

Reserved on : 10.06.2026

Pronounced on : 20.08.2026

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 20TH DAY OF AUGUST, 2026

PRESENT

THE HON'BLE MR. JUSTICE D K SINGH

AND

THE HON'BLE MR. JUSTICE T.M.NADAF

REGULAR FIRST APPEAL NO. 294 OF 2014 (PAR)

BETWEEN:

1. SRI. RANGANATHA REDDY,
S/O LATE RAMAREDDY,
AGED ABOUT 70 YEARS,
R/AT NO. 103, 14TH CROSS,
7TH MAIN, WILSON GARDEN,
BANGALORE - 560 027.
2. VENUGOPAL REDDY,
AGED ABOUT 57 YEARS,
S/O LATE R. RAMAREDDY,
NOW AT NO 18,
1ST MAIN, DOLLARS COLONY,
J.P. NAGAR, 4TH PHASE,
BANGALORE - 560 029.

...APPELLANTS

(BY SRI. RANGANATH REDDY S., ADVOCATE FOR A1,
SRI. RAHUL S. REDDY, ADVOCATE FOR A2)

AND:

1. SRI R.KESHAVAREDDY,
S/O LATE R.RAMAREDDY,
AGED ABOUT 63 YEARS,
R/AT NO.34/1,
HARAPANAHALLI VILLAGE,
JIGANI HOBLI & POST,
ANEKAL TALUK,
BANGALORE DISTRICT - 560 105.

2. SMT. SATHYAVATHI,
W/O LATE VISHWANATHA REDDY,
D/O LATE RAMAREDDY,
AGED ABOUT 51 YEARS,
R/AT NO 2/71, RAMAMANOR APARTMENT,
OPP: POLICE STATION,
SHANKARMUTT ROAD,
SHANKARPURAM,
BANGALORE - 560 004.
3. PUTTAPPA REDDY,
S/O LATE RAMAREDDY,
AGED ABOUT 64 YEARS,
R/AT NO.153, 3RD MAIN ROAD,
4TH CROSS, MICO LAYOUT,
B.T.M LAYOUT, 2ND STAGE,
BANGALORE - 560 076.
4. PRASAD REDDY,
S/O LATE R. RAMAREDDY,
AGED ABOUT 59 YEARS,
R/AT NO. 32 A, 2ND CROSS,
R.B.I COLONY, JAYANAGAR,
3RD BLOCK EAST,
BANGALORE.
5. RAVINDRANATH REDDY,
S/O LATE R. RAMAREDDY,
AGED ABOUT 55 YEARS,
R/AT NO. 38, 14TH CROSS,
N.H. PALAYA, B.T.M LAYOUT,
BANGALORE - 560 076.
6. SRI. IMTIYAR,
DADAPER TEA HOUSE,
7. IRFAN BHAI,
S.V.R TRAVELS,
8. SRI. SHOATH
H.G.L TRAVELS,

9. BABU RAO,
N.A.S TRAVELS,
10. R . KRISHNEGOWDE,
THIRUMALA WINES,
11. SRI. AZEEZ PETTY SHOP,
12. SRI. ROHITH REDDY,
RESTAURANT ON 2ND
AND 3RD FLOOR,

(NOTE: THE RESPONDENT NO. 6 TO 12
ARE FOR PARTIES/TENANTS RUNNING
THEIR BUSINESS IN SOME SUIT
SCHEDULE PROPERTIES.)

...RESPONDENTS

(BY SRI. RAJESH MAHALE SR. ADVCAOTE A/W
SRI. BRYEU STAIN BERG, ADVOCATE FOR
SRI. JOSE SEBASTIAN, ADVOCATE FOR R1,
SRI. H.S. GAURAV, ADVOCATE FOR R2,
SRI. B.R. HARI KRISHNA, ADVOCATE FOR R3,
SRI. VISHNU HEGDE, ADVOCATE FOR R4 AND R5,
VIDE ORDER DATED 05.09.2014 NOTICE TO R6 TO R12
ARE DISPENSED WITH)

THIS RFA IS FILED UNDER SECTION 96 OF CPC., 1908,
AGAINST THE JUDGMENT AND DECREE DATED:09.12.2013
PASSED IN O.S.NO.3555/2004 ON THE FILE OF THE I ADDL.
CITY CIVIL & SESSIONS JUDGE, BANGALORE (CCH-2), PARTLY
DECREEING THE SUIT FOR PARTITION, SEPARATE
POSSESSION, DECLARATION AND INJUNCTION. PARTLY
DECREEING THE COUNTER CLAIM OF DEFENDANT NO.1(a)
THEREIN.

THIS APPEAL HAVING BEEN HEARD AND RESERVED FOR JUDGMENT, COMING ON FOR PRONOUNCEMENT THIS DAY, **HON'BLE MR. JUSTICE T.M. NADAF** PRONOUNCED THE FOLLOWING:

CORAM: HON'BLE MR. JUSTICE D K SINGH
and
HON'BLE MR. JUSTICE T.M.NADAF

CAV JUDGMENT

(PER: HON'BLE MR. JUSTICE T.M.NADAF)

This appeal by defendant Nos.2 and 5, assailing the Judgment and decree dated 09.12.2013, passed by the I Addl. City Civil & Sessions Judge, Bangalore City (CCH-2)¹, in O.S.No.3555/2004.

2. The Trial Court under the impugned Judgment and Decree, partly decreed the suit. The operative portion of the Judgment, reads as under:

"The suit of the plaintiff is partly decreed with costs. The plaintiff is entitled to partition and separate possession of his 1/7th share in the suit schedule A, C & Sy.No.33, 37 of suit schedule -D properties and land measuring 30guntas in Sy.No.32 of Harapanahalli Village.

¹ the Trial Court, for short

It is declared that the partition deed dated 6.4.2000 entered into between defendants 1 to 6 in respect of the suit schedule properties is not binding on the plaintiff.

It is declared that the Will dated 23.2.2006 executed by the defendant No.1 Smt.Nanjamma in favour of defendant Nos.2 to 6 is not valid in respect of the suit schedule properties.

The defendants 2 to 6 are restrained from alienating or encumbering the suit schedule A,C & D properties till drawing up of final decree and division of the properties by metes and bounds.

The counter claim of defendant No.1(a) is partly decreed.

The defendant No.1(a) is entitled to partition and separate possession of her 1/7th share in item Nos.1, 2, 4, 8 to 13, 20 to 22, 38, 40, 42 and Sy.No.33 described in item No.40 of written statement schedule properties.

It is declared that the registered partition deed dated 6.4.2000 entered into between the defendants 1 to 6 is not binding on the defendant No.1(a) in respect of the written statement schedule properties.

The defendants 2 to 6 are also entitled to partition and separate possession of 1/7th share each in the said properties.

Draw preliminary decree accordingly."

3. As stated afore, only defendant Nos.2 and 5 are in appeal.

4. The parties are referred to as per their ranking before the Trial Court.

5. Before dwelling upon the facts of the case, it is apt to mention certain developments taken place during the pendency of the appeal.

5.1 This Court after hearing the parties to the appeal, on 23.02.2026, passed the following order:

"1. This appeal concerns only with the 'D' schedule properties of the Judgment and decree dated 09.12.2013 passed O.S.No.3555 of 2004 by the 1st Additional City Civil and Sessions Judge, Bengaluru.

2. The 'D' schedule properties are the lands in three survey numbers, i.e., Survey Nos.32, 33 and 37 situated at Harapanahalli Village, Jigani Hobli, Anekal Taluk. Except Respondent No.1 who was the plaintiff in the suit, other defendants have executed the registered relinquishment deeds in respect of the 'D' schedule properties in favour of the second appellant who was the fifth defendant in the suit before the learned Trial Court.

3. During the course of hearing, the second appellant has offered Rs.6,00,00,000/- (Rupees Six Crores only) to be paid to the first respondent in six months, in three equal bi-monthly instalments. The first instalment is to be paid on or before 05th March, 2026; the second instalment would be paid on or before 05th May, 2026 and the third instalment would be paid on or

before 05th July, 2026. On payment of this amount, the first respondent shall execute relinquishment deed of his shares in favour of the appellant No.2 in the 'D' schedule properties, i.e., Survey Nos.32, 33 and 37.

4. Considering the aforesaid submissions, we adjourn the hearing of this appeal for payment of Rs.2,00,00,000/- (Rupees Two Crores only) by the second appellant to the first respondent to 05th March, 2026.

5. The second appellant does not have any dispute so far other properties are concerned. His submissions are confined only in respect of the 'D' schedule properties.

6. So far as the first appellant is concerned, he is claiming his exclusive ownership on the basis of the Will allegedly executed by late mother in respect of 'A' and 'C' schedule properties. The only question which needs to be decided is whether the Will is proved, in accordance with the law, in the Court or not, for which, we would hear the arguments of the first appellant and the other respondents.

7. Re-list this appeal on 05th March, 2026."

5.2 Thereafter, the appeal was listed on 12.03.2026. On 12.03.2026, this Court passed the following order:

"On the last day of hearing i.e., on 23.02.2026, this Court passed the following order:

"1. This appeal concerns only with the 'D' schedule properties of the Judgment and decree dated 09.12.2013 passed O.S.No.3555 of 2004 by the 1st Additional City Civil and Sessions Judge, Bengaluru.

2. The 'D' schedule properties are the lands in three survey numbers, i.e., Survey Nos.32, 33 and 37 situated at Harapanahalli Village, Jigani Hobli, Anekal Taluk. Except Respondent No.1 who was the plaintiff in the suit, other defendants have executed the registered relinquishment deeds in respect of the 'D' schedule properties in favour of the second appellant who was the fifth defendant in the suit before the learned Trial Court.

3. During the course of hearing, the second appellant has offered Rs.6,00,00,000/- (Rupees Six Crores only) to be paid to the first respondent in six months, in three equal bi-monthly instalments. The first instalment is to be paid on or before 05th March, 2026; the second instalment would be paid on or before 05th May, 2026 and the third instalment would be paid on or before 05th July, 2026. On payment of this amount, the first respondent shall execute relinquishment deed of his shares in favour of the appellant No.2 in the 'D' schedule properties, i.e., Survey Nos.32, 33 and 37.

4. Considering the aforesaid submissions, we adjourn the hearing of this appeal for payment of Rs.2,00,00,000/- (Rupees Two Crores only) by the second appellant to the first respondent to 05th March, 2026.

5. The second appellant does not have any dispute so far other properties are concerned. His submissions are confined only in respect of the 'D' schedule properties.

6. So far as the first appellant is concerned, he is claiming his exclusive ownership on the basis of the Will allegedly executed by late mother in respect of 'A' and 'C' schedule properties. The only question which needs to be

decided is whether the Will is proved, in accordance with the law, in the Court or not, for which, we would hear the arguments of the first appellant and the other respondents.

7. Re-list this appeal on 05th March, 2026."

In compliance of the aforesaid order dated 23.02.2026, the appellant has handed over a bank draft bearing No.001425 dated 03.03.2026 drawn at HDFC Bank in favour of Keshava Reddy.R, for a sum of Rs.1,98,00,000/- (Rupees One Crore Ninety Eight Lakhs only) after deducting 1% TDS. The said bank draft has been accepted by the learned counsel for the respondent No.1.

The respondent No.1 undertakes that he will execute registered relinquish deed for himself and all his family members who may have any claim in respect of the 'D' schedule properties in favour of the appellant.

In view thereof we issue a mandatory injunction to the appellant as well as respondent No.1 to comply with the order dated 23.02.2026.

Any violation of the order would result with serious consequences. With the aforesaid direction, we dispose of the present appeal of the appellant No.2.

So far as appellant No.1 is concerned, we direct the parties to remain present before the National Lok Adalat to be held on 14.03.2026 at 10.30 p.m. before Hon'ble TMNJ."

5.3 Though the parties appeared in the National Lok-Adalat scheduled on 14.03.2026, as there was no

settlement arrived between the parties, the matter was ordered to be listed before the Court on 25.03.2026.

5.4 Lastly, the matter was listed on 10.06.2026 and this Court having heard both the parties, reserved the matter for judgment.

5.5 All the parties in unison submitted that the issue with regard to suit schedule properties except 'A' schedule property has already been settled between them. In that view of the matter, only *lis* pending in this appeal is with respect to 'A' schedule property, which according to defendant No.2 has been bequeathed in his favor under Will dated 23.02.2026 by Testator Nanjamma. Under the Will, several properties bequeathed in favor of defendant Nos.2 to 6, including 'A' schedule property in favor of defendant No.2. Now in view of submission made by the parties that *lis* having been settled in respect of all other properties, the only *lis* pending in this appeal is with respect to 'A' schedule property. Accordingly, this

Court proceed to state the facts which are relevant only in respect of 'A' schedule property in order to save the valuable time of the Court.

6. Facts germane to decide the present *lis* are as under:

6.1 The plaintiff claims that he is the son of Late Rama Reddy and Nanjamma. Apart from him, there are five sons and one daughter i.e., Sathyavathi - defendant No.1(a), were born in the wedlock. In a Family Partition which was reduced into writing in the year 1974, certain properties were allotted to the share of plaintiff Keshavareddy. Thereafter, not satisfied with the partition effected in his favor in the year 1974, Keshavareddy filed a suit in O.S.No.286/1988 against his father, mother and other brothers, claimant that the said partition was unequal and sought for demarcating his share of properties at one place in the suit schedule properties shown therein i.e., in the schedule to O.S.No.286/1988.

6.2 The suit, due to intervention of well-wishers, to put a quietus to the dispute between the parties, lasted in compromise, whereby in lieu of properties allotted under the Partition Deed of 1974, the plaintiff Keshavareddy was allotted several other properties and he was put in possession of the properties stating that he has no right, title or interest in respect of other family properties, left out in the Compromise Deed. In respect of schedule 'A', 'B' and 'C' of suit schedule properties, the same were allotted exclusively to the share of Late Rama Reddy and Nanjamma. The averments stated in the Compromise Petition, which are in regional language, reads as under:

"ಬೆಂಗಳೂರು ಸಿಟಿ ವಿಲ್ಸನ್ ಗಾರ್ಡನ್ 14ನೇ ಕ್ರಾಸ್‌ನಲ್ಲಿರುವ
ಕಾರ್ಪೊರೇಷನ್ ನಂ:4 ನಂಬರು ಮನೆ ಮತ್ತು ಸ್ಟೇಟ್ ನಂಬರು:14:1,
ಹಳೇ ನಂಬರು ಡಿ. ಅನೇಡ್ರಾ ಕ್ರಾಸ್‌ರೋಡ್, ಶಾಂತಿನಗರ, ಬೆಂಗಳೂರು
ಸಹ 1ನೇ ಮತ್ತು 2ನೇ ಪ್ರತಿವಾದಿಗಳಿಗೆ ಸೇರಿದ್ದು, ಈ ಮೇಲ್ಕಂಡ ಎರಡು
ಆಸ್ತಿಗಳಿಗೆ 1ನೇ ಮತ್ತು 2ನೇ ಪ್ರತಿವಾದಿಗಳೇ ಮಾಲಿಕರು ಮತ್ತು
ಹಕ್ಕುದಾರರು ಅವರು ತಮಗೆ ಬೇಕಾದರೆ, ಅವಶ್ಯ ಬಿದ್ದಾಗ ಮೇಲ್ಕಂಡ
ಮೇಲ್ಕಂಡ ಎರಡು ಆಸ್ತಿಗಳನ್ನು ಮಾರಲೂ ಸಹ ಅಧಿಕಾರವಿದೆ. ಇದರ
ವಿನಹ ಬೇರೆ ಯಾರಿಗೂ ಅಂದರೆ ವಾದಿಯಾಗಲೀ, ಅಥವಾ

ಪ್ರತಿವಾದಿಗಳಾದ 3 ರಿಂದ 7ನೇಯವರಿಗಾಗಲಿ ಮೇಲ್ಕಂಡ ಮನೆ ಮತ್ತು ಸೈಟುಗಳಲ್ಲಿ ಯಾವ ತರಹದ ಅಧಿಕಾರ ಹಕ್ಕು ಸ್ವಾಧೀನ ಇರುವುದಿಲ್ಲ. ಪ್ರತಿವಾದಿಗಳಾದ 1ನೇ ಮತ್ತು 2ನೇ ಯವರ ನಂತರ ಮೇಲ್ಕಂಡ ಮನೆ ಮತ್ತು ಸೈಟು ಮಾರದೇ ಅಥವಾ "ವಿಲ್" ಮಾಡದೇ ಉಳಿದಿದ್ದರೆ ಆ ಆಸ್ತಿಗಳಿಗೆ ವಾದಿ ಮತ್ತು 3 ರಿಂದ 7 ಪ್ರತಿವಾದಿಗಳು ಸೈಟು, ಕಟ್ಟಡವನ್ನು ಸಮಭಾಗವಾಗಿ ಹಂಚಿಕೊಳ್ಳತಕ್ಕದ್ದು."

(in vernacular, as it is in original compromise)

"The Corporation house bearing No.4, situated at 14th Cross, Wilson Garden, Bangalore City, and site No.14/1, old No.D. Andrew Cross Road, Shantinagar, Bangalore, belong to defendants 1 and 2.

The above two properties shall belong exclusively to Defendants 1 and 2, who shall be the absolute owners and holders of rights over them. They shall have full authority to sell the said two properties whenever they deem it necessary or desirable. Except for them, no one else - neither the plaintiff nor Defendants 3 to 7 - shall have any right, title, interest or possession over the said house and site.

The house and site belonging to Defendant No.1, Sri.R.Rama Reddy, and Defendant No.2, Smt.Nanjamma, shall, after their lifetime, the plaintiff or defendants 3 to 7 if otherwise not disposed of under a Conveyance or Will are entitled to equal share in site & building."

(English translation, as provided by learned counsel for appellant No.2)

- 6.3 Thereafter, it appears that there was a partition again in the year 2000 in respect of family properties, which were scheduled in the present suit between defendant Nos.2 to 6, excluding the plaintiff. In that view of the matter, the plaintiff filed the suit seeking partition of suit schedule properties, wherein schedule 'A' property was bequeathed in favor of defendant No.2 is also one of the property and sought 1/6th share in the said properties.
- 6.4 After service of summons, the defendants appeared and filed their respective written statement. In view of restriction of this appeal only with respect to schedule 'A' property, which exclusively claimed by defendant No.2, the facts are constrained only with respect to written statement filed by defendant No.2.
- 6.5 Defendant No.2 in his written statement, denied the plaint averments stating that the plaintiff though has taken an exception to the partition of 2000, has admitted the partition in the subsequent documents, wherein he has attested the Sale Deeds executed in

favor of third party purchasers as a consenting witness. This clearly shows that he is aware of the Partition of the year 2000. Further, defendant No.2 has asserted his right to the exclusivity over schedule 'A' property i.e., residential site and a residential house thereon at Wilson Garden, Bengaluru, on the basis of Will executed by his mother on 23.02.2006 registered before the concerned Sub-Registrar and sought to dismiss the suit.

6.6 The Trial Court after completion of pleadings, framed Issues. In view of restriction of this appeal only with respect to schedule 'A' property, only Issue Nos.1, 3 and 4 are extracted, which are as under:

1. *Whether the plaintiff proves that suit schedule A, C & D properties were allotted to the share of Late Ram Reddy and defendant No.1 in the compromise decree passed in O.S.No.286/1988?*
3. *Whether the plaintiff proves that on the death of Ram Reddy and defendant No.1, plaintiff and defendants 2 to 6 shall share the properties equally as per the terms of compromise decree?*

4. *Whether defendant No.2 proves that deceased defendant No.1 bequeathed properties in favour of defendants 2 to 6 under Will dated 23.02.2006 and it is valid?*

6.7 The Trial Court answered Issue Nos.1 and 3 in the Affirmative and Issue No.4 in the Negative and proceeded to partly decree the suit. The Trial Court held that in view of compromise decree, the properties scheduled as 'A', 'B' and 'C' were allotted exclusively to Late Rama Reddy and defendant No.1 Nanjamma, with right to alienate the properties and after them, all the plaintiff and defendants therein are entitled for equal share in the properties, if the properties are otherwise not disposed of either by way of conveyance or Will.

6.8 The Trial Court has held that after the demise of Rama Reddy, Nanjamma has not exclusive right over the property, but has only half share in the properties and the plaintiff and other sons along with defendant No.1 are entitled to the half share in the property left by Late Rama Reddy. In that view of the

matter, Nanjamma lacks exclusive right to bequeath entire properties in favor of defendant Nos.2 to 6 along with other properties under the Will, as she was not absolute owner of the properties stated therein, but she was having only half share in the property.

6.9 That apart, the Trial Court was of the opinion that the Will was said to have been executed and registered on 23.02.2006, between 11:45 am to 12:15 pm, suffer from suspicious circumstances, inasmuch as Nanjamma was admitted to Mallige Hospital for treatment on the very same day and was an in-patient for three days. In that view of the matter, the Trial Court was of the opinion that the Will executed by Nanjamma was not under the sound state of free mind & health and surrounded by suspicious circumstances, which defendant Nos.2 and 5 are not able to remove by leading cogent and corroborative evidence. Further the Trial Court has discredited the evidence of DW.4 and DW.5 i.e., son

of witness to the Will Mr.Ravindra and another witness B.Lokanatha Reddy.

6.10 Further, the Trial Court was of the opinion that the daughter was though not made as party to the suit, however she was brought on record as legal representative of defendant No.1, after her demise, as defendant No.1(a), is also entitled for a share in the suit schedule properties in terms of the counter-claim made by her along with other schedule properties stated in counter-claim, accordingly partly decreed both the suit as well as counter claim, holding that the plaintiff and defendant No.1(a) and defendants 2 to 6 are having $1/7^{\text{th}}$ share in the suit schedule properties and other schedule properties mentioned in the counter-claim. It is this Judgment and Decree passed by the Trial Court is called in question in this appeal.

7. Heard, Sri.Ranganath Reddy.S, learned counsel appearing for appellant No.1, Sri.Rajesh Mahale, learned Senior counsel assisted by Sri.Bryeu Stain Berg & Sri.Jose

Sebastian, learned counsel appearing for respondent No.1, Sri.H.S.Gaurav, learned counsel appearing for respondent No.2, Sri.B.R.Hari Krishna, learned counsel appearing for respondent No.3 and Sri.Vishnu Hegde, learned counsel appearing for respondents 4 and 5. Vide order dated 05.09.2014, notice to respondents 6 to 12 is dispensed with.

8. Sri.Ranganth Reddy, learned counsel appearing for defendant No.2/ appellant No.1 herein with all vehemence submits that the Trial Court has failed to consider the averments made in the compromise decree. In the compromise decree, it was clearly stated that the deceased Late Rama Reddy and his wife Late Nanjamma were exclusively allotted schedule 'A', 'B' and 'C' properties in the present suit, stating that, the properties are their exclusive properties henceforth and neither the plaintiff nor other defendants i.e., defendants 3 to 7 in O.S.No.286/1988 have any right, title or interest towards the property, during the lifetime of Late Rama Reddy and Nanjamma. It was further stated that during their lifetime,

they can dispose of the properties either by way of conveyance in any mode recognized under the Transfer of Property Act. The further contents stated in the said compromise petition, clearly show that the plaintiff and other children i.e., defendants 3 to 7 are entitled to equal share in the properties after the demise of both Rama Reddy and Nanjamma, if the properties otherwise retained and not disposed of by way of conveyance or Will. Ex.D25 (Ex.P77) is the Will executed by Nanjamma after the demise of Rama Reddy. In view of admission by the plaintiff in his evidence, especially at Paragraph No.4 in Page No.389, Paragraph No.5 in Page No.390, Paragraphs 6 to 8 in Page No.392-393 and Paragraph No.11 in Page No.395 of the paper book (cross examination of PW.1), wherein he has unequivocally admitted that he has filed a suit, which has ended in compromise.

8.1 So far as Will is concerned, the Trial Court has misapplied the provisions of law and misread the evidence adduced by defendants to prove the Will. Both the witnesses especially, DW.5 stood firm in the

cross-examination and his credibility was not at all shaken. In that view of the matter, the Trial Court only on the premise that Late Nanjamma was admitted in the Hospital on the very same day after executing the Will, discredited the entire Will. Admittedly, the Will executed was a registered Will. Nanjamma had gone to the Sub-Registrar Office, executed the Will, her photographs and thumb impressions were found on the Will. The Trial Court has failed to consider these aspects of the matter, however over-weighed the self-serving statement of the plaintiff and defendant No.1(a). Mere production of Medical records are not sufficient to discard the execution of Will.

- 8.2 Further, learned counsel submits that the Trial Court tried to cast a reverse burden on defendant No.2, for not having examined the doctor of Mallige Hospital to prove that Nanjamma was under sound state of health and mind. The witness DW.5 who has been examined, has clearly stated that Nanjamma

appeared to be in sound state of health and mind on the date of execution of Will. That apart, the active participation of Nanjamma in all the suits filed since 1974 till date of her death, clearly show her active mind and her knowledge with respect to the properties and her right to dispose of the properties accrued to her under the compromise and partition. Merely because it was stated that her husband also executed Will in her favor in the year 1988 prior to his death and non-production of the same could not have been considered as a ground to discredit the Will and the evidence led thereon in terms of Indian Succession Act, 1925 R/w Indian Evidence Act.

- 8.3 The Trial Court has erred in law in holding that the Will is surrounded by suspicious circumstances. In the Will Nanjamma has categorically stated, the exclusion of plaintiff and her daughter. This has not been considered by the Trial Court. In that view of the matter, he sought to allow the appeal and declare that under the Will dated 23.02.2006,

whereunder the property at Schedule 'A' has been bequeathed in favor of defendant No.2/ appellant No.1 herein by Late Nanjamma is valid in terms of Law, contemplated under the provisions of Indian Succession Act, 1925 R/w Indian Evidence Act.

9. Per contra, Sri.Rajesh Mahale, learned Senior counsel assisted by Sri.Jose Sebastian, learned counsel appearing for the plaintiff/ respondent No.1 herein, argued in support of the Judgment and Decree of the Trial Court and submitted that the right granted under the compromise decree was limited to Nanjamma. In that view of the matter, she has no absolute and exclusive right over the property to bequeath the same. That apart, she has bequeathed several other properties which were not part of compromise decree. The recital in the Will regarding Partition of the year 2000 clearly shows that she has no right over the property and once she admits that there is a Partition and she has subscribed as a signatory to the said Partition, she has no right left over to execute the Will in favor of defendant Nos.2 to 6. The Trial Court having

considered these aspects of the matter, was of the opinion that the Will is surrounded by suspicious circumstances and under a strange situation, wherein on the very day of execution of Will, Nanjamma was admitted to the Mallige Hospital for treatment and on three occasions, thereafter she was continued to be hospitalized and breathed her last within 6 months from the date of execution of Will. These are the circumstances which are not been properly explained by leading corroborative and cogent evidence by examining the doctor, to remove the suspicious circumstances, which has properly and rightly been considered by the Trial Court. In that view of the matter, the Judgment and Decree impugned do not require any interference at the hands of this Court.

10. Having considered the rival submissions, we have gone through the entire appeal paper, as well as the Trial Court record, but restricting only with respect to 'A' Schedule property in view of *lis* being narrowed down.

11. The following points would arise for our consideration:

1. *Whether the Will executed by Late Nanjamma i.e., defendant No.1 in favor of defendant No.2/appellant No.1 herein bequeathing schedule 'A' property exclusively with right, title and interest traceable under the compromise decree in O.S.No.286/1988, is valid in law?*
2. *Whether the Trial Court is right in discarding the Will executed by Late Nanjamma dated 23.02.2006, in respect of 'A' schedule property involved in this appeal?*

12. Our answer to above points for consideration is as under:

Point No.1 : In the Affirmative.

Point No.2 : Negative, for the following:

REASONS

13. As stated above, since the entire *lis* is narrowed down only with respect to 'A' schedule property i.e.,

residential site and house constructed thereon, the second point for consideration is answered Negative, as *lis* between the other parties having been stated to be settled, in terms of their submission in unison and as no dispute left in respect of other properties.

14. As we have already extracted above, in the compromise petition, the properties i.e., schedule 'A', 'B' and 'C' to the suit were exclusively allotted in favor of Late Rama Reddy and Late Nanjamma, both are given right to alienate the property and in the case both the parties dying intestate and only in that circumstance and not otherwise, the plaintiff and other defendants in O.S.No.286/1988 have equal right over the properties. There is a specific averment made in the compromise petition that, the plaintiff and other defendants in O.S.No.286/1988, are entitled to claim equal share in the properties only if the property is retained and otherwise not disposed of by way of a conveyance or Will. In the case on hand, Nanjamma has executed a Will bequeathing

the properties stated thereon covering all the suit schedule properties in favor of defendants 2 to 6 in the present suit.

15. In the said Will, she has bequeathed, 'A' schedule property exclusively in favor of defendant No.2/appellant No.1 herein stating that, he has invested amount in the said property and she is residing along with him in the said property. In the Will she has clearly stated the reason for excluding the plaintiff and her daughter who has been now brought on record as defendant No.1(a), stating that the plaintiff has got several properties in the earlier partition executed between the family members which was reduced into writing in 1974 and thereafter, he having filed a suit contending that there is no equitable partition and sought for demarcating of his share at one place in suit schedule properties in O.S.No.286/1988, and that he having been allotted several properties in the compromise decree, not entitled for any property under the Will. Further she has stated that, since her daughter was married and living happily and settled in matrimonial home and as she was given sufficient gold ornaments and

other movable properties at the time of marriage, she is not entitled for any property. She has also stated in the Will that neither the plaintiff nor defendant No.1(a) are looking after her and taking any care of her and it is only defendant Nos.2 to 6 are looking after her and she is living with defendant No.2 in his house i.e., in the schedule 'A' property.

16. In order to prove the Will though defendant No.2 has not stepped into the witness box, however another beneficiary under the Will i.e., defendant No.5/ appellant No.2 herein has been examined as DW.3 and he has stated regarding execution of the Will by his mother. His evidence was supported by means of examining son of one attesting witness Ravindra and another attesting witness as DW.4 and DW.5.

17. DW.4 is the son of attesting witness Ravindra. He has identified the signature of his father in the Will stating that it is the signature of his father and as he died, DW.4 was called upon to identify the signature of his

father. Nothing worthwhile was elicited in the cross-examination of this witness to discredit his evidence.

18. So far as DW.5 is concerned, he is a family friend and has stood firm in his cross-examination with respect to execution of the Will. He has clearly stated that Late Nanjamma appeared in good state of health and sound mind and had given instructions to prepare the Will and after the entire contents were read over by Ravindra both Kannada and Telugu, she having understood its contents, affixed/subscribed her thumb impression on the Will and he having seen Late Nanjamma subscribing her thumb impression, acknowledging the thumb impression of Late Nanjamma in her sound state of mind and health, affixed his signature as an attesting witness.

19. He has further stated that, another witness Ravindra has identified the left thumb impression of Nanjamma on the Will. Admittedly, the Will executed was registered before the concerned Sub-Registrar. Neither the left thumb impression nor the photo in the Will was denied either by the plaintiff or defendant No.1(a). The only

contention raised was, on the very same day of executing the Will, Nanjamma was hospitalized and was an in-patient for three days. When the witness has clearly stated regarding sound state of health and mind of the Testator while executing the Will and his evidence neither shaken nor discredited in the cross-examination, it becomes very hard for us to accept the reasons assigned by the Trial Court in its Judgment, which is as under:

"Looking to the LTM of executant on Ex.D.25, it appears that they are shaky and have not been put voluntarily by the executant. DW.3 has stated that defendant No.2 Ranganatha Reddy was taking care of his mother when he visited the hospital on 24.2.2006. DW.3 has stated that he has not seen his mother on 23.2.2006. Therefore, the testimony of DW.3 to the effect that his mother was hale and healthy on 23.2.2006 when she executed the Will, cannot be believed as he had not seen his mother on 23.2.2006."

20. It is trite law that a Judge cannot prescribe his personal view on any issue involved in the *lis*, which is

against the evidence led by the respective party in that respect. Appellant No.1 herein by examining the DW.4, son of one of the attesting witnesses identifying the signature of the attesting witness has complied the provision contemplated under Section 69 of the Indian Evidence Act and by examining another attesting witness DW.5, who stood firm on his evidence with respect to sound state of health and the mind of the Testator - Smt.Nanjamma and identified her thumb impression as well as the signature of another witness Ravindra and has clearly stated that late Nanjamma after got explained the contents of the Will subscribed her thumb impression before him and he has subscribed his signature attesting the same. In the teeth of the specific and categorical evidence of DW.5, the observations of the Trial Court supra are unsustainable in law.

21. Further, the reasoning of the Trial Court that Nanjamma was entitled only to an extent of half share in the property and not the exclusive right since the properties were allotted jointly to Rama Reddy and

Nanjamma, we find it hard again to countenance the same. Though both were given joint rights, the next sentence used assumes importance, which is "*the plaintiff and other defendants i.e., defendants 3 to 7 are entitled to equal share in the properties allotted to defendant Nos.1 and 2 upon their demise if the properties allotted to them otherwise not disposed of either by way of a conveyance or under Will.*" This along with the sentence above stating that, they are having absolute right during their lifetime to alienate the property clearly presupposes that exclusive right over the property has been given to both of them in the compromise petition. The Trial Court has failed to read this aspect of the matter and misread the contents of the compromise petition and over-weighed the medical documents. Further, merely non-production of Will executed by Rama Reddy and certain statements made in the Will regarding Partition of 2000, cannot be a circumstances to discard the entire Will which is otherwise proved in accordance with the law.

22. Another reason for us to set at naught the finding of the Trial Court on the Will in respect of 'A' schedule property is, the Trial Court tried to shoulder reverse burden on defendant No.2 by holding that, he has failed to examine the doctor of Mallige Hospital in order to substantiate that Late Nanjamma was having good and sound state of mind and health. The witness - DW.5 has clearly stated that none of the defendants were present at the time of execution of Will and it is only him, Ravindra - another attesting witness, advocate (Scribe) who prepared the Will, deceased Nanjamma and a maid servant were present before the Sub-Registrar at the time of execution and registration of the Will and the Testator appeared to be in sound state of mind & health, having understood the contents after it was read over and explained both in Kannada and Telugu, subscribed her Left Thumb Impression to the Will.

23. DW.5 has clearly stated regarding sound state of mind and health of Late Nanjamma and stood firm in his cross-examination. In that view of the matter, as the

plaintiff as well as defendant No.1(a) asserted and taken a plea that Nanjamma was suffering from illness, it is for them to prove with all probabilities, by examining the doctor to stake a claim that Nanjamma was suffering from ill-health and was not in a sound state of mind to execute the Will. There is no such attempt made neither by the plaintiff nor defendant No.1(a). Mere production of Medical certificates are not the only circumstances to discredit the proof of Will, when the same has been proved in accordance with law as per the provisions of Indian Succession Act R/w. Indian Evidence Act. The Trial Court has failed to consider this aspect of the matter and misread both the compromise petition as well as Will and weighed the self-serving testimony of plaintiff and defendant No.1(a) and the medical documents to discard the Will. In that view of the matter, we are of the opinion that the Judgment of the Trial Court discarding the Will with respect to 'A' schedule property in favor of defendant No.2 by Nanjamma suffers from inherent error and requires consideration holding that, defendant

No.2/appellant No.1 herein established and proved the Will to claim 'A' schedule property under the Will. For the foregoing reason, we proceed to pass the following:

ORDER

- (i) The Regular First Appeal is ***allowed in part.***
- (ii) The declaration of the Trial Court holding that the Will dated 23.02.2006 in respect of 'A' schedule property is not valid, is set-aside. We declare that defendant No.2 has proved the Will dated 23.02.2006 in respect of 'A' schedule property bequeathed in his favor by Late Nanjamma under the Will, neither the plaintiff nor defendant No.1(a) have any right over the property supra to claim partition.
- (iii) The Registry is directed to draw the modified decree accordingly.

24. In view of disposal of the appeal, pending interlocutory applications, if any, stand disposed of.

**Sd/-
(D K SINGH)
JUDGE**

**Sd/-
(T.M.NADAF)
JUDGE**

TKN