



IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 12TH DAY OF JUNE, 2026

BEFORE

THE HON'BLE MR. JUSTICE ASHOK S.KINAGI

REGULAR SECOND APPEAL NO. 1328 OF 2013
(DEC/INJ)

BETWEEN:

SMT. MAHADEVAMMA
W/O LATE V KRISHNAMURTHY
AGED ABOUT 57 YEARS
R/O NAGARTHPET
NEAR SUPRABHATHA TALKIES
FORT
CHICKBALLAPUR 562 101

...APPELLANT

(BY SRI. VIGNESHWARA U .,ADVOCATE)

AND:

1. G PUSHPA
D/O V GOVINDA RAJU
AGED ABOUT 43 YEARS
R/O CAR STREET
MANCHENAHALLI VILLAGE
GOWRIBIDANUR TALUK – 562 113
2. THE EXECUTIVE ENGINEER
KPTCL (BESCOM)
CHIKKABALLAPUR
SUB DIVISION
CHIKKABALLAPUR - 562 101

Digitally
signed by
KIRAN
KUMAR
Location:
HIGH COURT
OF
KARNATAKA





3. SRI CHIKKARAJU
S/O LATE V KRISHNAMURTHY
AGED ABOUT 40 YEARS
R/O NAGARTHPET
NEAR SUPRABHATHA TALKIES
FORT CHICKBALLAPUR - 562 101

...RESPONDENTS

[BY SRI. B M HALASWAMY, ADVOCATE FOR R1
R2- SERVED
R3- SERVED]]

THIS RSA IS FILED U/S. 100 OF CPC, 1908 AGAINST THE JUDGEMENT & DECREE DTD 11.12.2012 PASSED IN R.A.NO.7/2010 ON THE FILE OF SENIOR CIVIL JUDGE AND CJM, CHIKKABALLAPUR, ALLOWING THE APPEAL AND SETTING ASIDE THE JUDGEMENT AND DECREE DTD 2.12.2009 PASSED IN OS.NO.213/2002 ON THE FILE OF PRINCIPAL CIVIL JUDGE (JR.DN.) AND JMFC, GOWRIBIDANUR.

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

CORAM: HON'BLE MR. JUSTICE ASHOK S.KINAGI

ORAL JUDGMENT

1. This Regular Second Appeal is filed by defendant No.2 challenging the judgment and decree dated 11.12.2012 passed in R.A. No.7 of 2010 by the



learned Senior Civil Judge and CJM, Chikkaballapur,
itinerate at Gowribidanur.

2. For the sake of convenience, the parties are referred to based on their ranking before the Trial Court: the appellant is defendant No.2, respondent No.1 is the plaintiff and respondent Nos.2 and 3 are defendant Nos.1 and 3.
3. Brief facts leading rise to the filing of this appeal are as follows:
4. The plaintiff filed a suit for declaration alleging that the plaintiff is the legally wedded wife and sole successor of late Sri V.Krishnamurthy, who was working as a Lineman at a Nandi sub-division of KPTCL, who passed away on 17.09.2001 while he was in service. The plaintiff being the legal representative of the deceased V.Krishnamurthy is entitled to succeed to the estate of the deceased V.Krishnamurthy, as well as his service benefits,



pension etc. and to get a job on compassionate ground.

5. It is contended that defendant No.2 is a stranger to the family of V.Krishnamurthy and defendant No.2 has no manner of any right, title or interest in respect of the estate of the deceased V.Krishnamurthy and defendant No.2 is not entitled for the appointment on compassionate ground. It is contended that defendant No.2 married to one Byatappa of Kanakapura Village, who was working as a Lineman in KEB and she is a widow. She is illegally trying to draw the service benefits of Late V.Krishnamurthy. Hence, a cause of action arose for the plaintiff to file a suit for declaration that she alone is entitled to receive the death benefits of deceased V.Krishnamurthy and sought for a permanent injunction.



6. Defendant No.2 filed a written statement denying the averments made in the plaint and also denied that the plaintiff is the legally wedded wife of late V.Krishnamurthy. It is contended that V.Krishnamurthy, nominated his mother and thereafter, on 08.08.2001, he had nominated defendant No.2 as his legally wedded wife and the plaintiff as the second wife, to claim the benefits.
7. After his demise, the pension docket of V.Krishnamurthy discloses that defendant No.2 is the legally wedded wife and defendant No.3 is born to him through defendant No.2 and the service records of V.Krishnamurthy disclose that the plaintiff is the second wife. It is contended that the plaintiff has no right to claim any service benefits of V.Krishnamurthy as she is not a legally wedded wife and V.Krishnamurthy had developed an illicit relationship with the plaintiff, which was objected by defendant No.2 and family members.



8. The plaintiff has no right to claim a share in the benefits and has filed a frivolous suit. It is contended that there is no cause of action to file a suit. Hence, the cause of action shown in the plaint is false and imaginary and accordingly, he prays to dismiss the suit.
9. The Trial Court, based on the rival readings of the parties, framed the following issues and an additional issue:

"Issues:

1. Whether the plaintiff proves that, she is the legally wedded wife of Sri. V. Krishnamurthy as their marriage was took place on 22.07.1996, and that she is the sole survivor to succeed to the entire estate of deceased V.Krishnamurthy?
2. Whether the plaintiff proves that the 2nd defendant is a widow married to one Sri. Byatappa of Kanakapura village and that she is a stranger to the family of late V. Krishnamurthy



and that she has no manner of right, title or interest in the estate of deceased?

3. Whether the plaintiff prove that the 2nd defendant in order to have a wrongful gain in the estate of deceased V. Krishnamurthy has made arrangements to manipulate the documents in her favour?
4. Whether the first defendant prove that the plaintiff being the second wife of late V. Krishnamurthy is not entitled for any benefit in law?
5. Whether the plaintiff is entitled for the suit relief?
6. What order or decree?"

Additional Issue No.1:

"Whether the second defendant proves that, she is the legally wedded wife or late V. Krishnamurthy and entitle to receive all benefits from the 1st defendant along with her son?"



10. The plaintiff to substantiate her case examined herself as PW1, examined four witnesses as PW2 to PW5 and marked 16 documents as Exhibits P1 to P16.
11. In rebuttal, an officer of defendant No.1 was examined as DW1 and defendant No.2 was examined as DW4, examined two witnesses as DW2 and DW3 and marked five documents as Exhibits D1 to D5, and also marked one court documents as Exhibit C1.
12. The Trial Court after recording the evidence, hearing both sides answered issue Nos.1 to 3 and 5 in the negative; issue No.4 as per the findings; additional issue No.1 partly in the affirmative; and issue No.6 as per the final order. The suit of the plaintiff was dismissed vide judgment dated 02.12.2009.
13. The plaintiff, aggrieved by the dismissal of suit in O.S. No.213 of 2002 preferred an appeal in R.A. No.7



of 2010 on the file of learned Senior Civil Judge and CJM, Chickaballapur, itenerate at Gowribidanur.

14. The First Appellate Court, after hearing the learned counsel for the parties, framed the following points for consideration:

1. "Whether the judgment and decree of the trial Court is illegal, erroneous, perverse and thereby calls for interference by this Court?
2. What order?"

15. The First Appellate Court, after re-appreciating the entire evidence on record, answered point No.1 in the affirmative and point No.2, as per the final order. The appeal was allowed and the judgment and decree passed by the trial Court was set aside. Consequently, the suit was decreed as prayed for.

16. Defendant No.2 aggrieved by the judgment and decree dated 11.12.2012 passed in R.A. No.7 of 2010 by the learned Senior Civil Judge and CJM,



Chickaballapur sitting at Gowribidanur, filed this regular second appeal

17. Heard the arguments of the learned counsel for defendant No.2 and learned counsel for the plaintiff.
18. Learned counsel for defendant No.2 submits that defendant No.2 is the legally wedded wife of V.Krishnamurthy and the V.Krishnamurthy, during his lifetime, initially he nominated his mother, Chinnathayamma, as his nominee and subsequently, the name of defendant No.2 was nominated on 08.08.2001. The plaintiff has not produced any records to demonstrate that the plaintiff's marriage was solemnized with V.Krishnamurthy. The plaintiff has produced LIC receipts. On perusal of the LIC receipt, it does not disclose that the plaintiff is the legally wedded wife of V.Krishnamurthy.
19. He submits that the plaintiff examined her parents as PW2 and PW3. He submits that PW2 and PW3 are



interested witnesses. Their evidence cannot be considered to prove the alleged marriage between the plaintiff and V.Krishnamurthy. He submits that the plaintiff has filed a suit for declaration that the plaintiff is the legally wedded wife of the deceased V.Krishnamurthy. The plaintiff must establish her case independently. She cannot depend upon the weakness of the defendants.

20. To buttress his argument, he has placed reliance on the judgment of the Hon'ble Apex Court in the case of ***Union of India and Ors. v. Vasavi Co-Operative Housing Society Ltd and Others***¹ and he submits that the First Appellate Court without properly re-appreciating the entire evidence on record committed an error in reversing the judgment and decree passed by the Trial Court. He also submits that the First Appellate Court has not properly framed the points for adjudication in terms

¹ AIR 2014 SC 937



of Order XLI, Rule 31 of the Code of Civil Procedure, 1908.

21. He also submits that though the plaintiff has examined four witnesses, none of the witnesses have deposed as to when the marriage of the plaintiff was solemnized with the deceased V.Krishnamurthy and also as to when the necessary ceremonies, as required under the provisions of Hindu Marriage Act, 1955, were performed. Hence on these grounds, he prays to allow the appeal.

22. *Per contra*, the learned counsel for the plaintiff submits that the plaintiff is the legally wedded wife of deceased V.Krishnamurthy and he has examined four witnesses. He submits that as the plaintiff has examined the witnesses to prove the marriage of plaintiff with the deceased V.Krishnamurthy. He submits that PW2 to PW5 have stated regarding the marriage. Their evidence has to be considered in



view of Section 50 of the Indian Evidence Act, 1872. The First Appellate Court has rightly re-appreciated the evidence on record and decreed the suit of the plaintiff. The judgment and decree passed by the First Appellate Court is just and proper and do not call for any interference at the hands of this Court. Accordingly, he prays to dismiss the appeal.

23. This Court admitted the appeal to consider the following substantial question of law:

"Whether the First Appellate Court is justified in relying on Ex.P1 to hold that the plaintiff is the legally wedded wife of deceased V. Krishnamurthy?"

Reg. Substantial Question of Law:

24. The case of the plaintiff is that she is the legally wedded wife of deceased V.Krishnamurthy and her name is entered in the Service Register of deceased V.Krishnamurthy. In order to prove the marriage of plaintiff with V.Krishnamurthy, the plaintiff examined



four witnesses as PW2 to PW5. The plaintiff examined herself as PW1 and she reiterated the plaint averments in the examination-in-chief and the plaintiff has produced Exhibit P1 alleged to have been executed as the "declaration of marriage".

25. From the perusal of the said declaration, which is marked as Exhibit P1, it does not disclose as to when the alleged marriage was performed between the plaintiff and V.Krishnamurthy and where it was performed. Further, though the plaintiff examined her mother and father as PW2 and PW3, they have reiterated the same averments made in the examination-in-chief of PW1. Even from the perusal of the evidence of PW2 and PW3, they have not deposed as to when exactly the alleged marriage was performed between the plaintiff and V.Krishnamurthy.



26. Except producing Exhibit P1, the plaintiff has not produced any other records to demonstrate that the marriage of the plaintiff was solemnized with V.Krishnamurthy.
27. The plaintiff has produced LIC receipts which clearly disclose that V. Krishnamurthy has taken a life insurance policy and he has paid the premiums. From the perusal of the documents produced by the plaintiff, i.e., LIC receipts, they do not disclose the name of the plaintiff being shown as wife of deceased V.Krishnamurthy.
28. In rebuttal, defendant No.1, an officer of defendant No.1/ KPTCL was examined as DW1. He has deposed that V.Krishnamurthy was working as a Lineman and in his Service Register, initially, the name of his mother, Chinnathayamma was shown as a nominee and subsequently, the name of defendant No.2 was shown as a wife of V. Krishnamurthy as a nominee



and subsequently, the name of plaintiff was inserted as a nominee as a second wife of V. Krishnamurthy.

29. Defendant No.2 has denied the relationship between the plaintiff and V.Krishnamurthy as husband and wife.
30. It is settled law that when the plaintiff has filed a suit for declaration that she is the legally wedded wife of V. Krishnamurthy, the burden of proof lies on the plaintiff to establish that she is the legally wedded wife of V.Krishnamurthy. The plaintiff except producing Exhibit P1 has not produced any other cogent evidence i.e., records like ration card, voter's identity card etc. Exhibit P1 is an unregistered document and defendant No.2 has denied the execution of Exhibit P1. Thus, the burden is on the plaintiff to establish regarding the execution of Exhibit P1. It is settled law that mere marking of document does not dispense its proof. The plaintiff



has not examined any attesting witnesses to Exhibit P1.

31. The Trial Court was justified in recording the finding that the plaintiff has failed to prove that she is the legally wedded wife of deceased V. Krishnamurthy and has rightly dismissed the suit of the plaintiff.
32. However, the First Appellate Court, without examining that the plaintiff, except producing Exhibit P1, has not produced any other records, solely placing reliance on Exhibit P1, has decreed the suit as prayed for.
33. The Hon'ble Apex Court in the case of ***Vasavi Co-operative Housing Society Ltd. (supra)*** has held that the plaintiff in a suit for declaration of title and possession could succeed only on the strength of his own title, and that could be done only by producing sufficient evidence to discharge the onus on it, irrespective of the question whether the defendant



has proved their case or not. Even if the title set up by the defendant is found against the plaintiff, in the absence of establishment of plaintiff's own title, the plaintiff must be non-suited.

34. In the instant case, if defendant No.2 has not produced any record to establish that she is not the legally wedded wife of deceased V.Krishnamurthy, it is for the plaintiff to establish that she is the legally wedded wife of deceased V. Krishnamurthy. Thus, the plaintiff has failed to establish that she is the legally wedded wife of deceased V.Krishnamurthy.

35. Hence, the First Appellate Court has committed an error in passing the impugned judgment by placing reliance on Exhibit P1. In view of the above discussion, I answer substantial question of law in the ***negative***.

36. Accordingly, I proceed to pass the following order:



ORDER

- (i) This Regular Second Appeal is ***allowed;***
- (ii) The judgment and decree dated 11.12.2012 passed in R.A. No.7 of 2010 by the learned Senior Civil Judge and CJM,, Chikkaballapur, itenerate at Gowribidanaur, is ***set aside;***
- (iii) The judgment and decree dated 02.12.2009 passed in O.S. No.213 of 2012 by the learned Prl. Civil Judge (Jr.Dn.) and JMFC, Gowribidanur, is ***restored;***
- (iv) No order as to the costs;
- (v) In view of the disposal of appeal, pending interlocutory applications do not survive for consideration and are accordingly disposed of.

**Sd/-
(ASHOK S.KINAGI)
JUDGE**

RK
List No.: 2 Sl No.: 6