



IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 08TH DAY OF JULY, 2026

BEFORE

THE HON'BLE MR. JUSTICE V SRISHANANDA

REGULAR SECOND APPEAL No.392 OF 2021(DEC/INJ)

BETWEEN:

1. MR KRISHNAPPA
S/O LATE RAMAPPA,
AGED ABOUT 67 YEARS,
(SENIOR CITIZEN NOT CLAIMED)
2. CHOWDAPPA
S/O LATE RAMAPPA,
AGED ABOUT 47 YEARS,
3. SUBBAMMA
D/O LATE RAMAPPA,
AGED ABOUT 42 YEARS,

ALL ARE RESIDING AT A -BLOCK,
VINAYAKA NAGAR,
GUDIBANDE TOWN,
GUDIBANDE TALUK – 561 209,
CHIKKABALLAPURA DIST.

...APPELLANTS

(BY SRI. MOHANA CHANDRA P, ADVOCATE)

AND:

1. SMT N GUNAVATHI
AGED ABOUT 41 YEARS,
W/O LATE NAGARAJU,
R/AT 'B' BLOCK,
GUDIBANDE TOWN,
GUDIBANDE TALUK-561 209,

Digitally
signed by
MALATESH
K C

Location:
HIGH
COURT OF
KARNATAKA



2. SMT.N PADMAVATHI
W/O GANGAPPA,
AGED ABOUT 43 YEARS,
RESIDING AT RAYALAKANAHALLI VILLAGE,
GOWRIBIDANUR TALUK-561 213

...RESPONDENTS

(BY SRI NARASIMHA MURTHY C.D, ADVOCATE)

THIS RSA IS FILED UNDER SECTION 100 R/W ORDER 41 RULE 1 OF CIVIL PROCEDURE CODE, AGAINST THE JUDGMENT AND DECREE DATED 12.02.2021 PASSED IN R.A.No.63/2018 ON THE FILE OF THE SENIOR CIVIL JUDGE (ITINERARY COURT) AT GUDIBANDE ALLOWING THE APPEAL AND SETTING ASIDE THE JUDGMENT AND DECREE DATED 05.03.2018 PASSED IN OS No.57/2010 ON THE FILE OF THE CIVIL JUDGE AND JMFC, GUDIBANDE.

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

CORAM: HON'BLE MR. JUSTICE V SRISHANANDA

ORAL JUDGMENT

Heard Sri Mohana Chandra P, learned counsel for the appellants and Sri Narasimha Murthy, learned counsel for the respondents.

2. Plaintiffs' Second Appeal challenging the dismissal of the suit in R.A No.63/2018 dated 12.02.2021 on the file of the Senior Civil Judge (itinerary Court), Gudibande, by allowing the appeal filed by the defendant, and setting aside the part decree



passed in O.S No.57/2010, dated 05.03.2018 on the file of the Civil Judge and JMFC, Gudibande.

3. Facts in the nutshell which are utmost necessary for disposal of the present appeal are as under:

4. A suit in O.S No.57/2010 came to be filed seeking the relief of declaration and permanent injunction in respect of the following properties hereinafter referred to as the 'suit property'.

"1. Land bearing Sy.No.3/4, measuring 2 acres 0-18 guntas situated at Thangadikunte village, Kasaba Hobli, Gudibande Taluk, Chckballapur District.

*East - Chicka Yamanna's land,
West - H.Anjinappa's land,
North - Narayanappa's land,
South - Narayana Singh's land.*

2. House property bearing Ass.No.1006/717, to extent E x W- 65 feet, N x S - 15 feet, situated at Gudibande Taluk, Chckballapur District.

*East - Municipality Drainage, after
office of town Pancyachath,
West - Town Panchayath road,
North - Krishnamurthy land,
South - Sandhu."*



5. Plaintiffs claiming to be the children of second wife of deceased K.Ramappa, laid the claim in respect of suit property as absolute owners in possession of the suit property by virtue of the registered Will said to have been executed by Ramappa in their favour. Suit was resisted by the defendants.

6. Learned Trial Judge, after raising necessary issues, recorded the evidence of the parties and decreed the suit in part. Operative portion of the Trial Court judgment reads as under:

"The suit of the plaintiff is hereby partly decreed.

It is declared that, the plaintiff's No.A and B are the absolute owners of suit schedule property.

The Compromise decree obtained by defendants in O.S.No.36/2007 is not binding on the legal heirs of plaintiff No.A and B.

The suit of the plaintiff in respect of permanent injunction is hereby dismissed.

Office is directed to send Ex.P.16 original LTM Register of Will to the Sub-Registrar of Gudibande immediately after retaining true copy of the same."

7. Being aggrieved by the same, defendants filed an appeal before the First Appellate Court in R.A No.63/2018.



8. Learned Judge in the First Appellate Court, after securing the records, heard the arguments of the parties and noted that there was no proper proof of the Will propounded by the plaintiffs and dismissed the suit in *toto*.

9. Being further aggrieved by the same, plaintiffs are before this Court in this Second Appeal.

10. Sri Mohan Chandra, learned counsel for the appellants/ legal representatives of the original plaintiff reiterating the grounds urged in the appeal memorandum would contend that the First Appellate Court missed to notice the fact that, to prove the Will, the attesting witnesses were no more.

11. As such, the only proof that could be placed before the Court is to summon the Sub Registrar who had maintained the left thumb impression register at the time of registering the Will and the same is marked before the Court as Exhibit P-16.

12. Therefore, the efforts made by the plaintiffs to prove the Will to satisfy Section 68 of the Indian Evidence Act and Section 63 of the Indian Succession Act has been fulfilled by the plaintiffs. Same was noted by the Trial Judge and in the



attendant facts and circumstance of the case partly decreed the suit. But the learned Judge in the First Appellate Court wrongly dismissed the suit of the plaintiffs in *toto* resulting in miscarriage of justice and thus sought for admitting the appeal on the following substantial questions of law.

- 1. Whether the lower appellate court was justified in rejecting Ex P1 by assigning reason that no foundation was laid for production of secondary evidence and the same was marked without objection of the Defendants before the trial court?*
- 2. Whether the lower appellate court was justified in setting aside the judgement and decree passed in O.S.NO.57/2010 without giving any finding pertaining to compromise decree passed in O.S. No.37/2007?*
- 3. Whether the impugned judgement and decree of the lower appellate court is perverse and suffers from illegality calling for interference?*
- 4. Whether the lower appellate court has committed an error of law in reversing the judgement and decree of the trial court in respect of proof of Ex P1?"*

13. *Per contra*, learned counsel for the respondents/defendants supports the impugned judgment.



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

15. On such perusal of the material on record, it is noticed that Will marked at Exhibit P-1 is not proved in accordance with law.

16. Learned Trial Judge has taken note of the legal requirement with regard to the proof of Will as is contemplated under Section 68 of the Indian Evidence Act and Section 63 of the Indian Succession Act. However, was pleased to consider the validity of the Will by plaintiffs examining the Sub Registrar who produced before the Court the left thumb impression register maintained in his office when the Will in question came to be registered.

17. But, learned Judge in the First Appellate Court noted that mere marking of the Will or marking in LTM register alone would not be sufficient to fulfill the legal requirements with regard to the proof of the Will.

18. Indian Succession Act contemplates that if both the attesting witnesses are not available, the propounder of the Will



is required to place such other convincing evidence on record in proof of the Will either by examining the scribe or children of the attesting witnesses or anybody who is acquainted with signature of the attesting witnesses in lieu of examining the attesting witnesses.

19. Such an attempt is not made by the plaintiffs for the reasons best known to them.

20. As rightly pointed out by the learned Judge in the First Appellate Court, marking of left thumb impression register vide Exhibit P-16 did not fulfill the legal requirement with regard to the proof of Will.

21. A feeble attempt is no doubt made by the counsel for the appellants before this Court stating that the defendants have not objected for marking of the Will and therefore the First Appellate Court is wrong in holding that Will is not proved.

22. It is settled principles of law and requires no emphasis that mere marking of the Will is not the proof. More so, in case of a Will when there is a legal requirement as is contemplated



under Section 68 of the Indian Evidence Act and Section 63 of the Indian Succession Act.

23. Thus, the grounds urged in the appeal memorandum would not merit to admit the appeal on the aforesaid substantial questions of law.

24. Hence, the following:

ORDER

- (i) Admission declined.
- (ii) Appeal ***dismissed***.

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

kcm
List No.: 1 Sl No.: 56