



IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 7TH DAY OF JULY, 2026

BEFORE

THE HON'BLE MR. JUSTICE V SRISHANANDA

REGULAR SECOND APPEAL NO. 1892 OF 2017 (INJ)

BETWEEN:

C G RAMESHA
S/O. LATE. GOWDAIAH,
R/O. CHATHRALINGANADODDI,
MALLANAYAKANAHALLI DAKLE,
ATHAGUR HOBLI, MADDUR TALUK,
MANDYA DISTRICT -571 428

...APPELLANT

(BY SRI. K.L. SREENIVAS, ADVOCATE)

AND:

S.T. JAYALAKSHMAMMA
SINCE DEAD BY LRS

1A. SRI. H.C. RAJANNA
AGED ABOUT 69 YEARS

1B. ANANDA
S/O. H.C. RAJANNA
AGED ABOUT 48 YEARS

1C. UMESHA
S/O. H.C. RAJANNA
AGED ABOUT 46 YEARS

1D. CHANDRA
S/O. H.C. RAJANNA
AGED ABOUT 43 YEARS

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



ALL ARE R/AT NO.220,
VIDHANA SOUDHA LAYOUT
LAGGERE
BENGALURU - 560 058

2. M. KUMAR
S/O. LATE. MARIYAPPA,
AGED ABOUT 43 YEARS
R/O. MALLANAYAKANAHLLI VILLAGE
MADDUR TALLUK

NOW R/AT NO. 607,
3RD CROSS, SHANKARANAGARA,
MANDYA CITY - 571 401

...RESPONDENTS

(BY SMT. ARCHANA MURTHY P., ADVOCATE
VIDE ORDER DATED 29.06.2026,
APPEAL AGAINST R2 IS DISMISSED)

THIS RSA IS FILED UNDER SEC.100 OF CPC., AGAINST
THE JUDGMENT AND DECREE DATED 16.03.2017 PASSED IN
RA NO.32/2014 ON THE FILE OF THE SENIOR CIVIL JUDGE,
MADDUR, DISMISSING THE APPEAL AND CONFIRMING THE
JUDGMENT AND DECREE DATED 30.06.2014 PASSED IN OS
NO.15/2010 ON THE FILE OF THE PRL. CIVIL JUDGE AND JMFC,
MADDUR.

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. K.L. Sreenivas, learned counsel for the appellant and Smt. Archana Murthy, learned counsel for the respondents.

2. The present appeal by the second defendant challenging the judgment and decree passed in OS No.15/2010 confirmed in RA No.32/2014.

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

3.1 A suit in OS No.15/2010 came to be filed for the relief of permanent injunction in respect of the following immovable property:

"The landed property bearing SY.No.101/1 to an extent of 0.17 guntas including 0.01 guntas karab assessed at Rs.0.82 Ps it is bounded on :

*East : Government Oni
West: Land of Puttaswamy
North: Government Oni
South : Land of Thulasiramma W/o. Ningaiah*

*situated at Mallanayakanahalli Village, Authagur
Hobli, Maddur Tq.,*



3.2. Plaintiff contended that Smt. Kempamma, wife of late Mote Gowda alias Thimme Gowda is the mother of the plaintiff, who was the absolute owner in possession and enjoyment of the suit property. She purchased the same from Sri Gowdaiah under the registered sale deed dated 05.03.1954. Thereafter, revenue entries were mutated in her name.

3.3. Plaintiff further contended that she looked after her mother Kempamma with love and affection in proper manner. Therefore she has executed a Will on 10.12.1997 bequeathing the suit property in her favour.

3.4 It is the further case of the plaintiff that on 21.02.1998, Kempamma died and her final rituals were carried out were conducted by the plaintiff.

3.5 After death of Kempamma, it is the plaintiff who continued to be in the possession of the suit property by virtue of the Will as absolute owner.



3.6. Plaintiff further contended that first defendant filed a suit against the plaintiff and Kempamma and plaintiff's sisters for partition and separate possession of half share in the suit property and other properties in OS No.226/2000, which came to be dismissed on 29.03.2005.

3.7. It is further case of the plaintiff that after death of Kempamma, based on the Will executed by Kempamma in favour of the plaintiff, mutation proceedings took place and revenue entries were mutated in the name of first defendant clandestinely.

3.8 Based on the said mutation entry, he said to have sold the property in favour of defendant No.2 which is a fraudulent sale deed and therefore sought for an order of injunction in respect of suit property restraining the defendant from interfering with the peaceful possession and enjoyment of the suit property.



3.9. Pursuant to the suit summons, defendant No.1 entered appearance filed written statement denying the plaint averments in *toto*.

3.10. He maintained that in the revenue proceedings, the katha of the property was mutated in the name of first defendant and dismissal of the suit in OS No.226/2000 had got nothing to do with the suit property and thus sought for dismissal of the suit.

3.11. It is further contended that Defendant No.2 filed separate written statement contending that based on the revenue entries in R.Misc. No.152/2007 and 2008 and also the averments made in OS No.226/2000, he believed that first defendant is the owner of the property and purchased the same for valuable consideration and is a *bona fide* purchaser for value and thus, resisted the suit and sought for dismissal of the suit.

3.12. Based on the rival contentions of the parties, learned Trial Judge framed the necessary issues



and after recording the evidence, decreed the suit of the plaintiff. Operative portion of the Trial Court decree reads as under:

"The suit of the plaintiff is decreed with costs as under:

It is declared that, the sale deed 1st dated:09:01.2006 executed by the defendant in favour of the 2nd defendant does not bind the right, title, interest and possession of the plaintiff over the suit schedule property and the said sale deed is null and void.

Further, defendants are hereby restrained from interfering with the lawful possession and enjoyment of the plaintiff over the suit schedule property by way of permanent injunction".

3.13. Being aggrieved by the same, it is the both the defendants filed an appeal before the First Appellate Court in RA No.32/2014.

3.14. 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 appeal of the defendants *inter alia* holding in paragraphs No.39 to 41 as under:

39. In the light of the said discussion, if we consider the Ex.P.13 the will executed in favour of the plaintiff, it is relevant to consider that the PW.2 is one of the attessor to the said Ex.P.13. On perusal of the evidence of the PW.2 she has deposed about the sound health of the deceased Kempamma at the time of execution of the will and she has specifically deposed about the events of execution of the will. According to her, on 10.12.1997 the said will was executed in favour of the plaintiff and she deposed about the presence of witnesses and a scribe. Though, she has been suggested about the ill-health of the mother of the plaintiff, but, she has denied it. According to her, she was in good health and of sound mind while executing the said will. However, she has not deposed about the exact time of the execution of the will. Though, this PW.2 is the sister of the plaintiff and another witness to the will by name Chandrashekhar is the son of the plaintiff and PW.3 the scribe who is the distant relative of the plaintiff, that itself does not create any suspicious circumstances in execution of the will. As 29 CT0415_R.A._32_2014_Judgment_.doc it is rightly pointed out by the learned Trial Judge that there is no rule that the witnesses should be independent witnesses to the will. At the same time, the Court has to consider that it is not the case of the defendant No.1 that the said Kempamma has been residing with him till her death. At



the same time, this defendant No.1 has denied the fact that the said Kempamma was residing with the plaintiff and her sister during her last days and the plaintiff was looking after her welfare. Even during the cross-examination of the PW.3, though, it is suggested that the health of the said Kempamma was not good, according to him, her health was good at the time of execution of the will. He has deposed about the manner in which the execution of the will made by the deceased Kempamma. He has specifically deposed about the attestation of the will by Chandra Shekhar and the present PW.2. He has also deposed about the time in which the said execution of the will was taken place. According to him, the plaintiff was not present at the time of execution of the will. It is true that some discrepancies have occurred during the cross-examination about the non-production of draft of the will and other aspects. But, these things cannot take away the value that could be attached to the evidence of PW.3. It is also true that the age of the Kempamma is not mentioned in the will and whether it is mandatory to mention the age of the testator is to be considered by the Court. Hence, in my opinion, there are no reasons to disbelieve the execution of the will by deceased Kempamma. Further, though, the defendants No.1 and 2 have specifically denied the execution of the will, they have not placed anything, which disputes the contention of the 30 CT0415_R.A._32_2014_Judgment_.doc plaintiff in respect of the execution of the Ex.P.13 by deceased Kempamma. Hence, in my opinion, the said Kempamma has executed a will on 10.12.1997 and bequeathed the



suit schedule property in favour of the plaintiff. The said fact is also revealed from the Ex.D.12, which is the written statement of the plaintiff and Jayamma which was filed in O.S.226/2000, where they have denied the claim of the present defendant No.1. By looking under these circumstances, I am of the opinion that the contention of the defendants is not sustainable and on the other hand, the plaintiff's case is more probable in respect of the execution of the will.

40. Another contention raised by the defendants with respect to the boundaries pertaining to the suit property. It is true that the boundaries as mentioned in the plaint and the Ex.D.1 are similar, but the boundaries as mentioned in the Ex.P.13 and the plaint schedule are totally different. In this regard, it is relevant to consider that the Ex.P.1 has got similar boundaries as that of the Ex.P.13. Further, it is also relevant to consider that the Ex.P.1 is of the year 1954 and the Ex.P.13 has been executed in the year 1997. Hence, there might be several changes taken place in the schedule. But the Survey number and the title of the Said Kempamma is not under dispute. In this regard, it is also relevant to consider that the D.W.4 himself has admitted that the sale deed was executed about 60 years back and he deposed that he has not seen the sale deed executed in favour of Kempamma. That itself clearly show that the contention of the defendants is not sustainable. The defendants cannot resort to the said contention that since the boundaries 31 CT0415_R.A._32_2014_Judgment_.doc are not tallying



with each other, the claim of the plaintiff is not sustainable.

41. As observed supra, this Court has considered the fact that no title vested with the defendant No.1 in order to execute a registered sale deed in favour of the defendant No.2. It is also considered by this Court that there was no valid conveyance of title in favour of the defendant No.1 in order to execute such a sale deed in favour of the defendant No.2. Hence, it may be clearly inferred that the said sale deed is not sustainable in the eyes of law and the same is null and void. At the same time, the plaintiff has clearly established the right, title and possession of the deceased Kempamma in respect of the suit schedule property and the fact of execution of the will by said Kempamma in favour of this plaintiff. Hence, in my opinion, the plaintiff has clearly proved her title, interest and possession over the suit schedule property. In view of this, the findings given by the learned trial Judge in respect of the issues framed in O.S.15/2010 are appropriate and proper.

4. Being further aggrieved by the same, it is the second defendant who has filed the present appeal on following grounds and substantial questions of law:



GROUND

- *The impugned judgments and decrees of both the courts below are opposed to the probabilities of the case, evidence on record, and as such, are unsustainable being erroneous and liable to be set aside.*

- *The case of the plaintiff is that she became the owner of the suit schedule property by virtue of the Will executed by her mother Smt. Kempamma, and as such the second respondent has no right, title or interest to alienate the suit schedule property in favour of the appellant. The defendants denied the execution of the Will by Smt.Kempamma in favour of the plaintiff and contended that the said Will is created and concocted by the plaintiff. The Hon'ble Trial Court also framed issue as to whether the plaintiff proves that she is the absolute owner in possession and enjoyment of the suit schedule property. However, from the pleadings it is apparent that the execution of the Will by Smt.Kempamma is disputed being not admitted by the defendants, and the parties being conscious enough of the same had led evidence to prove and disprove the Will, and considering the same the Hon'ble Trial Court also proceeded to adjudicate the suit on that issue; as it is clear from the judgment wherein the Trial Court observed that the plaintiff claims her right over the suit schedule property on the basis of the Will dated 10-12-1997. As such, it is manifest that the plaintiff*



has to prove that she is the owner of the suit schedule property by virtue of the said Will. But, the plaintiff has not placed sufficient evidence to prove the Will, and as such, failed to prove her right, title to the suit schedule property. Both the courts below erred in not properly appreciating the same; and thereby decreeing the suit and dismissing the appeal, and as such, the impugned judgment and decrees being the fruit of mis-appreciation of the evidence on record are unsustainable and liable to be set aside.

- *In order to prove the Will, the Plaintiff got examined herself as PW-1; and her Sister Giriyamma as PW-2 (as the attesting witness); and one Shekar as PW-3(as the scribe) who is none other than the brother of the Daughter-in-law of her Sister(PW-2). Thus, it is apparent that all the witnesses are close relatives and their evidence could not be considered as reliable and trustworthy. Apart from that, the evidence on record reveals that the testator Smt.Kempamma was suffering from sickness since one year from the date of said Will. As such, the plaintiff who is required to place satisfactory evidence to show that said Kempamma was not suffering any ailment and was in a fit condition to execute the Will, had not placed any evidence regarding the same. More-over the evidence of PW's-1 to 3 are contradictory to each other and their evidence itself is sufficient to disprove the execution of the Will. The Plaintiff has not placed any evidence to prove the Will in accordance with Section*



65 of the Indian Evidence Act. The Hon'ble Trial Court failed to notice the same and erred in not evaluating the evidence on record properly in accordance with law, and basing on the contradictory evidence on record erred in decreeing the suit. As such, the judgment and decree of the trial court is not in accordance with law and as there is nothing to infer that the plaintiff is the lawful owner in possession and enjoyment of the suit schedule property by virtue of the Will, the trial court ought not to have decreed the suit. The first appellate court also erred in not noticing the same and thereby dismissing the appeal without noticing that the Will is not proved as required by Law. Hence, the impugned judgments and decrees being the fruit of improper appreciation of the evidence on record, are unsustainable and liable to be set aside.

- *The Hon'ble Trial Court erred in concluding that there are no suspicious circumstances attached to the execution of the Will, inspite of the evidence regarding the illness and old age of the testator Kempamma; and that too when the evidence manifest that the execution of the Will itself is doubtful being clouded with suspicion; and the plaintiff has not removed that suspicion. The Hon'ble First appellate Court also erred in not considering the same; and dismissing the appeal. Hence, the judgments and decrees of both the Courts below, based on the improper appreciation of the evidence;*



being arbitrary, illegal, erroneous, are liable to be set aside.

- *The plaintiff has not placed satisfactory evidence to prove her right, title and possession on the basis of the Will, but the Trial Court erred in concluding that the plaintiff acquired title over the suit schedule property on the basis of the Will. As such, ought not to have held that the plaintiff is the absolute owner in possession of the suit schedule property, and the first defendant has no right to execute sale deed in favour of the second defendant, in absence of sufficient and satisfactory evidence towards the same. Hence, when the plaintiff failed to prove her right and title in and over the suit property, the Trial Court ought not have held the sale deed dt.09-01-2006 executed by the first defendant in favour of the second defendant is null and void. Therefore, the judgment and decree of both the courts below being erroneous, arbitrary, are unsustainable and liable to be set aside.*

SUBSTANTIAL QUESTIONS OF LAW:

(a) Whether the courts below erred in not noticing that the Will dt.10-12-1997 at Ex.P-13 is not proved as required by Section 65 of the Indian Evidence Act?

(b) Whether the Courts below erred in decreeing the suit when the plaintiff has not proved her right, title and possession in the suit schedule property?



5. Sri. K.L. Srinivas, learned counsel for the appellant reiterating the grounds urged in the appeal memorandum would contend that based on the revenue entries, second defendant purchased the suit property from first defendant and he should be held as *bona fide* purchaser.

6. As such, there cannot be an injunction against the true owner and thus sought for admitting the appeal on the aforesaid substantial questions of law.

7. Per contra, Smt. Archana Murthy, learned counsel for the respondents would contend that first defendant had no right whatsoever to sell the property suit property in favour of the second defendant inasmuch as it is the plaintiff who got the property by virtue of a Will executed by Kempamma.

8. Therefore, sale made by the first defendant in favour of second defendant did not convey any right, title or interest in respect of the suit property and thus, grant



of Permanent Injunction in favour of the plaintiff is just and proper which has been rightly appreciated by the learned Judge in the First Appellate Court and thus sought for dismissal of the appeal.

9. She would further emphasize that the suit filed by the first defendant seeking partition against the plaintiff and her sisters in OS No.226/2000 on the file of Civil Judge (Senior Division), Maddur got dismissed for non prosecution.

10. Therefore, the second defendant cannot maintain that based on the suit and the revenue entries having purchased the suit property, second defendant is to be treated as *bona fide* purchaser for value cannot be countenanced in law and thus sought for dismissal of the appeal.

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



12. On such perusal of the material law on record, there is no dispute that property earlier belonged to Smt. Kempemma having purchased the same from Gowdaiah by way of registered sale deed.

13. According to the plaintiff, Kempamma executed a Will in favour of the plaintiff. By virtue of the Will, plaintiff claimed that she became the owner of the suit property. Detailed cross examination of PW1 with regard to the validity of the Will did not yield any material on record to hold that plaintiff is not the owner of the property.

14. Sri. C.C. Shekar - PW3 is the scribe of the Will. Likewise, PW2 is the one of the attesting witnesses to the will. Their oral testimony was also subjected to searching cross-examination.

15. In such cross-examination also there is no material elicited so as to doubt the Will executed by Kampamma in favour of the plaintiff.



16. Learned Trial Judge has followed the principles of law enunciated in ***Venkatachala Iyengar versus Thimmajamma*** reported in ***AIR 1959 SC 443*** while upholding the validity of the Will propounded by the plaintiff.

17. Thus, the Trial Judge was justified in granting injunction based on the Will by holding that plaintiff became the owner of the property by virtue of the Will.

18. Thus, the contentions urged on behalf of the appellant that there cannot be an injunction against the true owner cannot be countenanced as in law inasmuch as first defendant did not possess any right, title or interest to sell the suit property in favour of second defendant based on the revenue entries alone.

19. Pertinently, suit filed by the first defendant in O.S.No.226/2000 for partition against the plaintiff and her sisters got dismissed for non prosecution and there is no



further efforts made by the first defendant to restore the same and prosecute the same in accordance with law.

20. Taking note of these aspects of the matter, this Court does not find merits in any one of the substantial questions of law.

21. As such, following Order is passed:

ORDER

- (i) Admission declined.
- (ii) Regular Second Appeal is ***dismissed***.

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

SNC
List No.: 1 Sl No.: 44