HC-KAR

NC: 2026:KHC:63297
RFA No. 189 of 2019

CNR: KAHC010148172019

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 12TH DAY OF NOVEMBER, 2026

BEFORE

THE HON'BLE MR. JUSTICE RAJESH RAI K

REGULAR FIRST APPEAL NO. 189 OF 2019 (RES)

BETWEEN:

PUTTASWAMY
S/O DASEGOWDA
AGED ABOUT 80 YEARS
R/AT PALAHALLI VILALGE
SRIRANGAPATNA TALUK,
MANDYA DISTGRICT-571 438

...APPELLANT

(BY KUMARI RACHANA P.R FOR
SRI. V SRINIVAS, ADVOCATE)

AND:

Digitally signed by
PANKAJA S
Location: HIGH
COURT OF
KARNATAKA

U. S. MADANMOHAN
S/O LATE U.A. SHIVEGOWDA
AGED ABOUT 44 YEARS
NO.208/1,UDEVARA VILLAGE AND POST
BELAGODU HOBLI,
SAKALESHAPURA TALUK,
HASAN DISTRICT-573 127.

...RESPONDENT

(BY SMT. VASANTHA LAKSHMI H.V AND
SRI. B.R. DHANAJAIAH, ADVOCATES)

THIS RFA IS FILED UNDER SECTION 96 OF CPC, AGAINST THE JUDGMENT AND DECREE DATED 23.10.2018 PASSED IN O.S.NO.2/2015 ON THE FILE OF THE 5th ADDITIONAL DISTRICT AND SESSIONS JUDGE, HASSAN,

DECREEING THE SUIT FOR GRANT THE ORDER OF PROBATE OF WILL EXECUTED BY S.M.NANJUNDAPPA ON 20.03.2005.

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

CORAM: HON'BLE MR. JUSTICE RAJESH RAI K

ORAL JUDGMENT

This Regular First Appeal is filed by the appellant/defendant challenging the Judgment and Decree dated 23.10.2018 passed by the learned 5th Additional District and Sessions Judge, Hassan, in O.S. No. 2/2015, whereby the Trial Court decreed the suit of the plaintiff and granted a probate certificate in respect of the Will dated 20.03.2005 executed by one S.M. Nanjundappa.

2. For the sake of convenience, the parties are referred to as per their respective ranking before the Trial Court.

3. The brief facts of the case are that initially the plaintiff filed a petition under Section 280 of the Indian Succession Act seeking probate of the Will dated 20.03.2005. Thereafter, the defendant filed an application under Order I

Rule 10(2) of the CPC to implead himself as a necessary party, which was allowed, and the proceedings were converted into an original suit. The plaintiff contended that the testator S.M. Nanjundappa was having a cordial relationship with him, resided with him during his lifetime, and out of love and affection executed the unregistered Will dated 20.03.2005 bequeathing his properties in favor of the plaintiff as the plaintiff was taking care of him during his health ailments when no other relatives came forward.

4. In response, the defendant filed a written statement contending that he is a distant relative belonging to the Vokkaliga community and the sole legal heir of the deceased, whereas the plaintiff belonged to the Lingayath community and had no connection to the testator. The defendant denied the execution, genuineness, and validity of the Will, and claimed that the testator's last rites were performed by the defendant at Palahalli village.

5. On the basis of the rival pleadings, the Trial Court framed appropriate issues. During trial, the plaintiff examined himself as P.W.1 and two attesting witnesses as P.W.2 and

P.W.3, and marked documents as Ex.P-1 to Ex.P-13. The defendant examined himself as D.W.1 and another witness as D.W.2.

6. The Trial Court upon examination of oral and documentary evidences decreed the suit. Aggrieved by the said judgment and decree, the defendant has preferred this appeal.

7. Learned counsel for the appellant/defendant contended that the plaintiff has miserably failed to prove the execution of the Will as per the law laid down by the Co-ordinate Bench of this Court in the case of ***J.T. Surappa & Another Vs. Sri Sachindanandendra Saraswathi Swamiji Public Charitable Trust & Others*** (reported in **2008 Kar.L.J. 228**), by proving the five steps i.e., panchapadi. He further contended that the executant Nanjundappa was not in a sound state of mind at the time of execution of the alleged Will. Further, the executant belonged to the Vokkaliga community and he was a distant relative of the defendant, with the defendant being the sole legal heir of the said Nanjundappa, while the plaintiff was in no way related or connected to the said Nanjundappa. According to the learned counsel, these

aspects of the matter are not properly appreciated by the learned Trial Court. As such, the impugned judgment is liable to be set aside.

8. *Per contra* learned counsel for the respondent, by supporting the impugned judgment, contended that the Trial Court upon meticulous examination of the entire evidence on record has rightly passed the impugned judgment, which does not call for any interference at the hands of this Court.

9. I have carefully perused the impugned judgment and the other material placed before the Court.

10. Having heard the learned counsel for the parties, the points arising for my consideration are:

1. *whether the plaintiff proved the execution of the Will dated 20.03.2005 bequeathing the suit schedule property in his favor.?*
2. *whether the impugned judgment suffers from any perversity or illegality.?*

11. As could be gathered from records, initially the plaintiff filed the petition under Section 280 of the Indian Succession Act seeking probate of the Will dated 20.03.2005.

Thereafter, the defendant filed an application under Order I Rule 10(2) of the CPC to implead himself as a necessary party. Accordingly, the same was allowed and he was impleaded as a defendant. In order to prove the Will, before the Trial Court, the plaintiff examined himself as P.W.1 and two other witnesses as P.W.2 and P.W.3 and also produced 13 documents as Ex.P-1 to Ex.P-13. The defendant also examined himself as D.W.1 and one more witness on his behalf as D.W.2.

12. On careful perusal of contents of Ex.P-2 i.e.,Will, it is stated that the deceased Nanjundappa was a spinster and was suffering from various health ailments and he intended to bequeath the property to the plaintiff who was taking care of him, since none of his relatives were taking care of him. Further, P.W.2 and P.W.3 attested the Will. On perusal of their testimony, they have categorically deposed that they witnessed the executant Nanjundappa affixing his signature on Ex.P-2 Will and they identified his signature as Ex.P-2(b) and Ex.P-2(c) and their signatures as Ex.P-2(a) and Ex.P-2(d).

13. Further, defendant No.1 has specifically admitted in the cross-examination that Nanjundappa was the member of

the Veerashaiva Association at Hassan, whereas in his written statement, he had stated that Nanjundappa belonged to the Vokkaliga community. Ex.P-11 and Ex.P-12 which are the register extracts of the Veerashaiva Association, Hassan, would indicate that Nanjundappa was not a Vokkaliga and was Lingayath by caste. Thus, it is clear that the defendant is not a relative of Nanjundappa as claimed by him and thus no way connected to Nanjundappa.

14. Further, admittedly, the testator was in a sound state of mind at the time of execution of the Will as per the evidence on record. No such evidence has been placed by the defendant to prove that the testator was not in a sound state of mind at the time of execution of the Will. Further, there do not exist any suspicious circumstances surrounding the execution of the Will as claimed by the defendant.

15. As discussed supra, the factum of due attestation is proved by the evidence of P.W.2 and P.W.3. From the evidence of the attesting witnesses, it could be easily concluded that the Will is executed in accordance with Section 63 of the Indian Succession Act and Section 68 of the Indian Evidence Act. On

careful scrutiny of the impugned judgment, the Trial Court meticulously examined the evidence of both the parties and also examined the Will in accordance with law. Accordingly, I answer point No.1 in the affirmative and point No.2 in the negative.

16. In view of the above discussion, I proceed to pass the following:

ORDER

i. The Regular First Appeal filed by the appellant / defendant is hereby ***dismissed***.

ii. The judgment and decree dated 23.10.2018 passed by the 5th Additional District and Sessions Judge, Hassan, in O.S. No.2/2015, is hereby confirmed.

SD/-
(RAJESH RAI K)
JUDGE

PKS/V/List No.: 1 Sl No.: 12