



CNR: KAHC010673702023

NC: 2026:KHC:39357
RSA No. 2179 of 2023

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 28TH DAY OF JULY, 2026

BEFORE

THE HON'BLE MR. JUSTICE V SRISHANANDA

REGULAR SECOND APPEAL NO. 2179 OF 2023 (DEC)

BETWEEN:

1. SMT. THIMMAMMA
SINCE DEAD BY HER LR'S

1(A). SMT. JAYAMMA
AGED ABOUT 66 YEARS
W/O SIDDAIAH AND
D/O LATE THIMMAMMA AND
LATE KARIYIAIAH
R/AT KATTERI VILLAGE,
ARALAKUPPE POST,
CHINAKURALI HOBLI,
PANDAVAPURA TALUK
MANDYA DISTRICT - 571 434.

...APPELLANT

(BY SRI. D.R. RAJASHEKHARAPPA, ADVOCATE FOR A1(A))

AND:

SMT. LATHA
W/O MANTELINGAIAH,
AGED ABOUT 41 YEARS,
HOUSE NO. 722, SRS COLONY
HOOTAGALLY, MYSORE - 570 018.

...RESPONDENT

(BY SRI. GEORGE LAZARUS R, ADVOCATE)

THIS RSA IS FILED UNDER SEC.100 OF CPC., AGAINST
THE JUDGMENT AND DECREE DATED 16.08.2023 PASSED IN
RA NO.17/2022 ON THE FILE OF ADDITIONAL SENIOR CIVIL
JUDGE AND JMFC, PANDAVAPURA., ALLOWING THE APPEAL
AND SETTING ASIDE THE JUDGMENT AND DECREE DATED

Digitally
signed by
MALATESH
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Location:
HIGH
COURT OF
KARNATAKA



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5.10.2021 PASSED IN OS NO.253/2012 ON THE FILE OF
ADDITIONAL CIVIL JUDGE AND JMFC, PANDAVAPURA.

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. Defendant's second appeal challenging the
decreeing of the suit by the First Appellate Court in RA
No.17/2022 dated 16.08.2023 reversing the dismissal of the
suit filed by the respondent in O.S.No.253/2012 dated
05.10.2021.

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

3.1. A suit in O.S.No.253/2012 was filed by the
respondent being the beneficiary of the Will executed by
Siddaiah @ Kariyaiah on 02.01.2011.

3.2. Plaintiff contended that she being the second
daughter of Siddaiah @ Kariyaiah was looking after her father
as her sisters had passed away and because of the love and



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affection, her father had executed a Will on 02.01.2011 and bequeathed the properties in her favour.

3.3. It is contended by the plaintiff that defendant who is a stranger, claiming to be the wife of Siddaiah @ Kariyaiah, started interfering with the suit properties which necessitated the plaintiff to file the suit.

4. Pursuant to the suit summons, defendant entered appearance and filed return statement by contending that she is the first wife of Siddaiah @ Kariyaiah and she has a daughter born through Siddaiah @ Kariyaiah who has not been made as a party to the suit. Thus suit is not maintainable and sought for dismissal of the suit.

5. It is also contended that alleged Will is concocted by the plaintiff on old age person namely Siddaiah @ Kariyaiah who was aged about 82 years as on the date of executing the Will and Will was surrounded by suspicious circumstances.

6. Learned Trial Judge after raising necessary issues, recorded the evidence of the parties and dismissed the suit of the plaintiff.



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7. Being aggrieved by the same plaintiff filed an appeal before the first appellate court in RA No.17/2022.

8. Learned Judge in the First Appellate Court After securing the records heard the arguments of the parties in detail and reappreciated the material evidence on record and noted that in the year 1997 itself, defendant had filed an application before the Governmental authority stating that her husband Siddaiah @ Kariyaiah died and she is entitled for pension of her husband Siddaiah @ Kariyaiah which is placed on record as Exs.P.7 and P.8.

9. Noting the same, the First Appellate Court allowed the appeal and decreed the suit of the plaintiff.

10. Being further aggrieved by the same, Present second appeal is filed on following grounds and substantial questions of law:

GROUND

- *The Judgment and decree of the first appellate court is Illegal and contrary to law and hence the same is liable to be set aside.*



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- *The learned first appellate judge has failed to notice that the document produced by the Appellant/Defendant at Ex. D-1 namely the Sale Deed, dated 11.12.2008 wherein the father of the Plaintiff Siddaiah @ Kariyalah has categorically stated that, the Appellant/Defendant is first wife and Jayamma is her daughter, which document is also admitted by the Plaintiff/Respondent though she disputed the relationship and this is an important piece of evidence as Ex. D-1 is a registered document executed by Siddaiah and Kariyaiah along with his first wife, Smt. Thimmamma, the Appellant herein, her daughter Smt. Jayamma and his second wife Puttachannamma and her children Pramilamma, Latha the Plaintiff/Respondent herein and K. Yoga and the learned first appellate judge ought to have given credence, instead of giving credence to Exhibits P-7 and P-8 which are application and order for old age pension and not signed by the Appellant/Defendant and much anterior in time as compared with Exhibit D-1 referred to herein above, to arrive at the conclusion that appellant/first defendant is not the wife of Siddalah @ Kariyaiah the father of the Plaintiff/Respondent and this finding recorded by the learned First Appellate Court is totally erroneous and requires to be set aside at the hands of this Hon'ble Court.*



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- *The learned first appellate judge failed to notice that, in a Registered Document, Exhibit D-5 which is a Usufructuary Mortgage Deed, executed by Siddaiah @ Kariyaiah along with his second wife Puttachannamma and his daughters, Jayamma the daughter of the Defendant/Appellant and Smt. Latha the Plaintiff/Respondent herein in favour of one Sri Kumar and this document clearly establish the relationship of Siddalah @ Kariyalah with the Appellant/Defendant and her daughter Jayamma and this document should have been relied on by the learned First Appellate Judge and recorded a positive finding holding the appellant/defendant is the wife of Siddalah @ Kariyalah Instead of relying on Exhibits P-7 and P-8 namely old age pension application and order which do not bear the signature of appellant/defendant and much anterior in time as compared with Exhibit D-5 referred to herein above.*

- *The learned first appellate judge failed to notice that, the will dated 02.01.2011 has come in to existence in suspicious circumstances and no reliance could have been placed by the Plaintiff/Respondent to claim exclusive right in her favour in respect of plaint schedule property. In this regard it is to be noticed that, the wife of Siddaiah @ Kariyaiah namely Thimmamma the Appellant/Defendant is alive and her daughter*



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Jayamma is also one of the sharers in the plaint schedule properties. However, in the Will, Exhibit P-1 absolutely there is no reference to any arrangement that has been made in favour of Defendant/Appellant who is more than 82 years old and will does not contain any reasons as why Siddalah @ Kariyaiah has excluded his wife the Defendant/Appellant from getting any share in the schedule properties and she has been left in lurch and she does not have any support from anybody after the death of her husband Siddaiah @ Kariyaiah. This aspect of the matter ought to have been taken in to consideration by the learned first appellate judge and ought to have held that, the will is not a genuine one and the Plaintiff/Respondent has failed to explain the doubtful circumstances under which the Exhibit P-1 has come in to existence.

- *The learned first appellate judge has failed to notice that all the plaint schedule properties have been used and enjoyed as Joint family properties by all the members of the family including the appellant/defendant all these years which fact is demonstrated in the registered documents, Exhibits D-1 and D-5 and this fact has been lost sight of by the learned first appellate judge by holding that the will is proved by the Plaintiff and the learned first appellate judge has committed a serious error in*



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holding that, the plaint schedule properties are the self-acquired properties and he had every right to execute the will at Ex. P-1. This approach adopted by the learned trial judge is contrary to law and therefore the impugned judgement and decree are liable to be set aside at the hands of this Hon'ble Court.

- *The learned first appellate judge failed to notice that there has been active collusion between the Plaintiff/Respondent and the witnesses who have signed the will as attesting witnesses with a malafide Intention of grabbing the suit schedule properties in exclusion to all other who would have been legally entitled to a share in the plaint schedule properties after the death of Siddaiah Kariyaiah.*

SUBSTANTIAL QUESTIONS OF LAW:

- i. Whether the learned First Appellate Judge is right in disbelieving Exhibits D-1 and D-5 both being registered documents authored by Siddalah @ Kariyaiah admitting the fact that, the Appellant/Defendant is the first wife and Jayamma is her daughter and whether the learned first appellate judge is justified in recording findings contrary to these registered documents relying on Exhibits P-7 and P-8 (application for old age*



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pension and order on the said application) holding that they are public documents?

ii. Whether the learned first appellate judge is justified in holding that, the will, Exhibit P-1 is proved and it is genuine, Ignoring the fact that, Siddaiah @ Kariyaiah has not made any provision for his wife namely the Appellant/Defendant herein who is 82 years and without any support from anybody and whether the learned first appellate judge is justified in not considering such fact as doubtful circumstances and is there any legal justification for the learned first appellate judge in decreeing the suit of the Plaintiff/Respondent for declaration and injunction on the basis of the will dated 02.01.2011, Exhibit P-1?"

11. Learned counsel for the appellant reiterating the grounds urged in the appeal memorandum vehemently contended that plaintiff has gone to the extent of denying the very relationship of defendant which is evident from Exs.D1 to D5 wherein there is a specific mention by Siddaiah @ Kariyaiah that he had first wife by Thimmamma and also a daughter Jayamma.



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12. Therefore, plaintiff ought not to have called the defendant as a stranger to the family and thus sought for admitting the appeal on the aforesaid substantial questions of law.

13. He would further contend that when once the properties are to be held as properties of Siddaiah @ Kariyaiah, being the joint family properties, after the death of Siddaiah @ Kariyaiah, defendant and her daughter are entitled for the share in the suit properties and at the most, the Will executed by Siddaiah @ Kariyaiah would bind his share and not the shares of defendant and her daughter – Jayamma. Thus, appellant sought for admitting the appeal on the aforesaid substantial questions of law.

14. Per Contra, learned counsel for the respondent supports the impugned judgments of the First Appellate Court and sought for dismissal of the appeal.

15. Having heard the parties in detail, this Court perused the material on record meticulously.



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16. On such perusal of the material on record, Ex.P.7 is a document wherein the defendant has applied for grant of family pension upon the death of her husband - Siddaiah @ Kariyaiah. Said document is acknowledged by the concerned authority on 08.10.1996. Admittedly, Siddaiah @ Kariyaiah who is the father of plaintiff and allegedly claimed as husband by the defendant, was alive even on the date of execution of Ex.P.1 which is the Will dated 02.01.2011.

17. Further, Exs.D.1 to D.5 which are relied upon by the defendant to establish that she is the wife of Siddaiah @ Kariyaiah are of the year 2008 and 2009 respectively. If husband of defendant had died earlier in the year 1996, how could he execute the document in the year 2008 and 2009 vide Exs.D.1 and D.2 is a question that remains unanswered on behalf of the defendant.

18. Therefore, taking advantage of the same name of Kariyaiah, defendant wanted to interfere with the suit properties stating that she is the first wife of Siddaiah @ Kariyaiah who is the father of the plaintiff.



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19. Moreover, in the cross examination of D.W.1, she has categorically admitted that she has been married to his maternal uncle by name Kariyaiah @ Shruti Kariyaiah. She has specifically stated that Kariyaiah @ Shruti Kariyaiah is no more. Thus, Siddaiah @ Kariyaiah who is the father of the plaintiff is a different person than the Kariyaiah @ Shruti Kariyaiah.

20. Therefore, the First Appellate Court decreeing the suit of the plaintiff holding that defendant is a stranger is thus just and proper which requires no further consideration before this Court.

21. Hence, the following:

ORDER

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

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

KAV
List No.: 1 Sl No.: 50