial questions of law:

GROUND:



- *The courts below erred in dismissing the suit of the appellant.*
- *The courts below failed appreciate the pleading, documents produced and the evidence in proper perception which result in grave injury to the appellant.*
- *The court below erred to appreciate the oral and by the documentary evidence placed plaintiff/appellant and erred in appreciating the oral evidence of PW-1 to 4 and documents at Ex P-1 to p-9. The court below failed to appreciate that Ex-P9 registered will executed by Nanjappa in favour of plaintiff on 14/06/1982 in respect of suit schedule property. After the death of Nanjappa the plaintiff is in possession and enjoyment of the suit schedule property on supporting of Ex.P-9.*
- *The court below failed to appreciate that plaintiff examined PW-2 who is son of deed writer of the will Ex-P-7, he deposed that deceased Nanjappa has bequeathed his property in favour of the plaintiff through a registered will, he examined the one of the attesting witness, a scribe was dead, since plaintiff/appellant examined his son PW-2. The Pw-2 has identified the signature and thumb impression of the witness and thumb impression of deceased Nanjappa. The court below not consider the deposition of PW-2 and passed impugned judgment and decree.*



- *The court below failed to appreciate that the evidence of PW-4, he is the consenting witness of Ex-P-9 will. He deposing that at the time of execution of the will PW-4 and his father is present, both are put the signature as a witness. He identification of thumb impression of his father Patel Kariyappa and deceased Nanjappa. But the court below came to conclusion that "the evidence of PW-2 is not helpful to find out Nanjappa is owner of the suit schedule properties".*
- *The plaintiff himself examined as PW-1, he deposed in his examination in chief that the deceased Nanjappa is the owner of the suit schedule properties, said property was acquired by Nanjappa through a Jubani palu patti. But in cross examination of PW-1 admitted that he had not produced any documents to show that Nanjappa is the owner of the suit schedule properties. It is submitted that the defendant is admitted that the suit schedule property is allotted to Nanjappa by virtue of Jubani Palu Patti. Hence the Pw-1 as not produce the any documents regarding the owner ship of the suit schedule properties. But the court below wrongly came to conclusion that the issue No. 1 is Negative.*
- *The court below failed to appreciate that the documents produced by the PW-1 RTCs as per Ex. P-1 to 6 pertaining to suit schedule survey number; mutation register extract as per Ex.p7 and 8. Perusal of the above records it is seen that the suit sy. No. 216/4 totally measuring 8 acres 10 guntas including 4 acres kharab stood in the name of*



Nanjappa S/o Kotrappa. By virtue of Jubini palu patti in the year 1981-82 it appears the name of said Nanjappa was rounded and name of Halasiddappa S/o Halappa to the extent of 3 acres came to be inserted, further the name of Channabasappa S/o Kotrappa and Basappa S/o Channabasappa came to be entered. The names Nanjappa, Basapp, Halusiddappa, Channabasapp and Marulasiddappa court also be seen in the subsequent RTCs. Mutation register extracts would show that Sy. No. 216/4p measuring 3 acres appears to have been mutated in the name of the defendant as per M.R. 16/81-82 and the name of the plaintiff/appellant appears to have been mutated in respect of suit schedule property as per IHC 2/88-89. The court below failed to consider the documents produced by the plaintiff/appellant as per Ex-P-1 to P-8 and wrongly conclusion that the issue No. 1 is negative.

- *The court below failed to appreciate that the defendant/respondents clearly admitted that the Kotrappa had acquired land measuring 8 acres 10 guntas including 4 guntas of kharab in Sy. No. 216/4. After his demise Katha came to be changed in the name of Nanjappa as per IHC No. 51/38-39 dated 30/09/1938 and said property continued to be in the joint possession of sons of Kotrappa i.e., Halappa, Nanjappa and Channabasappa. They go the joint family properties divided in a oral partition before 1953; in the said partition Sy. No. 216/4 measuring 8 acres 6 guntas was divided in to six strips. As per oral partition father of defendant got his share 3*



acres; Nanjappa got to his share 2 acres 18 guntas and Channabasappa father of plaintiff got to his share 2 acres 28 guntas. The plaintiff/appellant assertion is that under a partition of their family deceased Nanjappa was got property of 2nd and 4th part from the western side. It is disputed fact in between the plaintiff and defendant. In the cross examination pw-1 admitted that the boundaries mentioned in Exs.P-5 & 6 were correct. The court below only on the basis of Ex.D-1 rough sketch produce by the Defendant came to be conclusion that the boundaries mentioned in the sale deed along with will deed, said Nanjappa has got properties from eastern side, 2nd and 4th one. It is submitted that Ex.D-1 rough sketch is not an authenticated document, it prepared by the defendant, hence the Ex.D-1 is not a proper documents to show the boundaries.

- *The court below failed to appreciate that the plaintiff/appellant produced original registered will Ex.P-9; which shows that deceased Nanjappa bequeathed the properties described in the will in favour of plaintiff. As referred to the requirements of proof of due execution of will one of attesting witnesses as mandated under section 68 of Indian evidence act is must. Admittedly PW-2 is stated to be son of scribe of the will-Ex.P-9, has identified the hand writing and signature of his father by name Shatrugnarao and plaintiff/appellant examined another witness PW-4 is attestor to the will. Hence, the plaintiff/complained the mandatory requirement of Section 68 of Indian evidence act.*



- *The trial court was not right in dismissing the suit solely based upon the Ex.D-1 rough sketch.*
- *The orders of the courts below are other wise opposed to law, facts and circumstances of the case.*
- *For the above reasons and on the above grounds and such others as may be urged and advanced at the time of the final hearing of the Appeal*

SUBSTANTIAL QUESTIONS OF LAW :

- i) Whether the will (Ex.P-9) produced by the appellant is sufficient ground to prove the possession and enjoyment of the suit schedule property by virtue of Ex. P-9?*
- ii) Whether Ex.P1 to P8 are sufficient to hold that, the appellant is in peaceful possession of the suit schedule property?*
- iii) Whether the Judgment and decree passed by the first appellate court is justifiable or not?*

5. Sri. Manu Shankar, learned counsel for the appellant reiterating the grounds urged in the appeal memorandum would contend that both the Courts failed to note the oral evidence of PW1 to PW4 and there was no



necessity for the examination of the attesting witnesses as they were not available at the time of leading the evidence.

6. Therefore, the oral evidence of PW2 to PW4 ought to have been considered by the learned Trial Judge while upholding the registered Will and thus sought for admitting the appeal on the aforesaid substantial questions of law.

7. Per contra, learned counsel for the respondents supports the impugned judgment.

8. Having heard the arguments of both sides, this Court perused the material law on record meticulously.

9. On such perusal of the material law on record, there is no dispute that the property was owned by the common prepositus namely Kotrappa, who had three children namely father of the plaintiff, father of the defendants and Nanjappa. There was a Zubani partition which is evidenced by placing necessary material on record.



10. The contents of the Will also would establish that there was a Jubani partition whereby Nanjappa got 3-00 acres of the property and other two brothers got 2-00 acres and odd each.

11. It is found from the records that the defendants' father had sold the property that has fallen to his share for a sum of Rs.2,000/-. However the property left behind by Nanjappa was the subject matter of the suit property.

12. According to the plaintiff, Nanjappa had executed a registered Will vide Exhibit P9 in favour of the plaintiff and thereby he became the owner of the property which was denied by the defendants.

13. Therefore the burden of proving that Nanjappa executed a valid Will in favour of the plaintiff was on the plaintiff as he being the propounder of the Will.

14. In this regard, cross-examination of plaintiff would go to show that one of the attesting witnesses



namely Sri. D.C. Mallikarjuna was alive. But For the reasons best known to the plaintiff, he did not choose to examine him as a witness to prove the will marked at Exhibit P9.

15. Likewise, the answer elicited in the cross-examination to the effect that plaintiff was present when Nanjappa executed the Will is a circumstance that went against the plaintiff inasmuch as presence of beneficiary at the time of execution of the Will would raise a reasonable doubt that he had influenced the mind of the testator in executing the Will in a particular manner.

16. Therefore, learned Trial Judge following the settled principles of law, noted that the proof of Will is not established by the plaintiff.

17. Learned Judge in the First Appellate Court, after re-appreciation of the material evidence on record, did not find any perversity in the finding recorded by the Trial Judge in rejecting the claim of the plaintiff based on the



registered Will said to have been executed by Nanjappa in favour of the plaintiff.

18. Thus, when two Courts have factually held that the Will is not proved, this Court does not find any merit in any one of the substantial questions of law so as to admit the appeal for further consideration.

19. Accordingly, following order:

ORDER

- (i) Admission declined.
- (ii) Regular Second Appeal is ***dismissed***.

**Sd/-
(V SRISHANANDA)
JUDGE**

SNC
List No.: 1 Sl No.: 41