



IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 09TH DAY OF JULY, 2026

BEFORE

THE HON'BLE MR. JUSTICE V SRISHANANDA

REGULAR SECOND APPEAL No.263 OF 2017 (PAR-)

BETWEEN:

RAJESHWARI
W/O RAJAPPA
AGEDA BOUT 57 YEARS
R/O BESIDE SHANESHWARA TEMPLE
DURGIGUDI MAIN ROAD
SHIVAMOGGA CITY-577 201

...APPELLANT

(BY SRI P N HARISH, ADVOCATE)

AND:

1. AMRUTHA KUMARI
W/O LATE GANESHAPPA D P
AGED ABOUT 59 YEARS

2. G KIRAN KUMAR
S/O LATE GANESHAPPA D P
AGED ABOUT 39 YEARS

RESPONDENTS 1 AND 2 ARE
R/O OPP. OLD VEGETABLE MARKET
H SIDDIAIAH ROAD
SHIVAMOGGA-577201

3. D G KAVITHA
D/O LATE GANESHAPPA D P
W/O E RENUKA
AGED ABOUT 37 YEARS
RESIDENT OF
OPP.RENUKESHWARA RICE MILL
HOLEHONNUR VILLAGE-577 227

Digitally
signed by
MALATESH
K

Location:
HIGH
COURT OF
KARNATAKA



BHADRAVATHI TALUK
SHIVAMOGGA DISTRICT

4. RATHNAMMA
W/O RAJAPPA
AGED ABOUT 65 YEARS
R/O PWD COLONY
D B HALLI
KALLIHAL POST-577 233
BHADRAVATHI TALUK
SHIVAMOGGA DISTRICT
5. MURUGESH D P
S/O LATE HALAPPA
AGED ABOUT 62 YEARS
R/O GAJANUR JANATHA COLONY
SHIVAMOGGA TALUK
SHIVAMOGGA DISTRICT-577 201
6. CHANNAVEERA D P
S/O D P GANESHAPPA
AGED ABOUT 28 YEARS
7. SUMALATHA
D/O D P GANESHAPPA
AGED ABOUT 24 YEARS

RESPONDENTS 6 AND 7 ARE
RESIDENTS OF KPC COLONY
HOSANGADI-576 282
UDUPI DISTRICT

...RESPONDENTS

(BY SRI. S V PRAKASH, ADVOCATE FOR R1 TO R3;
SRI M.N.MADHUSUDHAN, ADVOCATE FOR R6 AND R7;
R4 AND R5-SERVED)

THIS RSA IS FILED UNDER SECTION 100 OF CIVIL
PROCEDURE CODE AGAINST THE JUDGMENT AND DECREE
DATED 16.12.2016 PASSED IN R.A.NO.42/2015 ON THE FILE
OF THE II ADDL. SR. CIVIL JUDGE, SHIVAMOGGA, DISMISSING
THE APPEAL AND CONFIRMING THE JUDGMENT AND DECREE



DATED 10.02.2015 PASSED IN O.S.NO.639/2008 ON THE FILE OF THE II ADDL. CIVIL JUDGE AND JMFC, SHIVAMOGGA.

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

CORAM: HON'BLE MR. JUSTICE V SRISHANANDA

ORAL JUDGMENT

Heard Sri P.N.Harish, learned counsel for the appellant and Sri S.V.Prakash, learned counsel for respondent Nos.1 to 3.

2. Parties are referred to as plaintiffs and defendants as per their original ranking before the Trial Court, for the sake of convenience.

3. Defendant No.3 in O.S.No.639/2008 on the file of the II Additional Civil Judge and JMFC, Shivamogga, is the appellant challenging the grant of decree in favour of the plaintiffs being the wife and children of late Ganeshappa, confirmed in R.A.No.42/2015 dated 16.12.2026 on the file of the II Additional Senior Civil Judge, Shivamogga.

4. Facts of the case which are utmost necessary for disposal of the present appeal are as under:

4.1 A suit for partition, declaration and separate possession came to be filed in O.S.No.639/2008, by contending that



D.C.Halappa had a wife by name Puttamma, who had four children by name Ganeshappa, Murugesh, Rathnamma and Rajeshwari.

4.2 Ganeshappa, S/o D.C.Halappa, said to have died and plaintiff No.1 being the wife of Ganeshappa, and plaintiff Nos.2 and 3 being the children succeeded to the share of Ganeshappa in the property left behind by D.C.Halappa, who died intestate.

4.3 Property claimed by the plaintiffs is that of Halappa, which was disputed by defendants stating that the property is that of Halappa's wife viz., Puttamma. After death of Halappa intestate, Puttamma and all her children succeeded to the property equally.

5. Defendants, no doubt, resisted the suit stating that the suit property is that of Puttamma, but they failed to prove the same. Puttamma said to have executed a Will in favour of defendant Nos.2 and 3 excluding the share to the plaintiffs.

6. Plaintiffs, therefore, were required to file the suit seeking declaration that the Will executed by Puttamma would not bind



the share of Ganeshappa (husband of first plaintiff and father of plaintiff Nos.2 and 3) being the son of Halappa.

7. Learned Trial Judge after raising necessary issues, recorded the evidence of the parties and noted that defendants utterly failed to prove that the suit property is the property of Puttamma and therefore she had no competence to execute the Will bequeathing the entire property in favour of defendant Nos.2 and 3 and decreed the suit.

8. Operative portion of the decree of the Trial Court reads as under:

"Suit of the plaintiffs is decreed.

It is hereby declare that, the registered Will dt.21.06.2008 executed by Smt.Puttamma in favour of defendant No.2 and 3 with respect to suit schedule property is not binding on the interest of plaintiffs.

Plaintiffs are entitled for 1/5th share each in 1/4th share of deceased Ganeshappa in suit schedule property.

Defendant No.1 is entitled for 1/4th share in suit schedule property.

No order as to costs.

Draw preliminary decree accordingly."



9. Being aggrieved by the same, it is the third defendant alone who filed the appeal before the First Appellate Court in R.A No.42/2015.

10. Pertinently another legatee in the same Will did not choose to challenge the judgment of the Trial Court. Therefore, another beneficiary under the Will having suffered the decree accepted the decree passed by the Trial Court.

11. Learned Judge in the First Appellate Court after securing the records heard the arguments of the parties in detail and on re-appreciation of the material on record, agreed with the finding recorded by the Trial Court that Puttamma did not possess any right, title or interest in the suit property to bequeath in favour of Defendant Nos.2 and 3 by supplying supplemental reasons as well and dismissed the appeal of defendant No.3.

12. Being further aggrieved by the same, defendant No.3 alone has filed the present appeal on the following grounds and substantial questions of law.



- *The impugned judgments and decree of the courts below are highly erroneous and opposed to law of facts, probabilities of the case.*
- *The trial court erred in not noticing the relief prayed for by the plaintiffs in so far as the registered will dated 21.06.2008 is concerned. It is respectfully submitted that plaintiffs have only claimed that the said will is not binding on their interest. The trial court under such circumstances ought to have only held whether the said will is binding on the plaintiffs or not and whether the executant of the will has executed the will affecting the rights and interests of the plaintiffs. The trial court however erroneously held that the will is not validly executed and executed under doubtful circumstances. Such prayer was not at all sought for by the plaintiffs and they have not questioned the validity of the will but on the other hand only questioned that it is not binding on their interest. The lower appellate court also failed to appreciate these facts and committed an error in confirming the judgment of the trial court.*
- *The evidence of DW-2 to DW-6 establishes the fact that the will is not surrounded by suspicious circumstances and executed by the testator with definite intention of allotting the property to the beneficiaries of the will. The trial court and so also the lower appellate court committed an error in not considering the evidence of DW-2 to DW-6 in a right prospective. The courts below ought to have limited the finding to the issue of whether the will is binding on the interest of the plaintiffs or not without commenting on the*



circumstances surrounded for the execution of the will which issue even the plaintiffs did not take in their plaint.

- *The trial court erred in not considering the averments made in the plaint by deceased Halappa during his life time in O.S. No.228/2004 wherein he has clearly pleaded that the property though purchased in his name, the sale consideration is paid by his mother-in-law and the property is purchased by him on behalf of his wife Puttamma and it is Puttamma who is the absolute owner of the property. The owner of the property having been clearly admitted the transactions being one of benami in nature and the said property being purchased in his name for the ownership of his wife, itself sufficient to establish that the alleged owner Halappa is not the owner but it is his wife Puttamma the owner of the suit schedule property*
- *The issue of property being purchased as a benami owner by Halappa in the name of his wife Puttamma has not been dealt with in the earlier suit and as such the courts below ought to have taken a independent view in the present suit and ought to have given independent finding on the issue without accepting the finding on the issue of sthridhana in the earlier suit.*
- *The trial court committed an error in answering the issue no.1 in affirmative only based on the decision and finding of the earlier suit bearing O.S.No.228/2004.*
- *The issue No.1 in O.S. No.228/2004 was to the effect that "whether the plaintiffs prove that the suit schedule*



property is the strhidhana property of the second plaintiff?". There was no issue as to whether the property in question is purchased by Halappa as benami owner and under such circumstances the finding in the earlier suit would not be helpful for the plaintiffs to establish that Halappa during his life time purchased the suit schedule property out of his self earnings.

- *It is worthwhile to mention that both the courts lost sight of the fact that the benami transaction is permitted between husband and wife and could be established.*
- *When the plaintiffs have come before the court it is for them to establish that the suit schedule property is the absolute property of Halappa and when PW-1 in his cross examination admits that he had no knowledge of about the occupation, income and capacity of Halappa to purchase the suit schedule property, the courts below erred in decreeing the suit holding that the property is purchased by Halappa.*
- *The trial court while giving its finding on the succession at para no.30 though holds that after death of Halappa suit property devolves upon five members including his wife Puttamma who was alive at that time but however did not choose to hold that the will cannot be held as not binding in so far as 1/5th share of Puttamma succeeded by her even otherwise.*
- *The courts below erred in holding that bequeath under the limited right is not valid under law. It is respectfully*



submitted that if the bequeath is for limited right it would be valid and enforceable for that limited right and courts below erred in not considering the limited validity of the will.

- *The trial court in its judgment at para no.32 held that the plaintiffs have not questioned genuineness of the will but contended the suit property being ancestral property is not binding on their share. However, the trial court erred in giving findings on the genuineness of the will.*
- *The trial court erred in holding that the profounder of the will has taken interest in the execution of the will without properly considering the evidence on record.*
- *The courts below erred in holding that the first defendant is entitled for 1/4th share in the suit schedule property.*
- *The courts below erred in not considering the legitimacy or otherwise of the defendants 4 and 5 and they are entitlement over the ancestral property.*
- *The lower appellate court erred in not properly applying the principles laid down under Section 115 of Evidence Act with respect to admission made by the party in previous suit. It is respectfully submitted that Halappa under whom the plaintiffs are claiming, specifically in clear terms admitted in an earlier proceedings to the effect that the suit schedule property though purchased in his name he is not the owner but it is purchased from the resources of his mother-in-law for the benefit of his wife Puttamma. It is pertinent to note*



that irrespective of the finding arrived in the earlier suit, the admission so made would always be binding on the person claiming under said Halappa. The courts below erred in not appreciating this fact.

- *The courts below have also not properly appreciated the principles laid on Section 58, 61 and 65 of Indian Evidence Act with regard to admissions made by the title holder and its impact on the successor in interest.]*
- *The courts below erred in not properly applying the principles enumerated under Section 114 of the Indian Evidence Act.*
- *The courts below have committed an error in not taking into consideration the exception prohibition of benami transactions between the husband and wife.*
- *The lower appellate court erred in holding that the defendant is estopped from claiming the suit schedule property as sthridhana property of her mother. It is respectfully submitted that it is rather the estoppels operating against the plaintiffs that gains importance and not that of the estoppels on the defendants since the plaintiffs having come to the court, the burden is on them to establish the fact and to explain as to how their claim is not it by estoppels.*
- *The lower appellate court has not properly considered number of decisions cited before it with respect to proof of execution of the will.*



- *The courts below erred in not considering in right prospective the evidences of DW-2 to DW-6 who have not only spoken about the valid execution of the will but also the acquisition of the property by Puttamma.*

SUBSTANTIAL QUESTIONS OF LAW:

- i. Whether in a suit for declaration the admission made by the predecessor of the plaintiffs in an earlier suit with regard to the ownership of the property would be sufficient to discard the claim of the plaintiffs in the present suit irrespective of the decision arrived at in the earlier suit?*
- ii. Whether it is the estoppels operating on the plaintiffs should be the basis for determination of the suit irrespective of the estoppels operating against the defendants?*
- ii. Whether in a suit wherein the relief is sought only with respect to the declaration that the will is not binding on the interest of the plaintiff, the courts below are justified in giving finding on the validity or otherwise of the will instead of deciding only whether the testator had absolute right over the property bequeathed?*
- iv. Whether the courts below committed an error in not allotting any share to the defendant no.3 while rejecting the will?*



- v. Whether the courts below committed an error in not applying the principles of notional partition immediately after the death of Halappa thereby dividing the property between his wife and children?*
- vi. Whether immediately after the death of Halappa the father of defendant no.3, his wife and children of the succeeded the property and thereby the will will be enforceable for 1/5th share succeeded by hid wife Puttamma?*
- vii. Whether the courts below committed an error in not properly considering the provisions of Section 41 of Transfer of Property Act and the exclusion of provision of benami transaction between the husband and wife?*
- viii. Whether the courts below committed an error in not properly deciding on the admissions made by the predecessor of the plaintiff as mandated under Sections 58, 61, 65 and 115 of Indian Evidence Act?*
- ix. Whether if testator having limited interest over the property bequeathed could such bequeath would be operative for such limited interest."*

13. Sri P.N.Harish, learned counsel for the appellant reiterating the grounds urged in the appeal memorandum would contend that both the Courts failed to note that suit property is the absolute property of Puttamma and therefore



she had competence in executing the Will in favour of defendant Nos.2 and 3 and wrongly held that the property belonged to Halappa and granted the decree which has resulted in miscarriage of justice and sought for admitting the appeal on the aforesaid substantial questions of law.

14. *Per contra*, Sri S.V.Prakash, learned counsel for the contesting respondents/plaintiffs, would support the impugned judgment by contending that to establish that the suit property belonged to Puttamma exclusively, there is no material evidence placed on record.

15. As such, the judgment of the Trial Court as well as the First Appellate Court needs no interference having regard to the scope of Section 100 of the Code of Civil Procedure and thus sought for dismissal of the appeal.

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

17. On such perusal of the material on record, Trial Court as well as the First Appellate Court have recorded a categorical



finding that defendant Nos.2 and 3 failed to establish before the Court that the suit property belonged to Puttamma.

18. As such, Will executed by Puttamma would not prevail over the natural succession.

19. When such is the factual finding recorded by both the Courts based on the material evidence on record, having regard to scope of Section 100 of the code of Civil Procedure, this Court does not find merit in any one of the substantial questions of law.

20. Accordingly, the following:

ORDER

- (i) Admission declined.
- (ii) Appeal ***dismissed***.

Sd/-
(V SRISHANANDA)
JUDGE

kcm
List No.: 1 Sl No.: 88