



CNR: KAHC010448942019

NC: 2026:KHC:36907
RSA No. 239 of 2020

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 17TH DAY OF JULY, 2026

BEFORE

THE HON'BLE MR. JUSTICE V SRISHANANDA

REGULAR SECOND APPEAL No.239 OF 2020 (DEC/INJ)

BETWEEN:

Y V GANGAHANUMAI AH
S/O LATE VENKATARAMAIAH
AGED ABOUT 79 YEARS,
R/AT YELAKYATHANAHALLI
SOMPURA HOBLI
NELAMANGALA TALUK

...APPELLANT

(BY SRI G.H.SREENIVASA, ADVOCATE)

AND:

1. Y V GOPALAKRISHNA
S/O LATE VENKATARAMAIAH,
AGED ABOUT 63 YEARS,
WORKING AS TEACHER AT GOVERNMENT
HPS, MUTTOR
DASANAPURA HOBLI
BANGALORE NORTH TALUK-562 162.

NOW PRESENTLY R/AT
YELAKYATHANAHALLI
SOMPURA HOBLI
NELAMANGALA TALUK-562 125.

2. Y V HANUMAN THE GOWDA
S/O LATE VENKATARAMAIAH,
AGED ABOUT 63 YEARS,
R/AT NO.2, DASARAHALLI
22ND CROSS, NAGASANDRA POST,

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





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BENGALURU-560 073.

...RESPONDENTS
(BY SRI K.N.VENKATESH, ADVOCATE FOR R1 AND R2-ABSENT)

THIS RSA IS FILED UNDER SECTION 100 OF CIVIL PROCEDURE CODE, 1908 AGAINST THE JUDGMENT AND DECREE DATED 26.06.2019 PASSED IN R.A.No.90/2016 ON THE FILE OF THE VII ADDITIONAL DISTRICT AND SESSIONS JUDGE, BENGALURU RURAL DISTRICT, BENGALURU, DISMISSING THE APPEAL AND CONFIRMING THE JUDGMENT AND DECREE DATED 21.01.2016 PASSED IN O.S.No. 1391/2009 (OLD No.2001/08) ON THE FILE OF THE SENIOR CIVIL JUDGE, NELAMANGALA.

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 G.H.Sreenivasa, learned counsel for the appellant. None appears for the respondents.

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

3. Unsuccessful plaintiff is the appellant challenging the dismissal of the suit in O.S No.1391/2009 (old No.2001/2008) on the file of the Senior Civil Judge, Nelamangala, confirmed in



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R.A No.90/2016 on the file of the VII Additional District and Sessions Judge, Bengaluru Rural District, Bengaluru.

4. Facts of the case are as under:

4.1 A suit in O.S No.1391/2009(Old No.2001/2008) was filed on the file of Senior Civil Judge, Nelamangala, for declaration and injunction in respect of the following immovable properties hereinafter referred to as 'suit properties'.

"1. All that piece and parcel of the land bearing Sy.No.28/26 measuring 33 guntas and bounded as follows:

*East by: Gramathana,
West by: Land of Lankappa,
North by: Land of Appayyanna,
South by: Government Oni.*

2. All that piece and parcel of the land bearing Sy.No.20/1 measuring 6 acres 28 guntas and bounded as follows:

*East by: Land of Kadirappa,
West by: Appannaiah,
North by: Kalenahalli Gadi,
South by: Dasappa's land.*



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3. All that piece and parcel of the land bearing Sy.No.30 measuring 1 acre 12 guntas and bounded as follows:

East by: Land of Puttaiah,

West by: Land of Govinda,

North by: Appayyanna,

South by: Lankappa.

4. All that piece and parcel of the land bearing Sy.No.64/1 measuring 09 guntas and bounded as follows:

East by: Nagarakatte,

West by: Land of Puttaiah,

North by: Land of Lankappa,

South by: Nagarajaiah's land.

5. All that piece and parcel of the land bearing Sy.No.49/50 measuring 21 ankanas Malige Mane bounded as follows:

East by: Road,

West by: Nagakumaraiah/Padmarajaiah,

North by: Road+Puttaiah and,

South by: Lankyappa.

6. All that piece and parcel of the property bearing K.No.184 measuring 7 Ankanas vacant site bounded as follows:



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*East by: Lankyappa,
West by: Are bande,
North by: Road,
South by: Puttaiah.*

*7. All that piece and parcel of the property bearing
K.No.172 measuring and bounded as follows:*

*East by: Shanbogh Inamthi and road,
West by: Subbaiah,
North by: Dasara Venkatappa,
South by: Drainage.*

*All the item Nos.1 to 7 are situated at
Yelekyathanahalli village, Sompura Hobli,
Nelamangala Taluk.*

*8. All that piece and parcel of the land bearing
Sy.No.29/2 measuring 30 guntas situated at
Uddichikkanahalli village, Madhure Hobli,
Doddaballapura Taluk and bounded as follows:*

*East by: Land of Chandrappa and Appayyanna,
West by: Railway Track,
North by: Land of Gangadharappa,
South by: Anjaneya's Inamthi land.*

4.2 Plaintiff laid the claim in respect of the suit properties by contending that he is the owner of 1/3rd share in the suit properties. The registered sale deed executed by



Venkataramaiah and Gundahanumakka in favour of defendant Nos.1 and 2, is not binding on the plaintiff and for grant of permanent injunction against the defendants.

4.3 Plaintiff further contented that the suit properties originally belonged to late Patel Hanumanthegowda. It is his case that Patel Hanumanthegowda had executed a registered Will in favour of the plaintiff and his parents viz., Venkataramaiah and Gundahanumakka.

4.4 Since plaintiff was a minor, he was nurtured by his father and mother as natural guardians. It is his further contention that father of the plaintiff died on 17.02.2007 and mother of the plaintiff died on 16.09.2002. Ever since the death of his parents, plaintiff is in possession and enjoyment of the suit properties.

4.5 It is further contented that defendant Nos.1 and 2 are the brothers of the plaintiff i.e., sons of late Venkataramaiah and Gundahanumakka. Defendant Nos.1 and 2 created a fraudulent registered sale deed ignoring the bequeath made in



favour of the plaintiff under a registered Will. Therefore, the sale deed would not bind the plaintiff.

4.6 Plaintiff averments also reveal that plaintiff had filed a suit in O.S No.254/1998 on the file of Civil Judge, Nelamangla for declaration that he is the owner of entire suit properties as per the Will executed by Patel Hanumanthegowda. But after the death of plaintiff's parents, plaintiff could not prosecute the case effectively and therefore the said suit came to be dismissed for non prosecution. Later on, he has filed the present suit.

5. Pursuant to the suit summons, defendants entered appearance and filed written statement contending that Patel Hanumanthegowda, no doubt, executed a registered Will but not the one which is alleged and relied on by the plaintiff.

6. It is further contended that suit is improperly valued. It is also contended that suit is barred by *res-judicata*.

7. After the death of Patel Hanumanthegowda and his wife-Chikkarangamma and defendants' parents were in peaceful



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possession and enjoyment of the suit properties. Parents of the plaintiff have executed a registered sale deed and put the defendants in possession of the suit properties and therefore, suit is to be dismissed.

8. Based on the rival contentions, learned Trial Judge raised necessary issues, recorded the evidence of the parties and noted that plaintiff failed to prove the Will executed by Patel Hanumanthegowda and thus dismissed the suit.

9. Being aggrieved by the same, plaintiff filed an appeal before the First Appellate Court in R.A No.90/2016.

10. Learned judge in the First Appellate Court after securing the records, heard the arguments of the parties and on re-appreciation of the material on record, dismissed the suit of the plaintiff, concurring with the finding recorded by the learned Trial Judge.

11. Being further aggrieved by the same, plaintiff is before this Court in this appeal.



12. Sri G.H.Sreenivasa, learned counsel for the appellant/ plaintiff, reiterating the grounds urged in the appeal memorandum would contend that the parents of the plaintiff did not possess any right to sell the property in favour of the defendants by two different sale deeds in respect of the suit properties as they were only guardians of the minor plaintiff and did not possess any right in the Will executed by grandfather of the plaintiff which has been ignored by both the Courts and thus sought for admitting the appeal on following substantial questions of law.

"(i) Whether the suit for declaration of title and possession was regard to the admission in written statement and during the course of evidence that the plaintiff and defendants were living in joint family and that the joint family possessed several properties?

(ii) In view of the fact that Ex.P-1 was an registered will, whether the courts below were in error in disallowing the plea of execution of will?

(iii) Whether the plaintiff is member of family or not and does he entitled any share in the suit schedule properties?



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(iv) Whether the trial court erred in dismissing plea of the plaintiff?

(v) Whether the appellate court erred in affirming the said findings?"

13. Having heard the arguments of the learned counsel for appellant/plaintiff this Court perused the material on record meticulously.

14. On such perusal of the material on record it is noted that, both the Courts have specifically noted that plaintiff has failed to prove the Will executed by Patel Hanumanthegowda in his favour.

15. Mere marking of certified copy of the Will is not the proof of the Will as is required under Section 63 of the Indian Succession Act and Section 68 of the Indian Evidence Act.

16. Only on the ground that the Will is a registered Will, it will not absolve the responsibility of the plaintiff in establishing validity of the Will in accordance with law.



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17. Defendants have specifically taken a contention that the Will that has been propounded by the plaintiff is not the Will that has been executed by Patel Hanumanthegowda.

18. Taking note of these aspects of the matter especially when the suit is one for declaration when the plaintiff has failed to prove that he derived the title under Exhibit P-1/Will, dismissal of the suit by both the Courts is just and proper which requires no interference in this appeal having regard to scope of Section 100 of the Code of Civil Procedure.

19. Accordingly, the following:

ORDER

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

Sd/-
(V SRISHANANDA)
JUDGE

kcm
List No.: 1 Sl No.: 62