



CNR: KAHC010514692023

NC: 2026:KHC:42354
RSA No. 1726 of 2023

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 7TH DAY OF AUGUST, 2026

BEFORE

THE HON'BLE MR. JUSTICE V SRISHANANDA

REGULAR SECOND APPEAL NO. 1726 OF 2023 (DEC/INJ)

BETWEEN:

1. S. K. SATHYANARAYANA
S/O LATE S.H. KESHAVAIAH,
AGED ABOUT 62 YEARS,
2. S.K. SHIVAGOPAL
S/O LATE S.H. KESHAVAIAH,
AGED ABOUT 59 YEARS,
BOTH ARE RESIDING AT B.H.ROAD,
HANUMAIAH GALLI,
GOWRIBIDANUR TOWN - 561 208.

...APPELLANTS

(BY SRI. NAGARAJAPPA A, ADVOCATE)

AND:

1. S.H. RAJARAM
S/O LATE S.E. HANUMAIAH,
AGED ABOUT 70 YEARS,
R/AT HANUMAIAH GALLI,
B.H.ROAD,
GOWRIBIDANUR TOWN.

SMT.T.G. MANGALA
W/O LATE G.S. SREENIVASA
(DEAD BY LRS)

Digitally signed
by
ANNAPURNA G
Location: High
Court of
Karnataka



CNR: KAHC010514692023

NC: 2026:KHC:42354
RSA No. 1726 of 2023

2. SRI. G. VINAY KUMAR,
S/O LATE G.S. SREENIVASA
(DEAD BY LRS),
- 2(A). SMT. NEELIMA
W/O LATE G. VINAY KUMAR,
AGED ABOUT 42 YEARS.
- 2(B). SHREYAS
S/O LATE G. VINAY KUMAR
AGED ABOUT 14 YEARS
R2(B) IS MINORE REPRESENTED
BY HIS MOTHER AND NATURAL GUARDIAN
i.e. R2(A) BOTH RESIDENTS OF
NEAR RAILWAY STATION ROAD,
BESIDE JAIN HOSTEL,
ARAVINDANAGAR,
GOWRIBIDANUR - 561 208.
3. SMT. G.ARUNA
D/O LATE G.S. SREENIVASA,
AGED ABOUT 44 YEARS,
4. SRI. G. RAKESH
S/O LATE G.S. SREENIVASA,
AGED ABOUT 39 YEARS,
R3 TO R4 ARE RESIDING AT
ARVINDANAGARA,
GOWRIBIDANUR TOWN - 561 208.
5. SMT. L. HEMALATHA
W/O M. MUNISWAMY,
AGED ABOUT 59 YEARS,



NC: 2026:KHC:42354
RSA No. 1726 of 2023

CNR: KAHC010514692023

6. SRI. M. MUNISWAMY
S/O LATE MUTHAPPA,
AGED ABOUT 74 YEARS,
7. SRI. SANJAY
S/O M. MUNISWAMY,
AGED ABOUT 59 YEARS,
- 8 . SUBASHA
S/O M. MUNISWAMY,
AGED ABOUT 29 YEARS,
R5 TO 8 ARE RESIDENTS OF
NO.3, IST MAIN ROAD,
MUTHAPPA BLOCK, GANGANAGARA,
BENGALURU - 560 032.
9. P.S. ANJANEYALU
S/O ANJINAPPA,
AGED ABOUT 61 YEARS,
10. SMT. P.S. SUVARNAMMA
W/O P.S. ANJANEYALU,
AGED ABOUT 59 YEARS,
11. P. RAMANJANEYALU
S/O P.S. ANJANEYALU,
AGED ABOUT 35 YEARS,
R9 TO 11 ARE RESIDENTS OF
HOUSE NO.26-03-295,
VIJAYANAGARA COLONY,
MELAPURA HINDUPURA TOWN,
ANANTHAPURA DISTRICT - 515 201,
ANDHRA PRADESH STATE.

...RESPONDENTS

(BY SRI. S. VINOD, ADVOCATE FOR C/R10)



CNR: KAHC010514692023

NC: 2026:KHC:42354
RSA No. 1726 of 2023

THIS RSA IS FILED UNDER SEC.100 OF CPC., AGAINST THE JUDGMENT AND DECREE DATED 11.08.2023 PASSED IN RA NO.62/2021 ON THE FILE OF PRINCIPAL JUDGE, FAMILY COURT, CHIKKABALLAPURA, DISMISSING THE APPEAL AND CONFIRMING THE JUDGMENT AND DECREE DATED 20.07.2021 PASSED IN OS NO.49/2016 ON THE FILE OF SENIOR CIVIL JUDGE AND JMFC, GOWRIBIDANUR.

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.

2. Plaintiffs second appeal challenging the dismissal of the suit in O.S.No.49/2016 for declaration and consequential injunction in respect of the following property (hereinafter referred to as suit property) which was confirmed by the First Appellate Court in RA No.62/2021:

"The land bearing Sy.No.206/2 total measuring 2-18 guntas, out of which 1-09 guntas, situated at Madanahalli village, Kasaba Hobli, Gowribidanur Taluk, Chikkaballapura District and is bounded as follows:

East by : 1st defendant property is same Sy.Number

West by : Nanjappa's property

North by : Path way

South by : S.K.Hanumanthappa and brothers land."



CNR: KAHC010514692023

NC: 2026:KHC:42354
RSA No. 1726 of 2023

3. Facts of the case are as under:

3.1. A suit for declaration and injunction came to be filed by the plaintiffs in respect of the suit property claiming that they being the children of S.H.Keshavaiah are the absolute owners of the suit property as their grandfather S.E.Hanumaiah has executed the registered Will in favour of S.H.Keshavaiah who is the father of the plaintiffs.

3.2. Despite the same, their grandmother who is the wife of S.E.Hanumaiah has sold the property in favour of defendant No.2 - T.G.Mangala by registered sale deed and wife of S.C.Hanumaiah did not possess any right, title or interest to sell the suit property in favour of defendant No.2 as the suit property is exclusively belonged to S.E.Hanumaiah and thus sought for decreeing the suit.

4. Pursuant to the suit summons, defendant Nos.1 to 3, 5 and 10 to 12 entered appearance through their Advocates and other defendants remained absent.

5. It is defendant Nos.10 and 12 have filed the written statement by contending that suit property originally belonged



CNR: KAHC010514692023

NC: 2026:KHC:42354
RSA No. 1726 of 2023

to S.E.Hanumaiah. However, there is an emphatic denial of the execution of the Will by S.E.Hanumaiah in favour of S.H.Keshavaiah.

6. It is also contended that Gangamma @ Papamma was granted only life interest in the suit property and she had no right of alienation of the suit property in favour of third party.

7. It is also contended that after the death of S.H.Keshavaiah, it is the plaintiffs who are the owners of the property is also denied.

8. Based on the rival contentions of the parties, learned Trial Judge raised necessary issues and after recording the evidence of the parties, noted that plaintiffs being the propounders of the Will, said to have been executed by S.E.Hanumaiah in favour of S.H.Keshavaiah is not proved by examining the attesting witnesses. Instead Sub-Registrar's register is placed on record as a document which shows that Will was executed. There is an admission to the effect that one



CNR: KAHC010514692023

NC: 2026:KHC:42354
RSA No. 1726 of 2023

of the attesting witnesses was alive and despite the same, said attesting witnesses were not examined.

9. Taking note of these aspects of the matter, learned Trial Judge noted that plaintiffs failed to prove that they became the owners by virtue of the Will executed by S.E.Hanumaiah in favour of their father – S.H.Keshavaiah.

10. Learned Trial Judge also noted that suit of the plaintiffs is bad in law as parties to the Will are not impleaded and sale transaction by Gangamma @ Papamma in favour of G.S.Sreenivasa and further sale of property by T.G.Mangala in favour of Hemalatha are established by placing necessary material on record and therefore, dismissed the suit.

11. Being aggrieved by the same, unsuccessful plaintiffs approached the First Appellate Court in RA No.62/2021.

12. Learned Judge in the First Appellate Court after securing the records, heard the arguments of the parties in detail and on reappreciation of the material on record, dismissed the appeal of the plaintiffs.



CNR: KAHC010514692023

NC: 2026:KHC:42354
RSA No. 1726 of 2023

13. Being further aggrieved by the same, present second appeal has been filed by the plaintiffs on following grounds and substantial questions of law:

GROUND

- *The first Appellate court erred in dismissing the appeal of the Appellant solely on the misconception of the factual matrix of the case of the Appellant I.e., the observation of the first Appellate Court that, at Para 25 of the judgment is culled out here under:*

"It is further relevant to note that after the death of Keshavalah, his wife and children I.e., deceased second Defendant and Defendant No. 3 to 5 have executed the registered sale deed as per exhibit P17 on 16/10/2007 in favour of Hemalatha who is Defendant No.6"

- *The reasoning of the first Appellate Court that Keshavalah wife executed sale deed exhibit P17 on 16/10/2007 is totally Incorrect and there was no execution of sale deed by the wife of Keshavalah. The said reasoning contrary to documents produced and oral evidence of Plaintiff and their witness.*
- *The first Appellate Court framed two points for consideration that whether the Plaintiffs have proved the title and possession over the schedule property and whether the judgment of Trial Court is illegal, perverse and capricious, while answering to the said question in a suit for declaration of title, the Plaintiff-Appellant contended that the Hanumaiah who is the original propositior and grandfather of Plaintiff was in possession and during his life time executed a will dated 4/1/1978, in favour of Keshavaiah and the father of the Plaintiff got half share in the suit schedule property and he died*



CNR: KAHC010514692023

NC: 2026:KHC:42354
RSA No. 1726 of 2023

in the year 1984 and Smt.Gangamma @ Papamma inherited the properties to enjoy during her lifetime, after her death in the year 2003 the Will came into existence and the father of the Plaintiff got the Possession of the suit schedule, the father of the Plaintiff also died on 1/3/2013 accordingly, the Appellants are in the possession of the property in question.

- *The reasoning of the first Appellate Court is that, the property in question is not the ancestral property of the Plaintiffs is totally Incorrect. Further, the observation of the first Appellant Court that none of the sale deed have been sought to be challenged by S.H.Keshavalah. Consequently, the Plaintiffs cannot acquire title over the property by virtue of Will is totally incorrect. The reasoning is contrary to the documents produced by the Appellants herein which runs counter to Exhibit P1 to P21, which documents fortify the claim of Appellant. In fact, the father of the Appellants Keshavalah filed suit OS 183/2001 against Gangamma, which came to be rejected.*
- *The Trial Court also erred in dismissing the suit of the Plaintiff disagreeing the document produced and as well as the evidence of PW1 to PW4 was ignored that S.H.Rajaram has created nominal Sale Deed in favour of G.S.Srinivasa who is the husband of the second Defendant, in turn, G.S.Srinivasa executed sale deed in favour of Smt. Hemalatha and by virtue of the same concocted sale deeds were made in favour of the Defendants 10 to 12. The said aspect of the creation of sale deeds were not examined meticulously by the Trial Court and committed an error in dismissing the suit, the Defendants made complication alienating the suit schedule property to 3rd Parties for litigation.*
- *Even though, the Trial Court framed a points regarding right of alienation by Gangamma and further rejected that same was not questioned by Keshavaiah.*



CNR: KAHC010514692023

- *The Respondent - Defendant have not produced any evidence nor deposed in support of their case before the Trial Court to prove the schedule property is self acquired property not filed written statement by adding evidence.*
- *The one Plaintiff Appellant, Sri. Shivagopal In his cross examination specifically deposed that on 4/1/1978 the properties in question were divised and thereafter the grandfather of the Plaintiff was died in the year 1992 and question of alienation of land by Gangamma @ Papamma will not arise. Such being the evidence of the one of the Plaintiff by name Shivagopal the Courts below committed error in deciding the issue under controversy ignoring his evidence.*
- *In so far as, earlier proceedings in OS No. 262/2008 of the suit filed by son of first Defendant Harish and the OS No. 84/2007 the second Defendant, Manjula filed OS No. 84/2007 against the father of the Plaintiff and the said OS No. 84/2007 was dismissed on 6/11/2007. Such being the case, mere reference of the suits will not improve the case of the Defendants and consequently both the judgments are bad in law and liable to be set aside and to decree the suit of the Appellants.*
- *The Appellant placed on record the following judgments:*

Civil Appeal No. 21784/2017 in between Mr.Ranvir Dewan Vs Mrs. Rashmi Khanna and another.

Civil Appeal No.s.5063-5065/2005 in between Shivdev Kaur(D) by LRs and others Vs R.S.Grewal.

2009(2) ICC 368 in between Bhagwan Krishan Gupta Vs Prabha Gupta and others.

in between Siddamurthy Jayarami d. 2011(3) ICC 149 Reddy (D) by LRs Vs Godi Jaya Rami Reddy and another



CNR: KAHC010514692023

- *The said judgments were not applied meticulously to the case of the Appellant consequently both the judgment and decree of the Trial Court and as well as first Appellate Court is liable to be set aside and decree the suit of the Plaintiff.*
- *The courts below committed error in dismissing the suit and appeal of the Appellants regarding doubtful of Will and Shardamma was not made party to the suit.*

SUBSTANTIAL QUESTIONS OF LAW

- 1. Whether trial court right in saying that execution of will is doubtful and whether S.H.Hanumaiah has got right to excuse the Will?*
- 2. Whether trial court in saying that the sister of Keshavaiah, Shardamma was not made party to the suit as she was died somewhere in the year 1986?*
- 3. Whether the courts below right in arriving at conclusion that the schedule properties are not ancestral property of the plaintiff defendant, just because the Keshavaiah has not questioned in his lifetime the said alleged sale deed?*
- 4. Whether the 1st Appellate Court right in dismissing the appeal on the ground that none of the sale deeds have been sought to be challenged by S.H.Keshavaiah in fact OS 183/2001 challenged against Gangamma?*
- 5. Whether the first Appellate Court right in dismissing the appeal of the Appellant, assigning the reasons, "It is further relevant to note that after the death of Keshavaiah, his wife and children I.e., deceased 2nd Defendant and defendant Nos. 3 to 5 have executed the regd. Sale Deed as per Ex.P.17 on 16.10.2007 in favour of Hemalatha?"*



CNR: KAHC010514692023

**NC: 2026:KHC:42354
RSA No. 1726 of 2023**

14. Learned counsel for the appellants reiterating the grounds urged in the appeal memorandum would contend that attesting witnesses were not available having regard to the fact that registered Will is a old Will. As such, necessary material evidence is placed on record by summoning the register from the Sub-Registrar's office wherein thumb impression of S.E.Hanumaiah is found. Therefore, the Trial Court was required to consider the probative value of the registered Will executed by S.E.Hanumaiah in favour of S.H.Keshavaiah and thus, dismissal of the suit is bad in law and has resulted in miscarriage of justice and sought for admitting the appeal on the aforesaid substantial questions of law.

15. Learned counsel for contesting respondent No.10 is absent.

16. In the light of the arguments put forth on behalf of the appellants, this Court perused the material on record meticulously.

17. On such perusal of the material on record, plaintiffs being the propounder of the Will said to have been executed by



CNR: KAHC010514692023

**NC: 2026:KHC:42354
RSA No. 1726 of 2023**

S.E.Hanumaiah in favour of S.H.Keshavaiah who is the father of plaintiffs was duty bound to establish the same in accordance with law; more particularly as per Section 63 of the Indian Succession Act and Section 68 of the Indian Evidence Act.

18. Non-examination of the attesting witnesses is taken note of by the learned Trial Judge and reappreciated by the learned Judge in the First Appellate Court in establishing the proof of the Will.

19. Further, all the beneficiaries under the Will are not made as parties to the suit. No explanation is forthcoming by the plaintiffs in this regard. Mere marking of register which contains the thumb impression of S.E.Hanumaiah in the register maintained in the office of Sub-Register would not be sufficient enough to prove the Will in the absence of examination of attesting witnesses.

20. If the plaintiffs were not able to examine the attesting witnesses, atleast their signatures to the Will should have been proved by the persons who are acquainted with the



NC: 2026:KHC:42354
RSA No. 1726 of 2023

signatures of the attesting witnesses. No such attempt is made by the plaintiffs.

21. Taking note of these aspects of the matter, dismissal of the suit by the learned Trial Judge as the plaintiffs have failed to make out the legal right in respect of the suit property is just and proper which has been rightly upheld by the learned Judge in the First Appellate Court.

22. Thus, having regard to the scope of Section 100 of Code of Civil Procedure, this Court does not find any good grounds to admit the appeal for further consideration on the aforesaid substantial questions of law.

23. Accordingly, the following:

ORDER

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

Sd/-
(V SRISHANANDA)
JUDGE

KAV
List No.: 1 Sl No.: 68