



CNR: KAHC010529652019

NC: 2026:KHC:43999
RSA No. 464 of 2020

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 17TH DAY OF AUGUST, 2026

BEFORE

THE HON'BLE MR. JUSTICE V SRISHANANDA

REGULAR SECOND APPEAL NO. 464 OF 2020

BETWEEN:

1. SRI K M MAHESH
S/O SRI.T.MUNE GOWDA
R/O NO.1, ABHI NILAYA, 1ST CROSS
DIESEL SHED ROAD DEAD END LEFT
POOJAPPA LAYOUT, KRISHNARAJAPURAM
BENGALURU-560036
2. SRI.K.M.KUMAR
S/O SRI.T.MUNE GOWDA
AGED ABOUT 39 YEARS
R/O NO.666, ARMY AVN SQN (R AND O)
C/O 56 APO JAMMU AND KASMIR- 925666

...APPELLANTS

(BY SRI. V VINOD REDDY., ADVOCATE)

AND:

1. SMT. NANJAMMA
W/O LATE VENKATASWAMY GOWDA
AGED ABOUT 79 YEARS
2. SRI.V.MUNE GOWDA
S/O LATE VENKATASWAMY GOWDA
AGED ABOUT 58 YEARS
3. SRI.GOPALA GOWDA

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



NC: 2026:KHC:43999
RSA No. 464 of 2020

CNR: KAHC010529652019

S/O LAE VENKATASWAMY GOWDA
AGED ABOUT 53 YEARS

RESPONDENT 1 TO 3 ARE RESIDING AT
C.HOSURU VILLAGE, NAMBIHALLI POST,
SRINIVASAPURA TALUK
PIN-563126

4. SRI.T.MUNE GOWDA
S/O LATE VENKATASWAMY GOWDA
AGED ABOUT 70 YEARS

5. SMT.SUNANDAMMA
W/O T.MUNE GOWDA
AGED ABOUT 56 YEARS

RESPONDENTS 4 AND 5 BOTH ARE
R/O KENDATTI VILLAGE,
VOKKALERI HOBLI,
KOLAR DISTRICT - 563130

6. SRI.GOPALA GOWDA
S/O YALACHE GOWADA
AGED ABOUT 56 YEARS

7. SRI.VENKATESHAPPA
S/O YALACHE GOWDA
AGED ABOUT 56 YEARS

8. SRI.MARE GOWDA
S/O YALACHE GOWDA
AGED ABOUT 53 YEARS

9. SRI.NAGARAJ
S/O YALACHE GOWDA



CNR: KAHC010529652019

NC: 2026:KHC:43999
RSA No. 464 of 2020

AGED ABOUT 49 YEARS

10. SRI.M.NARAYANASWAMY
S/O CHIKKA MUNISWAMAPPA
AGED ABOUT 49 YEARS
R-6 TO R9 ARE ALL RESIDENTS OF
C. HOSUR VILLAGE, NAMBIHALLI POST
SRINIVASAPURA TALUK
PIN- 563126
11. SMT.CHANDRAMMA
D/O LATE SRIRAMAPPA
AGED ABOUT 50 YEARS
12. SRI.S.RAJANNA
S/O LATE SRIRAMAPPA
AGED ABOUT 47 YEARS
13. SMT.AMARAVATHI
D/O LATE SRIRAMAPPA
AGED ABOUT 45 YEARS
14. SMT.LAKSHMIDEVI
D/O LATE SRIRAMAPPA
AGED ABOUT 40 YEARS
15. SRI.K.S.MUNISWAMY GOWDA
S/O LATE SRIRAMAPA
AGED ABOUT 40 YEARS
16. SRI.MUNIVENKATAPPA
S/O VENKATESHAPPA
AGED ABOUT 65 YEARS

RESPONDENTS 10 TO 16 ARE



CNR: KAHC010529652019

NC: 2026:KHC:43999
RSA No. 464 of 2020

ALL RESIDENTS OF KENDATTI VILLAGE
VOKKALERI HOBLI
KOLAR TALUK
PIN-563130

...RESPONDENTS

(BY SRI. N. MURALI., ADVOCATE FOR C/R1
SRI. UMESH B.N., ADVOCATE FOR R11, R13 TO R15)
(R2 TO R10, R12, R16 ARE SERVED)

THIS RSA IS FILED UNDER SEC.100 OF CPC., AGAINST
THE JUDGMENT AND DECREE DATED 09.08.2019 PASSED IN
RA.NO.77/2017 ON THE FILE OF THE I ADDITIONAL DISTRICT
JUDGE, KOLAR, DISMISSING THE APPEAL AND CONFIRMING
THE JUDGMENT AND DECREE DATED 17.04.2017 PASSED IN
OS.NO.373/2014 ON THE FILE OF THE PRINCIPAL SENIOR
CIVIL JUDGE, AT KOLAR AND ETC.

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. Vinod Reddy, learned counsel for the
appellant, Sri. N. Murali, learned counsel for
Caveator/respondent No.1 and Sri. Umesh B.N., learned
counsel for respondents No.11, 13 to 15.



2. Plaintiffs second appeal challenging the dismissal of the suit in O.S.No.373/2014, confirmed in R.A.No.77/2017, whereby the suit for declaration and injunction came to be dismissed in respect of the following properties (hereinafter referred to as the 'suit properties').

SCHEDULE

- 1. Land bearing Sy.No. 33/5 measuring 03 guntas*
- 2. Land bearing Sy. No. 45/9 measuring 05 guntas*
- 3. Land bearing Sy. No. 96/2 measuring 0.34 guntas*
- 4. Land bearing Sy.No. 122/2 measuring 0.38 guntas*
- 5. Land bearing Sy.No. 54/4 measuring 03 guntas*
- 6. Land bearing Sy.No. 138/3 measuring 1 acres 05 guntas*
- 7. Land bearing Sy.No. 138/5 measuring 0.15 guntas*
- 8. Land bearing Sy.No. 70/4 measuring 0.24 guntas*
- 9. Land bearing Sy.No. 4/1 measuring 1 acre 36 guntas*
- 10.Land bearing Sy.No. 4/4 measuring 1 acre 19 guntas*
- 11.Land bearing Sy.No. 33/9 measuring 05 guntas*
- 12.Land bearing Sy. No.67/16 measuring 02 guntas*
- 13.Land bearing Sy.No. 47/24 measuring 03 guntas*



NC: 2026:KHC:43999
RSA No. 464 of 2020

CNR: KAHC010529652019

Items No. 1 to 8 and 11 to 13 situated at Kendatti village, item No. 9 and 10 situated at Kendatti Gollahalli village, Vokkaleri Hobli, Kolar Taluk.

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

4. A suit for declaration and injunction came to be filed in O.S.No.373/2014 in respect of the suit properties claiming that plaintiffs are the owners of suit properties. In the said suit, it is contended that the properties earlier belonged to Devamana w/o Gopalappa. Devamma was the daughter of Korchegowda. Patel Korchegowda had executed a gift deed in respect of the lands in survey Nos. 138/3, 138/5, 70/4, 45/9 and 35/7 of kendatti village, Kolar district. On account of the said gift deed, physical possession of those properties were also delivered to Devamma, who was the second daughter of Korchegowda. Devamma enjoyed the properties during her lifetime. Since she had no issues, she has fostered defendant No.4 Munegowda as her son to look after her in her old age.



CNR: KAHC010529652019

5. When Munegowda attained majority, Devamma performed marriage of defendant No. 4 with Sunandamma who is defendant No.5. Plaintiffs are the children of defendants No. 4 and 5. During the lifetime of Devamma she has executed a will in favour of plaintiffs No.1 and 2 appointing defendant No.5 as their natural guardian.

6. It is also contended by the plaintiffs that the defendants behind the back of plaintiffs in respect of suit properties filed a suit in O.S.No.154/2001 whereby share of the plaintiffs was sought to be denied.

7. It is further contended by the plaintiffs that defendant No.5 with the help of other defendants have alienated some of the properties bearing survey Nos.54/4, 122/2 and 96/4 in favour of father of defendant No.10. Father of the 10th defendant also filed a suit for partition against defendants No.1 to 9, 10 to 16. According to the plaintiffs, those court proceedings are not binding on the plaintiffs. It is further contended that plaintiffs demanded



their share through legal notice. When they questioned the actions of defendant No.5 through a legal notice for which they received evasive reply. Therefore, suit was filed.

8. Pursuant to the suit summons, defendant No.1 filed written statement which came to be adopted by defendants No. 2 and 3, wherein all the plaint allegations are denied. According to them, there is no cause of action to file this suit at all.

9. It is further contended by them that suit filed by the plaintiffs is speculative in nature and misconceived and not maintainable in view of the court proceedings in O.S.No.154/2001, R.A.No.68/2006, which ultimately concluded in RSA No. 2077/2008.

10. It is also contended that defendants No.6 to 9 filed a separate written statement reiterating the defence taken by defendants No. 1 to 3.



CNR: KAHC010529652019

11. It is further contended that it is Korchegowda, who was the original propositus of the plaintiffs and defendants family and they constituted joint family. Therefore, Devamma did not get any right by way of alleged gift and as such, bequeath said to have been made by Devamma in favour of the plaintiffs itself is incorrect and sought for dismissal of the suit.

12. Based on the rival contentions of the parties, learned trial Judge raised necessary issues and after recording the evidence of the parties, dismissed the suit of the plaintiffs.

13. The trial Court also noted that original will itself was not placed on record by the plaintiffs, though certified copy thereof is placed on record and examined one of the attesting witnesses as PW2. There is a specific admission by PW.1 in his cross-examination to the effect that he has seen the will for the first time in the year 1988 and he does not know what happened to the original will.



14. Being aggrieved by the dismissal of the suit, plaintiffs filed an appeal before the first appellate court in R.A.No.77/2017 and along with the appeal, an application under Order XLI Rule 27 read with Section 151 of CPC also came to be filed that original will to be taken on record.

15. The 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 plaintiffs, also dismissed the application to place additional evidence on record as no sufficient reasons were placed on record to take the additional evidence on record.

16. Being aggrieved by the same, the plaintiffs before this court filed the present second appeal on following grounds and substantial questions of law:

GROUND

- *The Appellants had instituted Suit, OS. No.373 of 2014 seeking decree for declaration of title and permanent injunction against Defendants in respect*



CNR: KAHC010529652019

NC: 2026:KHC:43999
RSA No. 464 of 2020

of the suit schedule properties. The Respondents/Defendants-1 had filed his written statement and contested the Suit. The respondent-2 and 3/defendant-2 and 3 has filed a memo and adopted the written statement filed by the defendant-1/respondent-1. The respondent-6 to 9 had filed their separate written statement and contested the suit. The Plaintiff-1 was examined himself as PW-1. He had also examined witness A.V. Ramakrishnappa as PW-2 and produced documents exhibits-'p-1' to 'P-15'. The Defendant-1 was examined herself as DW-1 and defendant-9 was examined as DW-2 produced documents exhibits-'D-1' to 'D-24'. The Trial Court had erroneously dismissed the Suit by its judgment and decree dated 17-04-2017. On Appeal by the Plaintiffs, the First Appellate Court has unjustly dismissed the appeal and confirmed the judgment and decree of the Trial Court by its judgment and decree dated 09-08-2019 contrary to the pleadings, evidence on record and law governing the matter.

- *The Appellants/Plaintiffs submits that the schedule properties belong to one Devamma W/o. Gopalappa who is the daughter of Korchegowda. The said Korchegowda had executed a gift deed dated 22-07-1940 in favour of his second daughter Devamma in*



CNR: KAHC010529652019

NC: 2026:KHC:43999
RSA No. 464 of 2020

respect of the schedule properties Sy.No. 138/3, 138/5, 70/4, 45/9 and Sy.No. 35/7. In view of the said gift deed, the said Devamma was in possession of the said properties. The said Devamma was enjoying the said properties during her life time and since she had no issues she fostered one Munegowda the respondent-4 and father of petitioners to look after her in her old age. The said Devamma performed the marriage of the said Munegowda with Sunandamma the respondent-5. The appellants are the children of the respondent-4 and 5. During the lifetime of Devamma she has executed a registered will dated 13-01-1988 in favour of the appellants by appointing respondent-5 as their natural guardian. The appellants further pleaded that the respondents with collusion with each other and without knowing to the appellants and when they are away from the suit schedule properties has filed the suit in O.S.No.154/2001 for partition. The said suit is only to hamper the rights of the appellants under the above said will. The appellants further pleaded that even though the respondent-5 is their mother, she acted detrimental to the interest of her sons and she is not cordial with the appellants. The earlier suit which is relied by the respondents and judgment and decree passed therein is not binding on the appellants as they were The not arrayed as parties to



CNR: KAHC010529652019

NC: 2026:KHC:43999
RSA No. 464 of 2020

the said suit O.S.No.154/2001. appellants contents that the respondent-5 was only mentioned as guardian of the plaintiffs who were minors at the time of execution of the will and hence any contention urged by the respondent-5 was not binding on the appellants in the present suit. The said registered will was in the hands of the respondents-5 since she was their guardian at that time and the said document could not be produced before trial court. The Trial Court as well as the First Appellate Court have acted illegally in not accepting the case of the Plaintiff and dismissing the legitimate claim for declaration of ownership and permanent injunction.

- *The appellants submit that at the time of execution of the will by Devamma the appellants are aged about 12 and 8 years respectively. The said will was with the custody of the respondent-5 who was appointed as natural guardian to the appellants under the will. The appellants came to the knowledge of the earlier proceedings only when the commissioner came near the schedule properties for making division. Thereafter the appellants took the documents relating to earlier proceedings and came to know about the will executed by Devamma and filed an application to implead themselves as parties*



CNR: KAHC010529652019

NC: 2026:KHC:43999
RSA No. 464 of 2020

to the F.D.P. proceedings. The said application of the appellants was dismissed. There after the appellants filed the present suit for declaration of their rights based on the will. Since the said will was produced in the earlier suit [O.S.No.](#) 154/2001 and the said fact was informed to the counsel appearing for appellants before suit and he advised to get certified copy of the will with sub-registrar and same was applied and got produced in the present suit. The legal procedure of proving a will and production of the original will are all not in appellants knowledge. The Trial Court dismissed the suit since the original will has not produced and proved. The appellant had filed an application under Order 41 Rule 27 before the first appellate court for production of additional evidence and sought permission to produce original will along with other documents. But the first appellate court without considering the importance of the document sought to be produced in deciding the dispute involved had dismissed the application for production of additional evidence by giving the following reason

- *"In the instant case no reasons have been assigned by the applicant and further the court has appreciated the fact that whether the same is required for proper adjudication of dispute and hence it is clear that the applicant has not made out any*



CNR: KAHC010529652019

NC: 2026:KHC:43999
RSA No. 464 of 2020

grounds to allow I.A.No.III and it is devoid of any merits and as such point No. 1 needs to be answered in the negative".

- *And further the first appellate court has given reason that since the appellants has not produced the original will they have failed to prove the signatures in the will and dismisses the appeal on cost which is arbitrary, opposite to natural justice and bad in law.*
- *The First Appellate Court has erroneously dismissed the I.A.No.III filed for production of additional evidence and mechanically confirmed the conclusions of the Trial Court without independently discussing and considering the entire evidence on record while passing the impugned judgment and decree.*
- *The Appellants had filed an application under Order-XLI, Rule-27 before the First Appellate Court seeking permission to produce the suit document i.e., the will and other documents as additional evidence in support of his case. The application so filed should have been allowed as the documents produced are so important to decide the dispute involved between parties. But the First Appellate Court has failed to consider the said application in the said view but dismissed the same on technical grounds. Dismissal*



CNR: KAHC010529652019

NC: 2026:KHC:43999
RSA No. 464 of 2020

of the application of the Plaintiffs seeking permission to produce documents as additional evidence in support of their case is a substantial procedural error causing substantial injury and injustice to them.

- *The Appellants have also filed an application Under order 6 rule 17 seeking amendment to the plaint schedule inserting the boundaries to the suit schedule items. The said application was numbered as I.A. No.II. The first appellate court has ignored the I.A.No.II and proceeded hurriedly to pass Judgment on merits. This aspect itself shows that how the first appellate court has appreciated the material on record while proceeding to pass the Judgment on merits.*
- *The First Appellate Court being the final Court of facts was required to re-assess the entire evidence on record and decide the Appeal in requirement of Order-XLI, Rule-31 of the Code of Civil Procedure. But it has failed to comply with the mandatory requirement of law in deciding the appeal mechanically agreeing with the findings and conclusions of the Trial Court.*
- *The findings of the Courts below on the Issues relating to title and possession over the suit land*



CNR: KAHC010529652019

claimed by the Plaintiffs are perverse and contrary to the evidence on record and realities.

- *Even otherwise the impugned judgments and decrees of the Courts below suffer from illegal infirmities warranting interference of this Hon'ble Court.*
- *The appellants seek leave of this Hon'ble court to urge such other additional grounds at the time of hearing.*

17. Sri. V. Vinod Reddy, learned counsel for the appellants reiterating the grounds urged in the appeal memorandum would contend that in respect of the suit in O.S.No.154/2001, there is already a settlement by the plaintiffs with other defendants; the properties involved in this suit will also be settled by reaching amicable settlement.

18. Therefore the appeal needs to be admitted on the following substantial questions of law.



CNR: KAHC010529652019

NC: 2026:KHC:43999
RSA No. 464 of 2020

SUBSTANTIAL QUESTIONS OF LAW:

- 1) Whether the First Appellate Court committed substantial procedural illegality in considering the application of the Appellant/Plaintiff filed under Order-XLI Rule-27 of Code of Civil Procedure seeking permission to produce documents as additional evidence in support of their case and passing appropriate orders thereon?*
- 2) Whether the Courts below were justified in placing reliance on the judgment passed in the other suit where the appellants are not the parties and dismissing the present for declaration of their title while giving their findings on the Issues involved and reaching their conclusions while passing the impugned judgments and decrees?*
- 3) Whether the Courts below were justified in not scrutinising and discussing and evaluating the evidentiary value of the entire oral and documentary evidence on record while giving their findings on the Issues involved in the Suit?*
- 4) Whether the findings of the Courts below on the Issues relating to title and possession over the suit property claimed by the Plaintiff are perverse and contrary to the evidence on record?*
- 5) Whether the First Appellate Court committed illegality in not complying with the mandatory requirement of Order-XLI Rule-31 of Code of Civil Procedure Code while dismissing the Appeal RA-29 of 2015?*
- 6) Whether inferences drawn and the conclusions arrived at by the Courts below are erroneous and resulted in miscarriage of justice?*



19. *Per contra*, learned counsel Sri. N. Murali and Sri. Umesh B.N, learned counsel for the respondents would oppose the appeal grounds and supported the impugned judgments.

20. Having heard the arguments of both sides, this Court perused the matter on record meticulously.

21. On such perusal of material on record, the suit before the trial Court was one for declaration and injunction. As such, a legal right has to be made out by the plaintiffs by placing necessary oral and documentary evidence on record to grant the said relief.

22. The plaintiffs claim right over the suit properties by virtue of the will said have been executed by Devamma in their favour appointing defendant No.5 - mother as the natural guardian.

23. Admittedly, PW.1 came in custody of the original will said to have been executed by Devamma in



favour of the plaintiffs in the year 1988. No reason whatsoever is forthcoming as to non-production of the original will before the first appellate court.

24. The original will is produced with an application under Order XLI Rule 27 of the CPC, wherein it has been stated that the said original will was produced in the earlier suit in O.S.No.154/2001. Therefore, he took back the same from that said case and filed it before the first appellate court.

25. Such an exercise could have been carried out when the suit was pending before the trial court assuming that the case is still pending and not yet disposed of then, which is incorrect, as RSA No.2077/2008 concluded in 2013.

26. At last, the will could have been summoned by filing an application under Order XVI of the CPC. But no such effort has been made by the plaintiffs.



CNR: KAHC010529652019

27. As such, the non-production of the will, which is the basis for seeking declaratory relief, is rightly taken note by the learned trial judge while dismissing the suit of the plaintiffs.

28. Furthermore, to establish that Devamma had acquired the right to bequeath the property, no material evidence is placed on record. Mere production of the certified copy and examining PW.2 would not *ipso facto* result in proof of the will. Even for production of the certified copy of the will and to rely upon it, no foundational facts are pleaded to lead the secondary evidence.

29. These aspects of the matter would go to the very root of the case, which has been rightly considered by the learned judge in the first appellate court by holding that plaintiffs failed to make out a case for granting declaratory relief.



**NC: 2026:KHC:43999
RSA No. 464 of 2020**

CNR: KAHC010529652019

30. Having regard to scope of Section 100 of the CPC, this Court does not find any merit in any one of the grounds urged in the appeal or in the substantial questions of law.

31. Accordingly, following order:

ORDER

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

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

SKS