



IN THE HIGH COURT OF KARNATAKA AT BENGALURU
DATED THIS THE 8TH DAY OF APRIL, 2026
PRESENT
THE HON'BLE MRS. JUSTICE ANU SIVARAMAN
AND
THE HON'BLE MS. JUSTICE TARA VITASTA GANJU
REGULAR FIRST APPEAL NO. 1303 OF 2025 (PAR)

BETWEEN:

1. SMT. VANAJAKSHI
AGED 80 YEARS,
W/O.LATE. SHARABA SETTY,
(DIED ON 16.11.2025,
THE APPELLANTS FILED MEMO TREAT
APPELLANT NOS.2 & 3 ARE
LRS OF DECEASED APPELLANT NO.1)
2. S.J.SHANKAR,
AGED 52 YEARS,
S/O.LATE.SHARABA SETTY,
RESIDING AT NO.415,
4TH MAIN,
5TH CROSS,
COFFEE BOARD LAYOUT,
KEMPAPURA,
HEBBAL,
BANGALORE - 560 024.



3. SMT. S. SHASHIKALA,
AGED 55 YEARS,
D/O.LATE SHARABA SETTY,
W/O. B. JAVAHAR,
RESIDING AT NO.85/A,
GEOLOGY LAYOUT,
SRIGHANDA KAWAL
ANAPURNESHWARI NAGAR,
BANGALORE 560 072.

...APPELLANTS

(BY SRI. T.P. VIVEKANANDA, ADVOCATE)

AND:

1. S. MAHESH
AGED 70 YEARS,
S/O. LATE SHARABA SETTY,
RESIDING AT NO.249,
FOREST LAYOUT,
BYRAVA NAGAR,
BANGALORE 560 059.

SMT.JAYANTHI,
AGED 61 YEARS,
D/O.LATE.SHARABA SETTY,
W/O.B.K.MALLIKARJUNAIAH,
RESIDING AT NO.55,
1ST MAIN,



8TH 'A' CROSS,
B.C.C.LAYOUT,
BANGALORE - 560 040.
SINCE DECEASED BY HER LRS

2. B.K.MALLIKARJUNAIAH
AGED ABOUT 73 YEARS,
S/O.LATE.KIDAGANNAPPA,
RESIDING AT NO.614,
A BLOCK,
KOMARLA BRIGADE,
CHIKLASANDRA,
UTTHARALLI MAIN ROAD,
BANGALORE 560 061.
3. SMT.ASHWINI B.M.
AGED ABOUT 39 YEARS
RESIDING AT NO.A-915,
A BLOCK,
KOMARLA BRIGADE,
SUBRAMANYAPURA MAIN ROAD,
CHIKLASANDRA,
UTTHARALLI HOBLI,
BANGALORE - 560 061.
4. SAGAR B M
AGED 34 YEARS,
S/O.B.K.MALLIKARJUNAIAH,



NO.55, 4TH CROSS,
1ST STAGE,
BCC LAYOUT,
VIJAYANAGAR,
BANGALORE-560 040.

...RESPONDENTS

(BY SRI. UMESH B.N., ADV. FOR R1;
R2 - R4 - SD)

THIS RFA IS FILED UNDER SECTION 96 OF CPC,
AGAINST THE JUDGMENT AND DECREE DATED 03.02.2024
PASSED IN OS.NO.2097/2020 ON THE FILE OF THE LII
ADDITIONAL CITY CIVIL AND SESSIONS JUDGE, BENGALURU,
PARTLY DECREETING THE SUIT FOR PARTITION.

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

CORAM: HON'BLE MRS. JUSTICE ANU SIVARAMAN
and
HON'BLE MS. JUSTICE TARA VITASTA GANJU



ORAL JUDGMENT

(PER: HON'BLE MRS. JUSTICE ANU SIVARAMAN)

This appeal is preferred against the judgment and decree dated 03.02.2024, passed in O.S.No.2097/2020 by the LII Additional City Civil and Sessions Judge, Bengaluru, (CCH-53), (hereinafter referred to as 'the trial Court' for short).

2. The suit was filed for partition in respect of two items of the suit property. The defendant, who is the eldest son of late Sri Sharaba Shetty had set up a Will and he contended that item No.1 of the suit property had been bequeathed exclusively to him by the Will of Sharaba Shetty dated 26.04.2000. The plaintiffs had set up another Will dated 20.04.2001. However, after taking into consideration the evidence on record, the trial Court came to the conclusion that the Will dated 26.04.2000 was proved and that the later Will set up by the plaintiffs dated 20.04.2001 was not proved. Accordingly, the suit was dismissed in respect of item No.1 of the suit property on the finding that



the first defendant was entitled to the said item of the property on the basis of the Will dated 20.04.2001.

3. Learned counsel appearing for the appellants submits that the Will dated 26.04.2000 clearly indicates that the first defendant would be the sole legatee in respect of item No.1 of the suit property and on account of the said bequest, he would have no claim in any of the other properties. It is submitted that though the Will was proved, the said contention was lost sight of and the suit was decreed in respect of item No.2 of the suit property by granting 1/5th share to the first defendant. Learned counsel for the appellants contends that a review petition was filed before the trial court, however, the same is dismissed.

4. We have heard the learned counsel appearing for the appellants as well as the learned counsel appearing for the respondents.

5. It is an admitted fact that the Will dated 26.04.2000 executed by Sharaba Shetty stood proved. Learned counsel appearing for the appellants submits that



the appellants are not making any claims with regard to the Will dated 20.04.2001 anymore. It is submitted that the Will dated 26.04.2000 is therefore to be considered in its entirety and is to be given full effect to. If that be so, the first defendant would not be entitled to 1/5th share in item No.2 of the suit property.

6. Having considered the contentions advanced, we notice that there is a clear finding that the Will dated 26.04.2000 is proved. It is not disputed today before us that the Will dated 26.04.2000 contained a specific condition that in view of the fact that item No.1 of the suit property was bequeathed exclusively to the first defendant, the first defendant would not be entitled to share in the other items of the property.

7. In the above view of the matter, we are of the opinion that the judgment inasmuch as granting 1/5th share in item No.2 of the suit property is incorrect since the Will of Sharaba Shetty, which is found to be proved clearly contains



a condition that the first defendant could not be entitled to any share in item No.2 of the suit property.

8. In the above view of the matter, we are of the opinion that the judgment and decree requires interference to that limited extent. The judgment and decree is modified to the extent that the 1/5th share granted to the first defendant in item No.2 of the suit property is set at naught. The judgment and decree is modified to the above extent. Parties shall work out their remedies accordingly.

Accordingly, the appeal is ***disposed of***.

All pending applications shall stand dismissed.

**Sd/-
(ANU SIVARAMAN)
JUDGE**

**Sd/-
(TARA VITASTA GANJU)
JUDGE**