NC: 2026:KHC:23875
RSA No. 748 of 2026

HC-KAR

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 28TH DAY OF APRIL, 2026

BEFORE

THE HON'BLE MR. JUSTICE PRADEEP SINGH YERUR

REGULAR SECOND APPEAL NO. 748 OF 2026 (DEC)

BETWEEN:

SRI BASAVARAJAPPA
S/O LATE BASAPPA @ CHANNAIAH
AGED ABOUT 61 YEARS
R/AT VAJAMANGALA VILLAGE & POST
VARUNA HOBLI, MYSURU TALUK - 570 010.

...APPELLANT

(BY SRI C.M. JAGADEESH, ADV.)

AND:

1. SRI SHIVANNA
   S/O SRI ARAMANE CHENNAPPA
   SINCE DEAD REPRESENTED BY
   HIS LEGAL REPRESENTATIVES

a. SMT. JAYMMA
   W/O LATE SHIVANNA
   AGED ABOUT 55 YEARS
   R/AT VAJAMANGALA VILLAGE AND POST
   VARUNA HOBLI, MYSURU TALUK
   AND DISTRICT - 570 028.

b. SRI SRIKANTA
   S/O LATE SHIVANNA
   AGED ABOUT 45 YEARS
   R/AT VAJAMANGALA VILLAGE
   AND POST, VARUNA HOBLI
   MYSURU TALUK AND
   DISTRICT - 570 028.

c. SMT. VASANTI
   D/O CHANDRASHEKAR
   AGED ABOUT 43 YEARS
   R/AT MOLLURUPATTANA
   VILLAGE AND POST

Digitally signed by B LAVANYA
Location: HIGH COURT OF KARNATAKA

CHANNAPATTANA TALUK
RAMANAGARA DISTRICT - 562 160.

d. SRI MAHESH
S/O LATE SHIVANNA
AGED ABOUT 39 YEARS
R/AT VAJAMANGALA VILLAGE
AND POST, VARUNA HOBLI
MYSURU TALUK AND
DISTRICT - 570 028.

2. SRI PUTTANNA
S/O LATE CHANNPPA
AGED ABOUT 59 YEARS
R/AT VAJAMANGALA VILLAGE
AND POST, VARUNA HOBLI
MYSURU TALUK AND
DISTRICT - 570 028.

…RESPONDENTS

THIS RSA IS FILED UNDER SEC.100 OF CPC., AGAINST THE JUDGMENT AND DECREE DATED 25.02.2026 PASSED IN RA NO.3/2025 ON THE FILE OF VI ADDITIONAL DISTRICT AND SPECIAL JUDGE, MYSURU., DISMISSING THE APPEAL AND CONFIRMING THE JUDGMENT AND DECREE DATED 11.11.2024 PASSED IN OS NO.89/2018 ON THE FILE OF I ADDITIONAL SENIOR CIVIL JUDGE AND CJM, MYSURU.

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

CORAM: HON'BLE MR. JUSTICE PRADEEP SINGH YERUR

ORAL JUDGMENT

This appeal is preferred by the appellant/plaintiff challenging the judgment & decree rendered by the VI Additional District & Special Judge, Mysuru in R.A. No.3/2025 dated 25.02.2026, dismissing the appeal and confirming the judgment & decree passed by the 1st Addl. Senior Civil Judge & CJM, Mysuru in O.S. No. 89 of 2018 dated 11.11.2024, whereby the suit of the appellant/plaintiff came to be dismissed.

2. The parties to the proceedings shall be referred to as plaintiff and defendants for the sake of brevity.

3. The brief facts of the case are as under:

3.1 The plaintiff filed a suit against the defendants for the relief of declaration that he is an absolute owner of the suit schedule property and for consequential relief of permanent injunction restraining the defendants, their agents, general power of attorney holders and others from

interfering with his peaceful possession and enjoyment of the suit schedule property.

3.2 It is the case of the plaintiff that he is the lawful owner in possession and enjoyment of the suit schedule property. Originally the property was allotted by the Land Tribunal on 2.01.1981 based on the Inam's Abolition Act, 1955 in favour of Chennappa, s/o Late Lingappa to an extent of 2 acres. The plaintiff's father - Basappa @ Channaiah s/o Channappa acquired the suit schedule property from its original owner based on the Will dated 10.03.1990. It was pleaded that Chennappa s/o Late Lingappa bequeathed 1 acre 10 guntas out of the 2 acres of land in favour of father of plaintiff and thereafter, the father of plaintiff constructed a house and also growing a mango tree in the suit schedule property. This being the state of affairs, the defendants started illegally interfering with the lawful possession and enjoyment of the suit schedule property of the plaintiff. Hence, the plaintiff was

constrained to file the suit for the relief of declaration and injunction against the defendants.

3.3 Upon summons being served to the defendants, they made their appearance, filed their written statement, denied the pleadings of the plaintiff, took up the plea that the Will set up by the plaintiff is concocted and fabricated. Therefore sought for dismissal of the suit.

3.4 Based on the pleadings of the plaintiff and the defendants, the learned trial judge framed the following issues for consideration.

1. *Whether the plaintiff proves that, said Channappa, S/o. Lingappa @ Lingaiah executed a Will in favour of plaintiff's father Basappa @ Chennaiah, S/o. Chennappa @ Thammadi Basappana Ankappa by bequeathing 1 acre 10 guntas out of the above said 2 acres of land?*

2. *Whether the plaintiff proves that, he is the absolute owner of suit property?*

3. *Whether the plaintiff proves that, he is in possession and enjoyment of the suit property?*
4. *Whether the plaintiff proves defendants are interfering with his possession of the suit property?*
5. *Whether plaintiff is entitled for the reliefs claimed in the suit?*
6. *What Order or Decree?*

3.5 In order to substantiate the issues and prove the case, the plaintiff examined himself as PW1 and got marked Ex.P1 to P36. The plaintiff also examined another witness as PW.2. Defendant no. 2 examined himself as DW1 and got marked Ex.D1 to D19.

3.6 On the basis of the materials placed on record, both oral and documentary, the trial Court came to the conclusion that the plea of the plaintiff with regard to bequeath of the property by way of Will/Ex.P28 dated 10.03.1990 has not been proved in accordance with the provisions of Sections 63 of the Indian Succession Act,

1955 and Section 68 of the Indian Evidence Act, 1872. The trial Court also came to the conclusion that the plaintiff has failed to prove that he is in possession and enjoyment of the suit schedule property by placing any cogent material on record. Accordingly, the issues that were cast for the plaintiff to prove, having not been proved, were held in the negative. The trial Court held that the plaintiff was unable to prove the Will by leading cogent evidence as contemplated under the provisions of Indian Succession Act and the Indian Evidence Act and has failed to establish his ownership on the basis of the Will and that no convincing materials were produced to show that the plaintiff is in possession and enjoyment of the property. Accordingly, dismissed the suit of the plaintiff.

3.7 Aggrieved by the dismissal of the suit, plaintiff preferred an appeal before the VI Additional District & Special Judge, Mysuru, in R.A. No.3/2025. Upon summons being served in the first appeal and on appearance of the defendants, the matter was re-heard, re-analyzed and

reconsidered once again by the appellate Court and based on the materials placed on record, both oral and documentary, the judgment of the trial Court, and the submissions of learned counsels for both parties, the first appellate Court formulated the following points for consideration:

1. *Whether the finding given by learned trial judge that, the Plaintiff has failed to prove the execution of Will by Sri.Channappa s/o Lingappa @ Lingaiah in favour of Plaintiff's father Sri. Basappa @ Channaiah is sustainable?*

2. *Whether the finding given by learned trial judge that, the Plaintiff has failed to prove his possession over the suit schedule property is sustainable?*

3. *Whether the impugned judgment passed by learned Trial Judge suffer from any infirmities and whether it call for an interference by this Court?*

4. *Whether the Appellant has made out the sufficient and satisfactory grounds to allow I.A.No.II filed under Order XXVI Rule 9 of CPC?*

3.8 The first appellate Court upon re-look of the entire matter once again and the submissions putforth by learned counsels, came to the conclusion that the plaintiff was unable to prove the Will by leading cogent evidence as contemplated under Section 68 of the Indian Evidence Act and Section 63 of the Indian Succession Act. It also came to the conclusion that both the attesting witnesses were not alive and therefore, none of the attesting witnesses are examined or for that matter any person, any legal heir of the attesting witness or the person who had identified or known the signatures of the attesting witness, have been examined. The son of the scribe/deed writer was examined as PW.2 and it would not prove the Will in accordance with law. The first appellate Court relying upon the judgment cited therein, did not agree with the contentions putforth by the learned counsel and came to the conclusion that there was no error committed by the trial Court in dismissing the suit as the plaintiff was unable to prove the Will in accordance with law. Accordingly, the

first appellate Court did not find favour with the plaintiff and dismissed the appeal, confirmed the judgment and decree of the trial Court.

3.9 It is these two concurrent findings of fact which are now questioned by the appellant/plaintiff before this Court.

4. I have heard learned counsel for appellant/ plaintiff.

5. It is the vehement contention of learned counsel for the appellant that both the trial Court and the first appellate Court have committed an error and illegality in not appreciating the material evidence placed on record, both oral and documentary, so also both the Courts have committed illegality in not even decreeing the suit for the relief of permanent injunction. It is further contended by learned counsel for the appellant that since the attesting witnesses and also the scribe were dead, the son of the scribe was examined as PW2 to prove the Will/Ex.P28,

which has not been appreciated by both the Courts. It is also contended by learned counsel for the appellant that the trial Court and the first appellate Court have failed to consider Exhibit P13 to Exhibit P27 and Exhibit P31 to Exhibit P35, which establish the possession and enjoyment of the plaintiff over the suit schedule property. On these grounds, learned counsel for the appellant submits that substantial questions of law are required to be framed as urged in the appeal memo.

6. I have given my thoughtful consideration to the arguments advanced by learned counsel for the appellant.

7. This Court is not inclined to issue notice to the respondents for the reason that no case is made out by the appellant to frame substantial questions of law.

8. On carefully going through the judgment and decree rendered by both the Courts and the submissions of learned counsel for the appellant, so also the substantial questions of law that are urged in the appeal

memo, it is seen that the substantial questions of law are also with regard to the factual aspects of not deciding Ex.P28, the Will on the merits of it and so also not considering the lawful possession of the appellant/plaintiff by not considering the documents Ex.P13 to Ex.P27 and Ex.P31 to Ex.P35. On carefully going through the impugned judgments of both the Courts, it is apparently seen that both the Courts have elaborately dealt with the entire materials on hand, including the Will that is relied upon by the plaintiff and the other documents to show that the plaintiff is in possession and enjoyment of the same. Both the fact finding Courts have concurrently come to a conclusion that the plaintiff has miserably failed to prove the Will in the manner known to law and that no material is placed on record to show that they are in possession and enjoyment of the suit schedule property. Under the circumstances, I do not find any good ground or cogent reason made out by the learned counsel for the appellant

to frame the substantial question of law as none exists in the present case on hand.

9. Section 100 of CPC deals with the Scope and powers of the Appellate Court. It is a no more *res integra* to state that the powers as contemplated under Section 100 CPC are very narrow and limited. This Court, in several catena of judgments, has held that the Appellate Court sitting in the second appeal is not required to appreciate the evidence on record unless there is perversity shown in the judgments rendered by the trial Court as well as the first Appellate Court. When two Courts have already considered the question of fact and the question of law to a large extent in detail, even if this Court finds third opinion on the opinions already expressed concurrently by both Courts, it is a general Rule that this Court should refrain from imposing its third opinion merely for the sake of interference when there is no cogent material placed on record.

10. The question of framing of substantial questions of law would depend upon if there is any illegality or perversity in the judgments rendered by the trial Court as well as the first appellate Court. Having considered the submissions of learned counsel for the appellant and having perused the impugned judgments of both the Courts and having gone through the records, I do not find any perversity or illegality in the judgments rendered by both the Courts. The appellant has not made out any good ground for this Court to frame any substantial question of law, as no such question of law, in my opinion, exists to be framed to decide the case on hand. The reasons assigned and conclusion arrived at by both the Courts are just and proper. I do not find any cogent reason to interfere with the well reasoned judgments rendered by both the Courts.

11. Accordingly, I pass the following:

O R D E R

The appeal is ***dismissed*** at the stage of admission itself as no substantial questions of law arise for consideration.

Sd/-
(PRADEEP SINGH YERUR)
JUDGE

GSS
List No.: 1 Sl No.: 45