



CNR: KAHC010480932026

NC: 2026:KHC:42156
WP No. 21924 of 2026

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 7TH DAY OF AUGUST, 2026

BEFORE

THE HON'BLE SMT. JUSTICE LALITHA KANNEGANTI

WRIT PETITION NO. 21924 OF 2026 (GM-CPC)

BETWEEN:

1. NINGAMMA
W/O LATE BORE GOWDA
AGED ABOUT 65 YEARS,
D/O SONAPATHALI
MADEGOWDA'S CHANNEGOWDA
RESIDING AT KIRUGAVALU VILLAGE AND HOBLI
MALAVALI TALUK
MANDYA DISTRICT -571 424.
2. SHRI BASAVARAJU
S/O BORE GOWDA
AGED ABOUT 45 YEARS
RESIDING AT KIRUGAVALU VILLAGE AND
HOBLI MALAVALI TALUK
MANDYA DISTRICT-571424.

...PETITIONERS

(BY SRI. GURUDATH B.S., ADVOCATE)

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Location:
HIGH COURT
OF
KARNATAKA



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AND:

1. SMT KEMPAMMA
W/O CHANNAIAH
AGED ABOUT 88 YEARS
R/AT THAILUR VILLAGE
ATHAGURU HOBLI
MADDUR TQ
MANDYA DISTRICT-571428.

2. SWAMY
S/O LATE CHANNAIAH
AGED ABOUT 62 YEARS
R/AT THAILUR VILLAGE
ATHAGURU HOBLI
MADDUR TALUK-571428.

...RESPONDENTS

THIS WRIT PETITION IS FILED UNDER ARTICLE 227 OF THE CONSTITUTION OF INDIA PRAYING TO SETTING ASIDE THE ORDER PASSED IN FDP NO 10/2018 ON I.A.II UNDER ORDER 22 RULE 10(1) CPC BY THE LEARNED ADDITIONAL SENIOR CIVIL JUDGE AND JMFC, MADDUR VIDE DATED 14.8.2023 AS PER ANNEXURE H.

THIS PETITION, COMING ON FOR PRELIMINARY HEARING, THIS DAY, ORDER WAS MADE THEREIN AS UNDER:



CORAM: HON'BLE SMT. JUSTICE LALITHA KANNEGANTI

ORAL ORDER

The petitioners herein have challenged the order passed on I.A. No. II dated 14.08.2023 in FDP No. 10/2018 by the Additional Senior Civil Judge and JMFC, Maddur, which was confirmed by the Appellate Court in M.A. No. 18/2023 dated 29.01.2026. Hence, the petitioners are before this Court.

2. In the execution, an application is filed under Order XXII Rule 10(1) r/w Section 151 of CPC, to grant leave to the applicant to come on record in the place of respondent No.1 as his legal representative, since his share has been devolved upon him, by virtue of the Will dated 06.09.2013. The Executing Court by order dated 14.08.2023, had allowed the same. While allowing the application, the Court has observed that after filing the application, the applicant has led the enquiry on the application. Apart from examining himself as AW-1, he also examined an attesting witness as AW-2. The applicant has produced the original Will under Ex.A-1. Ex.A-1 is a registered one. Both, PW-1 and PW-2 have clearly spoken about the execution of the Will dated 06.09.2013. At this stage,



there are no reasons to discard or disbelieve the version of AW-1 and AW-2. All the objections raised by respondent Nos.2 and 3 in the objections can be raised during the merits of the case also and accordingly, the Court has observed that *prima facie* the documents produced by the plaintiff show that late Boregowda has executed a Will dated 06.09.2013 in favour of the applicant and as per the said Will, the interest of the deceased respondent No.1 is devolved upon the present applicant. Therefore, the presence of the applicant is very much necessary and accordingly, the application is allowed.

3. *Albeit* thereby, the petitioners have carried it in an appeal by filing M.A.No.18/2023, that came to be dismissed by the order impugned, wherein the Appellate Court had observed that Ex.A-1 is a registered Will dated 06.09.2013 and it goes to show that the deceased Boregowda bequeathed his property in favour of the applicant- Swami. To prove the said Will, the applicant examined as AW-1 and he has spoken with regard to bequeath by Boregowda in respect of said property in his favour. He has examined the attesting witnesses of the Will and he narrated the execution of the Will. In the cross-examination,



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respondent Nos.2 and 3, though questioned with regard to the manner of execution of the Will and registration, nothing material elicited to discard the execution of the Will.

4. It is further observed that, indisputably, respondent Nos.2 and 3 are the son and wife of deceased Boregowda and the applicant is sister's son of Boregowda. On perusal of Ex.A-1 - Will, it appears that there is specific reason for excluding respondent Nos.2 and 3 from inheritance to his property and reasons for execution of the said Will. There are no suspicious circumstance brought about by the respondent Nos.2 and 3 in executing Ex.A1 - Will. Therefore, the learned Senior Civil Judge has rightly come to the conclusion that *prima facie*, Boregowda had executed the Will dated 06.09.2023 in favour of the applicant and from the said Will, the interest of Boregowda will devolve upon the applicant-Swami. Therefore, there is no illegality in the order.

5. Learned counsel appearing for the petitioners submits that these issues cannot be decided in the final decree proceedings. It is submitted that the Appellate Court has given the findings, as if the Will is already proved and the applicant is



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entitled for the right in the property of the deceased. It is submitted that the Appellate Court has exceeded the jurisdiction conferred and made certain observations which will have an impact on the petitioner's case. It is submitted that the order impugned needs to be set aside.

6. Having heard the learned counsel for the petitioners, perused the material on record. An application is filed stating that one of the co-sharers has executed a Will in his favor, which is resisted by the family members. The Trial Court has held that he has placed the Will on record. The attestors of the Will are examined. *Prima facie*, the applicant would show that there is a Will executed and as such, he is a proper and necessary party. Whether the Will is genuine or not and other things can be decided by the Trial Court during the course of evidence. When the matter was carried to the Appellate Court, the Appellate Court has also affirmed the order. However, certain observations were made by the Trial Court. In the considered opinion of this Court, the executing Court is empowered to deal with all these aspects and the executing Court has rightly allowed the application.



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7. Hence, this Court is of the view that there are no reasons to interfere with the order passed by the executing Court. However, the Appellate Court ought not to have made certain observations which are irrelevant. In that view of the matter, this Court is passing the following:

ORDER

- i. This Court does not find any reasons to interfere with the order impugned. However, uninfluenced by any of the observations made by the Appellate Court, the Executing Court shall consider the case of the respective parties on the merits of the matter.
- ii. Accordingly, this writ petition is ***disposed of***.
- iii. All I.A.s, in the petition shall stand closed.

SD/-
(LALITHA KANNEGANTI)
JUDGE

BK
List No.: 1 Sl No.: 11