



IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 18TH DAY OF JUNE, 2026

BEFORE

THE HON'BLE MR. JUSTICE V SRISHANANDA

REGULAR SECOND APPEAL NO. 1864 OF 2025 (DEC/INJ)

BETWEEN:

1. SRI GURU NAIKA
S/O LATE DHARMA NAIKA,
AGED ABOUT 41 YEARS,
R/O BILAKI THANDA - 577 301,
KASABA HOBLI,
BHADRAVATHI TALUK,
SHIVAMOGGA DISTRICT.
2. SMT. LAKSHMI BAI
W/O THIMMA NAIKA,
AGED ABOUT 30 YEARS,
R/O LINGADAHALLI VILLAGE - 577 129,
TARIKERE TALUK,
CHIKKAMAGALURU DISTRICT
3. SMT. SHANTHI BAI
W/O LATE SAMYA NAIKA,
AGED ABOUT 67 YEARS,
R/O BILIKI THANDA - 577 301,
BHADRAVATHI TALUK,
SHIVAMOGGA DISTRICT.

...APPELLANTS

(BY SRI. K. CHANDRANATH ARIGA, ADVOCATE)

AND:

SRI H C LOKYA NAIKA
S/O LATE CHOWKLA NAIKA,
AGED ABOUT 58 YEARS,

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



R/O BILIKI THANDA - 577 301,
BHANDRAVATHI TALUK,
SHIVAMOGGA DISTRICT.

...RESPONDENT

(VIDE ORDER DATED 08.06.2026, NOTICE TO RESP IS H/S)

THIS RSA IS FILED UNDER SEC.100 OF CPC, AGAINST THE JUDGMENT AND DECREE DATED 01.08.2025 PASSED IN RA.NO.20/2023 ON THE FILE OF THE ADDITIONAL SENIOR CIVIL JUDGE, BHADRAVATHI, DISMISSING THE APPEAL AND CONFIRMING THE JUDGMENT AND DECREE DATED 08.11.2022 PASSED IN OS.NO.232/2015 ON THE FILE OF THE II ADDITIONAL CIVIL JUDGE AND JMFC, BHADRAVATHI.

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 Chandranath Ariga K., learned counsel for the appellants. Respondents are served with the notice of the appeal and remained absent.

2. Plaintiffs are the appellants in the second appeal challenging the judgment passed in O.S. No.232/2015 confirmed in R.A. No.20/2023 whereby suit of the plaintiffs came to be dismissed.



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

A suit for declaration and permanent injunction in respect of the following property (hereinafter referred to as the suit property) came to be filed in OS No.232/2015, contending that Sri Gopya Naika and Ammi Bai had two sons by name Samya Naika and Dharma Naika. Among them, Dharma Naika is Plaintiff No.1. Lakshmi Bai is the daughter of Dharma Naika and Shanti Bai is the wife of Samya Naika, another sibling of first plaintiff.

A-SCHEDULE

Agricultural land measuring 2-16 guntas in SY.No.41/1 situated at Hebbandi Village, Kasaba Hobli, Bhadravathi Taluk and bounded by :

East : Channel

West :Land belongs to Umesh

North: Krishnappa

South: Bore Gowda

B-SCHEDULE

Agricultural land measuring 1-16 guntas out of 2-16 guntas in Sy.No.41/1 situated at Hebbandi Village, Kasaba Hobli, Bhadravathi Taluk and bounded by :



East : Channel

West :Remaining land in Sy.No.35

North:Krishnappa

South:Bore Gowda

It is further contented that Gopya Naika died on 09.11.1992 and his wife Ammi Bai also died and only two sons were left behind and therefore, they succeeded to the property held by Gopya Naika in his lifetime.

3.3 Samya Naika also died on 03.12.2002 leaving behind his wife who is the second plaintiff. During the lifetime of Gopya Naika, he acquired the landed property bearing Sy.No.41/1 measuring 2.16 acres as per the Order of the Land Tribunal bearing No.KLR-MA-No.913/1973-74. Pursuant to the said Order, revenue entries were mutated.

3.4 It is further contented that defendant being a stranger to the family, managed to get a Will in his favour



by exerting undue pressure on Gopya Naika who was illiterate and occupied the property.

3.5 It is further stated that in the month of April 2015, plaintiff collected documents and found that the Will got concocted by defendant from Gopya Naika and therefore, they filed suit seeking declaration that the Will is null and void and thus sought for the relief.

3.6 In pursuance to the suit summons, defendant entered appearance and filed written statement contending that Gopya Naika during his lifetime has executed the Will which is also registered in the office of the Sub-Registrar and therefore, plaintiffs cannot maintain the suit and resisted the suit.

4. Learned trial Judge raised following issues:

- 1) Whether the plaintiff proves that they are the absolute owners of suit schedule property?*
- 2) Whether the plaintiff proves that Will executed by Gopyanaika s/o Chatra Naika in favour of defendant*



registered under S.R.No.77/90-91 dated 16.11.1990 is null and void in respect of B schedule property?

3) Whether the plaintiff proves that they are in lawful possession and enjoyment of the suit schedule property?

4) Whether the plaintiff proves the alleged interference from the defendant?

5) Whether the plaintiff is entitled to the relief sought for?

6) What Order or Decree?

5. After recording the evidence of the parties, learned trial Judge dismissed the suit of the plaintiffs.

6. Being aggrieved by the same, plaintiffs filed an appeal before the First Appellate Court in R.A. No.20/2023.

7. 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, dismissed the appeal of the plaintiffs and confirmed the judgment of the Trial Court.



8. Being further aggrieved by the same, plaintiffs have preferred the present second appeal.

9. Sri. Chandranath Ariga, learned counsel for the appellants reiterating the grounds urged that in the appeal memorandum would contend that issue No.3 framed by the trial Judge is *per se* incorrect.

10. He further argued that placing the burden on the plaintiffs to prove that the registered Will is null and void is incorrect, as it is the defendant who propounded the Will and claimed the right over the suit property. Therefore, defendant was required to prove that the Will is valid and in the absence of proving the Will by examining the attesting witnesses, the suit of the plaintiffs ought to have been decreed and thus sought for admitting the appeals on the following substantial questions of law:

(i) Whether the trial court is right in holding that the Will need not be proved by the propounder?

(ii) Whether the finding of the trial court that the registered Will of Gopya Naika is proved without



examining the witness to the Will as required under section 63 of the Indian Succession Act?

(iii) Whether the first appellate court has properly appreciated the facts?

(iv) Whether the judgment of the first appellate court meets the requirement of the order 41 rule 31 of CPC?

11. Since the respondent is served with the notice and remained absent, this Court perused the material on record meticulously in the light of the arguments addressed on behalf of appellants.

12. On such perusal of materials on record, it is noted that there is some force in the argument put-forth on behalf of the appellants that the burden is wrongly placed on the plaintiffs.

13. However, no effort was made by the plaintiffs to seek for recasting of the issues by filing necessary application under Order XIV Rule 5 of the Code of Civil Procedure before the Trial Court.



14. Further, no attempt is also made before the First Appellate Court in this regard.

15. Even otherwise, it is the plaintiffs who are seeking a registered Will is to be declared as null and void. Therefore, initial burden was always on the plaintiffs to say that the Lokya Naika had no competency to execute the Will in favour of the defendant. Only on the ground that defendant is a stranger to the family, it cannot be held that his Will is surrounded by suspicious circumstances and it is *ab initio*, null and void.

16. No doubt defendant was also required to prove the Will in accordance with law. But in the absence of any burden that has been placed by framing the necessary issues before the Trial Court, all that the defendant has stated is that he got the suit property by virtue of a registered Will executed by Sri. Gopya Naika in his favour.

17. Thus, in the absence of positive steps taken by the plaintiffs before the Trial Court as well as the First



Appellate Court in not getting the issues recasted and placing necessary material on record, this Court having regard to the scope of Section 100 of the Code of Civil Procedure would not deem it fit to admit the appeal for further consideration.

18. Hence, following order :

ORDER

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

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

SNC
List No.: 1 Sl No.: 74