



IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 16TH DAY OF JUNE, 2026

BEFORE

THE HON'BLE MR. JUSTICE V SRISHANANDA

REGULAR SECOND APPEAL NO. 176 OF 2020 (DEC)

BETWEEN:

1. SADHU POOJARY
SINCE DECEASED BY HIS LRS
- A. SMT. SUMITHRA
AGED 59 YEARS
W/O. GOVINDA POOJARY
RESIDING AT KITINAGADDE
THIRTHAHALLY
SEABINAKAR
SHIMOGA - 577 432
- B. SMT. GEETHA
AGED 55 YEARS
W/O UMESH
RESIDING AT 2-2-12D, SHANTHI NILAYA
SHRIBEEDU, BANNANJE
UDUPI - 576 101
- C. SMT. JAYALAKSHMI
AGED 51 YEARS
W/O RAMESH
R/AT 2-81-2 GIRIJA NILAYA
SHRIBEEDU, BANNANJE
UDUPI - 576 101
LRS OF SADHU POOJARY

Digitally signed
by
SHARADAVANI
B
Location: High
Court of
Karnataka



2. LEELA
AGED ABOUT 56 YEARS,
D/O. G. ANNAYYAPOOJARY,
RESIDING AT HIREBETTU
UPPOOR VILLAGE,
UDUPI TALUK - 576 105
3. SHARADA
AGED ABOUT 53 YEARS,
D/O G ANNAYYAPOOJARY,
RESIDING AT KUTHPADY VILLAGE AND POST
UDUPI TALUK
4. HARISH
AGED ABOUT 46 YEARS,
S/O G. ANNAYYA POOJARY,
RESIDING AT K.G.ROAD,
UPPOOR VILLAGE,
UDUPI TALUK - 576 105
5. KUSUMA
AGED ABOUT 44 YEARS,
D/O G ANNAYYAPOOJARY,
RESIDING AT BALAMAKKI MANE,
CHANTHARY VILLAGE,
UDUPI TALUK - 576 213.
6. JAYANTHI
AGED ABOUT 42 YEARS
D/O G.ANNAYYAPOOJARY,
RESIDING AT CHALI NO.8,
ROOM NO83, KANNAMBAR NAGAR,
VIKROLI EAST,
MUMBAI - 400 078



7. SULOCHANA
AGED ABOUT 40 YEARS,
D/O G. ANNAYYAPOOJARY,
RESIDING AT SANNIDHI,
SHIRIBEDU VILLAGE,
UDUPI TALUK - 576 101

...APPELLANTS

(BY SRI. P. RAVI SHANKAR, ADVOCATE FOR A1 (A TO D))

AND:

1. CHANDRASHEKAR
AGED ABOUT 49 YEARS,
S/O G ANNAYYA POOJARY,
R/O.SRI SIDDHI,
MOODANIDAMBUR VILLAGE,
UDUPI TALUK - 576 101.
2. HARISH CHANDRA
AGED ABOUT 45 YEARS,
S/o G SANKI POOJARTHI,
R/o GATLE HOUSE
MOODANIDAMBUR VILLAGE,
UDUPI TALUK

VIDE ORDER DATED 05.01.2022

...RESPONDENTS

(BY SRI. S.M. ANFAL, ADVOCATE FOR

SRI. K PRASANNA SHETTY, ADVOCATE FOR R1 AND R2)

THIS RSA IS FILED UNDER SEC.100 OF CPC., AGAINST
THE JUDGMENT AND DECREE DATED 02.07.2019 PASSED IN
RA NOS.18/2012 AND 23/2012 ON THE FILE OF THE II
ADDITIONAL SENIOR CIVIL JUDGE AND JMFC., AT UDUPI



DISMISSING THE APPEALS AND CONFIRMING THE JUDGMENT AND DECREE DATED 29.02.2012 PASSED IN OS NO.49/2003 ON THE FILE OF THE III ADDL.CIVIL JUDGE AND JMFC., UDUPI.

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. P. Ravishankar, learned counsel for the appellants and Sri. S.M. Anfal for Sri. K. prasanna Shetty, learned counsel for the respondents.

2. Plaintiffs who are unsuccessful in getting a decree in respect of Item No.1 of the Plaint 'A' schedule (hereinafter referred to as suit property) in OS No.49/2003 are the appellants.

DESCRIPTION OF THE 'A' SCHEDULE

Immovable property situated in Moodanidamboor Village of Udupi Taluk and District.



<u>Sl.No.</u>	<u>Survey No.</u>	<u>Kissam</u>	<u>Extent</u>	<u>Assmt.</u>
01.	28/7B	Nanja	0.58	5.48
02.	32/4	Nanja	0.10	<u>0.95</u>
				<u>6.43</u>

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

3.1 A suit in O.S. No.49/2003 is filed seeking declaration and partition in respect of two items of the properties in 'A' schedule.

3.2 The declaration was to the effect that the settlement deed executed by Gatle Annaaiah Pujari is not a valid document and it would not bind the rights of the plaintiff and since Gatle Annayya Poojary died intestate, plaintiffs are entitled for equal share in all the suit properties.

3.3 Suit was resisted by defendants. However suit on contest came to be decreed in part. Operative portion of the Trial Court judgment reads as under:



The suit of the plaintiff is partly decreed. Declaring that the registered will dtd.27.11.2002 registered as document No.III-231/2002-03 of S.R.O. Udupi in respect of item No.2 of the Plaint 'A' schedule properties alleged to have been executed by Late Gatle Annayya Poojary as invalid and the same is not binding upon the plaintiffs.

Further the plaintiff and the defendants are entitled for 1/8th share each in the item No.2 of Plaint 'A' Schedule Properties.

There shall be a division of item No.2 of Plaint A schedule properties into 8 equal shares, and to allot and deliver 7 such shares to the plaintiffs with reference to good and bad soil.

Further, with respect to the relief of declaration to declare the registered settlement deed dtd., 27.11.2002 registered as document No.1-2640/2002-03 of S.R.O. Udupi in respect of item No.1 of the Plaint 'A' schedule properties alleged to have been executed by Late Gatle Annayya Poojary is vitiated by misrepresentation and fraud and not binding on the plaintiffs, the suit of the plaintiff is dismissed. No order as to cost.

3.4 Being aggrieved by the non-decreeing of the suit in respect of Item No.1 of the plaint 'A' schedule



property in not holding that the settlement deed executed by Sri. Gatle Annayya Poojary in favour of defendant No.1 on 27.11.2002, an appeal came to be filed by the plaintiffs in R.A. No.18/2012.

3.5 Defendants also filed an appeal in R.A. No.23/2012 challenging the decreeing of the suit in part. Learned judge in the First Appellate Court after securing the records, heard the arguments of the parties in detail and on re-application of the material on record, dismissed both the appeals and confirmed the judgment and decree passed by the Trial Court.

3.6 Defendants did not choose to challenge the dismissal of their appeal and thereby Judgment passed by the trial Judge decreeing suit in part insofar as defendants are concerned became final.

4. It is the plaintiffs who have filed the present second appeal challenging the non decreeing of the suit in respect of Item No.1 of the 'A' schedule property and non



declaring that the settlement deed dated 27.11.2002 executed by Sri. Gatle Annayya Poojary in favour of the defendant No.1 as invalid.

5. Dr. P. Ravi Shankar, learned counsel for the appellants reiterating the grounds urged in the appeal memorandum would contend that the material evidence on record was not properly appreciated by both the Courts in denying the relief of the plaintiffs with regard to the invalidity of the settlement deed dated 27.11.2002 executed by Gatle Annayya Poojary in favour of the defendant No.1 marked as Exhibit D4 and non-decreeing the suit in respect of the first item of the Plaint 'A' schedule property.

6. He would further emphasize that the reasons assigned by the learned trial Judge while upholding the contentions of the plaintiffs in holding that the Will executed by Sri. Gatle Annayya Poojary to his nephew who is the second defendant, same logic would also apply in respect of the settlement deed marked as Exhibit D4.



Therefore, the judgment of the Trial Court suffers from double standards with regard to the appreciation of evidence which has been ignored by the learned Judge in the First Appellate Court while upholding the finding recorded by trial Judge and dismissing the appeal of the appellants and thus sought for admitting the appeal on following substantial questions of law.

a) Whether the appellate Court and trial court were right in not considering the fact that by holding the Ex-D3 will Document is vitiated for non-removal of suspicious circumstances and whereas Ex-D4 executed on the same day does not attract such observations. The capacity to execute the document with full knowledge is the question. The capacity of the executor is in doubt which goes to the route of the issue.

b) Was it correct for Courts below in not considering the capacity of the Gattle Annayya Poojary's Mental physical status on the date of execution of the documents as the said person died with two and half days of execution.

c) Whether the court below was correct in dismissing the suit when without ascertaining the nature of the document as to whether it is a mere gift or Settlement Deed while framing the issues.



d) Whether the courts below were right in not considering the inconsistency in affixing signature before Revenue authorities Tahsildar and affixing Thumb Impression before Registration authorities when all the documents are submitted on the same day.

7. Per contra, counsel for respondents supports the impugned judgment.

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

9. On such perusal of the material on record, there is no dispute as to the relationship among the parties. First defendant is the brother of other plaintiffs.

10. Gatle Annayya Poojary was the absolute owner of the suit properties is also not in dispute. During the lifetime of Gatle Annayya Poojary, a registered settlement deed came to be executed marked vide Exhibit D4.

11. It is not in dispute that two days later Gatle Annayya Poojary died. It is under that circumstances, the



plaintiffs tried to establish before the Court that the Annaiah Pujari was of unsound mind and the execution of the settlement deed vide Exhibit D4 is thus shrouded with suspicious circumstances and defendant No.1 has played a major role in getting such a document executed and thus, sought for decreeing the suit.

12. In that regard, both the Courts took into consideration that plaintiff No.7 is a signatory to Exhibit D4.

13. To establish that Gatle Annayya Poojary was not having sound health and was incapable of understanding the worldly affairs as on the date of executing the Exhibit D4, she was the best person to speak about the validity of Exhibit D4 including the fact that the Gatle Annayya Poojary did not have sound health and was not capable of comprehending the worldly affairs. Thus, Trial Court drew adverse inference against the plaintiffs.



14. Before the First Appellate Court also, no attempt is made to place additional evidence by seeking the permission of the Court to examine plaintiff No.7 in order to establish the stand taken by the plaintiffs in the suit.

15. However, plaintiffs tried to impress the Court that defendant No.7 was made to forcibly sign and subscribe the signature on Exhibit D4.

16. In fact, the registration has taken place in the house of Gatle Annayya Poojary as a private registration having regard to the health condition of Gatle Annayya Poojary. If it is so, it is for the Registering Authorities not to register the document if Gatle Annayya Poojary had no sound health. It is on account of the physical ailment that Gatle Annayya Poojary had, private registration was arranged and there is material evidence on record that the officials were present when plaintiff No.7 subscribed her signature to Exhibit D4 marked at Exhibit D4.



17. Therefore, only on the ground that two days after execution of Exhibit D4 Gatle Annayya Poojary died could not be a ground to hold that the settlement deed is invalid.

18. Insofar as the Will is concerned, Will executed by Gatle Annayya Poojary in favour of defendant No.2 who is none other than the nephew of Gatle Annayya Poojary is concerned, material evidence are placed on record and there is no contra evidence in proving the Will and therefore, Will is held to be invalid in respect of Item No.2 of the plaint 'A' schedule property. As such, learned trial Judge granted the share to the plaintiffs by holding that the Will is invalid.

19. No doubt the defendants challenged the said finding of the learned trial Judge in decreeing the suit of the plaintiffs insofar as Item No.2 of the property is concerned, but First Appellate Court upheld the findings recorded by the learned Judge in the Trial Court and dismissed the appeal of the defendants. Since defendants



have not chosen to file any further appeal, no further discussion is necessary in that regard.

20. Suffice to say that the material on record would not make out a case for the appellants to get the further adjudication of the second appeal based on the aforesaid substantial questions of law in view of the foregoing discussion.

21. Accordingly, the following Order :

ORDER

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

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

SNC
List No.: 1 SI No.: 75