



IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 30TH DAY OF JUNE, 2026

BEFORE

THE HON'BLE MR. JUSTICE ASHOK S.KINAGI

REGULAR SECOND APPEAL NO. 368 OF 2013 (DEC/INJ-)

BETWEEN:

1. SANJEEVAMMA
SINCE DEAD BY LRS,
- 1(A) VENKATANARASEGOWDA,
S/O LATE CHALUVEGOWDA,
AGED ABOUT 82 YEARS,
RESIDING AT SUNNAGHATTA VILLAGE,
CHANANPATNA TALUK,
RAMANAGARAM DISTRICT.
- 1(B) VENKATESH
S/O VENKATANARASEGOWDA,
AGED ABOUT 40 YEARS,
- 1(C) SRINIVAS
SINCE DEAD BY LEGAL REPRESENTATIVES
- 1(C)(A) SMT BHARATHI
W/O LATE SRI SRINIVASA
AGED ABOUT 51 YEARS
- 1(C)(B) SRI DARSHAN S
S/O LATE SRI SRINIVASA
AGED ABOUT 26 YEARS
- 1(C)(C) SMT PRIYADARSHINI
D/O LATE SRI SRINIVASA
AGED ABOUT 24 YEARS

Digitally
signed by
SHILPABAI S
Location
HIGH COURT
OF
KARNATAKA





APPELLANTS 1(A) TO 1(C) ARE
R/AT SUNNAGHATTA
KASABA HOBLI
CHANNAPATNA TALUK
RAMANAGARA DISTRICT.

1(C)(D) SMT. PUJA S
W/O SRI KUSUMAKAR D N
AGED ABOUT 29 YEARS
R/AT DASAVRA
KANVA POST
CHANNAPATNA TALUK
RAMANAGARA DISTRICT

1(D) SMT. VIJAYA
D/O VENKATANARASEGOWDA,
AGED ABOUT 39 YEARS,

1(E) SRI. JAGADESH S V
S/O VENKATANARASEGOWDA,
AGED ABOUT 34 YEARS,

1(F) SMT. PUSHPA S V
S/O VENKATANARASEGOWDA,
AGED ABOUT 30 YEARS,

APPELLANTS 1(D) TO 1(F) ARE
R/AT SUNNAGHATTA VILLAGE
CHANNAPATNA TALUK
TUMAKURU DISTRICT

2. CHIKKATHAYAMMA
W/O SHIVALINGAIAH
44 YEARS
R/AT SUMAGHATTA VILLAGE
HONGANUR POST, CHANNAPATNA TALUK
RAMANAGARAM DISTRICT – 571 511.

...APPELLANTS

(BY SRI. NAG ASSTS & RAKSHIT K N., ADVOCATE FOR A2



SRI. R B SADASHIVAPPA & SRI. NARAYANA S, ADVOCATE
FOR A(1)(A-B), A1(C)(A) TO A1(C)(D) AND A1(D-F))

AND:

1. SRI GOVINDA
S/O LATE SRI. DYAVARAHALLI GOWDA,
SINCE DECEASED BY HIS LEGAL REPRESENTATIVES

1(A) SMT. NETHRAVATHI
W/O LATE SRI GOVINDA
AGED ABOUT 45 YEARS

1(B) SRI NITISH G
S/O LATE SRI GOVINDA
AGED ABOUT 24 YEARS

1(C) SRI SHANKARE GOWDA G
S/O LATE SRI GOVINDA
AGED ABOUT 23 YEARS

ALL ARE R/AT
SUNNAGHATTA VILLAGE
KASABA HOBLI
CHANNAPATNA TALUK
RAMANAGARA DISTRICT – 562 160

2. TAHSILDAR
CHANNAPATNA TALUK,
RAMANAGAR DISTRICT.

...RESPONDENTS

(BY SRI. K P BHUVAN, ADVOCATE FOR
SRI. S RAJU, ADVOCATE FOR R1(A-C)
R2 SERVED)

THIS RSA FILED U/S. 100 OF CPC AGAINST THE
JUDGEMENT & DECREE DTD 5.11.2012 PASSED IN
R.A.NO.8/2012 ON THE FILE OF SENIOR CIVIL JUDGE AND
JMFC, CHANNAPATNA, RAMANAGARA DISTRICT, DISMISSING
THE APPEAL AND CONFIRMING THE JUDGEMENT AND DECREE



DTD 27.2.2008 PASSED IN OS.NO.72/2003 ON THE FILE OF
ADDITIONAL CIVIL JUDGE (JR.DN.) AND JMFC, CHANNAPATNA.

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

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

ORAL JUDGMENT

This regular second appeal is filed by the appellants
challenging the judgment and decree dated 05.11.2012
passed in RA No.8 of 2012 by the Court of learned Senior
Civil Judge and JMFC, Channapattana (**'First Appellate
Court'** for short) confirming the judgment and decree
dated 27.02.2008 passed in OS No.72 of 2003 by the
Court of learned Addl. Civil Judge (Jr.Dn.) at
Channapattana (**'Trial Court'** for short).

2. For the sake of convenience, the parties are
referred to based on their rankings before the Trial Court.
Appellant Nos.1(a) to 1(f) are the legal representatives
(LRs) of plaintiff No.1, appellant No.2 was plaintiff No.2,
and respondents were the defendants before the Trial
Court.



3. Brief facts leading rise to the filing of this appeal are as follows:

3.1. The plaintiffs filed a suit for declaration of their ownership over the suit schedule property based on the Will dated 14.02.1996 and for a decree for permanent injunction. It is the case of the plaintiff that, one Narasamma had five daughters and a son who is defendant No.1. Plaintiff No.1 is the eldest daughter of the said Narasamma. The two agricultural lands originally belonged to one Manchamma W/o Kuri Cheluvegowda. The said Manchamma gifted the said property in favour of her own daughter Narasamma under a registered gift deed dated 06.08.1962. Accordingly, Narasamma was the absolute owner in possession of the suit schedule property. During the lifetime of Narasamma, she had bequeathed the suit schedule property in favour of the plaintiffs by executing a registered Will dated 14.02.1996. The said Will was executed in the presence of attesters one Papanna and one Ramu. Narasamma passed away on



01.03.2002. After her demise, the plaintiffs by virtue of the registered Will dated 14.02.1996, became the absolute owners and in possession of the suit schedule property. The plaintiffs, based on the Will, submitted an application to the Tahsildar to enter their names in the revenue records. The Tahsildar has issued an endorsement refusing to change the *khata* as defendant No.1 objected for the change of revenue entries based on the registered Will. Hence, a cause of action arose for the plaintiffs to file a suit for declaration of title and permanent injunction. Accordingly, pray to decree the suit.

3.2. Defendant No.1 filed a written statement denying the averments made in the plaint and contended that, the suit property are the ancestral properties of the plaintiffs and defendant No.1. The deceased Narasamma was an asthma patient and she was suffering from 1990. The plaintiffs, taking advantage of her illness, with an intention to grab the inherited and succeeded property, have created the alleged Will dated 14.02.1996. The suit



filed by the plaintiffs is not maintainable and after the demise of Narasamma, the suit property are transferred on succession. Hence, the plaintiffs have not acquired any title or interest over the suit schedule property. Accordingly, prays to dismiss the suit.

3.3. The Trial Court, based on the pleadings of the parties, has framed the following issues:

- "1. Whether the plaintiffs prove that they are the absolute owners of the suit schedule property?*
- 2. Whether the plaintiffs prove that they are in lawful possession and enjoyment of the suit schedule property?*
- 3. Whether the plaintiffs prove the alleged interference caused by the 1st defendant over the suit schedule property?*
- 4. Whether the plaintiffs are entitled for the reliefs as prayed by them?*
- 5. What order or decree?"*

3.4. To substantiate their case, plaintiff No.1 was examined as PW1, however as plaintiff No.1 could not



tender herself for cross-examination, she executed a power of attorney in favour of her husband-Venkata Narase Gowda who was examined as PW2, and marked seven documents as Exs.P1 to P7. In rebuttal, defendant No.1 examined himself as DW1 and one witness as DW2, and marked six documents as Exs.D1 to D6.

3.5. The Trial Court, after appreciating the entire evidence on record, answered issue Nos.1 to 4 in the negative and issue No.5 as per the final order. The suit of the plaintiffs was dismissed with costs vide judgment dated 27.02.2008.

3.6. The plaintiffs, aggrieved by the dismissal of suit in OS No.72 of 2003 by the Trial Court, preferred an appeal in RA No.08 of 2012 before the First Appellate Court.

3.7. The First Appellate Court, after hearing the learned counsel for the parties, framed the following points for consideration:



- “೧. ಅಸಲು ದಾವೆ ಸಂಖ್ಯೆ ೭೨/೨೦೦೩ ರಲ್ಲಿ ದಿನಾಂಕ ೨೭.೦೨.೨೦೦೮ ರಂದು
ಗೌರವಾನ್ವಿತ ಅಪರ ದಿವಾಣಿ ನ್ಯಾಯಾಧೀಶರು (ಕೆ. ವಿ.) ಮತ್ತು ಪ್ರಥಮ ದರ್ಜೆ
ನ್ಯಾಯಿಕ ದಂಡಾಧೀಶರುಗಳು, ಚನ್ನಪಟ್ಟಣ ಇವರು ನೀಡಿದಂತಹ ತೀರ್ಪು
ಸಮಂಜಸವಿರುವುದಿಲ್ಲವೆಂದು ಮೇಲ್ಮನವಿದಾರರು ಸಾಬೀತುಪಡಿಸುತ್ತಾರೆಯೇ?
೨. ಏನು ಆದೇಶ?”

3.8. The First Appellate Court, after re-appreciating the entire evidence on record, answered point No.1 in the negative and point No.2 as per the final order. The First Appellate Court dismissed the appeal vide judgment dated 05.11.2012.

4. The plaintiffs, aggrieved by the impugned judgments and decrees passed by the Courts below, have filed this regular second appeal.

5. Heard the arguments of learned counsel for the plaintiff and LRs of the plaintiff, and learned counsel for LRs of defendant No.1.



6. Learned counsel for the plaintiffs submits that, the suit schedule property was owned and possessed by Narasamma and she had bequeathed the suit schedule property in favour of the plaintiffs by executing a registered Will dated 14.02.1996. After her demise, the plaintiffs have submitted an application to the Tahsildar for change of *khata* and revenue record in their name. The Tahsildar has passed an order refusing to change the *khata* in the name of the plaintiffs. He submits that, though the plaintiffs have filed applications in IA Nos.VII to IX before the Trial Court to examine the witnesses to prove the execution of the Will, however, the Trial Court has rejected the applications. He submits that, the Trial Court has dismissed the suit only on the ground that the plaintiffs have not examined the attesting witnesses to the registered Will. He submits that, when the Trial Court has rejected the application IA Nos.VII to IX, it could not have dismissed the suit on the ground of non-examination of attesting witnesses to the Will. The judgments and decrees



passed by the Courts below are arbitrary and erroneous. He further submits that, the First Appellate Court has not properly framed the points for determination and the judgment passed by the First Appellate Court is not in compliance with Order XLI Rule 31 of the Code of Civil Procedure, 1908. To buttress his arguments, he has placed reliance on the judgment of the Hon'ble Apex Court in the case of ***H. Siddiqui (Dead) by LRs Vs. A. Ramalingam***¹. Hence, on these grounds, he prays to allow the appeal.

7. *Per contra*, learned counsel for defendant No.1 submits that, that the entire case of the plaintiffs is based on the Will and the plaintiffs have not examined the attesting witness as required under Section 68 of the Indian Evidence Act, 1872. The Courts below were justified in passing the impugned judgments. Hence, on these grounds, he prays to dismiss the appeal.

¹ (2011) 4 SCC 240



8. This Court, vide order dated 05.07.2016, admitted this appeal to consider the following substantial questions of law:

- "1) *Were the Courts below justified in dismissing the suit of the plaintiffs for declaration and injunction without considering the material documentary evidence Ex. P2- the registered Will?*
- 2) *Were the Courts below justified in dismissing I.A.Nos.7 to 9 seeking permission to examine the witness to prove Ex. P2- the registered Will?*
- 3) *Whether the lower appellate Court is justified in confirming the judgment and decree of the trial Court without following the procedure as contemplated under Order 41 Rule 31 of CPC?*
- 4) *Were the Courts below justified in dismissing the suit in the facts and circumstances of the present case ?"*

Reg. Substantial Questions of Law Nos.(1) and (2):

9. Substantial questions of law Nos.(1) and (2) are inter-linked, hence, they are taken together for discussion to avoid repetition of facts.



10. The plaintiff filed a suit for declaration of title and injunction alleging that the suit schedule property were owned and possessed by Narasamma; as she was the absolute owner and in possession of the suit schedule property; the plaintiffs were taking care of Narasamma and out of love and affection, she had executed a registered Will dated 14.02.1996 bequeathing the suit schedule property in favour of the plaintiffs. After the demise of Narasamma, the plaintiffs have submitted an application for change of *khata* in their names. Defendant No.2-Tahsildar refused to transfer *khata* in the name of the plaintiffs on the ground that the Tahsildar cannot go into the validity of the Will alleged to have been executed by Narasamma in favour of the plaintiffs. Defendant No.2-Tahsildar directed the parties to approach the Civil Court. Pursuant to the order passed by defendant No.2, the plaintiffs filed a suit for declaration of title and permanent injunction. The plaintiffs, to substantiate their case, plaintiff No.1 was examined as PW1, but she did not



tender herself for cross-examination and executed a power of attorney in favour of her husband, and her husband was examined as PW2; he reiterated the plaint averments in the examination-in-chief and got marked seven documents as Exs.P1 to P7. In rebuttal, defendant No.1 examined himself as DW1.

11. During the course of cross-examination of PW1, it was suggested that, Narasamma had no right to execute a registered Will in favour of the plaintiffs bequeathing the suit schedule property. The said suggestion was denied by PW1. He has deposed that, the suit schedule property is the ancestral property, and Narasamma alone had no right, title or interest over the suit schedule property. He also deposed that, the plaintiffs have created the alleged registered Will. In support of his defence, defendant No.1 has produced six documents as Exs.D1 to D6. Defendant No.1 also examined one witness as DW2. She reiterated the examination-in-chief of DW1.



12. After hearing the learned counsel for the parties, the Trial Court posted the case for pronouncement of judgment. At that time, the plaintiffs have filed IA Nos.VII to IX to recall the order to reopen the case and permit the plaintiffs to examine the attesting witnesses to the registered Will. The Trial Court rejected the applications.

13. From the perusal of the entire evidence on record, the entire case of the plaintiffs is based on the registered Will dated 14.02.1996 executed by Narasamma in favour of the plaintiffs. The plaintiffs have not examined the attesting witnesses to the registered Will. The Trial Court has dismissed the suit of the plaintiffs on the ground that the plaintiffs have not examined the attesting witnesses to prove the execution of the registered Will executed by Narasamma in favour of the plaintiffs. Though the Trial Court has heard the matter and posted the case for pronouncement of judgment, at that time, the plaintiffs have filed IA Nos.VII to IX for reopening of case and to



permit the plaintiffs to examine the attesting witnesses to the registered Will dated 14.02.1996. The Trial Court rejected the said applications on the ground that the case was already posted for pronouncement of judgment, and also recorded its finding that the plaintiffs have failed to prove the execution of the Will and have not examined the attesting witnesses.

14. At one stage, the Trial Court has not permitted the plaintiffs to lead evidence of attesting witnesses; at another stage, the Trial Court records a finding that the plaintiffs have not examined the attesting witnesses and dismissed the suit. The Courts below have committed an error in rejecting IA Nos.VII to IX, wherein the plaintiffs have sought to examine the attesting witnesses. Thus, the Courts below have committed an error in passing impugned judgments. Further, both the Courts below have not considered that if the Will is registered, it has a presumptive value in view of the proposition of law laid down by the Hon'ble Apex Court in the case of **Meena**



Pradhan and Others Vs. Kamla Pradhan and Another².

15. In view of the above discussion, I answer substantial questions of law Nos.(1) and (2) in the negative.

Reg. Substantial Question of Law No.(3):

16. I have perused the judgment passed by the First Appellate Court. The First Appellate Court has framed the following points for consideration:

“೧. ಅಸಲು ದಾವೆ ಸಂಖ್ಯೆ ೭೨/೨೦೦೩ ರಲ್ಲಿ ದಿನಾಂಕ ೨೭.೦೨.೨೦೦೮ ರಂದು ಗೌರವಾನ್ವಿತ ಅಪರ ದಿವಾಣಿ ನ್ಯಾಯಾಧೀಶರು (ಕೆ. ವಿ.) ಮತ್ತು ಪ್ರಥಮ ದರ್ಜೆ ನ್ಯಾಯಿಕ ದಂಡಾಧೀಕಾರಿಗಳು, ಚನ್ನಪಟ್ಟಣ ಇವರು ನೀಡಿದಂತಹ ತೀರ್ಪು ಸಮಂಜಸವಿರುವುದಿಲ್ಲವೆಂದು ಮೇಲ್ಮನವಿದಾರರು ಸಾಬೀತುಪಡಿಸುತ್ತಾರೆಯೇ?

೨. ಏನು ಆದೇಶ?”

The above points for consideration raised by the First Appellate Court are in general. The First Appellate Court

² Civil Appeal No.3351/2014, disposed of on 21.09.2023



has failed to frame the points for determination as per Order XLI Rule 31 of CPC. The First Appellate Court is required to re-appreciate the entire evidence on record. The First Appellate Court has not re-appreciated the entire evidence on record. The judgment and decree passed by the First Appellate Court is not in compliance with Order XLI Rule 31 of CPC and also the mandate laid down by the Hon'ble Apex Court in the case of **H. Siddiqui** (supra). Paragraph No.21 of the said judgment is reproduced as follows:

"Order 41 Rule 31 CPC

21. The said provisions provide guidelines for the appellate court as to how the court has to proceed and decide the case. The provisions should be read in such a way as to require that the various particulars mentioned therein should be taken into consideration. Thus, it must be evident from the judgment of the appellate court that the court has properly appreciated the facts/evidence, applied its mind and decided the case considering the material on record. It would amount to substantial compliance with the said provisions if the appellate court's judgment is based on the independent assessment of the relevant evidence on all important aspects of the



matter and the findings of the appellate court are well founded and quite convincing. It is mandatory for the appellate court to independently assess the evidence of the parties and consider the relevant points which arise for adjudication and the bearing of the evidence on those points. Being the final court of fact, the first appellate court must not record mere general expression of concurrence with the trial court judgment rather it must give reasons for its decision on each point independently to that of the trial court. Thus, the entire evidence must be considered and discussed in detail. Such exercise should be done after formulating the points for consideration in terms of the said provisions and the court must proceed in adherence to the requirements of the said statutory provisions. (Vide Sukhpal Singh v. Kalyan Singh [AIR 1963 SC 146] , Girijanandini Devi v. Bijendra Narain Choudhary [AIR 1967 SC 1124] , G. Amalorpavam v. R.C. Diocese of Madurai [(2006) 3 SCC 224] , Shiv Kumar Sharma v. Santosh Kumari [(2007) 8 SCC 600] and Gannmani Anasuya v. Parvatini Amarendra Chowdhary [(2007) 10 SCC 296 : AIR 2007 SC 2380].)”

17. In view of the above discussion, I answer substantial question of law No.(3) in the negative.



Reg. Substantial Question of Law No.(4):

18. As I have already answered substantial questions of law Nos.(1) to (3) in detail and already recorded a finding that the judgments and decrees passed by the Courts below are arbitrary and contrary to the proposition of law laid down by the Hon'ble Apex Court in the case of ***H. Siddiqui***, in view of the above discussion, I proceed to pass the following:

ORDER

- i. The appeal is ***allowed***;
- ii. The impugned judgments and decrees passed by the Courts below are hereby ***set aside***;
- iii. The suit in OS No.72/2003 is restored to its original file;
- iv. Consequently, IA Nos.VII to IX filed by the plaintiffs before the Trial Court are ***allowed***;
- v. The parties are directed to appear before the Trial Court on **18.08.2026** without awaiting any further notice;



- vi. The plaintiffs are permitted to lead evidence of witnesses within a period of one month from the date of appearance before the Trial Court, and thereafter, if the defendants want to rebut, the defendants are at a liberty to lead rebuttal evidence;
- vii. As the original suit is of the year 2003, the Trial Court is directed to dispose of the suit as expeditiously as possible within a period of one year from the date of appearance of the parties;
- viii. Pending IA(s) in this appeal, if any, shall stand disposed of.

**Sd/-
(ASHOK S.KINAGI)
JUDGE**

PA
List No.: 2 SI No.: 2