

IN THE HIGH COURT OF KARNATAKA AT BANGALORE

DATED THIS THE 10TH DAY OF AUGUST 2011

BEFORE

THE HON'BLE MR.JUSTICE A.S.PACHHAPURE

REGULAR SECOND APPEAL.NO.7 OF 2006

BETWEEN:

SANNABORAMMA,
W/O. BASANNA,
AGED ABOUT 61 YEARS,
AGRICULTURIST BY PROFESSION,
R/O GUNTAKOLAMMANAHALLI,
CHALLAKERE TALUK,
CHITRADURGA DISTRICT. ... APPELLANT

(BY SRI. B.M. SIDDAPPA, ADV.)

AND:

1. MALLAMMA,
W/O. LATE ANGADI JAGALURIAH,
AGED ABOUT 70 YEARS,
2. SIDDALINGAMMA,
W/O BASANNA,
AGE 50 YEARS,

APPELLANT NO.1 & 2 ARE
R/O. MALLURAHATTI,
NAYAKANAHATTI HOBLI,
CHALLAKERE TALUK,
DIST.CHITRADURGA
3. RAMACHANDRAPPA,
S/O. KODLIPALIAH,
AGED ABOUT 40 YEARS,

R/O. GUNTAKOLAMMANAHALLI VILLAGE,
CHALLAKERE TALUK,
DIST.CHITRADURGA.

4. RAMANNA,
S/O. KODLIPALAI AH,
AGED ABOUT 41 YEARS,
R/O. GUNTAKOLAMMANAHALLI VILLAGE,
CHALLAKERE TALUK,
DIST. CHITRADURGA. ... RESPONDENTS

(BY SRI. B.K. MANJUNATH, ADV.)

THIS RSA IS FILED U/S. 100 OF CPC AGAINST THE JUDGEMENT & DECREE DT.4.10.2005, PASSED IN R.A.NO.123/02 (28/99) ON THE FILE OF THE CIVIL JUDGE (SR.DN), CHALLAKERE, ALLOWING THE APPEAL AND SETTING ASIDE THE JUDGMENT AND DECREE DT.5.10.1998 PASSED IN O.S.NO.1674/94 ON THE FILE OF THE PRL. CIVIL JUDGE (JR.DN) AND JMFC, CHALLAKERE.

THIS RSA HAVING BEEN HEARD AND RESERVED, COMING ON FOR PRONOUNCEMENT OF JUDGMENT, THIS DAY, THE COURT DELIVERED THE FOLLOWING:

JUDGMENT

The appellant has challenged the judgment and decree in RA 123/2002 (old R.A.No.28/1999) dated 4-10-2005 allowing the appeal of the respondents and dismissing the suit filed by the appellant for declaration and injunction.

2. The facts relevant for the purpose of this appeal are as under:



3. The parties are referred to as per their rank before the Trial Court.

The appellant herein is the plaintiff whereas the respondents 1 to 4 are the defendants 1 to 4 respectively. Propositors Kodli Boraiah had two sons Angadi Jagaluraiah and Kodli Palaiah. Angadi Jagaluraiah married Siddamma the mother of the plaintiff and after the death of Siddamma, the first wife, he married Mallamma the first defendant and through the wedlock, the 2nd defendant was born. Kodli Palaiah had two sons who are defendants 3 and 4. The suit properties are the agricultural lands described in the schedule to the plaint and are situated at Guntha Kolammaahalli with the boundaries described therein. The plaintiff claims that these lands are self acquired and the occupancy rights of these lands were given to her father Angadi Jagaluraiah by the order of the Land Tribunal in INC 92/76-77 and after the order of the Tribunal Form No.10 was issued in the name of Angadi Jagaluraiah. In these circumstances, the plaintiff claims that the suit properties are the self acquired properties of her father.



It is further averred that after the death of Siddamma, the first wife of Angadi Jagaluraiah, he married the second wife Mallamma the first defendant and through the wedlock, the 2nd defendant was born. The defendants 1 and 2 did not look after the welfare of Angadi Jagaluraiah and it is the plaintiff who took care and gave protection and looked after the welfare of her father and that her father had developed love and affection for the plaintiff. So when he was in sound disposing state of mind with his free will bequeathed the suit schedule properties in favour of the plaintiff under registered Will dated 14-03-1986 in the presence of the attesting witnesses. After the execution of the Will Angadi Jagaluraiah died on 20-09-1986 leaving behind the plaintiff, the daughter through the first wife, the first defendant, the second wife and the second defendant, the daughter of the first defendant. The plaintiff claims that after the death of her father, she was paying the land revenue of the suit lands and has been in exclusive possession of the same. There was an obstruction to the possession by the defendants and in these circumstances, the plaintiff had filed a complaint in Crime No.131/1992. Therefore, she was constrained to institute the suit for declaration that she is the



absolute owner of the suit schedule properties and injunction restraining the defendants and their agents from interfering with the peaceful possession and enjoyment of the suit schedule properties.

4. The defendants 1 and 2 have filed the written statement denying the allegations made and they contend that the suit properties are the ancestral properties and that the deceased Angadi Jagaluraiah was residing with the first defendant till his death and further, they have denied about the residence of Angadi Jagaluraiah with the plaintiff. So also, they have denied the execution of Will bequeathing the properties in favour of the plaintiff and also the competency of the deceased to execute the said Will. So, it is their contention that after the death of Angadi Jagaluraiah, they are entitled to equal share in the suit lands. On these grounds, they sought for the dismissal of the suit.

5. On the basis of these pleadings, the following issues have been framed.

1. Whether the plaintiff proves that she is the owner of the suit properties?



2. Whether the plaintiff proves that she was in lawful possession and enjoyment of the suit properties as on the date of suit?
3. Whether the plaintiff proves the alleged interference by the defendants?
4. Whether the plaintiff is entitled to the reliefs prayed for in the plaint?
5. What decree or order?"

6. The plaintiff examined herself as PW.1 and another witness PW.2 and in their evidence got marked the documents Exs.P.1 to P.29. The first defendant was examined as DW.1 and one Palaiah who was not available for cross examination and hence, his evidence is struck off. The defendants have got exhibited the documents Exs.D.1 to D.14. The Trial Court after hearing the counsel for the parties and on appreciation of the material on record decreed the suit declaring that the plaintiff is the absolute owner in possession of the suit properties and also granted an injunction restraining the defendants from causing obstruction to her peaceful possession and enjoyment of the suit lands. Aggrieved by the judgment and decree, the

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defendants approached the First Appellate Court in RA 123/2002 (Old R.A.No.28/1999) and the first Appellate Court after hearing the counsel for the parties and on appreciation of the material on record allowed the appeal and dismissed the suit filed by the appellant herein. Aggrieved by the judgment and decree of the First Appellate Court, the plaintiff has approached this Court in appeal.

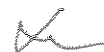
7. I have heard the learned counsel for the appellant and the respondents. At the time of admission, this Court has framed the following substantial question of law.

“Whether the first appellate Court was justified in reversing the judgment and decree of the trial Court after recording the finding on Ex.P.2 the Will in the favour of plaintiff under which the plaintiff claims her title?”

8. It is the contention of the learned counsel for the appellant that the Will Ex.P.2 has been proved by examining PW.2 the attesting witness and it was registered on the date of its execution and therefore, he contends that on the basis of this Will, the interest of the deceased Angadi Jagaluraiah in the suit properties is bequeathed in favour of the plaintiff and that

the said will is legal and valid. Per contra, it is the contention of the learned counsel for the respondents 1 and 2 that the Will has not been proved and that the deceased was not in a sound disposing state of mind while executing the Will and that a fraud has been committed on defendants 1 and 2. So also, it is his contention that the Will is shrouded with suspicious circumstances and therefore, the Lower Appellate Court was justified in dismissing the suit of the appellant.

9. The plaintiff who is the daughter of Angadi Jagaluraiah is examined as PW.1 and in her evidence, she states that her father executed a Will in her favour and she was the custodian of the Will. The Will has been produced at Ex.P.2. It is a registered document and apart from the plaintiff, the attesting witness, the scribe were present at the time of the execution of the Will. PW.2 has stated in his evidence that he was present in the Taluka Office where the Will was written by the scribe and after reading over the contents of the Will, Angadi Jagaluraiah the father of the plaintiff put his signature and thereafter, he and another witness signed the Will in token of their presence at the time of the execution of the Will. He



also states that Angadi Jagaluraiah was in sound state of mind and had the capacity to execute the Will. He speaks about the presence of the plaintiff at the time of execution of Ex.P.2.

10. It is not in dispute that Angadi Jagaluraiah was aged 85 years at the time when the Will came to be executed. Furthermore, after the execution of the document Ex.P.2, he died on 20-09-1986 i.e., after about six months of the execution of the Will. As could be seen from the defense put forth by the defendants 1 and 2, in the cross examination of PWs.1 and 2, they state that Angadi Jagaluraiah had sustained fracture before his death and that he was not in a sound disposing state of mind. It is their further contention that as the plaintiff who is the beneficiary under the Will the bequest made is not natural and that even the second wife, the first defendant and the daughter of the second wife having not even been granted any interest in the suit schedule properties and therefore, it is their contention that the Will is shrouded with suspicious circumstances.

11. The learned counsel for the appellant has placed reliance on the decision of the Apex Court reported in AIR 1995



SC 2086 (Vrindavanibai Sambhaji Mane vs. Ramachandra Vithal Ganeshekar and others) wherein the propounder of the Will took prominent part in the execution of the Will which had conferred substantial benefits on the propounder and the signature on the Will was shaky and the executor of the Will was feeble minded likely to be influenced and there was no unfair and unjust disposal of the property and the executor of the Will was aged 85 years. In these circumstances, the Apex Court held that there are no suspicious circumstances reflecting on the genuineness of the Will. At the same time, the learned counsel for the respondents has placed reliance on the decision of this Court reported in ILR 2007 KAR 1484 (W.E.Sambandam vs. W.E.Sathyannarayan and others) wherein it was typed Will and it came to be registered when the testator was in hospital and there were suspicious circumstances and therefore, it was held that by mere registration of the Will would not wipe out the suspicious character of the Will. So placing reliance on this decision, it is the submission of the learned counsel for the respondents that there are many suspicious circumstances in the due execution of the Will, the first one is that the plaintiff was present at the time of the



execution, and she is the only beneficiary under the Will and secondly, that Angadi Jagaluraiah was not in sound disposing state of mind and was incapable of executing the Will. Infact, as could be seen from the allegations in the written statement and the cross examination of PWs. 1 and 2, what it is suggested is that Angadi Jagaluraiah had sustained a fracture prior to his death and it is also suggested that as he was old aged, as his eye sight was weak and he was not in a sound disposing state of mind. It is relevant to note that he survived for about six months after the execution of the Will and the Will has been signed on each of the pages by Angadi Jagaluraiah. After the execution of the Will, it was registered with the Sub-Registrar and Angadi Jagaluraiah was present at the time when the Will was registered. So if these circumstances are looked into, it cannot be said that he was not in sound disposing state of mind and was incapable of executing the document. Mere sustaining fracture is not sufficient to conclude that he was not in a sound disposing state of mind. There is no material placed on record to show that the deceased was suffering from any illness and in the absence of any such material, it is to be inferred that he was in a sound disposing state of mind. Apart



from the evidence of PW.1, PW.2 who is the only attesting witness alive has stated before the Court that Angadi Jagaluraiah came to the place of registration at a distance of about 4 kms. by walk and thereafter, he purchased the stamp and that thereafter, the scribe wrote the Will as instructed by Angadi Jagaluraiah, the signature was made by the executor of the Will and thereafter, the attesting witness signed the said Will. So far as the other attesting witness is concerned, it is in the evidence that they are dead and PW.2 was the only person alive on the date, when the evidence was recorded. An effort has been made to set up enmity between defendants 1 and 2 and PW.2 in the cross examination wherein it is suggested and attempted by PW.2 that there is enmity between the elder sister's son of first defendant and PW.2. But it is relevant to note that there is no question of any enmity between PW.2 and defendants 1 and 2. Merely because that there was enmity between the relatives of the first defendant is itself not sufficient to discard the evidence of PW.2 an attesting witness.

12. Now, coming to the important aspect of the evidence, the first defendant has been examined as DW.1 and



in the chief examination itself she states "within 15 years of imposing the condition not to transfer the property, my husband executed the Will in respect of the suit properties in the name of the plaintiff." (the Kannada version is translated into English). So, as could be seen from this evidence of DW.1 she admits in the chief examination that Angadi Jagaluraiah had executed a Will bequeathing the properties in favour of the plaintiff. Apart from this admission, even in the cross examination at the first instance, she states "It is true to suggest that Angadi Jagaluraiah in his life time executed a Will in favour of Sanna Boramma the plaintiff." (the Kannada version is translated into English). But any how, in the next sentence, she states that there was a fraud committed by her husband. As to what is the fraud committed is not stated by DW.1. The above admission clearly goes to show that the first defendant was very much aware of the execution of the Will and she also admits in the evidence that Angadi Jagaluraiah expired after the execution of the Will. Furthermore, in page 8 of the deposition of DW.1, she states "It is true to suggest that because of love and confidence of Jagaluraiah on his daughter, the plaintiff, he has executed the registered Will in favour of his




daughter." So as could be seen from this admission of DW.1 in her evidence, the execution of the Will has been admitted and so also, the fact that there was an affectionate relation between the plaintiff and her father is also admitted and the question in this context would be as to whether the exclusion of defendants 1 and 2 without providing any interest in the properties is a suspicious circumstance and if it is so, whether the plaintiff has explained the circumstances to the satisfaction of the Court.

13. The learned counsel for the respondents has relied upon the judgment of this Court reported in ILR 2004 Kar 3611 (Siddaramappa and others vs. Smt.Gouravva) and it reveals that under the Will, the wife and children were disinherited and it was held that it casts a serious doubt on the genuineness of the Will, as it is unnatural. Furthermore, he also relied upon the decision reported in ILR 2007 KAR 247 (S.B.Ikktigi and another vs. S.V.Sulochana and others) this Court has held that it is necessary that trust worthy and unimpeached evidence should be produced before the Court to establish the genuineness and authenticity of the Will. Now, taking into



consideration the principles laid down by this Court and the Apex Court in the decisions referred to supra, so far as the presence of the plaintiff at the time of the execution of the Will was unavoidable. Angadi Jagaluraiah was aged 85 years and he was residing with the plaintiff and it is quite natural that when the plaintiff was looking after him, he has to bestow his love and affection for her at the same time, when defendant no.1 was not looking after her husband and said to have left the house within a year of the marriage, no one can expect that the executor of the Will would give some properties to them. The perusal of Ex.P.2 the Will reveals reasons to exclude the first defendant in bequeathing the properties. In the Will, it is stated by Angadi Jagaluraiah that though he married the second wife after the marriage, she left him and was residing elsewhere and that he does not know even the whereabouts of his second wife. It is in this context that Angadi Jagaluraiah expressed his displeasure about the conduct of the first defendant after the marriage. It may be that at that time, she was pregnanat and delivered the second defendant and Angadi Jagaluraiah may not be even aware of the birth of the second defendant. Any how, the contents of the Will offer an



explanation as to why Angadi Jagaluraiah deviated by without giving any properties to defendants 1 and 2. Therefore, it is to be held that the suspicious circumstances of not giving any interest in the properties to defendants 1 and 2 has been explained in the Will by Angadi Jagaluraiah and therefore, it cannot be said that there remains any suspicious circumstance in the due execution of the Will.

14. Though the defendants claim that they were in possession of the suit schedule lands after the death of Angadi Jagaluraiah, the cross examination of DW.1 reveals that it is she who went to the plaintiff seeking partition of her share in the suit properties. If she was really in possession of the suit properties, then there was no necessity for her to approach the plaintiff for the purpose of partition. Furthermore, to prove that defendants 1 and 2 were residing with Angadi Jagaluraiah, no material is placed on record except the interested version of DW.1 So far as the evidence of DW.2 is concerned, it has been struck off as the said witness was not available for cross examination. So, there is no material on record to show that Angadi Jagaluraiah was hale and healthy and was not in a



sound disposing state of mind at the time when the Will was executed and this fact has been proved from the evidence of PWs.1 and 2 and there is nothing on record to disbelieve the said version and hence, I am of the opinion that the plaintiff is successful in establishing the due execution of the Will by her father.

15. It is in the evidence of PW.2 that defendants 1 and 2 were not residing with Angadi Jagaluraiah and to disbelieve his version, except the interested version of DW.1, there is nothing on record. It is relevant to note that apart from Form No.10 produced at Ex.P.1, the plaintiff has produced Receipt Patta Ex.P.12, the land revenue receipts Exs.P.13 to P.25 and a copy of the complaint filed to the Police under Ex.P.6. So, it was the plaintiff who was paying the land revenue of the suit properties. Ex.P.14 is the land revenue receipt dated 14-03-1986, that is after the death of Angadi Jagaluraiah the plaintiff went on paying the land revenue, but at the same time, the defendant though states in her evidence that she has paid the land revenue of the suit properties has not produced a single receipt towards the payment of the same. So, this is also a



circumstance which favours the plaintiff about she being in possession of the suit properties and therefore, on scrutiny of the evidence that has been led, there is clinching material to establish that Angadi Jagaluraiah in his life time, when he was in a sound disposing state of mind had bequeathed the properties to his daughter, the plaintiff. The Trial Court was justified in accepting the evidence of PWs.1 and 2 and the documents in granting a decree in favour of the plaintiff.

16. So far as the execution and validity of the Will, the findings of the Lower Appellate Court are concurrent. The learned appellate Judge states in para 11 of the judgment that nothing is elicited to disbelieve that Late.Jagaluraih was not hale and healthy at the time of the execution of the Will Ex.P.2. It is in the evidence of DW.2 that there was ill-will with the defendants, but this ill-will is insufficient to discard the evidence of PW.2 about the execution of the Will by Late.Angadi Jagaluraiah. Moreover, the execution of the Will could be inferred since Ex.P.2 is a registered document. Therefore, I am of the opinion that the plaintiff is able to prove execution of the Will Ex.P.2 by Late.Jagaluraiah. So, having held that there is



due execution of the Will, the First Appellate Judge stated that there are suspicious circumstances and they have not been explained. But as could be seen from the appreciation of the material on record, as the plaintiff was the only daughter who was looking after Angadi Jagaluraiah, she was present at the time of the execution of the Will and as held by the Apex Court, in the decision referred to supra, the presence of beneficiary is itself not sufficient to discard the execution of the Will and so far as not providing any properties to defendants 1 and 2 is concerned, the executor of the Will himself has made a statement in the Will that defendant No.1 after the marriage went away and that he does not know their whereabouts. So, these are the circumstances which made Angadi Jagaluraiah not to give any properties to defendants 1 and 2.

17 Now, so far as the appreciation of the evidence is concerned, the Trial Court and the First Appellate Court concurrently held that the Will has been executed and it has been proved, but the First Appellate Court doubted stating that there are suspicious circumstances and held that the Will is invalid. So far as the authority of this Court is concerned, in



case, if there is any such error or illegality in the reappraisal of the evidence by the First Appellate Court, it has the jurisdiction to scan the evidence afresh and give its findings. The learned counsel for the respondents has placed reliance on the decision of the Apex Court reported in (2004) 5 SCC 762 (Thiagarajan and others vs. Sri.Venugopalaswsamy B.Koil and others) and (1990) 4 SCC 45 (Ramchandra Pandurang Sonar (deceased) through his heirs and legal representatives and others vs. Murlidhar Ramchandra Sonar and others) wherein the Apex Court has held that the reappraisal of the evidence in the second appeal is limited and that the High Court cannot substitute its own finding on reappraisal of the evidence, merely on the ground that another view was possible and when appreciating the evidence having once decided to do so, the High Court ought to examine entire evidence both oral and documentary instead of only a portion thereof.

18. Even accepting the principles laid down by the Apex Court and the decisions referred to supra, the whole evidence led by the parties has been scrutinized and ultimately, the finding of the Trial Court has been upheld and as the First



Appellate Court committed an error in stating that the suspicious circumstances have not been explained, though there is appropriate explanation referred to supra. I am of the opinion that the First Appellate Court committed an error in allowing the appeal and dismissing the suit of the respondents. In that view of the matter, I answer the substantial question of law in negative and proceed to pass the following:

ORDER

The appeal is allowed. The judgment and decree of the First Appellate Court in RA 123/2002 (Old No.28/1999) dated 04-10-2005 is set aside and the judgment and decree of the Trial Court is restored.

Sd/-
Judge

JL