



IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 16TH DAY OF JUNE, 2026

BEFORE

THE HON'BLE MR. JUSTICE V SRISHANANDA

REGULAR SECOND APPEAL No.798 OF 2022 (PAR/POS)

BETWEEN:

1. H.N.NAGARATHNAMMA
D/O LATE SOWBHAGYA
AGE : 46 YEARS
2. H N NARASIMHAMURTHY
S/O LATE SOWBHAGYA
AGE : 45 YEARS
3. H N DEVARAJ
S/O LATE SOWBHAGYA
AGE : 43 YEARS

ALL ARE RESIDENTS OF
MARUTHINILAYA
1ST LINK, 4TH CROSS
MARUTHI NAGAR
SHETTIHALLI, TUMAKURU.

...APPELLANTS

Digitally
signed by
MALATESH
K C

Location:
HIGH
COURT OF
KARNATAKA

(BY SRI YATHISH KUMAR.K.N, ADVOCATE;
VIDE ORDER DATED 16.06.2026, APPEAL AGAINST A1 AND A3
DISMISSED FOR NON-PROSECUTION)

AND:

1. MALLAMMA
AGE : 54 YEARS
W/O LATE MARIYAPPA
R/AT VINAYAKANAGARA
SHETTIHALLI



TUMAKURU-572 102.

2. JAYAMMA
AGE 49 YEARS
W/O SHETTALLAPPA
R/AT GAJANANA NAGARA
6TH WARD, BHEEMASANDRA
S S M C POST
TUMAKURU-572 102.
3. GOWRAMMA
AGE : 44 YEARS
W/O LATE SHETTALLAPPA
R/AT C/O JAYAMMA
GAJANANA NAGARA
6TH WARD, BHEEMASANDRA
S S M C POST
TUMAKURU-572 103.
4. NARASAMMA
AGE : 59 YEARS
W/O RANGASWAMIAH
R/O VINAYAKANAGARA
BETWEEN PALASANDRA AND SHETTIHALLI
TUMAKURU-572102.
5. NANJAMMA
AGE : 54 YEARS
W/O NARASIMHAIAH
R/AT KUNDUR ROAD
DEVARAYAPATNA-572105
TUMKURU TALUK
6. GANGAMMA
AGE: 44 YEARS
W/O PUTTARANGAIAH
R/AT GULUR HOBLI-572104
GULIHARAVE POST
TUMAKURU TALUK



7. SHANTHAMMA
W/O NARASIMHAIAH
AGED ABOUT 39 YEARS
R/AT DASARAKALLAHALLI VILLAGE-572216
KADABA HOBLI
GUBBI TALUK.
8. MANJAMMA
AGE : 34 YEARS
W/O RAMANNA
CARPENTER
R/AT NEAR BYPASS ROAD
THORE HANUMANTHAPURA
TUMAKURU-572 101.
9. GOWRAMMA
AGE: 33 YEARS
S/O ADIKE RAMANNA
R/AT NEAR BASAVANNA TEMPLE
TIGALARABEEDI
KYATHASANDRA-572106
TUMAKURU TALUK
10. SOUBHAGYA
AGE : 29 YEARS
W/O RAJANNA
S/O THIMMANNA
R/AT NAGAVALLI MAIN ROAD
NAGAVALLI
GULUR HOBLI-572104
TUMAKURU TALUK
11. SHIVANNA
AGE 53 YEARS
S/O NANJUNDAPPA
BEHIND UTTARAKATTE
SHETTIHALLI-572103
KASABA HOBLI
TUMAKURU TALUK



12. BASAVARAJU
S/O NANJUNDAPPA
AGED ABOUT 51 YEARS
R/O 6TH CROSS
S I T EXTENSION
TUMAKURU-572 101.
13. SHIVALINGA
S/O NANJAPPA
AGED ABOUT 38 YEARS
R/O 6TH CROSS
S I T EXTENSION
TUMAKURU-572101.
14. RAJA
S/O NANJAPPA
AGED ABOUT 36 YEARS
R/AT 6TH CROSS
S I T EXTENSION
TUMAKURU-572 101.
15. RENUKA
W/O LATE KUMAR
AGED ABOUT 35 YEARS
R/AT SIDDALINGAIAHNAPALYA
TUMAKURU CITY
NOW R/AT 6TH CROSS
MARIYAPPA COMPOUND
S I T EXTENSION
TUMAKURU-572 101.
16. ABHISHEK
S/O LATE KUMAR
AGED ABOUT 19 YEARS
17. DEEPAK
AGE : 17 YEARS
S/O LATE KUMAR
MINOR
R/B N/G
MOTHER R-15 RENUKA



R 16 AND R17
R/AT SIDDALINGAIAHNAPALYA
6TH CROSS, MARIYAPPA COMPOUND,
SIT EXTENSION, TUMAKURU.

18. RANGAPPA
AGE 48 YEARS
S/O KAMBAIAH
RETIRED HMT EMPLOYEE
GOKULA EXTENSION
TUMAKURU-572102.
19. LAKSHMAMMA
AGE 68 YEARS
W/O LATE RATHNAIAH SHETTY
20. RAJU
AGE 38 YEARS
S/O LATE RATHNAIAH SHETTY

RESPONDENT NOS.19 AND 20 ARE
R/AT 8TH CROSS, 1ST MAIN, S S PURAM
TUMAKURU-572101.

21. THIPPESWAMY
AGE : 44 YEARS
LECTURER
R/AT MEDIGESHI
MEDIGESHI-572132
HOBLI, MADHUGIRI TQ
22. SHIVAMMA
D/O NANJUNDAPPA
AGED ABOUT 43 YEARS
R/AT JOSNA VILLA
2ND MAIN, 4TH CROSS
SIR NIJALINGAPPA LAYOUT
DAVANAGERE-577001.

...RESPONDENTS



THIS RSA IS FILED UNDER SECTION 100 OF CIVIL PROCEDURE CODE, AGAINST THE JUDGMENT AND DECREE DATED 14.02.2022 PASSED IN R.A.NO.170/2019 ON THE FILE OF THE VII ADDL. DISTRICT JUDGE, TUMAKURU DISMISSING THE APPEAL AND CONFIRMING THE JUDGMENT AND DECREE DATED 18.12.2018 PASSED IN O.S.NO.60/2005 ON THE FILE OF THE ADDL. SENIOR CIVIL JUDGE AND CJM, TUMAKURU.

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

CORAM: HON'BLE MR. JUSTICE V SRISHANANDA

ORAL JUDGMENT

Sri Patel D. Kare Gowda, learned advocate had filed the present appeal in respect of three appellants viz., (i) H.N.Nagarathnamma, (ii) H.N.Narasimhamurthy and (iii)H.N. Devaraj, who are the legal representatives of original third defendant in O.S.No.60/2005.

2. After obtaining no objection from Sri Patel D.Kare Gowda, Sri H.N.Narasimhamurthy alone has engaged the services of Sri Yathish Kumar K.N. and he has filed power for appellant No.2 who is defendant No.3(b).

3. As such, appeal in respect of defendant Nos.3(a) and 3(c) i.e., appellant Nos.1 and 3 stands dismissed for non prosecution.



4. Heard Sri Yathish Kumar K.N., learned counsel for appellant No.2. This Court did not deem it fit to issue notice to respondents, having regard to the nature and scope of the appeal.

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

6. A suit in O.S No. 60/2005 for partition came to be filed by Smt.Mallamma and others being the legal representatives of late Najundappa in respect of the following properties.

1. *"Wet land bearing S.No.169 of Shettihalli Village, Tumkur Taluk, measuring 2.01 guntas, assessed at 3.86 paise, bounded on the:*

East : Lands of Nanjundaiah and others,
West: Rangaswamaiah,
North : Ganganna,
South: Halla.

2. *Land bearing S.No.42/2 measuring total 1.28 guntas, out of which 0.28 guntas of Tumkur Kasaba Village, Tumkur Taluk bounded on the:*

East : Road,
West: Road,
North : House of Siddalingegowda and others,
South: Vacant sites of others.



HC-KAR

NC: 2026:KHC:29288
RSA No. 798 of 2022

3. ತುಮಕೂರು ನಗರ ಕಸಬಾ ಗ್ರಾಮದ ಸರ್ವೆ ನಂ. 42/2 ರಲ್ಲಿ (ಎಸ್.ಎ.ಟಿ ಬಡಾವಣೆ) 6ನೇ ಕ್ರಾಸ್‌ನಲ್ಲಿರುವ ಮುನಿಸಿಪಲ್ ಖಾತಾ ನಂಬರ್ 639 ವಿಸ್ತೀರ್ಣ 35 X 32 ಅಡಿಯಲ್ಲಿರುವ ಮನೆಗೆ ಚಕ್ಕಬಂದಿ:

ಪೂರ್ವಕ್ಕೆ : ರಸ್ತೆ,

ಪಶ್ಚಿಮಕ್ಕೆ : ಖಾಲಿ ಜಾಗ,

ಉತ್ತರಕ್ಕೆ : ಖಾಲಿ ಜಾಗ,

ದಕ್ಷಿಣಕ್ಕೆ : ಹೆಚ್‌ನ ಮನೆ.

4. ತುಮಕೂರು ನಗರ ತುಮಕೂರು ಕಸಬಾ ಸರ್ವೆ ನಂ.42/2 ರಲ್ಲಿ (ಹಾಲಿ ಎಸ್.ಎ.ಟಿ ಬಡಾವಣೆ) 6ನೇ ಕ್ರಾಸ್‌ನಲ್ಲಿರುವ ಮುನಿಸಿಪಲ್ ಖಾತಾ ನಂಬರ್ 640 ವಿಸ್ತೀರ್ಣ 65 X 32 ಅಡಿಯಲ್ಲಿರುವ ಮನೆಗೆ ಚಕ್ಕಬಂದಿ :

ಪೂರ್ವಕ್ಕೆ : ರಸ್ತೆ,

ಪಶ್ಚಿಮಕ್ಕೆ : ಖಾಲಿ ಜಾಗ,

ಉತ್ತರಕ್ಕೆ : ಖಾಲಿ ಜಾಗ,

ದಕ್ಷಿಣಕ್ಕೆ : ಆರ್‌ಸಿಸಿ ಮನೆ.

5. ತುಮಕೂರು ನಗರದ ತುಮಕೂರು ಕಸಬಾ ಸರ್ವೆ ನಂ. 42/2 ರಲ್ಲಿ (ಹಾಲಿ 'ಎಸ್.ಎ.ಟಿ ಬಡಾವಣೆ' 6ನೇ ಕ್ರಾಸ್‌ನಲ್ಲಿರುವ ಮುನಿಸಿಪಲ್ ಖಾತಾ ನಂಬರ್ 692 ವಿಸ್ತೀರ್ಣ 65 X 20 ಅಡಿಯಲ್ಲಿರುವ ಮನೆಗೆ ಚಕ್ಕಬಂದಿ:

ಪೂರ್ವಕ್ಕೆ : ರಸ್ತೆ

ಪಶ್ಚಿಮಕ್ಕೆ : ಖಾಲಿ ಜಾಗ,

ಉತ್ತರಕ್ಕೆ : ಸಿದ್ದಲಿಂಗೇಗೌಡರ ಮನೆ

ದಕ್ಷಿಣಕ್ಕೆ : ಖಾಲಿ ಜಾಗ,

6. ತುಮಕೂರು ನಗರ ತುಮಕೂರು ಕಸಬಾ (ಹಾಲಿ ಎಸ್.ಎ.ಟಿ ಬಡಾವಣೆ) 6ನೇ ಕ್ರಾಸ್‌ನಲ್ಲಿರುವ ಸರ್ವೆ ನಂ.42/2 ರಲ್ಲಿರುವ ಮುನಿಸಿಪಲ್ ಖಾತಾ ನಂಬರ್ 693 ವಿಸ್ತೀರ್ಣ 65 X 30 ಅಡಿಯಲ್ಲಿರುವ ಕೆಂಪು ಹೆಚ್‌ನ ಮನೆಗೂ ಖಾಲಿ ಜಾಗಕ್ಕೆ ಚಕ್ಕಬಂದಿ:



ಪೂರ್ವಕ್ಕೆ :ಖಾಲಿ ಜಾಗ,
ಪಶ್ಚಿಮಕ್ಕೆ :ಖಾಲಿ ಜಾಗ,
ಉತ್ತರಕ್ಕೆ : ನಂಬರ್ 692 ರ ಮನೆ,
ದಕ್ಷಿಣಕ್ಕೆ : ಖಾಲಿ ಜಾಗ.”

7. Said suit on contest came to be dismissed.
8. In the written statement filed by the present appellants who are the legal representative of deceased third defendant, no doubt there was a prayer that in the property that has fallen to the share of first defendant Mariyappa, they are entitled for 1/5th share.
9. However, no separate court fee was paid nor a counter claim was laid, except making a prayer that they are entitled for 1/5th share in the property of the first defendant.
10. After dismissal of the suit, it is the present appellants being the legal representative of third defendant, filed R.A No. 170/2019.
11. Learned Judge in the First Appellate Court, after considering the rival contentions of the parties, dismissed the



appeal of the present appellants on merits, after condoning the delay by the judgment dated 14.02.2022.

12. Being further aggrieved by the same, present Second Appeal is filed on following grounds and substantial questions of law.

- *Both the courts below have failed to notice and appreciate the pleadings and the evidence on record and the dismissal of the suit is illegal, unjust and the judgments and decree of the courts below is liable to be set aside.*
- *The courts below have erred in not appreciating that the original propitious had 3 sons and 2 daughters, and all are entitle for a share in the suit properties. But the Ex.D8 the registered partition deed dated:25-10-65 is only among 3 sons, which is also not equitable partition. All the 3 sons have got share each in Sy.No.43/2 but no share is allotted in item No.. of the suit property i.e., Sy.No.42/2 in favour of Nanjappa and Nanjundappa. Hence Ex.D8 itself is illegal and not to be acted upon.*
- *Further the courts below have erred in holding that issue No.3 and 5 does not arise for consideration. When the plaintiff and contesting defendants have denied the examination of the Registered Will Ex.D5 dated: 8-10-93 as got up and fabricated, executed by Defendant No.1 in favour of Defendant 6 to 8,*



observing that it is not the scope of preliminary decree and the case pleaded by the defendants have to be gone into at the stage of final decree proceedings in the separate suit.

- *The trial court has erred in reasoning's that the defendants have to file separate suit for declaration claiming ownership on the basis of will being setup and fabricated and if the defendants fails to prove the due execution of the Will. Then the plaintiffs and defendants 4,5 and 12 will get their share in the suit properties as clause II heirs of the first defendant and if the execution of the Will is proved by defendant 6 to 8 then the claim of the plaintiffs (a) to (c) and defendants 4,5 and 12 would be answered in the negative. This observation and approach of the courts below is illegal, unjust and arbitrary.*
- *The trial court also erred in answering additional issue No.1 has does not arise for consideration for the same reasons assigned in respect of item No.3 and 5, observing that the plaintiffs (a) to (c) and defendants 4, 5 and 12 are at liberty to get the relief in a separate suit or in the final decree proceedings.*
- *Both the courts below have failed to notice and appreciate that the defendants 6 to 8 have failed to produced the original will. But what has been produced is only the certified copy of the Will and not the original. The Appellate Court has erred in accepting the reasoning given by the defendants 6 to*



8 and erred in accepting he certified copy as secondary evident since the will is registered when the very execution of the will is denied as got up and concocted. Further no police complaint is given and no public notice in the newspaper about loss of original Will. The DW3 who is the advocate drafted the will said will is examined and nothing is elicited about the loss of will and custody of the will.

- *The first appellate court has erred in not appreciating that thumb impression Register from the sub Registrar office on the Will and sending in the same to the hand writing expert to compare the same with the admitted Thumb impression of Defendant No.1 on the registered partition deed Ex.D8 and the opinion of the expert is that the questioned and admitted LTMs are identified and one and the same. But the said hand writing expert is not examined in the court and the report is also not marked.*
- *Further there is glaring contradiction in the evidence of DW2 and DW3. As per DW3 the Will was drafted and signed on 8-10-93 and registered on 6-11-93. But DW2 the attester says the execution and the registration took place on the same day. But the court has observed that there is a huge gap of 25 years from the date of the Will and date of giving deposition and erred in holding that such a minor details will not prove fatal to the case of the contesting defendants and will not falsify the will.*



- *The first appellate court has erred in not appreciating that the Will is registered on 8-10-93 and the Testator of the will died on 26-2-94, within a short span of time, as such it pre-supposes that the Will is not signed by the profounder of the Will in a sound state of mind, with free will coupled with glaring contradiction between DW2 and DW3 which leads the execution of the Will is under suspicious circumstances.*
- *The appellants are the sons and daughters of defendant No.3, who is the daughter of late Gurunanjaiah, sister of defendant No.1 is also entitle to a share in the suit properties. Both the courts below have erred in not appreciating this aspect of the matter. Both the daughters of Gurunanjaiah are not parties to either to the partition Deed or the Will, as such the judgements and decrees of the courts below are illegal and liable to be set aside.*
- *The judgments and decrees of the courts below are illegal and unjust and not in consonance with the pleadings and evidence on record and liable to be set aside.*
- *The appellants have not preferred any appeal, revision or any petition or proceedings before this court or any other court or forum on the same cause of action. Hence this appeal."*



SUBSTANTIAL QUESTIONS OF LAW:

- I. *Whether the Ex.D8 Registered Partition Deed dated (left blank by the appellant) affected only between the 3 sons of the profounder Gurunanjaiah without giving any share to the daughters Sowbhagya, Deft No.3 the mother of appellants is legal and binding on the appellants share.?*
- II. *Whether Ex.D8 is binding on the plaintiffs and deft No.2 when no share is allotted out of Sy.No.42/2 in 1A, 28 guntas as it is not equitable partition.?*
- III. *Whether the Registered Will ExD5 dated: 8-10-93, by defendant No.1 in favour of executed defendant No.6 to 8 is legal, just and proper?*
- IV. *Whether the appellants are entitle for a share in the suit properties. When undisputedly the suit properties are the joint family properties in spite of Ex.D5 and Ex D8 for which the appellants are not parties to it.?*
- V. *Whether the judgments and decree of the courts below are sustainable in law or liable to be set aside."*



13. Sri Yathish Kumar, learned counsel for the second appellant, reiterating the grounds urged in the appeal memorandum would contend that both the Courts failed to notice and appreciate the pleadings and evidence on record and wrongly dismissed the suit and thus sought for setting aside the impugned judgment.

14. He would further contend that the original propositus had three sons and two daughters. Therefore, all are entitled for share in the suit property. But Exhibit D-8/registered partition deed dated 25.10.1965 is only among the three sons. Therefore, same would not bind the daughters.

15. He also argued that both the Courts erred in holding that issue Nos.3 and 5 would not arise for consideration when the plaintiffs and contesting defendants have denied execution of registered will at Exhibit D-5 dated 08.10.1993.

16. He would also contend that finding recorded by the Trial Court that defendants have to file separate suit for declaration claiming ownership on the basis of the Will is erroneous and plaintiff and defendant Nos.4, 5 and 12 will get their share in



the suit properties as class II heirs of defendant No.1 and therefore sought for admitting the appeal on the aforesaid substantial questions of law.

17. Having heard the arguments of learned counsel for the appellants, this Court perused the material on record meticulously.

18. On such perusal of the material on record, in the first place, appellants did not have any right to challenge the dismissal of the suit, as there was no counter claim made in the suit.

19. Nevertheless, the learned Judge in the First Appellate Court dismissed the appeal of the appellants on merits while re-appreciating the material on record.

20. When the suit of the plaintiffs is dismissed who is the party respondent in this appeal and in the absence of any challenge to the said finding by the legal representatives of the original plaintiff, the present Second Appeal filed by one of the defendants is not maintainable.



21. Accordingly, the following:

ORDER

Appeal is ***dismissed***.

Sd/-
(V SRISHANANDA)
JUDGE

kcm
List No.: 1 Sl No.: 86