



IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 23RD DAY OF JUNE, 2026

BEFORE

THE HON'BLE MR. JUSTICE V SRISHANANDA
REGULAR SECOND APPEAL NO. 368 OF 2017

BETWEEN:

1. BASAVARAJU V
S/O LATE VENKATAIAH,
AGED ABOUT 43 YEARS,
2. YOGA V
S/O LATE VENKATAIAH,
AGED ABOUT 37 YEARS,

BOTH ARE RESIDING AT
NO.128, A & B BLOCK,
KUVEMPU NAGAR,
MYSORE-570007.

...APPELLANTS

(BY SRI. MOHAN B.K., ADVOCATE)

AND:

YESHODA
W/O LATE PANDUMURTHY,
AGED ABOUT 44 YEARS,
R/AT #1678, 10TH CROSS,
ASHOKA PURAM,
MYSORE.

...RESPONDENT

(VIDE ORDER DATED 11.06.2026, NOTICE TO RESP H/S)

THIS RSA IS FILED U/S. 100 OF CPC., AGAINST THE
JUDGEMENT & DECREE DTD 29.09.2016 PASSED IN R.A.NO.

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Location:
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COURT OF
KARNATAKA



166/2015 ON THE FILE OF THE II ADDL. DISTRICT JUDGE, MYSURU, DISMISSING THE APPEAL AND CONFIRMING THE JUDGEMENT AND DECREE DTD 17.04.2015 PASSED IN OS.NO. 24/2013 ON THE FILE OF THE III ADDL. SENIOR CIVIL JUDGE AND C.J.M., MYSURU.

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.Mohan B. K., learned counsel for the appellant. Respondent is served with the notice and remained absent.

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

3. Defendants' second appeal challenging the judgment and decree passed in O.S.No.24/2013 granting 1/3rd share to the plaintiff which was confirmed by the First Appellate Court in RA No.166/2015.

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



4.1. Plaintiff filed a suit for partition and separate possession in respect of following properties (hereinafter referred to as suit properties):

Item No.1: The house property bearing D.No.128, A&B Block, 8th Cross, Navilu Road, Kuvempunagar, Mysore measuring 30 x 40 bounded on:

East: Road

West: Private Property

North: Property bearing No.129

South: Property bearing No.127

Approximate value Rs.21 Lakh

Item No.2: The land bearing Sy.No.138/1, Katha No.304, Nachanahalli Grama, Kasaba, Mysore measuring 5 guntas bounded on:

East: Property of Venkataiah

West: Private property of Somanna

North: Property of Ganesha

South: Property of Jogisiddaiah

Approximate value Rs.2.50 Lakh

Item No.3: The house property bearing No.1678, 10th Cross, Ashokapuram, Myspre measuring 25 x 7 bounded on:

East: House of Gayathri Siddaiah

West: House of Venkataraju

North: House of Shivanna

South: Road

Approximate value Rs.50,000/-



Item No.4: The land bearing No.138, Katha No.304, Nachanahalli Grama, Kasaba, Mysore measuring 5 guntas bounded on:

East: Road

West: Property of Venkataiah

North: Property of Nanjamma

South: Property of Maragandaiah

Approximate value Rs.3.50 Lakh

Item No.5: The land bearing No.138/1, Katha No.304, Nachanahalli Grama, Kasaba, Mysore measuring 5 guntas bounded on:

East: Property of Chikkanna @ Hotte Chikka Hyda

West: Property of Yelakaiah

North: Property of Ramakka

South: Road

Approximate value Rs.2.50 Lakh

4.2. Plaintiff contended that her husband – Pandu Murthy and defendant Nos.1 and 2 are the sons of Venkataiah and Puttasiddamma. Venkataiah and Puttasiddamma are also no more. Suit properties are the ancestral properties and after the demise of Pandu Murthy, when plaintiff demanded the share in the property, defendants have denied the same and therefore, sought for decreeing the suit.



5. Pursuant to the suit summons, defendants entered appearance and filed written statement admitting the relationship but contended that Venkataiah was working in Sandal Oil Factory at Mysore as a helper and out of his earning, he purchased the suit properties. Therefore, suit properties are not the ancestral properties and individual properties of Venkataiah which has been bequeathed in favour of the defendants by way of Will. Therefore, plaintiff is not entitled for the share in the suit properties.

6. Learned Trial Judge after raising necessary issues, recorded the evidence of the parties and noted that defendants have failed to prove the Will by examining the attesting witnesses to the Will and mere production of the registered Will dated 31.01.2012 which is marked at Ex.D.1 was not sufficient enough to establish that the Will was duly executed, only on the ground that it is the registered Will, and decreed the suit of the plaintiff.

7. Being aggrieved by the same, defendants filed an appeal before the First Appellate Court in RA No.166/2015 *inter alia* filing an application under Order XLI Rule 27 of Code of



Civil Procedure to permit the defendants to prove the Will by leading additional evidence.

8. Learned Judge in the First Appellate Court after reconsidering the material evidence on record, recorded a categorical finding that when the defendants have failed to prove the Will in accordance with law, a second chance cannot be given by resorting to powers under Order XLI Rule 27 of Code of Civil Procedure and rejected the said application and also the appeal.

9. Being further aggrieved by the same, defendants are before this Court.

10. Learned counsel for the appellants reiterating the grounds urged in the appeal memorandum would contend that approach of the First Appellate Court in shunning the additional evidence by rejecting the application filed under Order XLI Rule 27 of Code of Civil Procedure has resulted in grave miscarriage of justice.

11. He would further emphasize that at the time of leading the evidence, attesting witnesses were not known to



them and they were not traceable. Therefore, after tracing the whereabouts of the attesting witnesses, an application under Order XLI Rule 27 of Code of Civil Procedure came to be filed before the First Appellate Court.

12. The First Appellate Court being the Court of fact and law, should have accommodated the defendants to prove the Will by examining the attesting witnesses. Denying such an opportunity to the defendants has resulted in grave miscarriage of justice and sought for admitting the appeal on following substantial questions of law:

- a. "Whether the lower Appellate Court was justified in coming to the conclusion that the defendant failed to prove the Will when sufficient opportunity was not given to him to examine the witnesses confirming the judgment of the Trial Court by dismissing the Regular Appeal?"*
- b. Whether the lower Appellate Court was justified in coming to the conclusion that the plaintiff has independent right to seek partition of ancestral property in her husband?"*

13. Notice of the appeal is served on the respondent/plaintiff who remained absent.



14. Having heard the arguments of learned counsel for the appellants, this Court perused the material on record meticulously.

15. On such perusal of the material on record, this Court is of the considered opinion that as a Rule, an application filed under Order XLI Rule 27 of Code of Civil Procedure cannot be allowed by the First Appellate Court unless the First Appellate Court is of the opinion that the material evidence already on record is not sufficient to pronounce the judgment effectively or by denying the opportunity to lead the additional evidence would result in miscarriage of justice.

16. Admittedly, no such ground was made out by the appellants and an application seeking permission to lead the additional evidence cannot be granted *ipso facto* in the absence of sufficient cause being shown.

17. Only on the ground that Ex.D.1 is a registered document, the responsibility and burden on the defendants did not get discharged in establishing the proof of Ex.D.1.



18. Thus, the finding recorded by the learned Trial Judge which was confirmed by the First Appellate Court needs no interference having regard to the scope of Section 100 of Code of Civil Procedure.

19. Hence, the following:

ORDER

- i. Admission is declined.
- ii. Appeal is ***dismissed***.

**Sd/-
(V SRISHANANDA)
JUDGE**

KAV
List No.: 1 Sl No.: 48