



IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 22ND DAY OF JUNE, 2026

BEFORE

THE HON'BLE MR. JUSTICE V SRISHANANDA

REGULAR SECOND APPEAL NO. 2106 OF 2017 (DEC)

BETWEEN:

1. SMT. GANGAMMA
W/O ONKARAPPA
AGED ABOUT 66 YEARS
R/O ANAGODU VILLAGE
DAVANAGERE TALUK AND DISTRICT - 577 002.
2. SMT. SIDAMMA
D/O LATE KODUGUNI SIDDAPPA
AGED ABOUT 64 YEARS
R/O ANAGODU VILLAGE
DAVANAGERE TALUK AND DISTRICT - 577 002.
3. SMT. RATHNAMMA
D/O LATE KODUGUNI SIDDAPPA
AGED ABOUT 61 YEARS
R/O ANAGODU VILLAGE
DAVANAGERE TALUK AND DISTRICT - 577 002.
4. SMT GOWRAMMA
W/O SRI. NINGAPPA
AGED ABOUT 58 YEARS
R/O ANAGODU VILLAGE
DAVANAGERE TALUK AND DISTRICT - 577 002.
5. SMT. CHANNABASAMMA
W/O THIPPANNA

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AGED ABOUT 39 YEARS
R/O ANAGODU VILLAGE
DAVANAGERE TALUK AND DISTRICT - 577 002.

6. SMT. LAKSHMI K. DEVI
W/O MANJU
AGED ABOUT 27 YEARS
R/O ANAGODU VILLAGE
DAVANAGERE TALUK AND DISTRICT - 577 002.

7. SMT. LATHA
D/O LATE ONKARAPPA
AGED ABOUT 35 YEARS
R/O ANAGODU VILLAGE
DAVANAGERE TALUK AND DISTRICT - 577 002.

...APPELLANTS

(BY SRI. V.P. KULKARNI, ADVOCATE)

AND:

1. P.H. NAGAPPA
S/O LATE GANGAPPA
AGED ABOUT 68 YEARS
OCCU:GOVT SERVICE
R/O 962, 1ST CROSS
K.T.J NAGAR, DAVANAGERE - 577 002.

2. D.J. GAJENDRA
S/O JAYADEVAPPA
AGED ABOUT 33 YEARS
R/O ANAGODU VILLAGE
DAVANAGERE TALUK AND DISTRICT - 577 002.

...RESPONDENTS

(BY SRI. ARAVIND PATTAR, ADVOCATE FOR
SRI. K SREEDHAR, ADVOCATE FOR R1;
VIDE ORDER DATED 21.10.2024, R2 IS DELETED)



THIS RSA IS FILED U/S. 100 OF CPC., AGAINST THE JUDGEMENT AND DECREE DTD 29.08.2017 PASSED IN R.A.NO. 9/2016 ON THE FILE OF THE I ADDITIONAL SENIOR CIVIL JUDGE DAVANAGERE, DISMISSING THE APPEAL AND CONFIRMING THE JUDGEMENT AND DECREE DTD 07.12.2015 PASSED IN OS.NO.486/2001 ON THE FILE OF THE ADDITIONAL CIVIL JUDGE AT DAVANAGERE.

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

CORAM: HON'BLE MR. JUSTICE V SRISHANANDA

ORAL JUDGMENT

1. Heard Sri.V.P.Kulkarni, learned counsel for the appellants and Sri.Arvind Pattar, learned counsel appearing on behalf of Sri.K.Sreedhar, learned counsel for respondent No.1.

2. Unsuccessful plaintiffs are the appellants challenging the dismissal of the suit in O.S.No.486/2001 for the relief of declaration and injunction which was confirmed by the First Appellate Court in RA No.9/2016.

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

A suit in O.S.No.486/2001 came to be filed in respect of the following immovable property (hereinafter referred to as suit property):



"The agricultural land bearing Re.Sy.No.45/2, measuring 9 acres, 28 guntas of Anagodu village, Davangere Taluk and bounded by:

*East: Lands belonging to Pujari
Doddasiddaiah*

*West: Lands belonging to Kodagundi
Kampalappa*

*North: Lands belonging to Siddappa and
others*

*South: Lands belonging to Nagendrappa,
Hanumappa and Others*

4. Prayer in the plaint reads as under:

"Wherefore, it is respectfully prayed that this Hon'ble Court may kindly be pleased to pass the judgment and decree in favour of plaintiff in following manner:

- a. To declare the Will dated 07.09.1983 is created and concocted document not at all executed by Babannanavara Sangappa S/o Nagappa in favour of Smt.Rangamma W/o Gangappa, the mother of the defendant.*
- b. Restrain the defendant and also his legal representatives are whoever may be not to pose themselves as rightful owners to the schedule property under Will dated 07.09.1983 inherited through their mother Smt.Rangamma in the absence of the proof of the Will by way of granting the order of permanent injunction.*



c. For Court costs or such other reliefs as this Hon'ble Court deems fit to grant under the circumstances of the case."

5. Plaintiff averments would reveal that suit property earlier belonged to the plaintiffs' family which was sold to Babannavara Sangappa son of Nagappa by way of registered sale deed in the year 1970.

6. Since the Babannavara Sangappa was a money lender, he orally granted the lease of the very same property to the plaintiffs for cultivation on 'yearly gutta basis'. In view of coming into force of Land Reforms Act, plaintiff No.1 filed an application before the Land Tribunal and there was an order granted in favour of plaintiff No.1 which was challenged by the owner Babannavara Sangappa in WP No.6383/1976.

7. The order of the Land Tribunal was quashed by allowing the said writ petition and matter was remitted to the Land Tribunal for fresh disposal. When the matter was pending before the Land Tribunal, after remand, Babannavara Sangappa died intestate on 18.02.1984 and there were no legal heirs to Babannavara Sangappa.



8. Rangamma filed an application before the Land Tribunal claiming that she is the legatee under the Will executed by Babannavara Sangappa and averments made by the plaintiffs stating that he died intestate is incorrect and impleaded herself as a party before the Land Tribunal.

9. Since the Will said to have executed by Babannavara Sangappa in favour of Rangamma was disputed by the plaintiffs who were applicants before the Land Tribunal, Land Tribunal passed an order which ultimately got decided before this Court in a writ appeal.

10. This Court in appeal, WA No.133/2008, directed that the validity of the Will is to be established by Rangamma before the Civil Court and disposed of the matter.

11. Plaintiff said to have continued in possession of the suit property. However, matter was not further pursued by Rangamma to establish her right, title or interest over the suit property by approaching the Civil Court. Instead it is these plaintiffs who approached the Civil Court in the suit in O.S.No.486/2001 with the aforesaid prayer.



12. Rangamma died and her son P.H.Nagappa was made as a party-defendant in the suit.

13. Pursuant to the suit summons, P.H.Nagappa entered appearance and filed written statement denying the plaint averments and further contended that since Babannavara Sangappa was the absolute owner of the suit property by virtue of the sale deed, he had every right to execute the Will in favour of Rangamma which was placed before the Land Tribunal and Rangamma got impleaded as legal representative of Babannavara Sangappa before the Land Tribunal and thereafter, the orders came to be passed and therefore, suit is to be dismissed.

14. Based on the rival contentions of the parties, learned Trial Judge raised seven issues and two additional issues as under:

- 1. Whether the plaintiffs prove that the WILL Deed dated: 07-09-1983 executed by Babannavara Sangappa son of Nagappa is created one and concocted document?*
- 2. Whether the plaintiffs prove that they are in possession of the suit schedule property?*



3. *Whether the suit is not properly valued and court fee paid is insufficient?*
4. *Whether this court has no pecuniary jurisdiction to try the suit?*
5. *Whether the suit is not maintainable?*
6. *Whether the plaintiffs are entitled for the relief sought by them?*
7. *What order or Decree?*

Additional issues dated: 18.06.2015

1. *Whether the defendant proves that Babannavara Sangappa S/o Nagappa was executed the registered WILL dated 07.09.1983 in favour of his mother by name Rangamma W/o. Gangappa in respect of suit schedule property out of free will and wish?*
2. *Whether the defendant proves that after death of his mother Rangamma, he became the owner in possession of the suit schedule property by virtue of the WILL dated 07.9.1983?*



15. After recording the evidence of the parties, learned Trial Judge held that the plaintiffs failed to make out their legal right in respect of the suit property to allow the declaratory relief and injunction as referred to supra and dismissed the suit by considered judgment dated 07.12.2015.

16. Being aggrieved by the same, plaintiffs filed an appeal before the First Appellate Court in RA No.9/2016.

17. Learned Judge in the First Appellate Court after securing the records, heard the arguments of the parties in detail and on reconsideration of the material evidence on record, dismissed the appeal on merits *inter alia* holding in paragraph Nos.25 and 26 as under:

"25. The learned counsel for the appellants has much argued that deceased Rangamma and the defendant are not the relatives of the deceased Babannavar Sangappa, thereby question of executing the Will in favour of Rangamma does not arise. But whereas Mulla Hindu Chapter -17 , Sec. 367 is very much clear that a Hindu can dispose off his property by way of Will, but it should not be effect the legal right of his wife and other co-parcners. Admittedly the deceased Sangappa had no issues, as on the date of execution of alleged Will. Now let me know what is the definition of the Will. Thus, this



court drawn its attention on Sec. 2(h) of Indian Succession Act 1925 which reads like thus;

Sec.2(h) – Will – means the legal declaration of the intention of a testator with respect to his property which he desires to be carried into effect after his death.

So, the above provision is very much clear that the Will is the legal declaration of the testator about his intention and his desires to dispose his property. In the instant case the plaintiffs have not disputed the ownership of Babannavar Sagnappa by virtue of the sale deed, but they were claiming the right as tenants over the schedule property. So, when the Babannavar Sangappa was the owner of the schedule property has executed the Will in favour of Smt. Rangamma. The learned counsel for the appellants has much argued about some discrepancies appeared in the Will in respect of the word mentioned as relative and the signature of the testator. Thus, this court drawn its attention on Sec. 74 of Indian Succession Act 1925 which reads like thus;

Sec.74 Wording of Will – It is not necessary that any technical words or terms of art be used in a Will, but only that the wording be such that the intention of the testator can be known there from.

The above provision is very much clear Will must be construed as a whole to give effect to the manifest intention of the testator and it is not necessary that any technical words or terms of art will not take away the interest of the testator who executed the Will. In the



instant case the recitals as stated supra are taken in to consideration it is clear that the testator when he was in the sound status of mind out of love and affection has executed the Will in favour of the Rangamma who and her son were look out him during his life time, as the Ex.D.14 and 15 are the Voter List for the year 1977 and 1980 in which the address of the deceased Babannavar Sangappa and Rangamma has been shown as 959/1 and relationship has been shown as husband and wife. So, for the proper appreciation of the recitals as appeared in the Ex.D.14 and 15 is necessary for reproduction which reads like thus;

ಮನೆ ಸಂಖ್ಯೆ ಮತ್ತು ವಿಳಾಸ:	ಮತದಾರರ ಹೆಸರು	ತಂದೆಯ/ ತಾಯಿಯ/ ಗಂಡನ ಹೆಸರು	ಗಂಡಸು ಹೆಂಗಸು	ಅಥವಾ	೧/೧/೧೯೯೭ ಸರಿ ಸುಮಾರು ವಯಸ್ಸು
959/1	ಬಿ ಸಂಗಪ್ಪ	ನಾಗಪ್ಪ	ಗಂ		೫೪
-	ಬಿ ರಂಗಮ್ಮ	ಬಿ ಸಂಗಪ್ಪ	ಹೆಂ		೪೪

ಮನೆ ಸಂಖ್ಯೆ ಮತ್ತು ವಿಳಾಸ:	ಮತದಾರರ ಹೆಸರು	ತಂದೆಯ/ ತಾಯಿಯ/ ಗಂಡನ ಹೆಸರು	ಗಂಡಸು ಹೆಂಗಸು	ಅಥವಾ	೧/೧/೧೯೯೭ ಸರಿ ಸುಮಾರು ವಯಸ್ಸು
೯೫೯/೧	ಬಿ ಸಂಗಪ್ಪ	ನಾಗಪ್ಪ	ಗಂ		೫೭
-	ಬಿ ರಂಗಮ್ಮ	ಬಿ ಸಂಗಪ್ಪ	ಹೆಂ		೪೭

The above recitals as appeared in Ex.D.14 and 15 are reflects the deceased Sangappa and Rangamma were living together during their life time, that itself is clear the defendant and his mother were looked out the deceased Sangappa during his life time, so out of love and affection deceased Sangappa has executed the Will in favour of



Rangamma, otherwise question of residing with the deceased Sangappa by the Rangamma does not arise. Even there is no explanation from the plaintiffs why the Rangamma's name has been shown along with the deceased Babannavar Sangappa as appeared in the Ex.D.14 and D.15. so the recitals as appeared in the Ex.D.14 and 15 are clearly shows that during the life time of Babannavar Sangappa and Rangamma were living together. Rangamma and defendant were looked out welfare of the deceased Sangappa, that is the reason why Sangappa has executed the Will in favour of Rangappa.

26. The learned counsel for the appellants has much argued that the Rangmma during her life time had not filed suit for declaration based on the Will, thereby the defendant is not entitled the ownership nor declaration over the suit schedule property based on the Will said to have been executed by the Sangappa in favour of Rangamma and the said counsel has drawn the court attention on the judgment of the Hon'ble High court of Karnataka passed in Writ Appeal No: 133 of 2008 (LR) in writ Petition No. 3833 of 2002 (LR) in which their lordship held that " it is not doubt true that sangappa being a Hindu, Will of such persons need not be probated, but the question is that whether Sangappa had executed a Will or not requires to be proved by the person who has set up the Will. When the appellants are questioning the right of the Rangamma to come on record disputing the legality and correctness of the Will executed by Sangappa, in all fairness, the Tribunal should have directed Rangamma to approach the Civil Court and get



an appropriate declaratory relief. Without doing so, the Tribunal cannot give any finding on the legality and correctness of the Will executed by Sangappa as the same is beyond the scope and power of the tribunal." So, the order of the Hon'ble High court of Karnataka clearly reflects that the tribunal has no jurisdiction to declare legality and correctness of the Will that has to be decided by the Civil court and the person who set up the Will has to establish his ownership by virtue of the Will. Admitteldy the plaintiffs in their plaint itself have categorically admitted that the Hon'ble High court of Karnataka remanded back the case to the Tribunal for fresh enquiry and Babannavar Sangappa was died on 8.2.1984 and Rangamma was also died on 25.8.1993 who was brought on record after the death of Sangappa and Rangamma, the plaintiffs were filed the instant suit on 10.10.2001 for declaration and for permanent injunction and the Hon'ble High court of Karnataka passed the judgment in Writ appeal No: 133/08 on 13.8.2012. So, the arguments advanced by the learned counsel for the appellants on this aspects holds no water. The learned counsel for the appellants has drawn the court attention on the following judgments;

- 1. CCC 2017 (91) MAD Page 650*
- 2. CCC 2015 (2) SC Page 159*
- 3. ILR 2008 Karnataka Page 2115*
- 4. ILR 2015 Page 3906*



On careful perusal of the above said decisions, in the said decisions their lordship held that no requirement that Will has to be marked only through attesting witness, a Will can be marked though a preponder of the Will and Sec. 68 of the Evidence Act is mandatory to examine the witness to prove the Will. In the instant case D.W.1 in his evidence has clearly stated that the deceased Sangappa has executed the Will in favour of Rangamma who is none other than his mother and he has identified the signatures of deceased Sangappa and he has also identified his signature as appeared in the Ex.D.16 as Ex.D.16(b). So, one thing is clear that as on the date of execution of the Will the defendant No.1 was present and he has put his signature as witness to the Ex.D.16. Admittedly the D.W.2 is not the witness of the Ex.D.16, but his father was the document writer and he has identified his father signature as appeared in the Ex.D.16. Though the learned counsel for the appellants has cross examined the D.W.1 and 2 nothing is established to disbelieve their evidence. Admittedly the document writer of Ex.D.16 is no more. That is the reason why the defendant has examined his son to identify the signature of his father. Accordingly he has identified the signature in view of Sec.47 of Indian Evidence Act 1872. Therefore, I do respect to the decision which relied by the learned counsel for the appellants are not applicable to the case on hand. It is an admitted fact, this court is not sitting as tribunal to decide the tenancy right and the plaintiffs were also not filed the instant suit for deciding of tenancy, but they were filed the instant suit for declaration to declare



that the Will dated: 7.9.1983 is a created and concocted document and the defendant is not the owner by virtue of the Will, for which the both parties were lead the evidence and placed materials, but the plaintiffs were failed to establish the same through oral and documentary evidence. The learned counsel for the appellants has much argued that the appellant are in possession of the schedule property, but the P.W.1 in her cross examination has categorically admitted that property is standing in the name of the defendant and her father had filed the Form No.7 in respect of the area to an extent of 4 acre 29 guntas in the schedule property and examined two witnesses on their behalf namely Chandrappa and Ishappa @ Ishwarappa, but whereas in the boundary of the schedule property no where reflects the P.W.2 and 3's properties are situated adjacent to the schedule property. But the reasons best known to the plaintiffs did not taken any steps to examine the persons who are adjacent to the schedule property to show their possession over the schedule property and moreover the P.W.2 in his chief examination has stated the plaintiffs are in possession of the schedule property, but in his cross examination has categorically admitted that since from the date of purchase of the tractor he is cultivating the schedule property till this day and Kogundi Siddappa never cultivated personally of the suit schedule property. So, for the proper appreciation of the admission of the P.W.2 in his cross examination is necessary for reproduction which reads like thus;



“ನಾನು ಟ್ಯಾಕ್ಟರ್ ಖರೀದಿ ಮಾಡಿದ ಲಾಗಾಯಿತಿನಿಂದ ಇವತ್ತಿನವರೆಗೂ ಜಮೀನಿನ ಸಾಗುವಳಿ ನಾನೇ ಮಾಡುತ್ತಿದ್ದೇನೆ. ಕೊಗುಂಡಿ ಸಿದ್ಧಪ್ಪ ಸ್ವತಃ ಉಳಿಮೆ ಮಾಡುತ್ತಿರುವುದಿಲ್ಲ. ಆದರೆ ನಾನು ಮಾಡುತ್ತಿದ್ದೇನೆ. ದಾವಾಸ್ತಿಯ ಪೂರ್ವಕ್ಕೆ ನಾಗೆಂದ್ರಪ್ಪನ ಜಮೀನು, ಪಶ್ಚಿಮಕ್ಕೆ ಕಂಪಾನಪ್ಪನವರ ಜಮೀನು, ಉತ್ತರಕ್ಕೆ ಸಿರಿಗೆರೆ ಸಿದ್ಧಪ್ಪನ ಜಮೀನು ಇರುತ್ತದೆ ದಾವಾಸ್ತಿ ಒಟ್ಟು 9 ಎಕರೆ ಇರುತ್ತದೆ ನಾನು 10-12 ವರ್ಷಗಳಿಂದ ಜಮೀನಿನ ಸಾಗುವಳಿ ಮಾಡುತ್ತಿದ್ದು ಅದಕ್ಕಿಂತ ಮೊದಲು ನನ್ನ ತಂದೆ ಸಾಗುವಳಿ ಮಾಡುತ್ತಿದ್ದರು.”

The above admission of the P.W.2 during his cross examination clearly reflects that the plaintiffs were not in possession of the suit schedule property as the P.W.2 is in possession of the suit schedule property. Since the P.W.2 is the witness of the plaintiffs, even he has not stated the boundaries as stated in the schedule, therefore his evidence will not help the plaintiffs to prove their possession over the schedule property, since the P.W.2 himself claiming to be in possession of the schedule property since from his father and moreover the P.W.3 who is also witness of the plaintiffs in his cross examination has categorically admitted the P. W 2 is in possession of the schedule property prior to his father was in possession of the schedule property. So, for the proper appreciation of the admission of the P.W.3 in his cross examination is necessary for reproduction which reads like thus;

ದಾವಾ ಜಮೀನನ್ನು ಪಿ ಡಬ್ಲ್ಯೂ 2 ಚಂದ್ರಪ್ಪನವರು ಸಾಗುವಳಿ ಮಾಡುತ್ತಾರೆ ಅದಕ್ಕಿಂತ ಮೊದಲು ಆತನ ತಂದೆ ಮಾಡುತ್ತಿದ್ದರು ಎಂದರೆ ಸರಿ.



The above admission of the P.W.3 during his cross examination reflects the P.W.2 is in possession and enjoyment of the suit schedule property since 10-12 years. Therefore, the P.W.2 and P.W.3 evidence will not help the plaintiffs to prove their possession over the schedule property. Thus the trial court after appreciating the oral and documentary evidence has come to the right conclusion and dismissed the suit. So, question of interference of this appellate court does not arise. Hence, I am of the opinion that the point No.1 to 3 are answered as negative."

18. Being further aggrieved by the same, plaintiffs filed the present appeal on following grounds:

- *The Appellants submit that Babannavar Sangappa was a money lender and belongs to Lingayath caste and Smt. Rangamma, the mother of the defendant herein belongs to a different caste and they were not relatives and hence there was no reason for Babannavar Sangappa to execute a Will bequeathing the schedule property in her favour. The recital of the Will however indicates that Babannavar Sangappa and Smt. Rangamma are relatives and hence he bequeathed the schedule property in her favour. The deceased Babannavar Sangappa was very old and taking undue advantage of his old age and his social background, the defendant herein got fabricated the Will in his mother's favour. The Trial Court and the 1st Appellate Court without appreciating the evidence on*



record properly have erroneously come to the conclusion that the Will is a genuine one and dismissed the suit filed by the Appellants.

- *The Appellants submit that Babannavar Sangappa was not at all residing with the Respondent herein and no oral evidence has been adduced to establish the relationship between Babannavar Sangappa and the mother of the defendant herein nor any evidence is adduced to establish that the defendant and his mother were looking after Babannavar Sangappa. The Voters List which has been produced is a "got up" document and same was prepared at the instance and information given by the defendant herein to the officials who visited his house at the time of revising the Voters List and hence the Voters List could not have been relied upon by the Courts below to come to the conclusion that the defendant and his mother were residing along with Babannavar Sangappa.*

- *The Appellants submit that the Courts below having come to the conclusion that the signature found on page 1 of the Will is quite different from the signature of Babannavar Sangappa ought to have come to the conclusion that the Will is a bogus and fabricated one and decreed the suit holding that the Respondent herein has not proved the Will in accordance with Sec. 63 of the Indian Succession Act.*



- *The Appellants submit that the defendant is an interested person and his evidence regarding the execution and the signature on a Will could not have been relied upon by the Trial Court to come to the conclusion that Babannavar Sangappa has executed the Will in his presence. The Respondent herein has examined another witness who has identified the signature of his father found in the Will who was not an attesting witness. The Appellant submit that as per the provisions of Indian Succession Act, the burden of proving the Will is in favour of the person in whose favour the Will has been executed. But however, the Courts below have erroneously shifted the burden of proving the Will on the Appellants herein and dismissed the suit on the ground that the Appellants herein have failed to establish that the Will is not executed by Babannavar Sangappa in favour of Smt. Rangamma.*
- *The Appellants submit that even though the Will is registered, the entire burden of proving the Will is on the defendant as per the provisions of Indian Succession Act. The registration of the Will does not given any presumption regarding the genuineness of the Will and hence Courts below could not have presumed that that the Will is a genuine one on the ground that the same is registered.*
- *The Appellants submit that the finding given by the Courts below that the Appellants are not in possession*



of the property is illegal, erroneous and not based on the evidence and hence the same is liable to be set aside.

- *The Appellants submit that the findings of the Courts below that the suit filed by the Appellants is time barred beyond the period of limitation is wholly illegal, erroneous and liable to be set aside. The Appellants submit that the application filed by the Plaintiff No.1 was pending before the Land Tribunal and the Courts below had no power or authority to decide regarding the possession of the land in question and hence the finding given by the Courts below that the Appellants are not in possession of the property is illegal, erroneous and wholly without jurisdiction and same is liable to be set aside.*
- *The Appellants submit that the deceased Babannavar Sangappa was 80 years old at the time of alleged execution of the Will and he was not in hale and healthy condition and he was not in a position to execute any Will during the relevant period of time. But however, the Courts below, overlooking the oral and documentary evidence have erroneously come to the conclusion that the Will has been executed by the deceased Babannavar Sangappa based on the recitals of the Will.*
- *The impugned order of the Courts below is based on surmises and conjectures and not based on pleadings*



and evidence of the parties and hence the same is erroneous and liable to be set aside.

19. Learned counsel for the appellants reiterating the grounds urged in the appeal memorandum would contend that both the Courts committed grave error in not considering the proof of Will was required to be established by the defendant who is claiming right as a legatee under the alleged Will executed by Babannavara Sangappa in favour of Rangamma and he being the son of Rangamma.

20. He would further emphasize that Trial Court failed to consider the admission made by D.W.1 in the cross-examination to the effect that signature found in the Will is doubtful as to the signature of Babannavara Sangappa.

21. He would further contend that both the courts erred in shifting the burden on the plaintiffs to prove the genuineness of the Will as profounder of the Will is the defendant.

22. He would also emphasize that no effort has been made by the defendant to prove the Will in terms of the observations made by this Court in WA No.133/2008 and therefore, the reasoning recorded by both the Courts is



incorrect and sought for admitting the appeal on following substantial questions of law:

- a. *"Whether the Courts below were justified in coming to the conclusion that the Will executed by Babannavar Sangappa in favour of Smt. Rangamma is a genuine Will even though the respondent has proved execution of the Will in accordance with Sec. 68 of Indian Succession Act and Sec. 64 of Evidence Act?*
- b. *Whether the Courts below were justified in shifting the burden on the Appellants to prove execution of the Will executed by Babannavar Sangappa in favour of Smt. Rangamma?*
- c. *Whether the Courts below were justified in coming to the conclusion that the Respondent herein has proved the Will only on the basis of the examination of DW-1 who is the son of the deceased Smt. Rangamma overlooking the provisions of Indian Evidence Act and Indian Succession Act?*
- d. *Whether the Courts below were justified in holding that the suit filed by the Appellants herein is time barred on the ground that the same has not been filed within a period of three years?*
- e. *Whether the Courts below had jurisdiction to decide the possession of the land in question knowing that Form*



No.7 filed by the 1st Plaintiff is pending before the Land Tribunal, Davanagere?

f. Whether the Courts below were justified in dismissing the suit filed by the Appellants herein on the ground that the Appellants herein have failed to establish their case even though defendant has failed to prove execution?"

23. Lastly, learned counsel for the appellants would contend that the finding of the Trial Court that the suit is time barred is totally uncalled for and it is the plaintiffs who continued to be in possession of the suit property and therefore, appeal needs to be admitted.

24. Per contra, learned counsel for the respondents supports the impugned judgments.

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

26. On such perusal of the material on record, in the first declaratory relief itself could not have been prayed for by the plaintiffs in view of the observations made in WA No.133/2008. Thus frame of suit itself is bad. There is no



dispute that the property at an undisputed point of time belonged to the plaintiffs' family. So also, it is admitted fact that brother of the plaintiffs sold the property in favour of Babannavara Sangappa in the year 1970 through a registered sale deed.

27. It is the case of plaintiffs that Babannavara Sangappa being the money lender could not cultivate the land and therefore, there was a oral agreement of lease entered into by Babannavara Sangappa in favour of the plaintiffs on 'yearly gutta basis'. Based on such rights, it is the plaintiffs who approached the Land Tribunal and filed an application under Form No.VII in view of the Land Reforms Act coming into force and then occupancy rights were granted in favour of the plaintiffs.

28. It is not in dispute that Babannavara Sangappa challenged the order of the Land Tribunal before this Court in writ petition. Writ petition was allowed and order granting the occupancy rights was quashed and matter was remitted to the Land Tribunal.



29. Later on, Land Tribunal held an enquiry in terms of the order passed by this Court in writ petition. During the pendency of such application, Babannavara Sangappa died. According to the plaintiffs, he died intestate leaving behind no issues. But Rangamma claiming to be the legatee of Babannavara Sangappa, filed an application to implead heirs in place of Babannavara Sangappa as a legal representative which was allowed by the Land Tribunal based on the Will.

30. At that juncture, an order came to be passed after adjudication which was subject matter of another writ petition which ultimately ended in WA.133/2008 before this Court.

31. In the Writ Appeal, what has been observed is that Rangamma should establish the validity of the Will before the Civil Court by holding an enquiry into the bequeath made by Babannavara Sangappa in favour of Rangamma, as it is outside the scope of enquiry before the Land Tribunal.

32. In the normal circumstances, it is Rangamma who was required to approach the Civil Court in terms of the order passed in WA No.133/2008. Instead it is these appellants who



filed the suit after the death of Rangamma against the son of Rangamma in O.S.No.486/2001.

33. Additional issues were also framed by the learned Trial Judge after taking into consideration the rival contentions of the parties as referred to supra. Parties placed their evidence in this regard.

34. Since it is the plaintiffs who approached the Trial Court with a relief of declaration and injunction, learned Trial Judge was justified in holding that plaintiffs cannot take advantage of the weakness of the defendant or his case or the evidence placed on record on behalf of the defendant to prove their case and rightly rejected the declaratory relief.

35. Insofar as relief of injunction is concerned, learned counsel for the appellants would contend that when there is an order granted by the Land Tribunal, Civil Court has no jurisdiction to grant injunction.

36. It is to be noted that the order of the Land Tribunal was not final in view of the order passed by the Appellate Court in the writ jurisdiction as referred to supra.



37. Be it what it may, it is for the parties to work out their remedy.

38. Nevertheless, since the plaintiffs failed to establish the legal right to seek for the declaratory relief as aforesaid, learned Trial Judge and learned Judge in the First Appellate Court were justified in dismissing the suit of the plaintiffs.

39. Having said thus, parties are left open with possible legal action to safeguard their respective rights.

40. With that observation, this Court does not find any merits in any one of the substantial questions of law raised in the appeal memorandum.

41. Accordingly, following:

ORDER

- i. Admission is declined.
- ii. Appeal is dismissed.
- iii. No order as to costs.

Sd/-
(V SRISHANANDA)
JUDGE

KAV
List No.: 1 Sl No.: 50