



IN THE HIGH COURT OF KARNATAKA,

DHARWAD BENCH

DATED THIS THE 8TH DAY OF JANUARY, 2025

PRESENT

THE HON'BLE MR. JUSTICE ASHOK S. KINAGI

AND

THE HON'BLE MR. JUSTICE UMESH M ADIGA

REGULAR FIRST APPEAL NO. 100144 OF 2019

(PAR/POS)

BETWEEN:

SMT. AMRUTHA,
W/O. HANUMANTHSA MEGHARAJ,
AGED ABOUT: 51 YEARS, OCC: HOMEMAKER,
R/AT: NO.66, 7TH CROSS,
MANJUNATH NAGAR,
NEAR VIJASHREE SCHOOL,
BEHIND WIDIA FACTORY,
NAGASANDRA POST,
BENGALURU-560073.

...APPELLANT

(BY SRI. GOPALA GOWDA T.N. AND
SRI. N.J. APPANNAVAR, ADVOCATES)

AND:

1. YALLAPPA,
S/O. RAMNATH YALLAPPA KALBURGI
AGED ABOUT: 49 YEARS,
OCC: PRIVATE SERVICE,



R/O: MANJUNATH LODGE,
DAJIBANPETH, HUBBALLI-580028.

2. SACHIN,
S/O. RAMNATH YALLAPPA KALBURGI
AGED ABOUT 47 YEARS,
R/AT: NO.3/2, LAKSHMI NIVAS,
OLD SHINDE BUILDING, KESHWAPUR,
HUBBALLI-580028.
3. AMAR S/O. RAMNATH YALLAPPA KALBURGI
AGED ABOUT 45 YEARS,
R/AT: NO.3/2, LAKSHMI NIVAS,
OLD SHINDE BUILDING,
KESHWAPUR, HUBBALLI-580028.

...RESPONDENTS

(BY SRI. GURUDEV I. GACHCHINAMATH, ADVOCATE)

THIS RFA IS FILED UNDER SECTION 96 OF CODE OF THE CIVIL PROCEDURE, AGAINST THE JUDGMENT AND DECREE DATED 31.01.2019 PASSED IN O.S. NO.52/2017 ON THE FILE OF THE I ADDITIONAL SENIOR CIVIL JUDGE, HUBBALLI, DISMISSING THE SUIT FILED FOR PARTITION AND SEPARATE POSSESSION.

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

CORAM: THE HON'BLE MR. JUSTICE ASHOK S. KINAGI
AND
THE HON'BLE MR. JUSTICE UMESH M ADIGA



ORAL JUDGMENT

(PER: THE HON'BLE MR. JUSTICE UMESH M ADIGA)

The plaintiff has preferred this appeal challenging the judgment and decree dated 31.01.2019 passed in O.S.No.52/2017 on the file of I Additional Senior Civil Judge, Hubballi.

2. For convenience, the parties are referred to, as per their ranking before the trial Court.

3. Brief facts of the case of both the parties before the trial Court are as under:

It is the case of the plaintiff that suit schedule properties are self acquired properties of her father Ramanath S/o Yellappa Kalaburagi. His wife Smt. Lakshmi Bai predeceased him during the year 2003. From the said wed-lock, he has three sons and one daughter, i.e., parties to the present suit. The said Ramanath died on 29.01.2017, leaving behind plaintiff and defendants and they succeeded to his properties. After the death of Ramanath, the plaintiff requested the defendants to effect



a partition and separate possession of her share in the suit properties. The defendants refused to do so. Therefore, she was constrained to file the suit. With these reasons, she prayed for the decree of partition and separate portion of her 1/4th share in the suit schedule properties.

4. The defendants admit the genealogy and that the property was self-acquired property of Ramanath. Their contentions are that Ramanath during his lifetime, in a sound state of mind, executed a Will on 06.10.2016, bequeathing the suit properties in favour of defendant Nos.1 to 3. After his death, they succeeded to the suit properties by virtue of Will executed by Ramanath. The deceased Ramanath had a valuable property at Bengaluru and during his life time he gifted the same in favour of plaintiff by a registered gift deed dated 22.02.2016. This fact is also noted in the registered Will. The deceased Ramanath was hale and healthy till his death. The defendants were looking after him and out of love and



affection, he executed the said Will. With these reasons, they prayed to dismiss the suit.

5. The trial Court framed following issues :

1. Whether plaintiff proves that suit schedule property is a joint family property of plaintiff and defendants as pleaded in the plaint?
2. Whether defendants prove that suit is not maintainable?
3. Whether defendant prove that valuation of the suit property and Court fee paid by the plaintiff is not correct?
4. Whether plaintiff is entitled for the relief as sought for?
5. What order or decree?

ADDITIONAL ISSUE DATED 29.01.2019:

1. Whether the defendants prove that their father Ramanath Yallappa Kalburgi has executed a Will dated 06.10.2016 in favour of defendants in respect of the suit schedule property as per law?

6. The plaintiff in support of her case examined herself as PW1 and marked Exs.P1 to P15. The defendants examined as DW.1 and 2 and marked Exs.D1 to D13.



7. After hearing both the parties and appreciating the pleadings and evidence available on record, the trial Court answered issue No.1 and 2 partly in the affirmative and issue No.4 and additional issue No.1 in the affirmative and issue No.3 in the Negative and dismissed the suit vide impugned judgment dated 31.01.2019. The trial Court held that the suit properties were self acquired properties of late Ramanath and out of sound disposing state of mind he executed the Will, in favour of defendants.

8. We have heard the arguments of learned counsels appearing for both the sides.

9. Learned counsel for the plaintiff would submit that the suit properties were ancestral properties and in a partition they were succeeded by late Ramanath and after his death plaintiff and defendants being coparceners are entitled for a share in the properties. These facts were questioned in the cross-examination of DW1 and 2 and they pleaded ignorance about the same and not specifically denied it. Suit properties are ancestral joint



family properties. Their father Ramanath had no absolute right to execute the Will in favour of respondents. The trial Court has not considered these facts and erroneously upheld contentions of the respondents, which needs interference by this Court. He further submits that relationship between the parties is not in dispute. Therefore, plaintiff is entitled for 1/4th share in the suit schedule property and accordingly prayed to allow the appeal.

10. The learned counsel for defendants submits that according to plaint averments as well as evidence of PW1, the suit properties are self acquired properties of Ramanath, which is not in dispute. Without any pleading, in the cross-examination of DW-1 a new case was made out by the plaintiff that the suit properties are ancestral joint family properties and they were inherited by Ramanath under a partition deed. The said suggestions are without any pleadings and therefore it cannot be considered. The plaintiff has not produced any other



documents to substantiate the said contention that the suit properties were ancestral properties. Even pleadings were not amended. Merely if there is a reference of a partition in the revenue records, it does not mean that they were ancestral properties. He further contended that even jointly acquired properties could also be divided between the joint owners of the property. As per pleadings of the parties, admittedly the suit properties are self-acquired properties of Ramanath.

11. The learned advocate for defendants further submits that deceased Ramanath being the absolute owner of the suit schedule properties had bequeathed it under registered Will in favour of defendant Nos.1 to 3. Defendants have examined one attesting witness to the Will to prove it. There are no suspicious circumstances surrounding the will. Few days prior to the execution of Will, Ramanath had executed gift deed in favour of plaintiff and she admits the same and disputes the Will on the ground that it was executed without sound disposing state



of mind. The gifted property is the most valuable property of Ramanath, which is situated in Bengaluru. The said fact is also mentioned in the Will executed by Ramanath. The plaintiff has not at all pleaded about the said gift in the pleadings, and even she did not make out a case that the said property was absolute property of Ramanath. If all the properties are joint family properties as per her contention, then she should have included that property also in the present suit for effecting partition of the properties. She cannot blow hot and cold at the same time. The appellant-Plaintiff has not approached the Court with clean hands. Therefore, prayed to dismiss the appeal with cost.

12. From the rival contentions of the parties following points arises for our determination:

- i. Whether the trial Court erred in holding that suit properties are absolute properties of deceased Ramanath and he bequeathed them in favour of respondents in sound disposing state of mind?*
- ii. What Order?*



13. We answer the above said point No.1 in the negative for the following reasons:-

The relationship between the parties and the suit properties belonged to deceased Ramanath are not in dispute. During the course of the trial, the plaintiff has not disputed execution of gift deed dated 22.02.2016 by the deceased Ramanath in her favour. It is not the subject matter of the present suit. The Will is said to be executed by Ramanath in favour of defendants on 06.10.2016 i.e. within a period of 7 months after execution of the gift deed.

14. In the pleading as well as in her examination-in-chief, plaintiff contended that the suit properties are absolute properties and self-acquired properties of deceased Ramanath. Ignoring the said pleadings and her evidence, in the cross-examination of DW-1, a new case was made out stating that suit schedule properties are ancestral joint Hindu family properties of plaintiff and defendants. They were inherited by late Ramanath from



his ancestors. It is settled principle of law that without necessary pleadings if any evidence is let in, such evidence cannot be considered at all. In the cross-examination of DW1, such suggestions were made and DW1 pleaded ignorance about the fact that the suit properties were ancestral properties of deceased Ramanath. It is also worth to note that no documents were placed on record to show that these properties were inherited by Ramanath from his ancestors.

15. During the course of arguments, the learned counsel for plaintiff has tried to place photocopy of the unregistered partition deed entered into between the deceased Ramanath with his brothers. There is no reference about such partition in the pleadings. Original partition deed was not placed on record before trial Court and it was admitted in evidence. Appellant has not produced the said records in accordance with the provision of Law, i.e., under Order 41 Rule 27 of CPC. It is a photocopy of the unregistered document and hence it



cannot be considered. For the sake of discussion, even if it is looked into, there is no mention in the document that the said property was inherited by their father and they belonged to their forefathers. On the contrary, it is stated that properties standing in the joint names of deceased Ramanath as well as his brothers were partitioned. Therefore, even if the said document is considered, it does not indicate that the suit schedule properties are ancestral and joint family properties of late Ramanath. Under those circumstances, not pleaded and not proved contentions of the plaintiff that suit properties are joint family properties cannot be accepted. On the contrary, the defendants proved that the suit properties are self acquired properties of deceased Ramanath.

16. The defendants in the pleadings as well as in the evidence have contended that deceased Ramanath out of his free will and volition and also out of sound disposing state of mind executed registered Will dated 06.10.2016. The original Will is produced at Ex.D12 and they have



examined one of the attesting witnesses to the Will as DW2. In the cross-examination of DWs-1 & 2 nothing was brought out to discard their evidence. The contention of the plaintiff was that the deceased Ramanath was suffering from AIDS (HIV positive) and he suppressed the said fact from others. Taking undue advantage of the same, defendant Nos.1 to 3 blackmailed him and forced him to execute the registered Will in their favour, otherwise they would disclose the facts of his deceases to others. It is pertinent to note that there is no whisper in the pleadings of the plaintiff that due to threat and force of defendants, Ramanath had executed the Will. Hence, said contention cannot be considered. Moreover, there is no reliable evidence in this regard. Suggestions were made to DWs.1 and 2 indicating that plaintiff had knowledge about execution of the Will by her father. In her cross examination also she admitted that she had knowledge about execution of the will by deceased Ramanath. But she has not challenged the Will in her pleadings.



17. Plaintiff had not produced any medical records containing details of ailments of deceased Ramanath to make out *prima-facie*, case to believe her contentions. Hence, attempts made to show that Will was surrounded with suspicious circumstances are failed.

18. It is the contention of the plaintiff that deceased Ramanath was suffering from ailment, therefore, he was unable to understand what he was doing and in that circumstance, the alleged Will was executed. The said contention was also not proved. In the cross-examination, DWs-1 and 2 denied the suggestion that "Ramanath was suffering from ailments and he was admitted to the hospital at the time of his death and unable to understand his acts". The plaintiff could not get any admission in the cross-examination of DWs-1 and 2 to prove the said facts. On the contrary, it is an admitted fact that few days prior to death he went abroad along with his grandson and photographs obtained were also placed on record. They



are not disputed. He was suffering from diabetes as well as hypertension and got himself treated as an inpatient. Even the plaintiff has not attempted to examine the doctor to show that he was incapable of understanding or not having sound disposing state of mind to execute the Will.

19. The learned trial Judge extracted the relevant portion of admission of PW1 in the impugned judgment in respect of the Will. Plaintiff admits the execution of the Will. Her grievance is that no properties were given to her under the Will therefore it is inequitable distribution of the properties by the deceased Ramanath under the Will. The said contention cannot be accepted. The intention of a testator to execute the Will is to disinherit the property by his natural heirs by succession. It also indicated in the Will that since he has already given one of the properties situated in Bengaluru in favour of the plaintiff, he distributed the remaining the property situated in Hubballi in favour of his sons. If he was not in sound disposing state of his mind, it is difficult to believe that he would



mention said facts in the Will. Contents of the Will indicate that it was executed voluntarily and by sound disposing state of mind.

20. The plaintiff tried to create suspicious circumstances to disbelieve the Will. However, she has utterly failed in her attempt. On the contrary, she admitted execution of Will and her knowledge about execution of the Will as well as the health condition of late Ramanath.

21. The learned trial Judge discussed all these facts in detail. There are no reasons to interfere in the findings of the learned trial Judge. Appeal is devoid of merit. For the above said discussions, we pass the following:

ORDER

The appeal is ***dismissed***.

Judgment and decree dated
31.01.2019 passed in O.S.No.52/2017 on



the file of I Additional Senior Civil Judge,
Hubballi, is confirmed.

Both parties shall bear their own
costs.

**Sd/-
(ASHOK S. KINAGI)
JUDGE**

**Sd/-
(UMESH M ADIGA)
JUDGE**

HMB/AG
LIST NO.: 1 SL NO.: 14