

Jagadish S/O Ninganagouda Patil Alias ... vs Mallanagouda S/O Ninganagouda Patil ... on 27 November, 2024

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NC: 2024:KHC-D:17391
RSA No. 100464 of 2022

IN THE HIGH COURT OF KARNATAKA,
DHARWAD BENCH

DATED THIS THE 27TH DAY OF NOVEMBER, 2024

BEFORE

THE HON'BLE MRS JUSTICE K.S.HEMALEKHA

RSA NO. 100464 OF 2022 (DEC/PAR)

BETWEEN:

1. JAGADISH
S/O. NINGANAGOUDA PATIL @ GOUDRA,
AGED ABOUT 51 YEARS,
OCC. AGRICULTURE,
R/O. GADDANKERI-587002,
TQ AND DIST. BAGALKOTE.
2. SMT. BAYAKKA
W/O. NINGANAGOUDA PATIL @ GOUDRA,
AGED ABOUT 71 YEARS,
OCC. HOUSEHOLD WORK,

R/O. GADDANKERI-587002,

TQ AND DIST. BAGALKOTE.

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(BY SRI. VIJAY S CHINIWAR, ADVOCATE)

... APPELLANTS

AND:

1. MALLANAGOUDA
S/O. NINGANAGOUDA PATIL @ GOUDRA,
AGED ABOUT 56 YEARS,

OCC. AGRICULTURE, R/O.KESANUR-587002,
TQ AND DIST. BAGALKOTE.

NINGANAGOUDA
S/O. SHIVANAGOUDA PATIL @ GOUDRA,
SINCE DEAD BY HIS LRS.,

2. GIRISH
S/O. SHIVANAGOUDA PATIL @ GOUDRA
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AGE: 17 YEARS, OCC. STUDENT,
R/O. GADDANAKERI-587002,
TQ. AND DIST. BAGALKOTE.

3. MALLAMMA
D/O. SHIVANAGOUDA PATIL @ GOUDRA,
AGED ABOUT 29 YEARS,
OCC. HOUSEHOLD WORK,
R/O. GADDANKERI-587002,
TQ AND DIST. BAGALKOTE.
4. MADHUSHRI
D/O. SHIVANAGOUDA PATIL @ GOUDRA,
AGED ABOUT 26 YEARS, OCC. STUDENT,
R/O. GADDANKERI-587002,
TQ AND DIST. BAGALKOTE.
5. SMT. VANASHREE
W/O. SHIVANAGOUDA PATIL @ GOUDRA,
AGED ABOUT 41 YEARS,
OCC. HOUSEHOLD WORK
R/O. GADDANKERI-587002,
TQ AND DIST. BAGALKOTE.
6. KUMARI PREMA
D/O. SHIVANAGOUDA PATIL @ GOUDRA,
AGED ABOUT 23 YEARS,
OCC. STUDENT, R/O. GADDANKERI-587002,
TQ AND DIST. BAGALKOTE.

... RESPONDENTS

THIS RSA IS FILED U/SEC.100 OF CPC., AGAINST THE
JUDGMENT AND DECREE DATED 23.01.2021 PASSED IN
R.A.NO.23/2020 ON THE FILE OF THE PRINCIPAL SENIOR CIVIL
JUDGE AND CHIEF JUDICIAL MAGISTRATE, BAGALKOT, DISMISSING
THE APPEAL AND CONFIRMING THE JUDGMENT AND DECREE DATED
28.02.2020 PASSED IN O.S.NO.68/2010 ON THE FILE OF THE

PRINCIPAL CIVIL JUDGE AND JUDICIAL MAGISTRATE FIRST CLASS,
BAGALKOT, DECREETING THE SUIT FILED FOR DECLARATION,
PARTITION AND SEPARATE POSSESSION.

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

CORAM: THE HON'BLE MRS JUSTICE K.S.HEMALEKHA

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RSA No. 100464 of 2022

ORAL JUDGMENT

1. Assailing the concurrent findings of fact recorded by the Courts below, defendants Nos.5 and 6 are before this Court, in this Regular Second Appeal.
2. For the sake of convenience, the parties are referred to as per their ranks before the trial Court.
3. Suit for declaration to declare that the Will dated 29.12.2005 is void, not binding on the plaintiff and for partition of plaintiff's 1/4th share in the suit schedule properties.
4. Brief facts of the case are that, one Basanagouda was the propositus of the family of plaintiff and defendants. He had a son by name Ninganagouda. Defendant No.6 is the wife of the deceased Ninganagouda, Ninganagouda and defendant No.6 had three children namely Mallanagouda, the plaintiff; Shivanagouda, the father of defendant Nos.1 to 4 and 8 and husband of defendant No.7; & Jagadish- defendant No.5.

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5. Suit properties are the ancestral joint family properties of the plaintiff and defendants. The case of the plaintiff is that, there is no partition effected amongst the family member and the Will in favor of defendants No.1 and 2 purportedly executed by the propositus Basanagouda is created by Defendant No. 5, hence, the suit for declaration that the Will dated 29.12.2005 executed by Basanagouda in favour of defendant Nos.1 and 2 is null and void and for partition of 1/4th share.
6. Defendant Nos.2 to 4 were minors at the time of institution of the suit and were represented by defendant No.5. Defendant No.5 filed written statement, which was adopted by Defendants No.2, 3 and 6. Defendant No.5, the son of Ninganagouda admitted that the suit properties are the ancestral joint family properties of the plaintiff and defendants. According to defendant No.5, Basanagouda died on 05.11.2006 and that Basanagouda bequeathed the suit properties in favour of defendant Nos.1 and 2 through a registered Will dated 29.12.2005, defendants 1 and 2 were NC: 2024:KHC-D:17391 minors and in the care and custody of defendant no 5, by virtue of registered will deed the defendants no 1 and 2 have become absolute owners. Defendant No. 3 attained the age

of majority during the pendency of the suit, filed an application to discharge defendant No.5 from the guardianship and the application was allowed and defendant No.5 has also been discharged from the guardianship of defendant Nos.2 and 4 by appointing defendant No.3 as a minor guardian of defendant No.2 and defendant No.4, and defendant Nos.2 and 4 were permitted to proceed under guardianship of defendant no 3 and not through defendant No 5.

7. Defendant Nos.7 and 8 were impleaded pursuant to I.A. No.19. Defendant No.7 claims to be the second wife of Shivangouda, the second son of Ninganagouda. After the discharge of the guardianship of minor defendants, defendant No.3 filed separate written statement and defendant Nos.2 and 4 adopted the written statement filed NC: 2024:KHC-D:17391 by defendant No.3 admitting the contents of the written statement filed by defendant No.5 as to be true and correct.

8. The trial Court based on the pleadings framed the following issues:

(1) Whether the plaintiff proves that, the suit schedule property is ancestral joint family property?

(2) Whether the plaintiff proves that, the Will dated 29.12.2005 is null and void? (3) Whether the defendant Nos.1 and 2 prove that, they are the owners of suit schedule property on the basis of Will dated 29.12.2005?

(4) Whether the plaintiff proves that, he is entitled for share in the suit schedule property?

(5) What order or decree?

9. In order to substantiate their claim, the plaintiff examined himself as PW1 marked documents at Exs.P1 to P20. On the other marked hand, defendant No.5 examined NC: 2024:KHC-D:17391 himself as DW1, examined three witnesses as DW2 to DW5 marked documents at Ex.D1 to D10; defendant No.7 examined herself as DW5 marked documents at Exs.D11 to D16; defendant No.5 examined himself as DW6 marked documents at Exs.D19 to D23; and during cross examination of PW1, counsel for defendant Nos.2 to 4 exhibited 2 documents at Exs.D.17 and D18.

10. The trial Court based on the pleadings, oral and documentary evidence arrived at a conclusion that:

(i) the plaintiff has proved that the suit schedule property is the ancestral joint family properties;

(ii) the plaintiff has proved that the Will executed on 29.12.2005 is null and void;

(iii) defendant Nos.1 and 2 have failed to prove that they are the owners of the suit property on the basis of the Will dated 29.12.2005.

NC: 2024:KHC-D:17391 By the judgment and decree, the trial Court decreed the suit of the plaintiff holding that the plaintiff is entitled for 1/4th share in the suit schedule properties and declared that the Will dated 29.12.2005 said to have been executed by the deceased Basanagouda S/o. Ninganagouda Patil @ Goudru as null and void.

11. Aggrieved, defendant Nos.5 and 6 preferred appeal before the First Appellate Court. No appeal is preferred by defendant Nos.1 and 2 against whom the Will is held to be null and void. The First Appellate Court observing that the beneficiary of the Will 29.12.2005 under Ex.D3, represented by defendant No.3, who is none other than the elder sister and defendant Nos.2 and 3 having not challenged the judgment against them insofar as the findings recorded on the Will, held that the appeal preferred by defendant Nos.5 and 6 against the findings recorded on the Will was not maintainable.

12. On the aspect of the right of the plaintiff over the suit property, the First Appellate Court affirmed the NC: 2024:KHC-D:17391 judgment and decree of the trial Court and held that the plaintiff is entitled for 1/4th share.

13. Aggrieved, defendant Nos.5 and 6 are before this Court in this Regular Second appeal.

14. Heard the learned counsel appearing for the appellant and perused the material available on record.

15. The Family genealogical tree is culled out as under:

BASANAGOUDA (DEAD) = YAMANAVVA (DEAD) NINGANAGOUDA (DEAD) =
BAYAKKA (D-6) MALLANAGOUDA SHIVANAGOUDA JAGADISH PLTFF) (DEAD)
(D-5) = PARAVVA (DEAD) = VANASHREE (D-7) MALLAMMA MADHUSHREE
NINGANAGOUDA GIRISH PREMA (D-3) (D-4) (D-1) (D-2) (D-8)

16. The relationship between the plaintiff and defendants is not in dispute. Defendants averred that the

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NC: 2024:KHC-D:17391 suit properties are the ancestral joint family properties of Basangouda, during the lifetime of Basangouda there was partition between plaintiff, defendant no 5 and father of defendant no 2 to 4, in partition suit properties fell to the share of Basangouda, and he is the absolute owner of the suit property, apart from mere assertion, there is no clinching evidence to indicate that there was a partition effected between Basanagouda and his three sons and the suit properties being allotted to the share of Basanagouda in a previous partition.

17. The trial Court and the First Appellate court arrived at a conclusion that the suit properties originally belonged to the deceased Basanagouda and the suit properties are the ancestral joint family properties of the plaintiff and defendants. The plaintiff specifically contended that, defendant

No.5 taking undue advantage of the unsoundness mind of the deceased Basanagouda due to his old age, has created a Will in favour of defendant Nos.1 and 2 and the same is not binding on the plaintiff.

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18. Defendant No.5 and the other defendants i.e., beneficiaries as well, took up a contention that they are the absolute owners of the suit properties by virtue of the registered Will dated 29.12.2005. The burden to prove the Will is upon the propounder, defendant Nos.1 and 2 have not been examined themselves, defendant No.5 examined himself and produced the original Will, examined the attesting witnesses and the scribe as DW3 and DW4 who have completely turned hostile to the version of defendant No.5 and categorically deposed that they have not put their signatures as attesting witness, they denied their signatures Ex D 3 .The trial Court while answering issue no 2 and 3 arrived at a conclusion that the Will as required to be proved under Section 63(c) of the Indian Succession Act and Section 68 of the Indian Evidence Act (Section 58 of Bharatiya Sakshya Adhiniyam, 2023), and the due execution of the Will by Basangouda is not proved by defendant No.5 or the propounder - defendant Nos.1 and 2. The relevant aspect which needs to be stated here is that the alleged Will is said to be executed in favour of

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NC: 2024:KHC-D:17391 defendant Nos.1 and 2, who are the beneficiary under the Will, they have not proposed to challenge the findings recorded on the will, on the other hand the judgment and decree of the trial Court was challenged by defendant Nos.5 and 6. The First Appellate Court has rightly appreciated and held that the appeal filed by defendant Nos.5 and 6 against the findings recorded in respect of the Will was not maintainable.

19. The trial Court and the First Appellate Court have rightly arrived at a conclusion that the plaintiff is entitled for 1/4th share in the suit property. The manner in which the Courts below have assessed the entire oral and documentary evidence, this Court is of the considered view that the concurrent findings of fact recorded by the Courts below does not warrant any interference under Section 100 of CPC and there arises no substantial questions of law for consideration in this Regular Second Appeal. Accordingly, this Court pass the following:

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NC: 2024:KHC-D:17391 ORDER

(i) The Regular Second Appeal is hereby dismissed.

(ii) The judgment and decree of the Courts below stands confirmed Pending applications, if any, do not survive for consideration and are accordingly disposed off.

Sd/-

_____ (JUSTICE K.S. HEMALEKHA) VNP / CT:PA