



IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 15TH DAY OF JUNE, 2026

BEFORE

THE HON'BLE MR. JUSTICE ASHOK S.KINAGI

REGULAR SECOND APPEAL NO. 252 OF 2013 (PAR)

BETWEEN:

N M NAGENDRA
AGED ABOUT 64 YEARS,
S/O MAHANTHAIAH,
R/O NITTUR, GUBBI TALUK,
TUMKUR DISTRICT - 572223

...APPELLANT

(BY SRI. K.N.NITISH ADVOCATE FOR
SRI.K V NARASIMHAN., ADVOCATE)

AND:

1. N M MURUGENDRAIH
SINCE DEAD REP. BY HIS LEGAL REPRESENTATIVES
- 1(A) SMT SUNANDAMMA
MAJOR
W/O LATE N.M. MURUGENDRAIAH
- 1(B) SRI. LOKESH
MAJOR
S/O LATE N.M. MURUGENDRAIAH
- 1(C) ANNAPOORNA
MAJOR
D/O LATE N M MURUGENDRAIAH

Digitally
signed by
KIRAN
KUMAR
Location:
HIGH COURT
OF
KARNATAKA





ALL ARE R/AT
NITTUR, GUBBI TALUK
TUMAKURU DISTRICT – 572 223.

...RESPONDENTS

BY SRI. SHIVARAMU H C., ADVOCATE FOR R1(A-C)]

THIS RSA FILED U/S. 100 OF CPC., AGAINST THE JUDGEMENT & DECREE DTD 31.10.2012 PASSED IN R.A.NO.13/2010 ON THE FILE OF THE SENIOR CIVIL JUDGE, GUBBI, ALLOWING THE APPEAL AND SETTING ASIDE THE JUDGEMENT AND DECREE DTD 5.1.2010 PASSED IN OS.NO.218/2003 ON THE FILE OF THE CIVIL JUDGE (JR.DN) GUBBI.

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

CORAM: HON'BLE MR. JUSTICE ASHOK S.KINAGI

ORAL JUDGMENT

1. This Regular Second Appeal is filed by the appellant challenging the judgment and decree dated 31.01.2012 passed in R.A. No.13 of 2010 by the learned Senior Civil Judge, Gubbi.
2. For convenience, parties are referred to based on their rankings before the Trial Court, the appellant



was the defendant and the respondent was the plaintiff.

3. Brief facts leading rise to the filing of this appeal are as follows:
4. The plaintiff filed a suit for partition and separate possession. It is the case of the plaintiff that the plaintiff and defendant are the sons of one late Mahantaiah and late Rudranamma. The suit land is their ancestral and joint family property. They had partitioned all their ancestral and joint family properties under Palupatti dated 15.11.1968. In the said palupatti, the suit land had fallen to the share of their mother Rudranamma for her livelihood, which she had enjoyed the same during her lifetime and after her demise, it has to be divided equally between the plaintiff and defendant. There is a recital to that effect in the palupatti dated 15.11.1968. The entries in the revenue records were changed in the



name of respective parties insofar as their respective shares as per Palupatti and they are living separately. The plaintiff's and defendant's mother is no more. After her demise, she died leaving behind the defendant. They have got a share in the suit land. The plaintiff demanded for a partition and separate possession, however, the defendant refused to effect a partition. Hence, a cause of action arose for the plaintiff to file a suit for partition and separate possession. Accordingly, prays to decree the suit.

5. The defendant filed a written statement denying the averments made in the plaint. It is contended that the plaintiff is working at Mysore Cements Ltd., and the plaintiff is residing at Ammasandra. His mother was living with him. The plaintiff treated Rudranamma with cruelty. The defendant alone was looking after the welfare of his mother and maintained her till her death. Rudranamma passed away in the year 1985. During her lifetime, she had



bequeathed the suit schedule property in favour of the defendant by executing a Will. After her demise, the defendant became the absolute owner of the suit schedule property. It is contended that the mother had purchased the said property under a registered sale deed dated 17.10.1960 from one Thimmaiah for valuable consideration. It is contended that the said property was her absolute property and neither the plaintiff nor the defendant had any right or title over the said property during the lifetime of Rudranamma. After the demise of Rudranamma, the defendant, on the basis of this Will, became the absolute owner and is in possession of the suit schedule property. It is contended that the suit schedule property is not amenable for partition and separate possession. There is no cause of action to file a suit for partition and separate possession. Hence, he prays to dismiss the suit.



6. The Trial Court based on the pleadings of the parties framed the following issues:

- (i) "Whether plaintiff proves that suit properties are ancestral and joint family properties of plaintiff and defendant?
- (ii) Whether defendant proves that suit schedule property was the absolute property of deceased Rudranamma?
- (iii) Whether the defendant proves that he is the absolute owner of suit schedule property on the strength of registered Will executed by deceased Rudranamma?
- (iv) Whether the plaintiff is entitled for $\frac{1}{2}$ share in suit property?
- (v) What order or decree?"

7. The plaintiff, in order to establish his case, examined two witnesses as PW1 and PW2 and marked three documents as Exhibits P1 to P3.



8. In rebuttal, the defendant examined four witnesses as DW1 to DW4 and marked 21 documents as Exhibits D1 to D21.
9. The Trial Court, after recording the evidence, hearing both sides, and after assessing the verbal and documentary evidence of the parties, answered issue Nos.1 and 4 in the negative; issue No.2 in the affirmative; issue No.3 was dropped and issue No.5, as per the final order. The suit of the plaintiff was dismissed vide judgment and decree dated 05.01.2010.
10. The plaintiff, aggrieved by the dismissal of suit in O.S. No.218 of 2003, preferred an appeal in R.A. No.13 of 2010 on the file of the learned Senior Civil Judge and JMFC, Gubbi.
11. The First Appellate Court, after hearing the learned counsel for the parties, framed the following points for adjudication:



(i) Whether the judgment and decree of the lower Court requires interference at the hands of this Court?

(ii) What order?"

12. The First Appellate Court, after re-appreciating the entire evidence on record, answered point No.1 in the affirmative and point No.2 as per the final order; The appeal was allowed and the judgment and decree passed O.S No.218 of 2003 by the Trial Court were set aside. Consequently, the suit of the plaintiff was decreed declaring that the plaintiff is entitled for half share in the suit schedule property and for separate possession of the same, after demarcation by metes and bounds. Further, regarding *mesne* profits, a separate inquiry is to be held, vide judgment dated 31.10.2012

13. The defendant aggrieved by the judgment and decree passed in R.A. No.13 of 2010, by the First Appellate Court filed this Regular Second Appeal.



14. Heard the arguments of the learned counsel for the defendant and learned counsel for the plaintiff.
15. Learned counsel for the defendant submits that the suit schedule property was purchased by Rudranamma under a registered sale deed dated 17.10.1960. The said property was put in palupatti (partition) between the family members, executed on 15.11.1968. In the said partition, the suit property fell to the share of Rudranamma and she became an absolute owner by virtue of Section 14 of the Hindu Succession Act. Even otherwise also, she has become an absolute owner by virtue of the registered sale deed dated 17.10.1960 and though she was not a party to the alleged partition effected in 1960 and she is not a signatory to palupatti alleged to have been executed on 15.11.1968, she became an absolute owner by virtue of registered sale deed and by operation of law under Section 14 of the Hindu Succession Act. As such, she bequeathed the suit



schedule property in favour of the defendant and after her demise, the defendant became the absolute owner and was in possession of the suit schedule property. The said aspects were not properly considered by the First Appellate Court and committed an error in decreeing the suit of the plaintiff. Hence, the judgment passed by the First Appellate Court is arbitrary and erroneous.

16. To buttress his arguments, he has placed reliance on the judgment of the Hon'ble Apex Court in case of ***Parvathi, Nairthi (Dead) by LRs. And others v. Lakshmi Nairthy (dead) through LRs. and others***¹.

17. The First Appellate Court has reversed the judgment and decree passed by the Trial Court dated 05.01.2010 on the ground that the Will is surrounded by suspicious circumstances. Hence, the impugned

¹ Civil Appeal No.6859 of 2014, disposed of on 21.05.2026, reported in 2026 SCC Online SC 591 : 2026 INSC 521,



judgment passed by the First Appellate Court is arbitrary and erroneous. Hence, on these grounds, he prays to allow the appeal.

18. Learned counsel for the defendant has also submitted that on the registration of a Will, a presumption has to be drawn in regard to the execution of the Will and in the instant case, the Will is duly registered and further, submits that as per Section 3 of the Transfer of Property Act, registration is a constructive notice.
19. Admittedly, the plaintiff has not challenged the registered Will executed by Rudranamma in favour of the defendant. Hence, the suit filed by the plaintiff is not maintainable. The said aspect was not considered by the First Appellate Court and has passed the impugned judgment. Hence, on these grounds, he prays to allow the appeal.



20. *Per contra*, learned counsel for the plaintiff, submits that the plaintiff and the defendant are brothers and the suit schedule property was purchased in the name of Rudranamma by their father and subsequently, the said property was put in partition and in the said partition, the suit property was allotted to the share of Rudranamma for a limited purpose i.e., for her livelihood till her death. As such, she has no right to bequeath the suit schedule property in favour of the plaintiff . The Will executed by Rudranamma in favour of the defendant is without title, as she was having only limited interest in the property. The First Appellate Court, considering the entire evidence on record, has rightly decreed the suit of the plaintiff and declared that the plaintiff is entitled for half share. Hence, on these grounds, he prays to dismiss the appeal.



21. This Court, vide order dated 11.06.2014, admitted the appeal to consider the following substantial questions of law:

(I) Whether the findings of the appellate Court to decree the suit justify without assigning any reason as to why Ex.D-1, deed of sale in favour of Rudranamma does not confer any title as absolute owner?

(II) With the plaintiff claiming that suit land was allotted to Rudranamma for livelihood / maintenance, whether the appellate Court was justified in holding it does not create any right of ownership of Rudranamma over the schedule property?

Reg. Substantial question of Law No.1:

22. There is no dispute in regard to the relationship between the parties to the suit and also regarding the property purchased in the name of Rudranamma



under a registered sale deed. The case of the plaintiff is that there was a partition in 1968 and in the said partition, the suit schedule property fell to the share of Rudranamma for her livelihood/maintenance during her lifetime. There is a recital in the alleged palupatti executed between the parties that after the demise of Rudranamma the property has to be divided equally between the plaintiff and defendant. After the demise of Rudranamma, the plaintiff demanded for partition and separate possession of the properties. The defendant refused to effect a partition.

23. The plaintiff, to substantiate his case, examined himself as PW1 and he reiterated the plaint averments in the examination-in-chief and also produced the records to show that the property was purchased in the name of Rudranamma under a registered sale deed. The said documents are marked as Exhibits P1 to P3.



- Exhibit P1 is the partition (palupatti) document, which clearly shows that the scheduled property fell to the share of Rudranamma in the partition executed on 15.11.1968 and the defendant and Umadevi have affixed their signature on Exhibit P1. Exhibit P1 discloses that there was a partition effected in 1968 and admittedly, Rudranamma was not a party to Exhibit P1.
- Exhibit P2 is the RTC extract.
- Exhibit P3 is the certified copy of a registered sale deed does not pertain to the suit schedule property.

24. During the cross-examination of PW1, he has admitted that his father had one daughter by name Uma Devi and he has admitted that he has not made Uma Devi as a party to the suit and it was suggested to PW1 that Rudranamma was the absolute owner of the suit schedule property under a registered sale deed and she had a right over the property, and she had executed a registered Will bequeathing the suit



schedule property in favour of the defendant. The said suggestion was denied by PW1.

25. The plaintiff also examined one witness as PW2, who has deposed that there was a prior partition between the plaintiff, defendant and Uma Devi and in the said partition, the suit land was allotted to the share of Rudranamma for a limited estate and after her demise, the property had to be divided equally between the plaintiff and the defendant. He submits that Rudranamma had no right to execute a Will bequeathing the suit schedule property in favour of the defendant.

26. In rebuttal, the defendant was examined as DW1. He has deposed that the suit schedule property was purchased by Rudranamma under a registered sale deed and she became the absolute owner of the property and she is not a party to the alleged partition effected between the plaintiff, defendant



and Uma Devi, also she is not a signatory to Exhibit P1 i.e., palupatti, as such, the said palupatti is not binding on Rudranamma. He submitted that the plaintiff has harassed the Rudranamma and he was residing in Ammasandra and the defendant was residing at Nittur and he was taking care of his mother Rudranamma; out of love and affection, Rudranamma bequeathed the suit schedule property in favour of the defendant by executing a registered Will. Hence, after the demise of Rudranamma, the defendant became the absolute owner and in possession of the suit schedule property by virtue of a registered Will. On the basis of registered Will, name of the defendant was entered in the revenue records and the plaintiff has not challenged the registered Will executed by Rudranamma in favour of the defendant.

27. The defendant has produced the documents marked as Exhibits D1 to D21. The Will is marked as Exhibit



D2 and also produced the revenue records to demonstrate that on the basis of the Will, name of the defendant was entered in the revenue records and the defendant is paying the land revenue on the suit schedule property.

28. During the course of cross-examination, it was suggested to DW1 that there was a partition effected in 1968 and in the said partition, the suit schedule property fell to the share of Rudranamma and there is a recital in the palupatti that after her demise, the property is to be divided equally between the plaintiff and the defendant. DW1 has denied the said suggestion.

29. As the attesting witnesses to the Will were not alive, the defendant has examined the brother of one of the attesting witnesses as DW3, who has identified the signature of the attesting witness i.e., Murugendraiah and his signature is marked as



Exhibit D2(a). The defendant also examined DW-4 viz., son of another attesting witness Virupakshaiah and his signature is marked as Exhibit D2(b).

30. The defendant, by examining the witnesses, under Section 69² of the Indian Evidence Act, 1872 has proved the execution of a registered Will bym Rudranamma in favour of the defendant.

31. The Hon'ble Apex Court in case of ***Parvathi, Nairthi (Dead) by LRs. And others v. Lakshmi Nairthy (dead) through LRs. and others, Civil Appeal No.6859 of 2014, disposed of on 21.05.2026, reported in 2026 SCC Online SC 591 : 2026 INSC 521*** has held at para 34 as follows:

"34. With regard to the prudence to be drawn while determining the suspicious circumstances, all the Courts have unambiguously opined that the Will in

² **69. Proof where no attesting witness found.**—If no such attesting witness can be found, or if the document purports to have been executed in the United Kingdom, it must be proved that the attestation of one attesting witness at least is in his handwriting, and that the signature of the person executing the document is in the hand writing of that person.



question was validly executed. It is trite to state that when the validity of a Will is to be determined, the overall terms of a Will, the intention of the testator and the surrounding circumstances have also to be seen. Mere exclusion of the natural heirs from the property of the testator, by itself, cannot be construed as a suspicious circumstance so as to invalidate a Will outrightly. A testator is legally entitled to dispose of his property according to his own wishes, and unless the exclusion is accompanied by suspicious circumstances affecting the genuineness or due execution of a Will, such exclusion alone does not render a Will invalid. Thus, we are of the considered view that the exclusion of the natural heirs cannot be sufficient to vitiate the Will in question, particularly when the Will clearly specifies that the testator has not done any injustice to his wife, children, or other relatives,....”

32. Admittedly, Rudranamma had acquired a title by virtue of a registered sale deed dated 17.10.1960 and the title has been conferred on Rudranamma by



virtue of a registered sale deed marked as Exhibit D1. The First Appellate Court ignored Exhibit D1 and placed reliance on palupatti and held that there was a prior partition among the plaintiff, defendant and Uma Devi, without looking into whether the Rudranamma was a party to the said alleged partition.

33. The First Appellate Court, without considering the said aspect, has committed an error in placing a reliance on the alleged palupatti and held that Rudranamma had no right or title over the suit schedule property as an absolute owner.

34. Further, the First Appellate Court has not assigned any reasons as to why Exhibit D1, i.e., sale deed executed in favour of Rudranamma does not confer any title on her as an absolute owner. Further, the First Appellate Court has also not examined Section 14 of the Hindu Succession Act. By virtue of



registered sale deed Exhibit D1, she became the absolute owner of the suit schedule property and the title was conferred on her as per Exhibit D1. In view of above discussion, substantial question of law No.1 is answered in the ***negative***.

Reg. Substantial Question of Law No.2:

35. The plaintiff has contended that there was a partition in 1968 and the suit schedule property fell to the share of Rudranamma for her life estate and after her demise, the property had to be divided equally between the plaintiff and the defendant.
36. In view of the finding recorded on substantial question No.1 that Rudranamma was not a party to the alleged partition (palupatti), Exhibit P1, effected in 1968, so the said partition is not binding on Rudranamma, and as she was not a party to Exhibit P1, allotting the suit land in favour of her livelihood/maintenance would not arise.



37. The said aspect was not properly considered by the First Appellate Court and committed an error in recording a finding that the sale deed Exhibit D1 does not create any right of ownership on Rudranamma over the suit schedule property.
38. As I have already discussed in detail in substantial question of law No.1, the First Appellate Court was not justified in holding that Exhibit D1 sale deed does not create any right of ownership on Rudranamma over the suit schedule property on the basis of Exhibit P1. In view of the above discussion, I answer substantial question of law No.2 in the ***negative***.
39. The judgment and decree passed by the First Appellate Court is arbitrary and erroneous and the same is liable to be ***set aside***.
40. In view of the above discussion, I proceed to pass the following order:



ORDER

- (i) The Regular Second Appeal is ***allowed***;
- (ii) The judgment and decree dated 31.10.2012 passed in R.A. No.13 of 2010 by the learned Senior Civil Judge, Gubbi, is set ***aside***;
- (iii) The judgment and decree dated 05.01.2010 passed in O.S. No.218 of 2003 by the learned Civil Judge and JMFC, Gubbi is hereby ***restored***;
- (iv) No order as to the costs;
- (v) Learned counsel for the defendant submits that the defendant is ready to pay ₹4,00,000/- towards the litigation expenses to the plaintiff. The plaintiff is present before the Court. He has declined to accept ₹4,00,000/-. The defendant is directed to deposit ₹4,00,000/- before the Trial



Court within three months from
today;

- (vi) Liberty is reserved to the plaintiff
to withdraw the said amount, if
so desired.

Sd/-
(ASHOK S.KINAGI)
JUDGE

RK
List No.: 2 SI No.: 3