



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.870 OF 2026(INJ)

BETWEEN:

1. GEETHA PRABHU
AGED ABOUT 73 YEARS
W/O G VARADARAYA PRABHU
R/O AT NO.101, PADMA ENCLAVE,
COELHO LANE
FALNIR, MANGALORE,
DK-575001
2. MANJUSHRI PRABHU
AGE ABOUT 38 YEARS
R/O AT NO. 101, PADMA ENCLAVE,
COELHO LANE
FALNIR, MANGALORE,
DK-575001
M: 9535617355

Digitally
signed by
MALATESH
K C
Location:
HIGH
COURT OF
KARNATAKA

PRESENTLY BOTH RESIDING AT
FLAT NO. 702, BUILDING 10
SHANTI PARK APARTMENTS
BESIDE MANIPAL HOSPITAL
JAYANAGAR 9TH BLOCK
BENGALURU-560 069

...APPELLANTS

(BY SRI SATEESH S. KUDTARKAR, ADVOCATE)

AND:

1. KUMBLA RAMDAS RANGAPPA NAYAK
MEMORIAL TRUST
A REGISTERED TRUST
REPRESENTED BY ITS TRUSTEE CUM



PRESIDENT
SRI RAMAKRISHNA NAYAK K
S/O K. DEVADAS NAYAK,
AGED 91 YEARS
R/O AT D.NO. 13-10-1377/1,
GI, ANMOL RESIDENCY,
BEHIND CANARA HIGH SCHOOL MAIN,
KODIALBAIL,
MANGALURU-575 003

2. K. GOPALAKRISHNA NAYAK,
S/O MADHAVA NAYAK,
AGED 78, TRSUTEE,
KUMBLA RAMDAS RANGAPPA
NAYAK MEMORIAL TRUST,
RESIDING AT 'GOWRI SHANKAR
SULTAN BATTERY ROAD,
URWA MARKET,
MANGALURU – 575 006
3. M. GOPINATH NAYAK
S/O RAGHUVeer NAYAK,
AGED 77 YEARS,
TRUSTEE, KUMBLA RAMDAS
RANGAPPA NAYAK MEMORIAL TRUST
R/AT JYOTHI CYCLE, MISSION STREET,
MANGALURU – 575 006
4. K. SHANKAR NAYAK,
S/O K. MADHAVA NAYAK,
AGED 89 YEARS,
TRSUTEE,
KUMBLA RAMDAS RANGAPPA
NAYAK MEMORIAL TRUST
R/AT 5-71/5, BOLPUGUDDE
KAVOOR POST
MANGALURU – 575 015

...RESPONDENTS

(BY SRI M.SUDHAKAR PAI, ADVOCATE FOR C/R1)



THIS RSA IS FILED UNDER SECTION 100 OF CIVIL PROCEDURE CODE AGAINST THE JUDGMENT AND DECREE DATED 13.02.2026, PASSED IN RA NO.160/2025 ON THE FILE OF THE ADDITIONAL DISTRICT AND SESSIONS JUDGE, FTSC - 1, D.K., MANGALURU PARTLY ALLOWING THE APPEAL AND CONFIRMING THE JUDGMENT AND DECREE DATED 17.02.2018 PASSED IN O.S.NO.126/2007 ON THE FILE OF THE I ADDITIONAL CIVIL JUDGE AND JMFC, MANGALURU D.K.

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 Sateesh S. Kudtarkar, learned counsel for the appellants and Sri M.Sudhakar Pai, learned counsel for the caveator/respondent No.1.

2. Parties are referred to as plaintiffs and defendants as per their original ranking before the Trial Court, for the sake of convenience.

3. Defendants in O.S No.126/2007 on the file of the I Additional Civil Judge and JMFC, Mangaluru, Dakshina Kannada, are the appellants challenging decreeing of the suit for permanent injunction in respect of the following property hereinafter referred to as suit property, which was confirmed in



R.A.No.160/2025 dated 13.02.2026 on the file of the Additional District and Sessions Judge, FTSC-I, Dakshina Kannada, Mangaluru.

SCHEDULE 'A'

"House bearing Door No.19-10-640, T.S.No.224/1, situated in Old Kent Road, Pandeshwara, Mangalore and appurtenant land measuring in all 12 cents."

4. A finding was recorded by the Trial Court while decreeing the suit of the plaintiffs that Smt.H.K.Sushila R. Nayak, who had a right in the joint Will executed by herself and her husband Sri K.Ramdas Nayak had no right to bequeath the suit property in favour of plaintiff No.1.

5. Against such finding, it is the plaintiffs who filed an appeal in R.A No.160/2025 on the file of the Additional District and Sessions Judge, FTSC-I, D.K., Mangaluru.

6. The learned Judge in the First Appellate Court after securing the records, allowed the appeal of the plaintiffs recorded a categorical finding that, the finding recorded by the learned Trial Judge while passing the judgment in O.S



No.126/2007 that Sushila R.Nayak had no right to bequeath the suit property in favour of the first plaintiff stood expunged.

7. Being aggrieved by the same, defendants have filed the present second appeal only with regard to the finding and not with regard to the grant of injunction.

8. Pursuant to the judgment of the Trial Court, defendants in O.S No.126/2007 filed a separate suit in OS No.353/2018 which is pending for consideration and was stayed because of the pendency of the R.A No.160/2025. Since said R.A.No. 160/2025 is now disposed of, automatically the suit in O.S No. 353/2018 needs to be continued.

9. Now that the finding that was recorded by the Trial Judge stood expunged by the impugned judgment passed in R.A No. 160/2025, the scope of the present appeal is,

"Whether the defendants can challenge the finding recorded by the Trial Court being set aside by the First Appellate Court?"

10. Admittedly, the scope of the suit before Trial Court was with regard to granting of permanent injunction in respect of the suit property based on the Will and codicil said to have



been executed by Smt.Sushila R.Nayak, who was one of the joint executors of the Will in favour of the defendants.

11. As such, the Trial Court, while decreeing the suit, held that plaintiffs are in possession of the suit property, but, recorded a finding that Sushila R.Nayak had no power to bequeath the property in favour of the trust that was assailed by the plaintiffs in R.A No.160/2025.

12. Having noted the above factual aspects, this Court heard the arguments of Sri Sateesh S. Kudtarkar and Sri M.Sudhakar Pai for the parties.

13. Since the scope of the suit before the Trial Court in O.S No.126/2007 was only with regard to the grant of permanent injunction, and counter claim made by the defendants/ present appellants was not considered for want of payment of requisite court fee, said counter claim stood abandoned.

14. Therefore, the Trial Judge was only required to consider possession of the property by plaintiff and pass appropriate orders. But the Trial Court while decreeing the suit of the



plaintiffs also recorded a finding that Sushila R.Naik had no power to bequeath the property in favour of the plaintiffs.

15. Being aggrieved by the same, it is the plaintiffs who filed R.A No.160/2025 alleging that the Trial Court has traversed beyond its scope in recording such a finding which is detrimental to the interest of the plaintiffs, as no issue with regard to the same was required to be considered especially when the counter claim filed by the defendants/appellants was abandoned for want of payment of court fee.

16. Learned Judge in the First Appellate Court, thus, rightly set aside the said finding and finding was expunged by the impugned judgment.

17. Same is called in question by the beneficiaries under the joint Will executed by Sushila R. Nayak and her husband Sri K.Ramdas Nayak.

18. Sri Sateesh, learned counsel for the appellants/defendants, reiterating the grounds urged in the appeal memorandum, would contended with vehemence that the First Appellate Court has wrongly recorded a finding while expunging



the finding recorded by the Trial Court by mis-noting of the statutory provisions under Section 14(1) and 14(2) of the Hindu Succession Act.

19. He would further contend that, to consider that Sushila R. Nayak had full and absolute power over suit property to bequeath in favour of family deity at first instance and by codicil to respondent-Trust had no power inasmuch as what has been granted in mutual Will is only a life interest in favour of Sushila R. Nayak. The property being owned by K.Ramdas Nayak, in the absence of any legal heirs to K.Ramdas Nayak and also having regard to the Will executed by Ramdas Nayak and Sushila R.Nayak in favour of appellants, the finding of the First Appellate Court in holding that Sushila R.Nayak had no right to bequeath the suit property in favour of the first plaintiff is incorrect and thus suffers from not only legal infirmity, but also perversity.

20. He would further contend that when there was no power at all for Sushila R.Nayak to bequeath the suit property in favour of family deity or by way of codicil to the first plaintiff/ Trust, the learned Trial Judge was justified in recording a



finding that Sushila R.Nayak had no power to bequeath the suit property in favour of first plaintiff and therefore, these appellants rightly instituted suit in O.S.No.353/2018 for possession of the suit property as the appellants are law abiding citizens and did not want to take possession of the suit property by illegal method.

21. He would further contend that formation of the Trust as well as execution of codicil has come into being under suspicious circumstance is established since Sushila R.Nayak was practically on death bed, as could be seen from the very document itself.

22. He would also point out that the endorsement made in the Trust deed would go to show that it is a private registration in the house of Sushila R.Nayak. Therefore, she had no mental capacity to form the Trust.

23. Plaintiffs have high handedly got the Trust Deed registered, excluding the appellants from entering into the house which is detrimental to the interest of the appellants in



the joint and mutual Will executed by Sushila R. Nayak and her husband Sri K.Ramdas Nayak.

24. Thus, sought for admitting the appeal on the following substantial questions of law:

(i) Whether the Trial Court and First Appellate Court have come to the conclusion/decision or erroneous reading of facts/ evidence and on law and therefore the same is liable to be reversed, calling for remanding the petition to the trial court for fresh enquiry?

(ii) Whether the Trial Court is justified in decreeing the suit in part when trial court ought not to have decreed in favour of the respondents, permanently prohibiting the appellants when there was absence of approval or acquiescence from the appellants who are the actual title holders of the disputed property?

(iii) Whether OS 126/2007 could be decreed by the trial court when the disputed possession of the Respondents over the suit schedule property is not covered under any legal capacity of the Respondents or relationship with the title holders but, is illegal as the suit schedule property was to pass on to the Appellants after the death of Smt.Sushila Nayak as per the joint and mutual will dated 19/05/1997?

(iv). Whether the First Appellate Court has erroneously admitted the RA No.129/2018 for challenging only a single holding in the judgement



passed in OS No.126/2007 when the Appellants in the First Appeal (Respondents in this RSA) had other remedies available under the law?

(v). Whether the First Appellate Court has excessively used its powers of Judicial activism by wrongly appreciating the fact that the limited right of late Smt.Sushila Nayak as covered under Section 14(2) of Hindu Succession Act to fall under the ambit of Sec 14(1) of the Hindu Succession Act?

(vi) Whether the First Appellate Court had acted ultra vires in expunging the finding of the Court of first instance in OS No 126/2007?

(vii). Whether the 1st Appellate Court erred in placing reliance on the Joint and Mutual Will dated 19/05/1997 and perversely concluded that late Sri Ramdas Nayak had intention to bequeath it to her as an absolute owner, whereas he had bequeathed the suit schedule property as a life estate to late Smt.Sushila Nayak. Contrary to his expressions in the said Will, the First Appellate Court arbitrarily considering the said Will as a conditional Will, whereas there were no conditions mentioned in the Will?

(viii). Whether the Learned First Appellate Court erred in placing reliance on the Joint and Mutual Will dated 19/05/1997 by ignoring the fact that the said Will was admitted by both the contesting parties and such a Will could not be annulled only by the wish of one survivor?

(ix). Whether there is any infirmity in the judgment and decree of the Courts below?"



25. *Per contra*, Sri Sudhakar Pai, learned counsel for the contesting respondents supports the impugned judgment passed by the First Appellate Court.

26. He would further contend that the claim that is now made by the appellants to validate the joint and mutual Will executed by Sushila R. Nayak and her husband Sri K.Ramdas Nayak by way of this present Second Appeal is impermissible, inasmuch as, the attempt made by appellants herein before Trial Court seeking counter claim having been abandoned for payment of court fee.

27. He would further emphasize that the Order passed by the learned Trial Judge with regard to payment of court fee on the counter claim was challenged by the appellants herein before this Court in a writ petition which came to be dismissed.

28. He would also point out that even after dismissal of the writ petition, appellants herein who are the defendants failed to make good the payment of court fee on the counter claim. As such, Trial Court rejected the counter claim and also deleted



the issues framed thereunder as additional issues by exercising power under Order XIV Rule 5 of the Code of Civil Procedure.

29. Therefore, appellants cannot be now permitted to indirectly agitate the same issue in the form of challenging the Order of the First Appellate Court and thus sought for dismissal of the appeal.

30. In reply, learned counsel for the appellants relied on the following judgments in support of the joint and mutual Will.

(i) *K.S.Palanisami (dead) through legal representatives vs. Hindu Community in General and Citizens of Gobichettipalayam and others* reported in (2017)13 SCC 15.

(ii) *Dilharshankar C. Bhachech vs. Controller of Estate Duty, Ahmedabad* reported in (1986)1 SCC 701.

(iii) *J.Velu vs. Saroja and others* passed in S.A.No.144/2022 and CMP No.2914/2002 dated 18.04.2022 passed by the High Court of Judicature at Madras.

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



32. On such perusal of the material on record, there is no dispute that suit property earlier belonged to K.Ramdas Nayak. It is also not in dispute that he had a wife by name Sushila R. Nayak. The couple did not have issues is also a fact which is not in dispute. They executed a document styled 'joint and mutual Will' on 19.05.1993.

33. After execution of joint and mutual Will, K.Ramdas Nayak expired on 16.08.1997. Sushila R. Nayak survived her husband K.Ramdas Nayak.

34. During her life time, Sushila R.Nayak executed a Will in favor of her family deity on 21.06.1999. However, soon thereafter a deed of declaration of Trust came into existence which is registered in the office of the Sub Registrar, Mangaluru. Admittedly, it is a private registration.

35. In other words, Senior Sub Registrar, at the request of the concerned, visited the private residence of Sushila R. Nayak and registered the deed of declaration of Trust.



36. Smt.Sushila R. Nayak was aged 84 years when deed of Trust came to be registered. It is also on record that a codicil was executed by Sushila R. Nayak modifying the Will executed by her in favour of family deity. The said codicil is dated 22.08.2002.

37. After the death of Sushila R. Nayak on 25.11.2006, plaintiffs took out paper publication informing the general public that Sushila R.Nayak has executed a codicil and thereby plaintiff/Trust is the owner of the suit property.

38. The appellants herein, pursuant to the said paper publication, caused a legal notice informing that Ramdas Nayak and Sushil R. Nayak have together executed a registered Will in favour of the appellants and all other things which are contrary to the interest of the beneficiary are not binding on the appellants.

39. Ultimately, the dispute resulted in filing a suit in O.S No.126/2007 by the Trust against the appellants herein. Suit was contested by filing necessary written statement, making a



counter claim, seeking validity of the joint and mutual Will executed by Ramdas Nayak and Sushila R.Nayak.

40. Learned Trial Judge raised necessary issues and additional issues in view of the counter claim. However, since the court fee was not paid on the counter claim, the additional issues seeking validation of the Will executed by Ramdas Nayak and Sushila R.Nayak in favour of the defendants got deleted after the order of the Trial Court got confirmed before this Court in the writ petition.

41. Thus, the scope of the suit remained only with regard to the claim made by the plaintiffs with regard to the possession held by the plaintiffs by virtue of the declaration that they are the owners of the suit property by virtue of the subsequent Will and codicil executed by Sushila R.Nayak in favour of the Trust, after the Trust came to be formed on 12.04.2000.

42. Suit was contested and was decreed in part. Operative portion of the Order of the Trial Court reads as under:

"The suit of the plaintiffs is hereby decreed with costs.



The defendants are hereby restrained from interfering with the peaceful possession and enjoyment of the 'A' schedule property by the plaintiffs illegally or forcibly or dispossessing the plaintiff trust from the 'A' schedule property illegally or forcibly unless due process of law by way of permanent prohibitory injunction.

Draw decree accordingly."

43. Taking advantage of non-grant of declaration and recording a categorical finding by the Trial Court that Sushila R.Nayak had no power to liquidate the suit property in favour of plaintiff-Trust, it is the defendants who filed suit in O.S No.353/2018 seeking possession of the suit property from the plaintiffs.

44. Soon thereafter, plaintiffs realized that non granting declaratory relief and also recording a finding which is detrimental to the interest of the plaintiff-Trust, filed an appeal in R.A.No.129/2018 which was re-numbered as R.A No.160/2025.

45. The delay of 233 days in filing the appeal by the plaintiffs was condoned.



46. Appellants herein challenged the same before this Court in writ petition and for the reasons best known to them they withdrew the writ petition.

47. Thereafter, appeal was argued on merits and by the impugned judgment dated 13.02.2026, First Appellate Court allowed the appeal of the plaintiffs and expunged the finding recorded by the Trial Judge.

48. It is in this background that the present Second Appeal is filed by the defendants.

49. As could be seen from the above chronology of events, the right of the appellants to seek the validation of the Will got abandoned for non-payment of the court fee on the counter claim despite the rejection of their writ petition before this Court and after granting sufficient opportunity.

50. It is on record that the additional issues which were raised pursuant to the counter claim were also deleted by exercising the power under Order XIV Rule 5 of the Code of Civil Procedure.



51. Therefore, scope of the suit was only restricted to the Will said to have been executed by Sushila R. Nayak in favour of family deity in the first instance and later, by way of a codicil to the plaintiff-Trust. In the said proceedings, the ground that is now urged by the appellants cannot be taken into consideration as their counter claim was dismissed for non-payment of court fee.

52. Further, opposition to the Will and codicil executed by Sushila R. Nayak is nothing but the grounds to validate the joint Will of Ramdas Nayak and Sushila R.Nayak in favour of the defendants. When once they are non-suited for payment of court fee with regard to the counter claim, they cannot be permitted to re-urge the same either in the suit with regard to the validity of their Will or before this Court.

53. No doubt, a distinction is made by counsel for appellants Sri Sateesh to the effect that even in the absence of validation of the Will executed in favour of the appellants, the appellants can challenge the finding recorded by the First Appellate Court in upsetting the finding recorded by the Trial Court as a party to the proceedings.



54. No doubt, such a right is always available to a party. But what is the *locus standi* of the present appellants when their prayer for validation of their Will is abandoned on their volition is a question that remains unanswered.

55. Therefore, it is the plaintiffs who have realized that the finding recorded by the Trial Court would act against their interest and therefore, challenged the same before the First Appellate Court.

56. Factual findings have been recorded by both the Courts. Same is out of the scope of re-visitation in view of the powers of this Court under Section 100 of the Code of Civil Procedure.

57. However, taking note of the fact that the First Appellate Court has taken into consideration Sections 14(1) and 14(2) of the Hindu Succession Act is concerned, *per se*, such an opinion of the First Appellate Court may not hold the water inasmuch as Sushila R.Nayak did not get the absolute right over the suit property having regard to the limited right of life interest in the joint and mutual Will. Since the validation of the joint Will as propounded by the appellants herein got abandoned in the suit



in O.S No.126/2007, as an indirect method they cannot be permitted to re-agitate the same by challenging the order of the First Appellate Court.

58. As such, this Court does not find merits in any one of the substantial questions of law.

59. With regard to the decisions that has been relied upon by the counsel for the appellants is concerned, there cannot be any dispute as to the principles of law that are enunciated in those judgments.

60. However those judgments are only helpful if there is an enquiry by this Court as to the validation of the joint and mutual Will executed by Ramdas Nayak and Sushila R.Nayak in favour of the appellants.

61. When this Court has categorically recorded the finding as supra about the powers of this Court having regard to the scope of the Second Appeal, that there cannot be any revisitation to the validity of the Will. As such, those decisions are of no avail in admitting the appeal for further consideration.



NC: 2026:KHC:34582
RSA No. 870 of 2026

62. Accordingly, the following:

ORDER

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

Sd/-
(V SRISHANANDA)
JUDGE

kcm
List No.: 1 Sl No.: 78