



CNR: KAHC010445342010

NC: 2026:KHC:54077
RSA No. 1479 of 2010

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 29TH DAY OF SEPTEMBER, 2026

BEFORE

THE HON'BLE MR. JUSTICE SACHIN SHANKAR MAGADUM

REGULAR SECOND APPEAL NO. 1479 OF 2010 (PAR)

BETWEEN:

JAVARAYIGOWDA
@JAVAREGOWDA

1. CHOWDAMMA
AGED ABOUT 57 YEARS
W/O RAMALINGU,
D/O LATE JAVARAYIGOWDA @ JAVAREGOWDA
RESIDING AT 1ST CROSS, HALAHALLY
MANDYA CITY-571 402.
2. THIMMAMMA
AGED ABOUT 55 YEARS
W/O PUTTASWAMY
D/O LATE JAVARAYIGOWDA @ JAVAREGOWDA,
RESIDING AT HANIYAMBADI VILLABGE,
KOTHATHI HOBLI, MANDYA TALUK,
MANDYA DISTICT.-571 403.
3. RATHNAMMA
AGED ABOUT 53 YEARS
W/O SHANKARA
RESIDING AT HOSABUDANUR VILLAGE
KASABA HOBLI, MANDYA TALUK
MANDYA DISTRICT-571 403.
4. GOWRAMMA
AGED ABOUT 48 YEARS
W/O KALEGOWDA
D/O LATE JAVARAYIGOWDA@JAVAREGOWDA,
RESIDING AT D. NO.3414,

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2ND CROSS, GANDHI NAGARA,
MANDYA CITY-571 401.

...APPELLANTS

(BY SRI. B. VIJAY SHETTY, ADVOCATE)

AND:

1. SRI NARAYANA
AGED ABOUT 55 YEARS
S/O LATE JAVARAYIGOWDA@JAVAREGOWDA
RESIDING AT HANIYAMBADI VILLAGE
KOTHATHI HOBLI, MANDYA TALUK
MANDYA DISTRICT-571 403.
2. SIDDAMMA
AGED ABOUT 55 YEARS
W/O CHANNEGOWDA,
RESIDING AT HANIYAMBADI VILLAGE
KOTHATHI HOBLI, MANDYA TALUK,
MANDYA DISTRICT-571 403.

...RESPONDENTS

(BY SRI. K.V. NARASIMHAN, ADVOCATE FOR R1 & R2)

THIS RSA IS FILED UNDER SECTION 100 OF CPC,
AGAINST THE JUDGMENT AND DECREE DATED 15.01.2010
PASSED IN R.A.NO.106/2008 AND R.A.NO.104/2008 ON THE
FILE OF THE ADDL. DISTRICT JUDGE, MANDYA, ALLOWING
THE APPEAL AND SETTING ASIDE THE JUDGMENT AND DECREE
DATED 08.09.2008 PASSED IN O.S.NO.134/2000 ON THE FILE
OF THE ADDL.CIVIL JUDGE (SR.DVN.), MANDYA.

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

CORAM: HON'BLE MR. JUSTICE SACHIN SHANKAR MAGADUM

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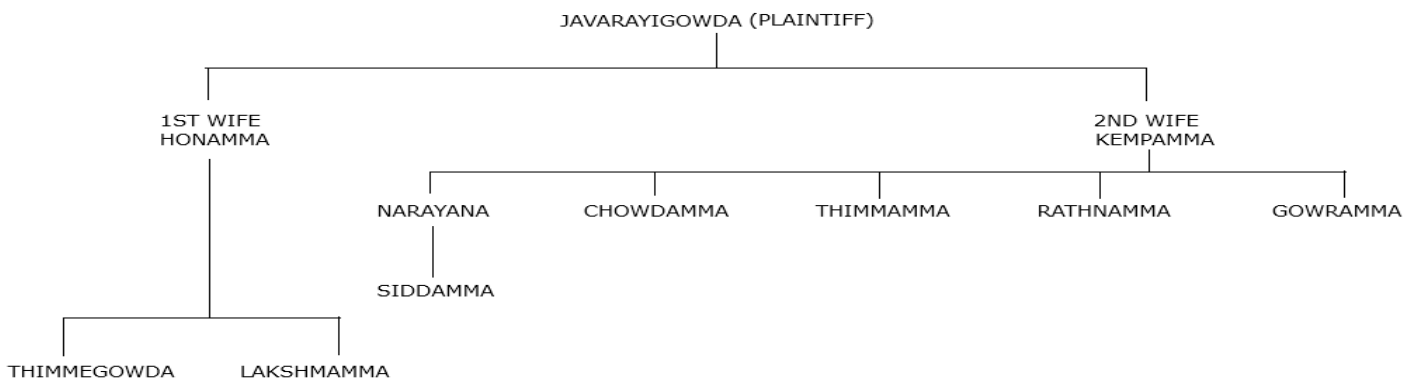
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ORAL JUDGMENT

The captioned appeal is by the legal heirs of the original plaintiff questioning the judgment and decree of the Appellate Court in R.A.Nos.104/2008 and 106/2008, who has reversed the judgment and decree of the trial Court by allowing the appeal and suit is consequently dismissed.

2. For the sake of brevity, the parties are referred to as per their rank before the trial Court.

3. Family tree is as under:



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4. The original plaintiff, Javarayigowda, who is the father of defendant No.1, instituted the suit seeking partition and separate possession of his alleged half share in the suit schedule properties. The foundation of the plaintiff's claim was the compromise recorded in the earlier partition suit in O.S.No.109/1989. It was specifically pleaded that, under the terms of the said compromise, the plaintiff-Javarayigowda and defendant No.1, who was his son born through his second wife, were jointly allotted the suit schedule properties. The plaintiff, therefore, asserted that notwithstanding the compromise decree, he and defendant No.1 continued to constitute a joint Hindu family and that the properties jointly allotted under the compromise continued to be held by them jointly, each being entitled to his legitimate share therein.

5. The grievance of the original plaintiff was that, subsequent to the compromise recorded in O.S.No.109/1989, the relationship between himself and

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defendant No.1 became strained. It was alleged that defendant No.1 began to adopt a hostile attitude towards the plaintiff and started neglecting him. The plaintiff further alleged that even his basic requirements, including food and other amenities, were denied by defendant No.1, compelling him to seek partition of the properties which, according to him, continued to be jointly held by him and defendant No.1. It was further pleaded that though defendant No.1 initially agreed to effect partition by metes and bounds, he subsequently resiled from the said understanding at the instance of his wife and refused to effect partition and deliver the plaintiff's separate share.

6. The plaintiff also alleged that defendant No.1, while acting adversely to his interest, failed and refused to render accounts in respect of the income and enjoyment of the suit schedule properties. According to the plaintiff, the conduct of defendant No.1 made it necessary for him to seek not only partition and separate possession but also



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rendition of accounts in respect of the properties which, according to him, continued to be jointly held by the parties.

7. Defendant No.1 entered appearance and filed his written statement, stoutly disputing the allegations and claims made in the plaint. The principal defence was that the suit itself was not maintainable in view of the terms and conditions incorporated in the compromise decree passed in O.S.No.109/1989. Defendant No.1 contended, in substance, that the rights of the parties stood conclusively determined under the earlier compromise and that the plaintiff, having agreed to the terms thereof, could not subsequently maintain a suit seeking partition in respect of the very same properties.

8. On the basis of the pleadings of the parties, the Trial Court framed the necessary issues and the parties were called upon to lead evidence in support of their respective claims and defences.

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9. During the pendency of the suit, the original plaintiff-Javarayigowda sought amendment of the plaint. By way of the proposed amendment, an additional averment was incorporated to the effect that he had made a testamentary arrangement in respect of his one-half share in the suit schedule properties and had resolved to bequeath the same in favour of his daughters. The factum of such testamentary arrangement was accordingly brought on record by amending the plaint. During the pendency of the proceedings, Javarayigowda died. Thereafter, the daughters, claiming to be the beneficiaries under the testamentary arrangement made by the deceased plaintiff, filed appropriate applications before the Trial Court and came on record. They thereafter prosecuted the suit by asserting the rights which, according to them, had devolved upon them under the testamentary arrangement.

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10. The Trial Court, upon appreciation of the oral and documentary evidence on record, answered Additional Issue No.2 in favour of the plaintiffs and held that the plaintiffs had succeeded in establishing the testamentary arrangement said to have been made by the original plaintiff-Javarayigowda. However, while considering the effect of the compromise decree in O.S.No.109/1989, the Trial Court took the view that the said compromise did not, by itself, create any right in favour of either the plaintiffs or defendant No.1 and proceeded to treat the suit schedule properties as joint family ancestral properties. Proceeding on that basis, the Trial Court decreed the suit and granted one-half share in all the suit schedule properties in favour of the original plaintiff-Javarayigowda, directing that the same be separated by metes and bounds. The Trial Court also considered the claim of defendant No.2 in respect of suit schedule Item No.2, namely, Sy.No.44/1. While answering Additional Issue No.4 in the negative, the Trial Court held that defendant



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No.2, who is the mother-in-law of defendant No.1, had failed to establish that she was a bona fide purchaser of the said property and consequently declined to recognise the protection claimed by her on that count.

11. Aggrieved by the judgment and decree of the Trial Court, defendant No.1 and defendant No.2 preferred two separate appeals, principally questioning the grant of one-half share in favour of the original plaintiff-Javarayigowda in respect of all the suit schedule properties. The First Appellate Court, on re-appreciation of the material on record, allowed the appeals and reversed the judgment and decree of the Trial Court. While doing so, the Appellate Court negated the testamentary arrangement relied upon by the plaintiffs, primarily on the ground that although an attesting witness to the testamentary document had been examined, the said witness had not supported the case of the plaintiffs regarding the execution of the testamentary arrangement.



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12. The Appellate Court further proceeded to examine the legal effect of the compromise decree in O.S.No.109/1989. It took the view that, in terms of the compromise entered into in the earlier suit, the original plaintiff-Javarayigowda had acquired only a limited right in the suit schedule properties and, consequently, he had no subsisting testamentary capacity in respect of the properties beyond the right recognised under the compromise. On that reasoning, the Appellate Court concluded that the original plaintiff could not have validly made a testamentary arrangement in respect of the properties in question.

13. The Appellate Court also proceeded on the premise that the compromise decree in O.S.No.109/1989 had not been challenged by the original plaintiff. According to the Appellate Court, so long as the compromise remained unchallenged, the terms thereof were binding upon the parties and the original plaintiff could not

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thereafter maintain a suit for partition contrary to the arrangement recorded therein. On these grounds, the Appellate Court allowed the appeals, set aside the judgment and decree of the Trial Court and consequently dismissed the suit.

14. It is this judgment and decree of the First Appellate Court which has given rise to the present second appeal. The plaintiffs, being aggrieved by the reversal of the decree passed by the Trial Court, have preferred the present appeal. This Court, having heard the learned counsel for the parties at the stage of admission and having examined the material placed on record, by order dated 16.12.2013, was pleased to formulate the following substantial question of law:

"Whether the absence of the relief for setting aside the compromise decree obtained in O.S.No.109/1989 would bar the appellants from claiming their share in the suit properties?"



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15. Having heard the counsels on record, this Court is of the view that an additional substantial question of law needs consideration. Accordingly, the following substantial question of law is framed:

(i) Whether the finding of the Appellate Court that the Will executed by original plaintiff Javarayigowda dated 21.10.2000 in favour of the present plaintiffs is not proved, is perverse, palpably erroneous and contrary to the amended pleadings at para 9(a)?

Finding on first substantial question of law:

16. Before this Court proceeds to examine the correctness of the findings recorded by the Appellate court, it is necessary to determine the true purport and effect of the compromise entered into between the parties in O.S.No.109/1989. The said suit was brought to an end on the basis of the settlement arrived at between the parties and a compromise decree came to be drawn in terms thereof. The rights of the parties in the present



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proceedings are admittedly traceable to the properties which were the subject matter of the said compromise. Therefore, the terms of compromise have to be construed as a whole and the intention of the parties has to be gathered from the language employed therein, the nature of the allotment made and the rights which were expressly recognised in favour of the respective parties. Therefore, this Court deems it fit to extract the relevant portion of the compromise recorded in O.S.No.109/1989. The same reads as under:

"ಪ್ರತಿವಾದಿ ಜವರೇಗೌಡರ ಮುತ್ತಜ, ನಾರಾಯಣನ ಹಕ್ಕು ಮತ್ತು ಸ್ವಾಧೀನಾನುಭವಕ್ಕೆ ಸೇರಿದ ಸ್ವತ್ತುಗಳು:

1) ದಾವಾ ಷೆಡ್ಯೂಲ್ ಐಟಂ ನಂ.1 ಪೈಕಿ ಮಂಡ್ಯ ತಾಲ್ಲೂಕು, ಕೊತ್ತತ್ತಿ ಹೋಬಳಿ, ಚೀರನಹಳ್ಳಿ ಗ್ರಾಮದ ಸರ್ವೆ ನಂ.69:4 ವಿಸ್ತೀರ್ಣ 0-24 ಗುಂಟೆ ಇದಕ್ಕೆ ಚಕ್ಕುಬಂದಿ ಪೂರ್ವಕ್ಕೆ: ತಮ್ಮೇಗೌಡರ ಜಮೀನು, ಪಶ್ಚಿಮಕ್ಕೆ: ರಸ್ತೆ, ಉತ್ತರಕ್ಕೆ: ಚೀರನಹಳ್ಳಿ ಜೋಗಿಕರಿಯಯ್ಯನ ಜಮೀನು, ದಕ್ಷಿಣಕ್ಕೆ ವಾದಿ ತಮ್ಮೇಗೌಡರ ಜಮೀನು, ಮಂಡ್ಯ ತಾಲ್ಲೂಕು, ಕೊತ್ತತ್ತಿ ಹೋಬಳಿ, ಸಂತಕಸಲಗರ ಗ್ರಾಮದ ಸ್ವತ್ತುಗಳು.

XXXXXXXXXXXX

1ನೇ ಪ್ರತಿವಾದಿಯರ ಹಕ್ಕು ಮತ್ತು ಸ್ವಾಧೀನಾನುಭವಕ್ಕೆ ಸೇರಿರುವ ಸ್ವತ್ತುಗಳು ಅವರು ಕಾಲವಾದ ನಂತರ 2ನೇ ಪ್ರತಿವಾದಿಗೆ ಸೇರತಕ್ಕದ್ದು. ಸದರಿ ಸ್ವತ್ತುಗಳು ಬಗ್ಗೆ ವಾದಿಗೆ ಲೇಶ ಮಾತ್ರದ ಹಕ್ಕಾಗಲೀ ಸ್ವಾಧೀನವಾಗಲೀ ಇರುವುದಿಲ್ಲ.

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ಮತ್ತು ಕೇಳುವ ಹಕ್ಕು ಸಹ ಇರುವುದಿಲ್ಲ. 1ನೇ ಪ್ರತಿವಾದಿಯರು ತಮ್ಮ ಜೀವಮಾನ ಪರಮ್ಪಂತರ ಅನುಭವಿಸುವ ಹಕ್ಕು ಮಾತ್ರ ಇದೆಯೇ ವಿನಃ ಪರಭಾರೆ ಮಾಡುವ ಹಕ್ಕು ಇರುವುದಿಲ್ಲ."

17. The relevant portion of the compromise, as extracted supra, makes it clear that the properties described therein were allotted jointly in favour of the plaintiff-Javarayigowda and defendant No.1. The first and fundamental aspect which emerges from the compromise, therefore, is that Javarayigowda was not a stranger to the allotment nor was he merely conferred a right of permissive enjoyment. His interest in the properties was recognised under the compromise decree itself. The allotment being in his favour along with defendant No.1, his proprietary interest cannot be treated as having disappeared merely because the compromise contains a subsequent stipulation dealing with the manner in which the property was to devolve after the lifetime of the concerned parties.

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18. The entire controversy centres around the latter portion of the compromise, wherein it is stated, in substance, that the properties in the possession and enjoyment of the first defendant would, after his lifetime, go to the second defendant and that the plaintiff would have no right, possession or claim therein. The said clause undoubtedly has significance; however, the question is as to what exactly was intended to be achieved by incorporating such a stipulation.

19. A compromise decree must necessarily be read as a whole. No particular clause can be torn out of its context and construed in a manner which defeats or nullifies the substantive allotment made in the earlier part of the compromise. The Court is required to give effect to the settlement actually arrived at by the parties and not to a construction which, by implication, introduces a term which is otherwise conspicuously absent from the compromise.



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20. When the compromise is read in its entirety, this Court finds that the latter stipulation was intended to operate in relation to the property which was allotted to and was being enjoyed by defendant No.1. The evident object of the clause was to regulate its subsequent devolution upon the second defendant and, correspondingly, to prevent a claim being raised by Timmegowda, the son born through the first wife, after the death of Javarayigowda. In substance, the parties intended that Timmegowda should not, upon the death of Javarayigowda, assert an independent claim to the property which, under the compromise, was to remain with defendant No.1 during his lifetime and thereafter devolve upon defendant No.2.

21. Thus understood, the recital operates as a stipulation concerning succession to and devolution of the interest which was recognised in favour of defendant No.1. It cannot, however, be construed as a clause by which

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Javarayigowda himself relinquished the share which had been allotted to him under the compromise.

22. This distinction assumes considerable importance. There is a clear difference between a party agreeing as to the manner in which the property allotted to another party is to devolve after the latter's lifetime and a party surrendering his own vested proprietary interest in the property. If the intention of the parties was to divest Javarayigowda of the share allotted to him, such intention ought to have been expressed in clear and unambiguous terms. There is no such recital in the compromise.

23. On the contrary, the very language and tenor of the settlement proceeds on the basis that Javarayigowda and defendant No.1 were jointly allotted the properties. The subsequent clause does not state that Javarayigowda relinquished his share in favour of defendant No.1. It does not state that his allotment was merely for his lifetime. It does not provide that upon his



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death his share would vest in defendant No.1. Nor does it contain any language by which the proprietary interest already recognised in favour of Javarayigowda is expressly extinguished or surrendered.

24. This Court is, therefore, unable to accept the contention that the subsequent recital has the effect of completely divesting Javarayigowda of the share allotted to him under the compromise decree. Such a construction would amount to reading into the compromise a term which the parties did not incorporate. More importantly, it would render the earlier allotment in favour of Javarayigowda substantially meaningless.

25. The language of the compromise also assumes significance from another perspective. The parties have specifically addressed the question as to what would happen to the property after the lifetime of defendant No.1 and have identified defendant No.2 as the person to whom such property was to go. If the intention was to



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take away the share of Javarayigowda itself, nothing prevented the parties from expressly recording such relinquishment. The absence of any such express stipulation cannot be overlooked while construing the compromise.

26. The recital, therefore, has to be given a restricted and purposive interpretation. Its purpose was to exclude a future claim by Timmegowda, the son born through the first wife, in respect of the property which was to devolve upon defendant No.2 through defendant No.1. It was not intended to operate as an instrument of divestment of the independent share of Javarayigowda.

27. There is yet another circumstance which militates against the interpretation sought to be placed by defendant No.1. The compromise decree is the source of title and entitlement of the parties. Once the decree records an allotment in favour of Javaregowda jointly with defendant No.1, such allotment necessarily creates an



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enforceable proprietary interest in his favour. Any subsequent restriction or relinquishment of that interest must be established from the terms of the very instrument. A Court cannot infer relinquishment merely because the compromise contains a clause regulating future devolution of another party's interest.

28. It is trite that relinquishment of a substantive proprietary right cannot be readily inferred by implication when the document itself does not disclose a clear intention to relinquish such right. Particularly in the case of a compromise decree, the Court must ascertain the intention of the parties from the settlement as a whole. The construction adopted must preserve the efficacy of the decree and give effect to all its clauses. An interpretation which results in the destruction of an express allotment, without there being a corresponding express clause of relinquishment, would neither advance the object of the compromise nor reflect the intention of the parties.



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29. Viewed in that manner, the compromise decree in O.S.No.109/1989 admits of only one reasonable construction. Javarayigowda and defendant No.1 were jointly allotted the properties in question and Javarayigowda acquired an independent share therein. The subsequent clause did not operate to curtail or extinguish that share. It merely regulated the devolution of the property which was allotted to defendant No.1 and excluded the possibility of Timmegowda claiming such property by way of succession after the death of Javarayigowda in half share held by Javarayigowda .

30. Therefore, the death of Javarayigowda could not, by virtue of the said recital alone, result in the extinguishment of the proprietary interest which he had acquired under the compromise decree. Defendant No.1 cannot claim the entirety of the property on the strength of the said recital when the compromise itself had recognised Javarayigowda as a co-allottee. In the absence



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of any express relinquishment, surrender or divestment of his share, the proprietary right of Javarayigowda to the extent of one-half share necessarily survives and has to be given effect to in accordance with law.

31. The Appellate Court, therefore was required to examine the compromise decree from this perspective. The mere presence of a clause providing for devolution upon defendant No.2 after the lifetime of defendant No.1 could not have been treated as sufficient to conclude that Javarayigowda had surrendered or lost the half share allotted to him. Jointly with Defendant no.1 born through second Wife. Such an interpretation conflates two distinct matters, namely, the right of Javarayigowda in the property jointly allotted to him and the succession to the interest of defendant No.1.

32. For the foregoing reasons, this Court is of the considered view that the compromise decree did not restrict or extinguish the proprietary right of



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Javarayigowda in respect of his share. His entitlement to the extent of one-half share in the properties jointly allotted to him and defendant No.1 remains unaffected. The subsequent recital, properly construed, operates only to regulate the devolution of the interest of defendant No.1 and to exclude the claim of Timmegowda therefrom. It cannot be invoked by defendant No.1 to defeat the vested share of Javarayigowda.

33. The First Appellate Court, in the opinion of this Court, proceeded on an erroneous premise that since the appellants had not sought setting aside or cancellation of the compromise decree passed in O.S.No.109/1989, the present suit for partition was not maintainable. Such an approach overlooks the nature of the claim actually advanced by the appellants. The appellants are not seeking to annul, rescind or reopen the compromise decree. Their claim is founded upon the very same compromise decree and, in particular, upon the allotment



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made thereunder in favour of the original plaintiff-Javarayigowda jointly with defendant No.1.

34. The material question, therefore, is not whether the compromise decree requires to be set aside, but what rights were created or recognised in favour of the parties under the terms of that decree. If, on a proper construction of the compromise, Javarayigowda was allotted an identifiable share in the suit properties, there was no occasion for him to seek setting aside of the compromise decree merely for asserting and enforcing the right which emanated from the decree itself.

35. The subsequent recital contained in the compromise, which provides for the devolution of the property upon the death of defendant No.1, cannot be construed as having extinguished the independent share of Javarayigowda. As held hereinabove, the said recital was intended to regulate the devolution of defendant No.1's interest and cannot be treated as a relinquishment or



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surrender by Javarayigowda of the share jointly allotted to him. Consequently, the appellants are not challenging the compromise decree; rather, they seek enforcement of the proprietary interest which accrued to Javarayigowda under the said decree.

36. It is well settled that a party seeking to enforce a right expressly recognised under a decree need not first seek its setting aside. The requirement of challenging a decree would arise where the relief sought is inconsistent with, or seeks to nullify, the decree. In the present case, the relief of partition does not involve any such challenge. The appellants' claim is premised upon the continued efficacy of the compromise decree and upon the rights flowing from the allotment made therein.

37. The First Appellate Court, therefore, erred in holding that the absence of a prayer to set aside the compromise decree was fatal to the suit. Such a finding



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proceeds on a misappreciation of the nature of the appellants' claim and the true effect of the compromise.

38. Accordingly, the first substantial question of law is answered in the **Negative**, holding that the absence of a specific prayer seeking setting aside of the compromise decree in O.S.No.109/1989 did not bar the appellants from claiming and enforcing their share in the suit schedule properties, since the appellants' claim is founded upon and seeks enforcement of the rights arising from the very same compromise decree and does not seek to impeach or nullify it.

Finding on additional substantial question of law:

39. Before this Court proceeds further, it would be apposite for this Court to extract para 9(a) of the plaint. The same reads as under:

"9(a) After the institution of the suit, the plaintiff, by his own desire and volition, had made a registered 'Will' dated 21.10.2000 and registered on



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7.11.2000 before the sub-registrar, Mandya under which he bequeathed his undivided half share in the suit schedule properties in favour of his daughters through his 2nd wife Kempamma viz., Chodamma, Thimmamma, Rathnamma and Gowramma. Thus, after the demise of the plaintiff, his said 4 daughters alone as legatees under the said 'Will' are entitled to succeed plaintiff's half share in the suit schedule properties. The said 'Will' of the plaintiff is the last 'Will' of him. He has made the said 'Will' while he was and is in sound dispose of mind and free from any kind of influence, coercion or compulsion and so also free from any kind of fraud. The defendant, after the demise of the plaintiff, is not at all entitled for any share out of the half share of the plaintiff in the suit schedule properties. In the event of the death of the plaintiff during the pendency of this suit, the plaintiff's aforesaid 4 daughters alone are entitled to continue to prosecute the case against the defendant and are entitled for the reliefs sought for by the plaintiff in the plaint, and none else inclusive of the defendant."

40. The significance of the aforesaid pleading cannot be lost sight of. Paragraph 9(a) of the amended



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plaint was incorporated during the lifetime of the plaintiff himself. The plaintiff, who is the very person stated to have executed the Will, has categorically pleaded before the Court that he had executed a registered Will dated 21.10.2000, which was registered on 07.11.2000 before the Sub-Registrar, Mandya. He has further specifically pleaded the subject matter of the testamentary disposition, namely, his undivided half share in the suit schedule properties, the beneficiaries under the Will and their relationship with him. More importantly, he has expressly pleaded that the Will was his last Will and that the same had been executed by him out of his own desire and volition, while he was in a sound and disposing state of mind and free from influence, coercion, compulsion or fraud.

41. Thus, this is not a case where the alleged Will has surfaced for the first time after the death of the testator, with the beneficiaries setting up a testamentary

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disposition which had never been disclosed during his lifetime. On the contrary, the existence and nature of the testamentary disposition were brought on record by the testator himself, during his lifetime and in the course of the very suit in which the rights in the suit schedule properties were being adjudicated. The pleading is therefore of considerable evidentiary significance.

42. The aforesaid pleading constitutes a clear and unequivocal admission by the plaintiff as to the existence of the Will and his own execution of the testamentary instrument. The plaintiff did not merely make a general reference to a Will. He identified the date on which it was made, the date and place of its registration, the properties covered by it, the persons in whose favour the bequest was made and, significantly, asserted that it was his last Will. He also expressly asserted his testamentary capacity and the voluntary nature of its execution.



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43. The defendant, who is the son of the plaintiff and a co-owner under the Compromise Decree, did not file any additional written statement under Order VIII Rule 9 of the Code of Civil Procedure, 1908 specifically disputing the averments made in para 9(a) of the amended plaint, despite having the opportunity to do so. In these circumstances, the allegations in para 9(a) are liable to be taken as admitted in terms of Order VIII Rule 2 of the Code of Civil Procedure, 1908. More importantly, Section 70 of the Indian Evidence Act, 1872 provides that the admission of a party to an attested document of its execution by himself shall be sufficient proof of its execution as against him, though it be a document required by law to be attested. The Law Commission of India, in its 69th and 185th Reports, has recommended that where the executant of a Will admits its execution during his lifetime in a pleading or otherwise in the course of a suit or proceeding, such admission shall be sufficient proof of its execution as against those who dispute the



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execution. Although the statutory text of Section 70 has not yet been amended, the underlying principle recognises that an unqualified admission of execution by the executant in the course of litigation dispenses with the necessity of calling an attesting witness for proving execution as against those who contest the Will.

44. The scheme of Section 63 of the Indian Succession Act, 1925 read with Section 68 of the Indian Evidence Act, 1872 is to ensure that a Will, as an instrument of posthumous disposition, is proved to be the last free and conscious wish of the testator, duly executed and attested so as to guard against spurious testamentary instruments. Ordinarily, this mandates that the propounder establish due execution and attestation by examining at least one attesting witness, and, where suspicious circumstances are alleged, to dispel such doubts to the satisfaction of a prudent judicial conscience, as laid down by the Hon'ble Supreme Court in **H.**



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However, Section 70 of the Indian Evidence Act, 1872 recognises that where the party to an attested document admits its execution, such admission constitutes sufficient proof of execution as against him, even though the document is required by law to be attested. In the present case, the plaintiff-testator himself, in para 9(a) of the amended plaint, has stated on oath that he executed a registered Will dated 21.10.2000 (registered 07.11.2000) in favour of his four daughters, that it represented his last Will, and that he was of sound mind and free from coercion or fraud.

45. The First Appellate Court, being the final Court on facts, was undoubtedly required to undertake a comprehensive re-appreciation of the evidence. However, its conclusion that the Will was not duly proved rests substantially upon an erroneous understanding of the effect of the compromise decree and an unduly restrictive

¹ AIR 1959 SC 443



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appreciation of the testimony of the attesting witness. The finding on due execution is consequently vitiated by an approach which fails to consider the evidence in its proper perspective.

46. In that view of the matter, this Court holds that the original plaintiff-Javarayigowda possessed a valid and subsisting one-half share in the properties jointly allotted to him and defendant No.1 under the compromise decree in O.S.No.109/1989. The said right was not extinguished or curtailed by the subsequent clause contained in the compromise. He was, therefore, competent to deal with his share by way of testamentary disposition. The plaintiffs, having established the due execution and validity of the Will, are entitled to succeed to the interest of Javarayigowda in terms of the testamentary disposition.

47. Accordingly, the finding of the First Appellate Court disbelieving the Will and holding that Javarayigowda had no right to make a testamentary disposition in respect



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of the suit schedule properties cannot be sustained. The said finding is hereby set aside.

48. The additional substantial question of law is accordingly answered in the ***affirmative*** and in favour of the plaintiffs, holding that the First Appellate Court was not justified in disbelieving the due execution and validity of the Will merely on the basis of the testimony of the attesting witness, particularly when the testamentary arrangement had been brought on record during the lifetime of the testator and the evidence and surrounding circumstances, considered cumulatively, establish its due execution. The First Appellate Court further erred in treating the compromise decree in O.S.No.109/1989 as having deprived Javarayigowda of his proprietary interest and, on that premise, in holding that he lacked testamentary capacity.

49. Consequently, the judgment and decree passed by the First Appellate Court cannot be sustained. The



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judgment and decree of the Trial Court granting the plaintiffs the share referable to the interest of the original plaintiff-Javarayigowda shall stand restored, subject to the findings recorded herein with regard to the rights of the respective parties and the validity of the testamentary disposition.

50. This Court holds that the First Appellate Court was not justified in disbelieving the Will merely because the attesting witness examined by the plaintiffs did not support the execution of the testamentary document in its entirety. The evidence on record, particularly the fact that the testamentary arrangement was pleaded and brought on record during the lifetime of the original plaintiff-Javarayigowda, was required to be considered cumulatively along with the other attending circumstances. The First Appellate Court, having proceeded on an erroneous understanding of the nature and extent of the right acquired by Javarayigowda under



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the compromise decree in O.S.No.109/1989, failed to properly examine the question of his testamentary capacity and the due execution of the Will.

51. Once it is held that Javarayigowda had a subsisting proprietary interest in the properties jointly allotted to him and defendant No.1 and that the compromise did not operate to extinguish or restrict his share, there was no legal impediment to his making a testamentary disposition in respect of his share. The finding of the First Appellate Court that he lacked locus to execute the Will is, therefore, legally unsustainable.

52. Insofar as the claim of defendant No.2 in respect of suit schedule Item No.2 is concerned, the finding recorded by the Trial Court on Additional Issue No.4, holding that defendant No.2 has failed to establish that she was a bona fide purchaser for value without notice of the plaintiff's subsisting interest, does not call for interference. The said finding, being based on appreciation



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of the material on record and there being no legally sustainable ground to dislodge the same, is affirmed.

53. For the foregoing reasons, this Court proceeds to pass the following:

ORDER

(i) The appeal is ***allowed***;

(ii) The judgment and decree dated 15.01.2010 passed in R.A.Nos.104/2008 and 106/2008 on the file of the Additional District Judge, Mandya, is hereby set aside;

(iii) The judgment and decree dated 08.09.2008 passed in O.S.No.134/2000 on the file of the Additional Civil Judge (Sr.Dn.), Mandya, is hereby restored;

(iv) The plaintiffs shall be entitled to the share of the original plaintiff-Javarayigowda in accordance with the testamentary disposition proved in the suit. The Trial Court shall proceed with the drawing of the final decree, if not already drawn, in accordance with law;

Digitally Signed By:
SACHIN SHANKAR MAGADUM
Verified



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(v) In view of the relationship between the parties, there shall be no order as to costs.

Digitally Signed By:
SACHIN SHANKAR MAGADUM
Verified

(SACHIN SHANKAR MAGADUM)
JUDGE

CA
List No.: 3 Sl No.: 1