



IN THE HIGH COURT OF KARNATAKA,
DHARWAD BENCH



DATED THIS THE 20TH DAY OF NOVEMBER, 2024

BEFORE

THE HON'BLE MR. JUSTICE ANANT RAMANATH HEGDE
REGULAR FIRST APPEAL NO. 100008 OF 2019 (DEC/POS)

BETWEEN:

1. SMT.INDIRAMMA
W/O. LATE SRI. KARIBASAPPA,
AGE: 62 YEARS, OCC: HOUSHOLD
2. HOOGAR MANJUNATH
S/O: LATE KARIBASAPPA
AND SMT. INDIRAMMA,
AGE: 32 YEARS, OCC: AGRICULTURE
3. SMT. HEMAVATHI @ VEDAVATHI
D/O: LATE KARIBASAPPA,
AGE: 27 YEARS, OCC: HOUSEHOLD

ALL ARE R/AT: OLD DOOR NO.170,
PRESENT NO.135, WARD NO.IV,
KUDUTHINI VILLAGE, DIST: BALLARI.

...APPELLANTS

(BY SRI. RAJASHEKAR R. GUNJALLI, ADVOCATE)

AND:

1. SMT. HAMPAMMA DIED BY HER LRS
- 1a. SMT. YERRAMMA
W/O. LATE JEER ERANNA,
AGE: 55 YEARS, OCC: HOUSEHOLD
- 1b. VISHWA S/O. LATE JEER ERANNA,
AGE: 40 YEARS,
BOTH ARE R/AT URAKUNDI,
TQ: ALLUR, DIST: KARNUL.
- 1c. JEER CHANDR S/O. LATE KUMARAPPA
BHEVENHALLI, VILLAGE & POST
TQ & DIST: BALLARI.





- 1d. JEER ERAMMA W/O. SHIVAPPA
AGE: 55 YEARS,
R/O. DODDASHIDDAVANAHALLI POST
TQ & DIST: CHITRADURGA.
- 1e. SMT. JEER LAKSHMI W/O. SHANKARAPPA
AGE: 52 YEARS, O/C. KOTRESHGOUDA
R/O. DOOR NO.17, WARD NO.18,
NEHARU COLONY, BALLARI.
- 1f. JEER MALLAMMA W/O. THIPPESWAMY
AGE: 50 YEARS,
R/O. DODDASHIDDAVANAHALLI POST
TQ& DIST: CHITRADURGA.
- 1g. JEER UMMADEVI W/O. CHELAVAIAH,
AGE: 48 YEARS, R/O. MALEGELI POST,
TQ: ALLUR DIST: KARNUL A.P
2. SRI. RAMALINGAPPA,
H/O. LATE GOURAMMA,
AGE: MAJOR, OCC: FLOWER MERCHANT,
BALLARI ROAD,
KUDUTHINI VILLAGE,
TQ & DIST: BALLARI.

...RESPONDENTS

(BY SRI. H.R. DESHPANDE AND SMT. USHA H. DESHPANDE,
ADVOCATES FOR R1 (A-G); R2 SERVED BUT UNREPRESENTED)

THIS RFA IS FILED UNDER SECTION 96 OF THE CODE OF
CIVIL PROCEDURE, PRAYING TO CALL FOR RECORDS AND SET
ASIDE THE JUDGMENT AND DECREE PASSED BY THE LEARNED PRL.
SENIOR CIVIL JUDGE & CJM, AT BALLARI IN O.S.NO.187/2016
DATED 29.09.2018 DISMISS THE SUIT IN THE INTEREST OF JUSTICE
AND EQUITY.

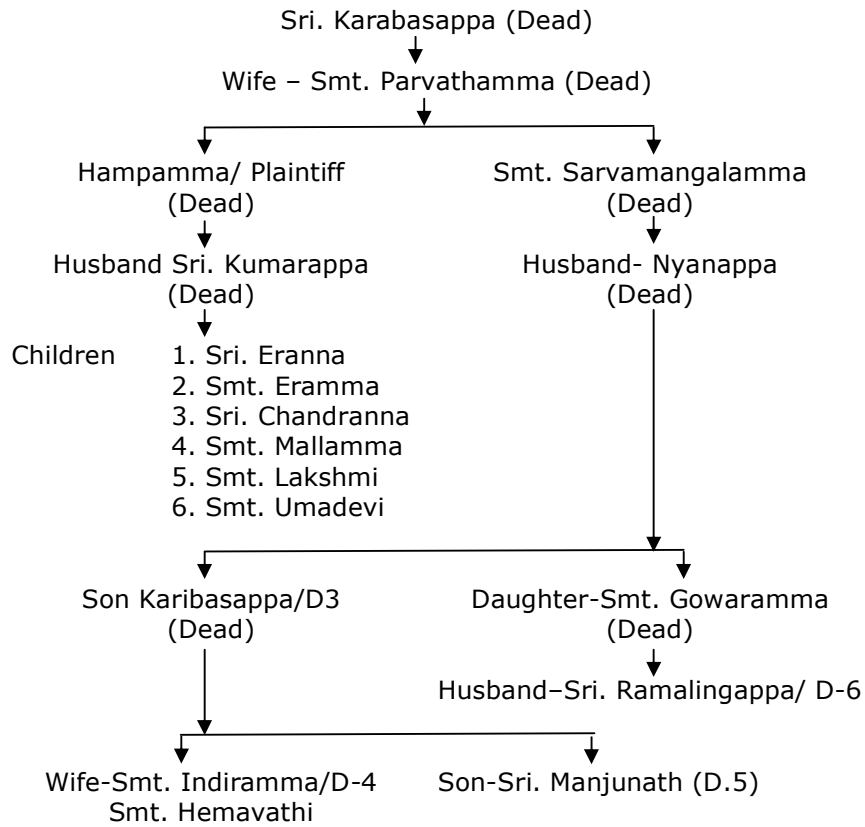


THIS APPEAL COMING ON FOR FINAL HEARING THIS DAY, THE COURT DELIVERED THE FOLLOWING:

CORAM: THE HON'BLE MR. JUSTICE ANANT RAMANATH HEGDE

ORAL JUDGMENT

1. This appeal under Section 96 of the Code of Civil Procedure, 1908, is against the decree for partition. The plea of self-acquisition of some of the properties by defendant No.3 and claim of defendant No.4, based on a registered Will dated 09.05.2005, are rejected.
2. The genealogy furnished by the plaintiff, though initially disputed by the defendants, later it is admitted. The Trial Court relied on the genealogy marked at Ex.P1. Learned Counsel for both sides in this appeal, did not dispute Ex.P1. Hence, the Court would refer to the genealogy at Ex.P1, extracted as under:



3. The brief facts of the case are;

3.1. Karabasappa @ Vaddatti Basappa (Henceforth referred to as Vaddatti Basappa, as there is one more person by name Karibasappa) was the propositus. Vaddatti Basappa and Parvathamma lived together as husband and wife for a considerable length of time, though there was no formal marriage ceremony. Parvathamma



had two daughters, Hampamma and Sarvamangalamma from her first marriage. Later, after her husband's death, Parvathamma lived with Vaddatti Basappa.

3.2. Since both of them lived for a considerable length of time as husband and wife, this Court is of the view that Vaddatti Basappa and Parvathamma should be considered as husband and wife, though there is no proof of marriage ceremony.

3.3. Though Hampamma and Sarvamangalamma are not the children of Vaddatti Basappa, Hampamma filed a suit for partition, claiming ½ share contending that the suit belonged to Karabasappa @ Vaddatti Basappa. In the said suit, her sister Sarvamangalamma's heirs were arrayed as parties. Defendant No.3 - Karibasappa, is the son of Sarvamangalamma, Defendant No.4 - Indiramma, is the wife of



Defendant No.3 Karibasappa, Defendant No.5 – Hoogaru Manjunatha, is the son of Defendants No.3 and 4, Defendant No.6 is the husband of Gowramma, the daughter of Sarvamangalamma.

3.4. Defendants No.1 and 2, the State and Tahasildar who were formal parties did not contest the suit. Defendant No.3 filed a written statement and Defendants No.4 and 5 adopted the written statement filed by Defendant No.3.

3.5. The contesting defendants contended that Vaddatti Basappa was unmarried and issueless. It is also urged that Parvathamma is not his wife.

3.6. Defendant No.3 also took a stand that, Karabasappa alias Vaddatti Basappa bequeathed items No.3 and 4 of the suit properties and also in respect of property



bearing assessment No.2052 and 1954 in favor of defendant No.4, though no specific reference is made to the registered Will dated 09.05.2005.

3.7. As far as item No.5 property is concerned, it is contended that this property was granted to Defendant No.3 by the Land Tribunal, as that was Inam land and Defendant No.3 was Inamdar.

3.8. The Trial Court did not frame any issue relating to the proof of Will pleaded by Defendant No.3. However, the Trial Court framed issue relating to the proof of joint family of the plaintiff and Defendants No.3 to 6 and also framed issue whether the suit schedule properties are the joint family properties.

3.9. Defendant No.4 produced the registered Will dated 09.05.2005. One attesting witness was examined.



- 3.10. The Trial Court concluded that the plaintiff has established the relationship and that the properties are joint family properties and decreed the suit. However, the finding is not given on the Will on the premise that the particulars of the Will are not forthcoming in the written statement.
 - 3.11. Aggrieved by the aforementioned judgment, Defendants No.3 to 5 are in appeal.
 4. Learned counsel for Defendants No.3 to 5/appellants would contend that:
 - 4.1. The Trial Court could not have held that the Will cannot be considered on the premise that there is no pleading relating to the Will. Written statement filed by Defendant No.3, contains an averment in paragraph No.8 relating to the Will of Vaddatti Basappa. Despite the evidence being led in proof of the Will, and despite pleadings regarding the Will, the Trial Court



erred in holding that there is no pleading regarding the Will.

4.2. The plaintiff has not acquired any right over the properties, as the properties belonged to Vaddara Basappa @ Karabasappa @ Vaddatti Basappa. The plaintiff Hampamma, not being the daughter of Vaddatti Basappa, is not entitled to succeed to his properties.

4.3. Merely because Vaddatti Basappa and Parvathamma lived together as husband and wife, Hampamma, the daughter of Parvathamma, from her first husband does not acquire any right over the properties of Vaddatti Basappa, as Hampamma, at the most, can be a stepdaughter of Vaddatti Basappa.

4.4. Defendant No.3 is the absolute owner of item No.5 property, which was granted to him by the Land Tribunal, as the said property was the



Inam land, and Defendant No.3 was the Inamdar.

5. Learned counsel appearing for the plaintiff/contesting respondents would contend that the Will is not properly pleaded in the written statement and even if it is presumed that the Will is pleaded and evidence is led, the evidence is not good enough to uphold the due execution of the Will. It is also his further contention that, suit properties are jointly acquired by Karabasappa @ Vaddatti Basappa and Parvathamma. Thus, Vaddatti Basappa could not have executed the Will with respect to the entire properties. Even if the execution of the Will is proved, Parvathamma's ½ share in the suit properties would devolve upon her heirs, namely Hampamma and Sarvamangalamma. It is urged that grant in respect of item No.5 property is a grant in favour of the joint family of Hampamma and Sarvamangalamma, and Hampamma will have ½



share in the said property. Thus, he would pray for the dismissal of the appeal.

6. This Court has considered the contentions raised at the Bar. The following points arise for consideration:

- i. Whether the Trial Court justified in not considering the evidence led in support of the Will on the premise that date of the Will is not pleaded in the written statement?*
- ii. Whether the Trial Court justified in holding that the suit properties are the joint family properties of Hampamma and Sarvamangalamma?*

7. In paragraph No.8, in the written statement the relevant portion reads as under:

"This defendant and his wife Indramma took care of him in old age. During his lifetime, Vaddatti Basappa made a Will in favour of Indiramma out of love and affection. On his death, the properties of the testator devolved upon Indiramma, the fourth defendant and she is the absolute owner".



The defence is based on the Will is raised in the written statement. However there was no specific issue framed relating to the proof of the Will. Nevertheless the parties went to the trial understanding the respective contentions. The parties led evidence in support of their contention on the disputed Will dated 09.05.2005.

8. This being the position, this Court is of the view that no prejudice is caused to the parties by not framing a specific issue relating to proof of the alleged Will dated 09.05.2005. The Trial Court could not have held that the Will cannot be considered for not mentioning the date of the Will in the written statement when Defendant No.3 pleaded that Will is executed in favour of Defendant No.4.
9. This Court has perused the evidence relating to the Will. The original Will dated 09.05.2005 is produced and marked as Ex.D3. Will is registered on the same day. Vaddatti Basappa was 85 years old at that



time. He died in the year 2009. He survived four years after the execution of the Will. One of the attesting witnesses is examined to prove the execution and attestation. The witness was cross-examined.

10. The attesting witness to the Will has stated that the Will was executed in his presence and the presence of other attesting witness. In the examination-in-chief, the witness has identified the signature of Vaddatti Basappa as well as his signature. In the cross-examination, the signature of Vaddatti Basappa on the Will was not disputed.
11. The attesting witness is an illiterate. He signed the Will on 09.05.2005. He was examined in the year 2018. Minor discrepancy, if any, in the evidence of the attesting witness has to be ignored as 13 years had elapsed since the Will was registered. The testator survived for more than four years after the execution of the Will. The signature of the testator on



the Will is not in dispute. The Testator's sound health at the time of the execution of the Will is also not disputed.

12. The attesting witness has also stated that Vaddatti Basappa was hale and healthy while executing the Will. The said statement is not disputed in the cross-examination. As already noticed Vaddatti Basappa survived for four years after the execution of the Will. That would also indicate the fact that he was quite healthy while executing the Will. Though in the cross-examination, the attesting witness in one sentence has said that he does not know anything about the Will; it has to be construed as a stray sentence. By considering the entire evidence led in support of the Will, and attending circumstances, it can be concluded that the execution of the Will is duly proved.

13. Prior to the Will dated 09.05.2005, Karabasappa @ Vaddatti Basappa had executed another Will in favor



of Gowramma and Indiramma, defendants No.6 and 4. However, Vaddatti Basappa canceled the said Will on 01.10.2004 stating that Gowramma and Indiramma had shown a hostile attitude towards him.

14. Indiramma, the legatee has led evidence as DW.1 and has stated that she was taking care of Vaddatti Basappa in his old age. The signature on the Will is not disputed and no other suspicious circumstances are brought out. It is also relevant to note that plaintiffs do not contend that the Will in question is the outcome of fraud, misrepresentation, or undue influence. This Court is of the view that the execution of the Will dated 09.05.2005 is proved. However, what is required to be considered is whether Karabasabba @ Vaddatti Basappa had right over the properties covered under the Will.

15. In the Will itself, Karabasabba @ Vaddatti Basappa stated that he had purchased property bearing Survey No.330C/1b measuring 6 acres described in



item No.3 of the schedule properties along with his wife Parvathamma. The sale deed in respect of the property marked at Ex.D1 is in the joint name of Vaddatti Basappa and Parvathamma. This being the position, this Court is of the view that the Will though proved, is valid only in respect of $\frac{1}{2}$ share held by Vaddatti Basappa. Remaining $\frac{1}{2}$ share in the said property bearing Sy.No.330c/1b belongs to Parvathamma who predeceased Vaddatti Basappa. Thus, half share of Parvathamma would devolve equally upon three persons i.e., her two daughters Hampamma and Sarvamangalamma, and the husband Vaddatti Basappa. Thus, Hampamma will have $\frac{1}{6}^{\text{th}}$ share, and Sarvamangalamma will have $\frac{1}{6}^{\text{th}}$ share from Parvathamma. Vaddatti Basappa apart from his half share will also succeed $\frac{1}{6}^{\text{th}}$ share of Parvathamma. Consequently, Vaddatti Basappa will have half share plus $\frac{1}{6}^{\text{th}}$ share which comes to $\frac{2}{3}^{\text{rd}}$ share. After the death of Vaddatti Basappa, his



$2/3^{\text{rd}}$ share will devolve upon the legatee Indiramma under the Will dated 09.05.2005.

16. Thus Indiramma will acquire $2/3^{\text{rd}}$ share. $1/6^{\text{th}}$ share devolves upon Hampamma, and $1/6^{\text{th}}$ share would devolve upon Sarvamangalamma. Thus, Hampamma is entitled to $1/6^{\text{th}}$ share in item No.3 property.
17. As far as item Nos.1, 2 and 4 properties are concerned, there is no evidence to show that they are the joint family properties.
18. With respect to item No.5 is concerned, it is evident from Ex.D6, the re-grant order that the property is granted to Defendant No.3. Since no records are produced to show that this property was in the name of mother Parvathamma, or the re-grant is made for the benefit of the joint family, and also given the fact that Defendant No.3 and plaintiff belong to different families, this Court has to hold that the said property is the self-acquired property of Defendant No.3.



19. As far as the property bearing Survey No.260 measuring 6 acres 20 guntas is concerned (item No.6), the property record stands in the name of Defendant No.3. Defendant No.3 has produced RTC. The plaintiff has not produced any records showing that this property was in the name of Parvathamma. Hence, this Court has to hold that this property also belongs to Defendant No.3 alone. Hence the suit is not maintainable in respect of the said property.
20. For the reasons recorded, the impugned judgment and decree are to be set aside. The plaintiff will have 1/6th share in item No.3 property. Defendant No.4 will have 2/3rd share in the suit properties at item No.3.
21. A discussion on law relating to proof of Will.
- 21.1. Quite a few disputes concerning the Will, land up in Courts. This is one such case. Here, the Court is called upon to decide on the validity of the registered Will dated 09.05.2005, in a suit



filed in 2016. Defendant No.4 legatee, to prove the Will, examined the attesting witness on 01.08.2018, 13 years after the execution of the Will.

21.2. Will or the testament is a sacred document. It contains the last wish of a testator when it comes to the disposition of the testator's property. In our culture, lot of significance is attached to the last wish of a person.

21.3. The law enables a person to decide the course of succession, in respect of his estate, through a Will. Duly executed Will overrides the personal law relating to intestate succession and fulfills the last wish of the testator in so far as succession to his estate. This signifies the sanctity attached, by the lawmakers, to the last wish of a testator.

21.4. The law is also in place governing execution and proof of a Will. Law requires that a Will must be attested by at least two attesting



witnesses and at least one must be examined to prove it. The word "Attestation" is defined in the Transfer of Property Act. In ***Abdul Jabbar vs Venkata Sastri***¹ the Apex Court dealt with the requirement of attestation defined in Section 3 of the Transfer of Property Act. Though ignorance of the law is no excuse, many a times a person called upon to prove the attestation of a Will, may not know the nitty-gritty of "attestation" or importance of the "evidence of an attesting witness" to a Will.

21.5. The experience of life tells us that in many cases where a dispute surrounding the execution of a Will is tried in Courts, the attesting witness will be deposing before the Court many years after the execution of the Will. The witness may not be in a position to give the correct account of what transpired

¹ AIR 1969 SC 1147



when the Will was executed or when he signed as an attesting witness. At times, a witness may predecease the testator. Though the law provides for a different mode of proof in such a situation, the fact remains that the best witness is no more.

21.6. During the trial, where at times, a high premium is placed on the accuracy of the statement, the evidence led in support of the Will may fall short of the standard expected. When a Will is tested in a Court, the testator who expressed his last wish, and the best person to speak about his intention is not there to confirm his act.

21.7. Under the existing law, proof of Will and the fulfillment of the last wish of the testator is *entirely dependent on the ability of the attesting witness to withstand the cross-examination by a skilled and trained lawyer. Sometimes, if not all times, the atmosphere in*



the Court, the presence of a judge, lawyers, and the parties to the proceedings, may infuse a sense of fear or anxiety in the mind of a witness while deposing before the Court. In such a scenario, the witness may fumble, even if the Will is genuine. In the process, it is quite possible that the last desire/wish of the testator may not get fulfilled at all.

21.8. Lack of awareness as to the significance and importance of being an attesting witness to a Will and lack of awareness as to what attestation means may also result in a verdict rejecting the claim based on the Will. More often than not, when the evidence on both sides appears to be somewhat evenly balanced, the Court finds (at least speaking for myself) it bit difficult to decide which version is true.

21.9. The concept of Will and proof of Will introduced in the colonial regime through the Indian Succession Act, 1925 and Indian Evidence Act,



1872 has not witnessed any change. Even in Bharatiya Sahkshya Adhinyama 2023, there is no change in the mode of proof of a Will.

21.10. Technology in the last two decades has advanced beyond comprehension. There is a need to make good use of the technology in documenting the Wills. The office of the Sub-Registrar is now equipped with computer systems and web cameras. Video recording and storing the data is quite simple and inexpensive. The process of registration can be suitably amended to facilitate video recording of the statement of the testator and attesting witnesses. There is a need to embrace the technology to ensure that there is an unambiguous, credible, and clinching record relating to proof of execution of documents, more particularly the documents such as Will where the author of the instrument will not be



available to admit or prove its execution when its execution is disputed.

21.11. Suitable provision in law, facilitating an option to record the statement by the testator and the attesting witnesses in a Court, testifying about the execution of a Will, with necessary measures or safeguards to ensure the confidentiality, will go a long way in assisting the Courts in discharging its function where the Courts have to adjudicate the dispute surrounding the execution of the Will.

21.12. *A Will containing the last wish of the testator should last as per his wish, and should not be lost in a complex procedure of proof where when the testator has no voice and the proof of a Will depends on the evidence of attesting witnesses or other witnesses recognized under law.*

21.13. *The issue is discussed only to invite the attention of the stakeholders for meaningful*



deliberation and to find a solution to ensure that a genuine Will never fails or a fake Will never succeeds in a Court of law.

22. In the instant case this Court has concluded that the Will dated 09.05.2005 is duly proved. However, the testator was not the absolute owner of the properties. The testator had only ½ share in item No.3 property. The plaintiff has not produced any records to hold that item No.1, 3 and 4 properties are the joint family properties. Thus, plaintiff is not entitled to any share in the said properties.
23. For the aforementioned reasons, the impugned judgment and decree of the Trial Court are to be modified. Hence the following:

ORDER

- i. The appeal is ***allowed in part.***



- ii. Impugned judgment and decree dated 29.09.2018 passed by the Principal Senior Civil Judge at Ballari, in O.S.No.187/2016, are modified.
- iii. The suit of the plaintiff is decreed in part.
- iv. The plaintiff is entitled to 1/6th share in item No.3 (as numbered in the original plaint) property bearing Survey No.330C/1b measuring 6 acres.
- v. The suit is dismissed in respect of remaining properties.
- vi. It is stated that final decree proceedings are pending before the Court. The Final Decree Proceedings shall be continued in terms of the decree passed by this Court.

Sd/-
(ANANT RAMANATH HEGDE)
JUDGE

gab
CT:ANB
List No.: 1 Sl No

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