

**IN THE COURT OF XII ADDL. CHIEF JUDGE, CITY CIVIL COURT,
SECUNDERABAD.**

Present: Smt.Shoukath Jahan Siddique
XII Additional Chief Judge
Secunderabad.

WEDNESDAY, THE 24th DAY OF JUNE, 2026

O.S.NO.67 OF 2022

Between:

1. Nimma Suguna W/o Late Nimma Rama Krishna Rao,
Age: 72 years, Occ: Housewife, R/o Flat No.306,
Sri Venkateswara Paradise, Huda Complex, Kothapet,
Hyderabad.
2. Gongal Reddy Lakshmi Sunitha W/o G.Sreenivasa
Reddy D/o Late Nimma Rama Krishna Rao, Age: 52
years, Occ: Employee, R/o Flat No.306, Sri
Venkateswara Paradise, Huda Complex, Kothapet,
Hyderabad.
3. Kilari Kamal W/o K.Srinivas D/o Late Nimma Rama
Krishna Rao, Age: 50 years, Occ: Private Employee,
R/o USA, Permanent R/o D.No.8-19, Venkatadri
Township,Phase-I, Choudharyguda, Ghatkesar
Mandal, Medchal-Malkajgiri District.
4. Garikapati Madhavi W/o Venkateswara Rao D/o Late
Nimma Rama Krishna Rao, Age: 46 years,
Occ: Housewife, R/o Flat No.G-3, Bharat Residency,
4th Line, JKC College Road, Guntur, A.P.

... Plaintiffs

AND

Nimma Narandra Nath S/o Late Nimma Rama Krishna
Rao, Age: 48 years, Occ: Business, R/o H.No.6-6-455/
1/1, Road No.9, Behind CGO Towers, Secunderabad.

... Defendant

This suit is coming before me on 23.04.2026 for final hearing in the presence of **Sri R.Anurag**, Counsel for the plaintiffs, **Sri M.V.Raj Kumar Gabriel**, Counsel for the Defendant and the matter having been heard and stood over for consideration till this day, this Court delivered the following:

J U D G M E N T

The suit is filed by the plaintiffs against the defendant seeking the relief of partition of suit properties into five equal shares.

2. The brief averments of the plaint are that the plaintiffs and defendant are the legal heirs of Late Nimma Rama Krishna Rao. Plaintiff No.1 is wife, plaintiffs 2 to 4 and defendant are daughters and son of Late Nimma Rama Krishna Rao. That Nimma Rama Krishna Rao passed away on 21.08.2016 leaving behind the plaintiffs and defendant as his sole legal heirs. That during his lifetime he acquired various immovable properties in different places i.e. A to F schedule properties. The defendant is in the custody of all the documents which were purchased by Late Nimma Rama Krishna Rao and he is not willing for amicable partition for equal shares between plaintiffs and the defendant. The plaintiffs and defendant are Hindus and they are governed by Mitakshara Law and they constitute a Hindu Joint Family. The being the legal heirs of Late Nimma Rama Krishna Rao, the plaintiffs and defendant are the joint owners and possessors of the immovable suit schedule properties and they are entitled for 1/5th share

each in the suit schedule properties having jointly inherited the same from Late Nimma Rama Krishna Rao, who is husband of plaintiff No.1 and father of plaintiffs 2 to 4 and defendant. That after the demise of Nimma Rama Krishna Rao, the disputes arose between the plaintiffs and defendant in respect of partitioning the suit schedule properties. Since 2014, the plaintiff No.1 on behalf of all the plaintiffs met the defendant and demanded for partitioning the suit schedule properties into five equal shares, so as to give one share to each of the plaintiffs and defendant. However, defendant prevailed upon the plaintiffs and delayed the partitioning of the suit schedule properties and dragged the matter intentionally in a cunning manner to avoid partition. In the month of May 2021, the plaintiffs jointly approached the defendant and requested him to join the plaintiffs in amicably partitioning the suit schedule properties and for distribution of movable property i.e. cash. But the defendant refused to partition the property and highhandedly started asserting that plaintiff cannot claim any share over the suit schedule properties and it is only the defendant who is entitled to the entire suit schedule property being the only son of Late Nimma Rama Krishna Rao. The defendant in order to usurp the rightful share of the plaintiffs is deliberately not coming forward for partitioning the suit schedule properties. Hence, the suit.

3. Defendant filed written statement inter-alia contending that Late Nimma Rama Krishna Rao during his lifetime executed his last Will dated 16.06.2016 bequeathing certain immovable properties to plaintiffs 1 to 4 and defendant. That after his death on 21.08.2016, the said Will has come in force and by operation of the said Will, the beneficiaries i.e. both defendant and plaintiffs became the owners of their respective immovable properties mentioned in the Will. Thereafter, plaintiffs 1 to 4 in conveyance with the defendant have sold their respective share of properties bequeathed under the said Will to the third parties for sale consideration under registered documents. By operation of the said Will, the defendant became the absolute owner and peaceful possessor of all the immovable properties i.e. the suit schedule properties bequeathed in his favour by his father. The plaintiffs having achieved their goal in possession the immovable properties under the above referred Will, now as an afterthought, developed jealousy towards the defendant and started making illegal claim over the suit schedule properties. Therefore, prayed to dismiss the suit.

4. After having gone through the rival contentions of both parties, following issues are framed for trial:-

1. Whether the plaintiffs are entitled for preliminary decree partitioning the suit schedule properties into 5 equal shares by metes and bounds?

2. Whether the plaintiffs are entitled for direction to deposit monthly rental amount being collected by the defendant from schedule A and C properties and all lease amounts collected from the land of schedule B, D and E to the suit account till final judgment of the suit?
3. Whether the Will dated 16.06.2016 is true, valid and binding on the plaintiffs.
4. To what relief?

5. At the time of trial, the plaintiffs examined PW1 and got marked Exs.A1 to A12. On conclusion of plaintiffs evidence, the defendant got examined Dws 1 and 2 and got marked Exs.B1 to B7.

6. After conclusion of trial, arguments of both counsels heard.

7. **ISSUE NO.1:- Whether the plaintiffs are entitled for preliminary decree partitioning the suit schedule properties into 5 equal shares by metes and bounds?**

ISSUE NO.3:- Whether the Will dated 16.06.2016 is true, valid and binding on the plaintiffs.

To prove these issues, the plaintiff No.2 pressed into service her evidence as PW1. PW1 reiterated the plaint averments and she got marked Exs.A1 to A12. Ex.A1 is statement of encumbrance, Ex.A2 is 1-B ROR extract, Ex.A3 is property tax receipts, Ex.A4 is certified copy of sale deed dated 11.06.2002, Ex.A5 is market value certificate, Ex.A6 is family tree, Ex.A7 is Aadhar cards, Ex.A8 is certified copy of Family Members

Certificated, Ex.A9 is certified copy of death certificate and Exs.A10 to A12 are certified copies of sale deeds dated 19.02.2007, 04.01.2007 and 09.01.1987 respectively.

8. To rebut the evidence of plaintiffs and in support of his defence, the defendant examined himself as DW1. DW1 reiterated the averments of his written stated and got marked Ex.B7 which is Will Deed dated 16.06.2016. In the cross-examination of PW1, she confronted certified copies of documents and the same are admitted and marked as Exs.B1 to B6. Exs.B1 to B3 are certified copies of sale deeds bearing document Nos.1597/2017, 1598/2017 and 1599/2017 dated 02.08.2017. Exs.B4 to B6 are certified copies of encumbrance certificates.

9. The defendant also examined DW2. DW2 deposed that he know both the plaintiffs and defendant and they proposed to sell Plot Nos.31, 32 and 33 situated at Abdullapet Village, Rangareddy District and produced the death certificate of Late Nimma Rama Krishna Rao, family members certificate and the Will dated 16.06.2016. Upon being satisfied with the same, the plaintiffs and defendant executed registered GPA bearing document Nos.1337/2017, 1338/2017 and 1339/2017 dated 12.07.2017 respectively in his favour in respect of the above said plots. That acting upon the above referred documents, he being their GPA Holder sold the

above referred plots to third parties under Sale Deeds bearing Nos.1597/2017, 1598/2017 and 1599/2017 dated 02.08.2017 respectively.

10. Before proceeding ahead with the discussion, the following are the facts admitted by both parties:-

a) That plaintiff No.1 is wife of the deceased and other plaintiffs and defendant are children of the deceased.

b) That the deceased died on 21.08.2016.

c) That the suit properties are acquired by the deceased (out of which some are self acquired and some are succeeded).

d) That the deceased fell seriously sick, gradually confined to bed, suffered with Cancer and ultimately died in the year 2016.

e) That after the death of the deceased, all the plaintiffs and defendant together sold some properties to third parties for sale consideration.

f) Some of the amount in joint account of the deceased and plaintiff No.1 were transferred in the name of plaintiff No.1 after the death of the deceased by consent of all the children of the deceased.

11. The above admitted facts give us clear picture about the partition of remaining properties in the name of the deceased. That claim of the plaintiffs is that the suit properties are still lying in the name of the deceased and all the plaintiffs and sole defendant being legal heirs are

entitled for equal share in the suit properties. The plaintiffs filed Ex.A2 i.e. 1-B ROR extract. On perusal of the said document, it reflects the name of the deceased with respect to B-schedule property. The other documents filed by the petitioners with respect to suit properties are Exs.A10 and A11 which are with respect to D-schedule and E-schedule properties. However, it is also observed that all the schedule of properties documents are not filed by the plaintiffs. Nevertheless, if they claim all the suit schedule properties belongs to their father, then as per Hindu Law all the children of the deceased including the wife of the deceased gets equal share in the properties of the deceased.

12. Now the defence taken by the defendant here is that all the suit schedule properties belongs to their father, but however, their father executed a Will Deed in his favour in the year 2016 bequeathing all the suit properties in his name. It is well settled law that if any person takes the defence of execution of the Will in a partition suit, the burden shifts on him to prove the same. Under Section 63C of Indian Succession Act and Section 68 of Indian Evidence Act, a Will must be proved by examining atleast one attesting witness. The Hon'ble Supreme Court in ***Meena Pradhan Vs. Kamla Pradhan in (2023) 9 SCC 734*** have given the detailed guide lines about the proof of Will before the Court. The Hon'ble Supreme Court in the said case held as follows:-

10.1. *The court has to consider two aspects: firstly, that the Will is executed by the testator, and secondly, that it was the last Will executed by him;*

10.2. *It is not required to be proved with mathematical accuracy, but the test of satisfaction of the prudent mind has to be applied.*

10.3. *A Will is required to fulfil all the formalities required under [Section 63](#) of the Succession Act, that is to say:*

(a) The testator shall sign or affix his mark to the Will or it shall be signed by some other person in his presence and by his direction and the said signature or affixation shall show that it was intended to give effect to the writing as a Will;

(b) It is mandatory to get it attested by two or more witnesses, though no particular form of attestation is necessary;

(c) Each of the attesting witnesses must have seen the testator sign or affix his mark to the Will or has seen some other person sign the Will, in the presence and by the direction of the testator, or has received from the testator a personal acknowledgment of such signatures;

(d) Each of the attesting witnesses shall sign the Will in the presence of the testator, however, the presence of all witnesses at the same time is not required;

10.4. *For the purpose of proving the execution of the Will, at least one of the attesting witnesses, who is alive, subject to the process of court, and capable of giving evidence, shall be examined;*

10.5. *The attesting witness should speak not only about the testator's signatures but also that each of the witnesses had signed the will in the presence of the testator;*

10.6. *If one attesting witness can prove the execution of the Will, the examination of other attesting witnesses can be dispensed with;*

10.7. *Where one attesting witness examined to prove the Will fails to prove its due execution, then the other available attesting witness has to be called to supplement his evidence;*

10.8. *Whenever there exists any suspicion as to the execution of the Will, it is the responsibility of the propounder to remove all legitimate suspicions*

before it can be accepted as the testator's last Will. In such cases, the initial onus on the propounder becomes heavier.

10.9. *The test of judicial conscience has been evolved for dealing with those cases where the execution of the Will is surrounded by suspicious circumstances. It requires to consider factors such as awareness of the testator as to the content as well as the consequences, nature and effect of the dispositions in the Will; sound, certain and disposing state of mind and memory of the testator at the time of execution; testator executed the Will while acting on his own free Will;*

10.10. *One who alleges fraud, fabrication, undue influence et cetera has to prove the same. However, even in the absence of such allegations, if there are circumstances giving rise to doubt, then it becomes the duty of the propounder to dispel such suspicious circumstances by giving a cogent and convincing explanation.*

10.11. *Suspicious circumstances must be 'real, germane and valid' and not merely 'the fantasy of the doubting mind' 1. Whether a particular feature would qualify as 'suspicious' would depend on the facts and circumstances of each case. Any circumstance raising suspicion legitimate in nature would qualify as a suspicious circumstance for example, a shaky signature, a feeble mind, an unfair and unjust disposition of property, the propounder himself taking a leading part in the making of the Will under which he receives a substantial benefit, etc.*

13. In short, it is the burden of the person who takes the defence of Will to prove that the testator has signed the Will out of his own free will, that the testator was in sound state of mind, that he was aware of the nature and effect thereof and that the Will was not executed under suspicious circumstances. In the present case, if we see the evidence and pleadings of DW1, he himself stated that his father was suffering with chronic disease of Cancer in later stage of his life and finally died on 21.08.2016. If we see the Will got marked by the defendant under Ex.B7 it is an unregistered Will dated 16.06.2016. Now it is the burden of the defendant to explain the

circumstances arose for the deceased for execution of the Will during his terminal decease i.e. during his last stage. DW1 has not given any reason for such an execution of Will which ousted the rights of his wife and his daughters. It is surprising to note that though the suit is filed in the year 2022, the alleged Will under Ex.B7 is marked only in the year 2025 giving rise to suspicious circumstances. The untenable reason given by the defendant is that the Will was lost and found only in the year 2025 which is a totally unbelievable story, because there is no proof of it.

14. The other important aspect in this case is that as per the above case law it is mandatory for the defendant to examine atleast one attesting witness of the Will who could speak on the execution of the Will by the testator and also would attest his signature on the Will. The defendant has not examined any of the attesting witness. Admittedly, DW2 the other witness examined by the defendant is not the attesting witness of the Will. He is a totally independent witness who is said to be the GPA holder of the plaintiffs and defendant who helped in alienating some of their properties after the death of the deceased. Therefore, this evidence of DW2 cannot be taken as evidence of a attesting witness to the Will. In fact, if we look into the evidence of DW2, he stated that the sale deeds under Exs.B1 to B3 contains recitals regarding the registered GPA in his favour and also regarding the Will Deed. On perusal of the said documents, the Court has

not find any where about the mention of the alleged Will in Exs.B1 to B3. Further in the cross-examination of DW2, he admitted that he has seen the Will dated 16.06.2016 brought to his office in the year 2017. This admission of DW2 does not become equivalent to the evidence of attesting witness who sees the testator executing the Will and also endorses his signature on the Will. The above admission of DW2 only about seeing the Will in the year 2017 cannot be equivalent to the evidence of an attesting witness. Therefore, the fact remains that DW2 is nothing but GPA holder of plaintiffs and defendant sold some their properties to third parties, but he is not attesting witness of the Will under Ex.B7. As such, his evidence has no value as an attesting witness. In fact, GPA holders statement regarding the mention of the Will in the GPA document or Exs.B1 to B3 is contradicted by the document itself. As such, the defendant prima facie did not prove the Will in the manner known to Law. The Hon'ble Supreme Court has consistently held that mere production of a registered Will is not proof of its execution. In the present case, the Will under Ex.B7 itself is not registered, adding to it none of the attesting witnesses to the Will were examined by the defendant.

15. Apart from not proving the Will, there are several suspicious circumstances is surrounded against Ex.B7.

a) Why there is complete of exclusion of wife and daughters in Ex.B7 and why the entire estate is bequeathed to the son/defendant. Though the exclusion of the other legal heirs is not by itself suspicious, but the propounder must satisfactorily explain the things. The only explanation given by the defendant is that he properly looked after his father and that none of the plaintiffs looked after his father during his illness of Cancer. In fact, this admission further lays burden on the defendant that during the last days of the deceased there was force on him for execution of the Will or pressure on him for execution of the Will on the pretext of looking after the deceased during his last stage. The fact admitted by the defendant that the deceased was suffering with Cancer itself lays much burden on the defendant to prove the Will by examining the attesting witnesses. As already discussed above, the defendant not even examined atleast one attesting witness to the Will, which proves that the Will was not voluntarily made eliminating the share of his other daughters and his wife.

16. That apart, DW1 has not even proved the fact even by his oral evidence by deposing that the testator/his father was in sound state of mind while execution of the Will. He did not file any medical documents belonging to his father. DW1 has not even whispered in his evidence that his father was in a condition able to understand the contents of the Will under Ex.B7. He also did not whisper in his evidence that Ex.B7 was

execution out of free will of his father. When there is no proper evidence of DW1 himself, leave aside not taking into consideration the fact that atleast one attesting witness is not examined by DW1, the documentary evidence under Ex.B7 cannot be considered as the Will executed by his father. The clouds of suspicion surrounding the Will is not dispelled by the defendant. Adding to it, the Will is surfaced by the defendant only in the year 2025, although the testator died in the year 2016. This long delay of setting up the Will, adds to the suspicious circumstances requires explanation from the defendant. In fact, in the cross-examination he admitted that he has not taken any steps to bring the alleged Will dated 16.06.2016 into effect after the death of his father. He also admitted that he did not initiate any probate proceedings. These suspicious circumstances leave the defendant with no support of Ex.B7 in his favour.

17. That apart, the pleadings and evidence of DW1 shows that some of the properties were sold jointly by all the plaintiffs and defendant through their GPA holder after the death of their father. These facts concludes that there was no Will by his father regarding all his properties to bequeath to the defendant. Had there been any Will, it would have been shown by the defendant to the plaintiffs in the year 2016 itself when they jointly sold the properties under Exs.B1 to B3. Though the GPA holder/DW2 deposed that the family members certificate and Will was produced before him and he

being GPA holder got satisfied with the same and the plaintiffs and defendant executed registered GPAs vide document No. 1337/2017, 1338/2017, 1339/2017 dated 12.07.2017 in his favour. But neither the defendant nor the GPA holder/DW2 has not filed the above alleged registered GPAs. As such, his alleged satisfaction about the Will does not bind the Court about the proof of Will under Ex.B7. The Will has to be independently proved by the defendant by examining atleast one of the attesting witnesses of the Will. Once again it is reiterated that the defendant has not examined any of the attesting witness to the Will. Hence, in view of the above discussion we hold that since the defendant failed to prove the Will, all the plaintiffs and defendant as per Hindu Law are entitled for their respective shares in the property of the deceased being the legal heirs of the deceased. Accordingly, both the issues are answered holding that plaintiffs are entitled for preliminary decree to partition the suit properties into five equal shares by meets and bounds. Also holding that the alleged Will dated 16.06.2016 under Ex.B7 is not binding on the plaintiffs.

18. ***ISSUE NO.2:- Whether the plaintiffs are entitled for direction to deposit monthly rental amount being collected by the defendant from schedule A and C properties and all lease amounts collected from the land of schedule B, D and E to the suit account till final judgment of the suit?***

Having relevancy to this issue, PW1 deposed that since the death of the deceased in the year 2016 they have been demanding the defendant for partition of the suit properties, but the defendant instead of partitioning the suit properties is enjoying the rents of the suit schedule properties. There is no specific pleadings either in the plaint or in the evidence of PW1 about the particulars of the rent of each suit schedule property, about the date from which the defendant is allegedly enjoying, the correct particulars of the amount of rent of each schedule of property being allegedly received by the defendant. Even in the cross-examination of DW1 it is not elicited by the plaintiffs about all the above said particulars. The only admission elicited by the plaintiff in the cross-examination of DW1 is that he has been receiving Rs.5000/- over A-schedule property. No particulars of the dates were elicited to bring on record about the receiving of said Rs.5000/- by the defendant. Therefore, in the absence of all the above stated particulars, the Court cannot direct the defendant to deposit the lease amounts already alleged to have been collected by him. **However, from the date of judgment in this case the defendant shall deposit the lease amounts collected by him in any of the suit schedule properties till the date of the suit properties finally divided between the parties by a final decree. Accordingly, the issue is answered.**

19. **ISSUE NO.4:-** *To what relief?*

In the result, the suit is decreed, with costs, passing a preliminary decree for dividing the suit schedule properties into five equal shares by allotting 1/5th share to each of the plaintiffs and 1/5th share to the defendant. However, from the date of judgment in this case the defendant shall deposit the lease amounts collected by him in any of the suit schedule properties till the date of the suit properties finally divided between the parties by a final decree. The plaintiffs are at liberty to file the final decree for division of the suit schedule properties by meets and bounds and also for calculation of measne profits for the suit schedule properties, if any.

Typed to my dictation, corrected and pronounced by me in the open Court on this the 24th day of June, 2026.

**XII Addl.Chief Judge,
City Civil Court, Secunderabad.**

Corrections carried out.

APPENDIX OF EVIDENCE
WITNESSES EXAMINED

FOR PLAINTIFFS:

PW1 : G.Reddy Lakshmi Sunitha

FOR DEFENDANT:

DW1 : N.Narendra Nath

DW2 : K.Shivashanker

EXHIBITS MARKED

FOR PLAINTIFFS :

- Ex.A1 : Statement of encumbrance
- Ex.A2 : 1-B ROR extract (Nos.2)
- Ex.A3 : Property tax receipts (Nos.3) along with house tax details
- Ex.A4 : Certified copy of Sale Deed dated 11.06.2002
- Ex.A5 : Market Value Certificated (Nos.4)
- Ex.A6 : Family Tree
- Ex.A7 : Aadhar cards (Nos.3)
- Ex.A8 : Certified copy of Family Member certificate
- Ex.A9 : Certified copy of Death certificate
- Ex.A10 : Certified copy of Sale Deed dated 19.02.2007
- Ex.A11 : Certified copy of Sale Deed dated 04.01.2007
- Ex.A12 : Certified copy of Sale Deed dated 09.01.1987

FOR DEFENDANTS :

- Ex.B1 : Certified copy of Sale Deed No.1597/2017
- Ex.B2 : Certified copy of Sale Deed No.1598/2017
- Ex.B3 : Certified copy of Sale Deed No.1599/2017
- Ex.B4 : Certified copy of statement of encumbrance dated 25.01.2023
- Ex.B5 : Certified copy of statement of encumbrance dated 28.01.2023
- Ex.B6 : Certified copy of statement of encumbrance dated 25.01.2023
- Ex.B7 : Will Deed dated 16.06.2016

**XII Addl.Chief Judge,
City Civil Court, Secunderabad.**

Corrections carried out.