

KACM200005012020



**IN THE COURT OF SENIOR CIVIL JUDGE,
AT KADUR.**

Dated this the 11th day of March – 2026.

Present :SRI.IRFAN

B.A., LL.B.

Senior Civil Judge & JMFC,
Kadur,
Chikkamagaluru District.

O.S.No.164/2020

Plaintiff:-

Smt. S.K. Latha,
W/o K.S. Lokesh,
Aged about 42 years,
House-wife,
R/o Marvanji Circle,
Kadur Town at & Post,
Kadur Taluk,
Chikkamagaluru District.

(By: Sri S.N. Girisha, Advocate)

V/s

Defendants:-

1. Smt. Meenakshamma,
W/o late S.B. Kalleshappa,



Aged about 55 years,
House-wife,
R/o Yallambalse Village at
& Post, Yagati Hobli,
Kadur Taluk.

2. Smt. Saraswathi,
W/o K.G. Krishnamurthy,
Aged about 48 years,
House-wife,
R/o Choultry Street, Near
Sri. Veerabhadreshwara Temple,
Kadur Town at & Post,
Kadur Taluk.
3. Sri. S.K. Jagadeesha,
S/o late S.B. Kalleshappa,
Aged about 46 years,
Advocate,
R/o Choultry Street,
Rehamath Nagara,
Kadur Town at & Post,
Kadur Taluk.
4. Smt. Vasantha,
W/o late S.K. Chandrashekar,
Aged about 44 years,
House-wife,
5. Master: Prajwal,
S/o late S.K. Chandrashekar,
Aged about 16 years,
Student, Minor,



Represented by his guardian
/ mother Smt. Vasantha,
W/o late S.K. Chandrashekar,
Aged about 44 years,
House-wife,

6. Kum: Keerthana,
D/o late S.K. Chandrashekar,
Aged about 14 years,
Student, Minor,
Represented by her guardian
/ mother Smt. Vasantha,
W/o late S.K. Chandrashekar,
Aged about 44 years,
House-wife,

Defendants No.4 to 6 are
R/o Yallambalse Village at
and Post, Yagati Hobli,
Kadur Taluk.

7. Smt. Sunitha,
W/o Marulappa,
Aged about 40 years,
House-wife,
R/o Siddarahalli Village,
Biluvalla Post, Yagati Hobli,
Kadur Taluk.
8. Smt. S.K. Leelavathi,
W/o Manjunatha,
Aged about 34 years,
House-wife,



C/o Boodi Krishnappa,
Near Durgamma Temple,
R/o K. Hosahalli Road,
Kadur Town at & Post,
Kadur Taluk.

(Defendants No.1 & 8 by: Sri. N. Shekhar, Advocate).

(Defendants No.2 and 4 to 7 by: Sri. N.N. Vasanth Kumar,
Advocate)

(Defendant No.3 by: Sri. B.R. Harish Kumar, Advocate).

Date of Institution of the Suit:	03.11.2020.		
Nature of the suit :	Partition.		
Date of commencement of recording of the evidence :	14.09.2021.		
Date on which the Judgment was pronounce :	11.03.2026.		
Total Duration	Years	Months	Days
	05	04	08

Sd/-

(IRFAN)
Senior Civil Judge,
Kadur.



J U D G M E N T

This suit is for the relief of partition and separate possession wherein, the plaintiff has claimed 1/6th share in the suit schedule properties and for such other reliefs.

2. The case of the plaintiff is as follows:-

One S.B. Kalleshappa was the moolapurusha of the joint family of plaintiff and defendants. Said Kalleshappa had two wives namely Smt. Padmavathi and Smt. Meenakshamma (1st defendant). Said Kalleshappa had five children through Smt. Padmavathi namely Smt. Saraswathi (2nd defendant), S.K. Jagadeesha (3rd defendant), late S.K. Chandrashekar (husband of 4th defendant and father of defendants No.5 and 6), Smt. S.K.



Latha (plaintiff) and Smt. Sunitha (7th defendant). Said Kalleshappa had married Smt. Meenakshamma after the demise of Smt. Padmavathi and out of their wedlock, they have a daughter by name S.K. Leelavathi (8th defendant). It is the contention of the plaintiff that suit schedule properties belongs to said Kalleshappa, who demised in the year 2007 and mutations were entered in the name of 3rd defendant alone. It is claimed that till date the plaintiff and defendants are in joint possession and enjoyment over the suit schedule properties and no partition is effected amongst them. Due to dispute amongst the family members, the plaintiff does not wish to continue in the joint family and her demand for partition was refused by the 3rd defendant, which derived the plaintiff



to institute the suit seeking for the relief of partition. Accordingly, sought to decree the suit.

3. In response to the suit summons, the defendants No.1 to 8 appeared through their counsel. The respective counsel for defendants No.1 and 8 and defendant No.3 have filed their separate written-statement. The counsel for defendants No.2 and 4 to 7 have not filed any written statement.

4. The case of the defendants No.1 and 8 is as follows:-

They have not only admitted the relationship, but also the entire suit claim of the plaintiff by seeking for allotment of their specific shares in the suit schedule properties.



5. The case of the defendant No.3 is as follows:-

He has admitted the relationship, but denied the contentions of the plaintiff that the suit schedule properties are the ancestral and joint family properties. It is his specific case that the suit schedule item No.1 to 8 were the self-acquired properties of late Kalleshappa, who had acquired the suit schedule item No.1 property under a registered sale deed dated 01.11.1974, suit schedule item No.2 property under a registered sale deed dated 10.05.1985, suit schedule item No.3 and 4 properties under a registered sale deed dated 06.08.1975, suit schedule item No.5 property under a registered sale deed dated 29.11.2000, suit schedule item No.6 property under a registered sale deed dated



19.05.2005 and suit schedule item No.7 and 8 properties under a registered sale deed dated 20.08.2003. During the life-time of said Kalleshappa he has arranged the marriage ceremony of plaintiff, defendants No.2 and 7 on his own costs by also giving away necessary monetary considerations. The 3rd defendant has arranged the marriage of 8th defendant at his own costs by giving away necessary monetary considerations. The 3rd defendant has also given some golden ornaments to the plaintiff. Initially, the plaintiff was suffering from mental health issues for which the 3rd defendant has provided necessary treatment at NIMHANS Hospital, Bengaluru. The suit schedule properties were the self acquired properties of late Kalleshappa, who was in exclusive possession and enjoyment



over the same as its true owner. During his life-time, since he had intended to dispose of the suit schedule properties, he had executed a Will dated 12.12.2016 in favour of 3rd defendant and late S.K. Chandrashekar bequeathing the suit schedule properties. Said Kalleshappa demised on 13.11.2007 and it is claimed that the 3rd defendant has improved the suit schedule properties by investing about a sum of Rs.45,00,000/- by raising Bank loans and Hand-loans. Neither the plaintiff nor defendants No.1, 2, 7 and 8 got any right over the suit schedule properties. The plaintiff despite knowing the above facts has filed this false suit for unlawful gain. It is also contended that the instant suit is bad for non-joinder of necessary parties and also for non-inclusion of joint family



house, which is in the occupation of 1st defendant. On these grounds, sought to dismiss the suit.

After the disclosure regarding the existence of alleged Will dated 12.12.2006 by the 3rd defendant in his written-statement, the plaintiff got amended the plaint by inserting additional paras No.4(a) and 4(b), wherein, she has taken a contention that the suit schedule properties are the joint family properties purchased by late S.B. Kalleshappa from joint family funds and it is claimed that said S.B. Kalleshappa had no exclusive right to execute any will in favour of anybody. The katha of the suit schedule properties were mutated in the name of 3rd defendant vide MR No.15/2008-09 as partition in collusion with the revenue authorities. The



alleged will dated 10.10.2006 is a created document by the 3rd defendant in order to grab the suit schedule properties. The 3rd defendant has forged the signature of S.B. Kalleshappa in the disputed will. Said Kalleshappa was not in a position to execute the will due to his ill-health. The 3rd defendant by playing fraud has created the disputed will and same has got no value in the eyes of law.

6. On the basis of the aforesaid pleadings of the parties, the following issues and additional issues have been framed;

ISSUES

1. Whether the plaintiff proves that suit schedule properties are the joint family property of plaintiff and defendants?



2. Whether the defendants prove that suit is bad for non-joinder of necessary party?
3. Whether the plaintiff is entitled for the relief as sought for?
4. What order or decree?

ADDITIONAL ISSUES

1. Whether defendant No.3 proves that the suit schedule properties are self acquired properties of Late Kalleshappa?
2. Whether defendant No.3 proves that the said Kalleshappa died testate bequeathing the suit schedule properties in his favour along with Chandrashekara under a will dated 12/12/2006?



3. Whether defendant No.3 dispels all the doubtful circumstances surrounding the due execution of the disputed will in question?

7. To establish his case, the plaintiff got examined himself as PW-1 and got marked documents as Ex.P-1 to 11 and closed her side. On the contrary, the 3rd defendant got examined himself as DW-1 and examined two witnesses as DW-2 and 3 and got marked a document as Ex.D-1 and closed his side.

8. Heard the learned counsel for plaintiff and defendant No.3. The counsel for defendants No.1 and 8 and counsel for 2 and 4 to 7 have not tender arguments. Perused the case records. The learned counsel for the plaintiff filed the following citations:



- (1) 2008 (3) KCCR 1484 between Sri. J.T. Surappa and another V/s Sri. Satchidhananadendra Saraswathi Swamiji Public Charitable Trust and others.
- (2) 2010 (5) SCC 274 between S.R. Srinivasa and others V/s S. Padmavathamma.
- (3) AIR 1959 (5) SC 443 between H. Venkatachala Iyengar V/s B.N. Thimmajamma and others.
- (4) 1977 (1) SCC 369 between Smt. Jaswant Kaur V/s Smt. Amrit Kaur and others.
- (5) 2007 (2) KCCR 1055 (DB) between S.B. Ittigi and another V/s S.V. Sulochana and others.
- (6) 2008 (4) SCC 530 between Thiruvengada Pillai V/s Navaneethammal and anothers.

Above rulings are meticulously referred to and principles are applied wherever found appropriate.



9. Answers to the above Issues are as under:

- Issue No.1 : In the Negative;
Issue No.2 : In the Negative;
Issue No.3 : Partly in the Affirmative;
Addl. Issue No.1 : In the Affirmative;
Addl. Issue No.2 : In the Negative;
Addl. Issue No.3 : In the Negative;
Issue No.4 : As per final order,
for the following;

REASONS

10. **Issue No.1 and Additional Issue**

No.1:- These issues are taken together for common discussion to avoid repetition of facts.

This suit is for the relief of partition and separate possession, wherein, the plaintiff has sought for allotment of 1/6th share in the suit schedule properties. Having regard to the rival contentions of the parties, it is an undisputed



fact that one Kalleshappa was the head of the family and he had two wives namely Smt. Padmavathi and Smt. Meenakshamma, the 1st defendant. Said Kalleshappa had five children through Smt. Padmavathi namely Smt. Saraswathi (2nd defendant), S.K. Jagadeesha (3rd defendant), late S.K. Chandrashekar (husband of 4th defendant and father of defendants No.5 and 6), Smt. S.K. Latha (plaintiff) and Smt. Sunitha (7th defendant). Said Kalleshappa had married Smt. Meenakshamma after the demise of Smt. Padmavathi and out of their wedlock, they have a daughter by name S.K. Leelavathi (8th defendant). In the plaint, it was initially contended that the suit schedule properties originally belongs to S.B. Kalleshappa, but subsequently by way of amendment, it is also



contended that the suit schedule properties are purchased by late S.B. Kalleshappa out of joint family funds. On the other hand, it is the specific case of the 3rd defendant that the suit schedule properties are the self-acquired properties of late S.B. Kalleshappa. Under the rival contentions, it is first necessary to determine whether the suit schedule properties are the self acquired properties of late S.B. Kalleshappa or whether the said properties were acquired by late S.B. Kalleshappa out of joint family funds. In this aspect, it is necessary to consider the oral evidence of both plaintiff and 3rd defendant who deposed before the court as PW-1 and DW-1 respectively. There is a clear admission from the plaintiff as well as the 3rd defendant that there was no ancestral or joint



family property available with late S.B. Kalleshappa and all the acquisition of suit schedule properties were made by late S.B. Kalleshappa out of his own earnings. In the written-statement, the 3rd defendant has given reference of several sale deeds to establish that all the suit schedule properties are the self acquired properties of late S.B. Kalleshappa, but he has not bothered to produce those sale deeds in evidence for the inspection of the court. However, whatever the case may be, but the plaintiff has given a specific admission to the fact that all the suit schedule properties are the self-acquired properties of late S.B. Kalleshappa. Therefore, there is no impediment to hold suit schedule properties as the self-acquired properties of late S.B. Kalleshappa.



Accordingly, **the issue No.1 answered in the Negative and additional issue No.1 answered in the Affirmative.**

11. **Additional Issues No.2 and 3:-** These issues are taken together for common discussion to avoid repetition of facts.

Under the findings of forgoing issues, it is stood established that the suit schedule properties are the self-acquired properties of late S.B. Kalleshappa. The 3rd defendant in his written-statement has taken a specific contention that said late S.B. Kalleshappa during his life-time had executed a will dated 12.12.2006 bequeathing the suit schedule properties in favour of 3rd defendant and late S.K. Chandrashekar. It is his specific case that said S.B. Kalleshappa voluntarily and out of his



own free will and volition had bequeathed the suit schedule properties. On the other hand, the plaintiff by amending the plaint had taken a contention that late S.B. Kalleshappa was not in a sound state of mind to make any dispossession and the alleged will is a concocted document created by the 3rd defendant in order to deceive the plaintiff and other family members.

12. With the backdrop of aforesaid rival aspects, since the 3rd defendant is resting his claim on the basis of alleged will dated 12.12.2006, being the propounder he is bound to prove the due execution of the said will as well as dispel all the doubtful circumstances surrounding the due execution of the will. At this stage it is necessary to cull-out the citations



relied upon by the learned counsel for the plaintiff on the subject of proof of will, which are very much relevant to the case on hand and same are re-produced as hereunder:-

(1) 2008 (3) KCCR 1484 between Sri. J.T. Surappa and another V/s Sri. Satchidhananadendra Saraswathi Swamiji Public Charitable Trust and others.

55. The third rule is the Will requires attestation by two or more witnesses. Attestation means the persons, who have affixed their signature as attesting witness, saw the executant, (in the case of a Will a testator), sign or affix his mark to the instrument. If for any reason they are not present at the time of the testator affixing his signature to the instrument, then it is obligatory that they should receive from the testator a personal acknowledgment of his signature or mark. It is either after seeing the testator sign the document or after



obtaining the personal acknowledgment of his signature, they shall sign the Will in the presence of the testator. Therefore, not only the attesting witness should sign the Will in the presence of the testator, but they should also see with their eyes the testator signing the instrument or if they are not present at the time of signing the instrument, the testator should acknowledge to them his signature or mark to the said instrument.

56. Therefore, before a Will is said to have been duly executed, it has to pass through the dual test prescribed under Section 68 of the Evidence Act as well as Section 63 of the Act. Section 68 makes it clear that the said document shall not be used as evidence until at least one attesting witness has been called for the purpose of proving its execution, if there be an attesting witness alive and subject to the process of the Court and capable of giving



evidence. Before the execution of the Will is held to be proved, examination of one attesting witness at least is a must, but that by itself will not prove the due execution of the Will. The said Will also should satisfy the other requirements prescribed under Section 63 of the Act. In so far as attestation is concerned, sub-rule (c) of Section 63 explains, what attestation means which is in pari materia with the definition of the word "attested" found in Section 3 of the Transfer of Property Act. Before a document is said to be duly attested, evidence has to be adduced to the effect that two of the attesting witnesses 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 in order to receive from the testator a personal acknowledgment of his signature or mark or the signature of such other person. It is thereafter each of the



attesting witnesses shall sign the Will in the presence of the testator.

57. The aforesaid provision makes it clear for due execution of a Will it is not necessary that both the attesting witnesses be present at the same time. But, the question is if both the attesting witnesses are not present at the same time and has not seen the testator affix his signature or mark to the Will how is attestation proved? If only one attesting witness was present at the time the testator affixing his signature to the Will, it is obvious that the other attesting witness has not seen with his eyes the affixing of signature by the testator to the Will and also the other attesting witness signing the Will in the presence of the testator. The requirement of law is, each of the attesting witnesses shall sign the Will in the presence of the testator. In such event, in order to prove due attestation, it is necessary to examine both the attesting



witnesses. Though the requirement of Section 68 of the Evidence Act is satisfied by examining only one attesting witness, in such circumstances the requirement of due attestation as contemplated under Section 63(c) of the Act is not satisfied. Non-examination of the other attesting witness in such circumstances would be fatal. If the other attesting witness is not available, the propounder is not helpless. To prove due attestation under Section 63(c) it is open to the propounder of the Will to examine a person who was present at the time of attestation, who saw the testator acknowledging to such attesting witness who was not present at the time of the testator affixing his signature to the Will, acknowledging his signature or mark and then the attesting witness signing the Will in the presence of the testator. That would meet the requirement of Clause (c) of Section 63. If an attesting witness is not present when the testator affixed his



signature and if the testator does not acknowledge his signature to the said attesting witness, before the attesting witness affixes his signature to the Will, then this requirement of law is not fulfilled and the Will is not proved. In those circumstances, if the other attesting witness is not examined or other evidence is not adduced regarding due attestation, the requirement of Section 63(c) is not complied with, Will is not proved.

(2) 2010 (5) SCC 274 between S.R. Srinivasa and others V/s S. Padmavathamma.

63. This Court in Iyengar case (supra) had clearly held that cases in which the execution of the Will is surrounded by suspicious circumstances, it may raise a doubt as to whether the testator was acting of his own free will. In such circumstances it is a part of the initial onus of the propounder to remove all reasonable doubts



in the matter. The presence of suspicious circumstances makes initial onus heavier. Such suspicion cannot be removed by the mere assertion of the propounder that the Will bears signature of the testator or that the testator was in a sound and disposing state of mind at the time when the Will was made.

64. In our opinion, the High Court failed to exercise proper care and caution by not thoroughly examining the evidence led by the party, especially when it was not in agreement with the reasons recorded by the First Appellate Court.

65. In the case of Jaswant Kaur V/s Amrit Kaur, (1977) 1 SCC 369 this Court reiterated the principles governing the proof of a Will which is alleged to be surrounded by suspicious circumstances. Justice Chandrachud speaking for the Court observed as follows:



"8. The defendant who is the principal legatee and for all practical purposes the sole legatee under the will, is also the propounder of the will. It is he who set up the will in answer to the plaintiff's claim in the suit for a one-half share in her husband's estate. Leaving aside the rules as to the burden of proof which are peculiar to the proof of testamentary instruments, the normal rule which governs any legal proceeding is that the burden of proving a fact in issue lies on him who asserts it, not on him who denies it. In other words, the burden lies on the party which would fail in the suit if no evidence were led on the fact alleged by him. Accordingly, the defendant ought to have led satisfactory evidence to prove the due execution of the will by his grandfather Sardar Gobinder Singh.

9. In cases where the execution of a will is shrouded in suspicion, its proof ceases



to be a simple lis between the plaintiff and the defendant. What, generally, is an adversary proceeding becomes in such cases a matter of the court's conscience and then the true question which arises for consideration is whether the evidence led by the propounder of the will is such as to satisfy the conscience of the court that the will was duly executed by the testator. It is impossible to reach such satisfaction unless the party which sets up the will offers a cogent and convincing explanation of the suspicious circumstances surrounding the making of the will."

(3) AIR 1959 (5) SC 443 between H. Venkatachala Iyengar V/s B.N. Thimmajamma and others.

18. What is the true legal position in the matter of proof of wills ? It is well-known that the proof of wills presents a recurring topic for decision in courts and



there are a large number of judicial pronouncements on the subject. The party propounding a will or otherwise making a claim under a will is no doubt seeking to prove a document and, in deciding how it is to be proved, we must inevitably refer to the statutory provisions which govern the proof of documents. Section 67 and 68, Evidence Act are relevant for this purpose. Under Section 67, if a document is alleged to be signed by any person, the signature of the said person must be proved to be in his handwriting, and for proving such a handwriting under SS 45 and 47 of the Act the opinions of experts and of persons acquainted with the handwriting of the person concerned are made relevant. Section 68 deals with the proof of the execution of the document required by law to be attested; and it provides that such a document shall not be used as evidence until one attesting witness at least has been called for the purpose of proving its



execution. These provisions prescribe the requirements and the nature of proof which must be satisfied by the party who relies on a document in a court of law. Similarly, Ss 59 and 63 of the India Succession Act are also relevant. Section 59 provides that every person of sound mind, not being a minor, may dispose of his property by will and the three illustrations to this section indicate what is meant by the expression " a person of sound mind" in the context. Section 63 requires that 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 that the signature or mark shall be so made that it shall appear that it was intended thereby to give effect to the writing as a will. This section also requires that the will shall be attested by two or more witnesses as prescribed. Thus the question as to whether the will set up by the propounder is proved to be the last will of the testator has to be decided in the light



of these provisions. Has the testator signed the will ? Did he understand the nature and effect of the dispositions in the will ? Did he put his signature to the will knowing what it contained ? Stated broadly it is the decision of these questions which determines the nature of the finding on the question of the proof of wills. It would prima facie be true to say that the will has to be proved like any other document except as to the special requirements of attestation prescribed by Section 63 of the Indian Succession Act. As in the case of proof of other documents so in the case of proof of wills it would be idle to expect proof with mathematical certainty. The test to be applied would be the usual test of the satisfaction of the, prudent mind in such matters.

19. However, there is one important feature which distinguishes wills from other documents. Unlike other documents the will speaks from the death of the testator, and



so, when it is propounded or produced before a court, the testator who has already departed the world cannot say whether it is his will or not ; and this aspect naturally introduces an element of solemnity in the decision of the question as to whether the document propounded is proved to be the last will and testament of the departed testator. Even so, in dealing with the proof of wills the court will start on the same enquiry as in the case of the proof of documents. The propounder would be called upon to show by satisfactory evidence that the will was signed by the testator, that the testator at the relevant time was in a sound and disposing state of mind, that he understood the nature and effect of the dispositions and put his signature to the document of his own free will. Ordinarily when the evidence adduced in support of the will is disinterested, satisfactory and sufficient to prove the sound and disposing state of the testator's mind and his



signature as required by law, Courts would be justified in making a finding in favour of the propounder. In other words, the onus on the propounder can be taken to be discharged on proof of the essential facts just indicated.

20. There may, however, be cases in which the execution of the will may be surrounded by suspicious circumstances. The alleged signature of the testator may be very shaky and doubtful and evidence in support of the propounder's case that the signature in question is the signature of the testator may not remove the doubt created by the appearance of the signature; the condition of the testator's mind may appear to be very feeble and debilitated; and evidence adduced may not succeed in removing the legitimate doubt as to the mental capacity of the testator; the dispositions made in the will may appear to be unnatural, improbable or unfair in the



light of relevant circumstances; or, the will may otherwise indicate that the said dispositions may not be the result of the testator's free will and mind. In such cases the court would naturally expect that all legitimate suspicions should be completely removed before the document is accepted as the last will of the testator. The presence of such suspicious circumstances naturally tends to make the initial onus very heavy; and, unless it is satisfactorily discharged, courts would be reluctant to treat the document as the last will of the testator. It is true that, if a caveat is filed alleging the exercise of undue influence, fraud or coercion in respect of the execution of the will propounded, such pleas may have to be proved by the caveators; but, even without such pleas circumstances may raise a doubt as to whether the testator was acting of his own free will in executing the will, and in such circumstances, it would be a



part of the initial onus to remove any such legitimate doubts in the matter.

21. Apart from the suspicious circumstances to which we have just referred in some cases the wills propounded disclose another infirmity. Propounders themselves take a prominent part in the execution of the wills which confer on them substantial benefits. If it is shown that the propounder has taken a prominent part in the execution of the will and has received substantial benefit under it, that itself is generally treated as a suspicious circumstance attending the execution of the will and the propounder is required to remove the said suspicion by clear and satisfactory evidence. It is in connection with wills that present such suspicious circumstances that decisions of English courts often mention the test of the satisfaction of judicial conscience. It may be that the reference to judicial conscience in



this connection is a heritage from similar observations made by ecclesiastical courts in England when they exercised jurisdiction with reference to wills; but any objection to the use of the word 'conscience' in this context would, in our opinion, be purely technical and academic, if not pedantic. The test merely emphasizes that, in determining the question as to whether an instrument produced before the court is the last will of the testator, the court is deciding a solemn question and it must be fully satisfied that it had been validly executed by the testator who is no longer alive.

(4) 1977 (1) SCC 369 between Smt. Jaswant Kaur V/s Smt. Amrit Kaur and others.

16. The will has been typed out on both sides of a single foolscap paper and is obviously drafted by a lawyer. No evidence at all has been led as to who drafted the will and who typed it out. The will uses some trite legal jargon but it does not show where



it was executed and contains no description whatsoever of any of the extensive properties bequeathed to the defendant.

17. The will has been attested by two persons called Dinshaw R.M. Framjee and Pali Ram. It is intriguing that a person in the position of Sardar Gobinder Singh should choose these two strangers as attesting witnesses to a very solemn and important document. Dinshaw Framjee was a trader in Simla and Pali Ram was his servant. Framjee has stated in his evidence that he did not remember where Gobinder Singh used to stay in Simla, that he did not know for how long he was staying in Simla before the attestation of the will, that he was unable to state whether he had met Gobinder Singh after the attestation of the will and that he was unable to give the approximate time of the day when the will was attested--forenoon, afternoon or evening. Framjee was sure about one thing



only, that he had not attested the will at night. He attempted to say that he was on friendly terms with the testator's family but he was unable to give even the approximate ages of the testator's son and daughter. Under the stress of cross-examination, he had to admit eventually that he knew nothing about the testator's family or family affairs.

Under the light of aforesaid rulings, the burden is heavily upon the propounder I.e, 3rd defendant to establish the due execution of the will and also to dispel all the doubtful circumstances surrounding its due execution. As per his version, said disputed will was executed on 12.12.2006 and said S.B. Kalleshappa was demised on 13.11.2007, which is just after lapse of about 11 months. At this stage, it is very much relevant to refer the oral



evidence of 3rd defendant as DW-1, wherein, he has given an un-eqo-vocal admission to the fact that after the demise of said S.B. Kalleshappa, the revenue entries with respect to the suit schedule properties have been mutated on the basis of inheritance in the exclusive name of 3rd defendant with the consent of all his family members including the plaintiff and other defendants. Upon a reference to the RTC extract produced by the plaintiff under Ex.P-1 to 8 with respect to suit schedule item No.1 to 8 properties, it go to establish the fact that the revenue entries are existing in the name of 3rd defendant only, which were admittedly mutated on the basis of inheritance. Above aspect, makes it clear that no mutations were taken place in the name of 3rd defendant or late Chandrashekar



on the basis of disputed will dated 12.12.2006. It is just to note that the instant suit was filed on 03.11.2020 and upon issuance of suit summons, the 3rd defendant marked his appearance before this court on 21.01.2021 and he has filed his written-statement on 19.10.2021 i.e., almost after about 10 months from the date of his appearance before the court. Under para No.12 of his written-statement, for the first time the 3rd defendant disclosed about the existence of a will dated 12.12.2006, but the same was not produced as on the said date, but an undertaking was given to the effect that the said 'Will' is going to be produced in the due course of time. It is also necessary to mention here itself that neither in the written-statement of 3rd defendant nor in his chief-examination as DW-1,



the 3rd defendant has disclosed how he has acquired the knowledge about the existence of said will in question. Both the written-statement as well chief-examination of 3rd defendant are very much silent about the said aspect. Though nothing has been disclosed regarding the custody of the disputed will in question as stated above, but during the course of cross-examination, the 3rd defendant as DW-1 for the first time discloses that he came to know about the said will through his uncle by name Basavarajappa only in the month of November – December 2020 by stating that the said disputed will was with said Basavarajappa, who has settled in Bengaluru for his avocation about 15 - 20 years ago.



13. With the backdrop of aforesaid aspects, it is just to consider the status of 3rd defendant. It has come in the evidence that the 3rd defendant is a practicing Advocate. His evidence also disclosed that his father S.B. Kalleshappa was staying along with him at the time of his death and also that he stood with 3rd defendant only throughout his life. This aspect emerges a fact that the said S.B. Kalleshappa stayed all along with the 3rd defendant before and at the time of his death. Said S.B. Kalleshappa died in the year 2007. As it is disclosed in the evidence of 3rd defendant that he acquired the knowledge regarding the existence of disputed will only in the year 2020 that too through his uncle Sri. Basavarajappa. There is a huge gap of about 13 years and in the natural course of event even if



it is believed that his uncle Sri. Basavarajappa was possessing the disputed will in question, could anybody remain dormant for such a huge period of time without informing about the availability of the disputed will on hand. The natural course would be a immediate disclosure about the existence of disputed will either by late S.B. Kalleshappa at the time of his death or by Sri. Basavarajappa soon thereafter within a reasonable and acceptable period of time. The reasons why the existence of said disputed will which was available with Sri. Basavarajappa has not been disclosed at the earliest point of time and why the same has been disclosed after the filing of suit is an aspect, which could have been satisfactorily explained by Sri. Basavarajappa. The 3rd defendant has not at all opted to



examine said Basavarajappa, which is in-fact found to be fatal to the case of the 3rd defendant as far as the disputed will is concerned. The best evidence should have been produced by the 3rd defendant in order to dispel the doubtful circumstances referred above and the non-discourse of existence of the disputed will for such a long period of 13 years from the date of death of S.B. Kalleshappa creates a serious doubt regarding the genuineness of the said Will in question. Merely disclosing in the cross-examination that the 3rd defendant acquired the knowledge about the disputed will only in the year 2020 without disclosing anything either in the written-statement or in his chief-examination also leads to draw an adverse inference against the 3rd defendant.



14. Now, moving to the documentary evidence about the disputed Will, the 3rd defendant presented the same before this court on 22.08.2022 and marked it as Ex.D-1 through one of the attesting witnesses to the disputed will by name Sri. Nagaraj who deposed before this court as DW-2. As already noted, the said S.B. Kalleshappa stated to have executed the said will on 12.12.2006 and reported to have been died on 13.11.2007. If the recitals under the will are taken into consideration, it is noticed that the age of S.B. Kalleshappa was shown as 58 years as on the date of execution of the disputed will, which pre-supposes that said S.B. Kalleshappa died somewhere at the age of around 59 years. In the plaint under amendment to para No.4(a), it is contended that



said S.B. Kalleshappa was not in a position to execute the will due to his ill-health. Though such a contention is taken, but the plaintiff has not produced either oral or documentary evidence in order to accept her contentions that said S.B. Kalleshappa was not in a sound disposing state of mind due to his ill-health. Moreso, in the course of cross-examination, the 3rd defendant disclosed that said S.B. Kalleshappa except having Diabetes mellitus had no other serious health issues at the relevant point of time. This aspect pre-supposes that said S.B. Kalleshappa had no serious health issues.

15. The question of determination of sound disposing state of mind is nothing, but the testators understanding about the happening of



events. The execution of the will is not only physical act, but also a mental act. The testator must therefore, be possessed of sound and disposing mind and memory. A sound disposing mind implies soundness of mind, memory and understanding that implies sufficient capacity to deal with and understanding disposition of property in his will. These aspects are required to be established by the 3rd defendant through attesting witness who deposed before this court as DW-2. Before considering the oral evidence of DW-2 with regard to the due execution of the will, it is found essential to cull-out the recitals made under the disputed will in order of better appreciation. The recitals are re-produced as hereunder:-



ವಿಲ್ ಯಾನೇ ಮರಣ ಶಾಸನ ಪತ್ರ

ಸನ್ ಎರಡು ಸಾವಿರದ ಆರನೇ ಇಸವಿ ಡಿಸೆಂಬರ್ ಮಾಹೇ
ತಾರೀಖು ಹನ್ನೆರಡರಲ್ಲೂ (12.12.2006).

ಚಿಕ್ಕಮಗಳೂರು ಜಿಲ್ಲೆ, ಕಡೂರು ತಾಲ್ಲೂಕು, ಯಗಟಿ
ಹೋಬಳಿ, ಯಳ್ಳಂಬಳಸೆ ಗ್ರಾಮದಲ್ಲಿ ವಾಸವಾಗಿರುವ ದಿವಂಗತ
ಸಿಂಗಟಗೆರೆ ಬೀರಪ್ಪರವರ ಮಗ ಸುಮಾರು 58 ವರ್ಷದ ಎಸ್.ಬಿ.
ಕಲ್ಲೇಶಪ್ಪ ಆದ ನಾನು ಬರೆಸಿದ ವಿಲ್ ಯಾನೇ ಮರಣ ಶಾಸನ ಪತ್ರ
ಏನೆಂದರೇ,

ಆದಾಗಿ, ನೀವುಗಳು ನನ್ನ ಮಕ್ಕಳಾಗಿದ್ದು, ನನ್ನ ಆಗು
ಹೋಗುಗಳನ್ನು ನೀವೇ ನೋಡಿಕೊಳ್ಳುತ್ತಿದ್ದು, ನಿಮ್ಮ ಮೇಲಿನ ನಂಬಿಕೆ
ಪ್ರೀತಿ ವಿಶ್ವಾಸದಿಂದಲೂ ಹಾಗೂ ನನ್ನ ಮರಣ ನಂತರ ನನ್ನ
ಸ್ವಯಾರ್ಜಿತ ಆಸ್ತಿಗಳ ವಿಚಾರದಲ್ಲಿ ಹಾಗೂ ನನ್ನ
ಸ್ವಾಧೀನಾನುಭವದಲ್ಲಿರುವ ಸ್ವತ್ತುಗಳ ವಿಚಾರವಾಗಿ ಯಾವ ರೀತಿಯ
ತಂಟೆ ತಕರಾರುಗಳು ಬರಬಾರದೆಂಬ ಉದ್ದೇಶದಿಂದ ಚಿಕ್ಕಮಗಳೂರು
ಜಿಲ್ಲೆ, ಕಡೂರು ತಾಲ್ಲೂಕು, ಯಗಟಿ ಹೋಬಳಿ, ಯಳ್ಳಂಬಳಸೆ
ಗ್ರಾಮದಲ್ಲಿ ವಾಸವಾಗಿರುವ ಸುಮಾರು 34 ವರ್ಷದ ಎಸ್.ಕೆ.
ಜಗದೀಶ ಬಿನ್ ಎಸ್.ಬಿ. ಕಲ್ಲೇಶಪ್ಪ ಹಾಗೂ ಸುಮಾರು 32 ವರ್ಷದ
ಎಸ್.ಕೆ. ಚಂದ್ರಶೇಖರ ಬಿನ್ ಎಸ್.ಬಿ. ಕಲ್ಲೇಶಪ್ಪ ಆದ ನಿಮಗೆ ಈ
ದಿವಸ ವಿಲ್ ಯಾನೇ ಮರಣ ಶಾಸನ ಪತ್ರವನ್ನು ಬರೆಯಿಸಿರುತ್ತೇನೆ.



ಈ ವಿಲ್ ಯಾನೆ ಮರಣ ಶಾಸನ ಪತ್ರದಲ್ಲಿ ನಮೂದಿಸಿರುವ ಸ್ವತ್ತುಗಳನ್ನು ನಾನು ನನ್ನ ಸ್ವಂತ ದುಡಿಮೆಯಿಂದ ಅಂದರೆ ನಾನು ಸರ್ಕಾರಿ ಮೀನುಗಾರಿಕೆ ಇಲಾಖೆ ವ್ಯಾಪ್ತಿಗೊಳಪಟ್ಟ ಕೆರೆಗಳನ್ನು ಮೀನು ಪಾಶುವಾರು : ಮೀನು ಕೃಷಿ ಸಲುವಾಗಿ ಸಾರ್ವಜನಿಕ ಹರಾಜಿನಲ್ಲಿ ಪಡೆದು ಮೀನು ಸಾಗಣೆಗೆ ಮಾಡಿ ಅದರಿಂದ ಬಂದಂತಹ ಆದಾಯ ಮತ್ತು ನಾನು ತೆಂಗಿನಕಾಯಿ ವ್ಯಾಪಾರ ಮಾಡುತ್ತಿದ್ದು ಇದರಿಂದ ಬಂದಂತಹ ಆದಾಯದಿಂದಲೂ ಷೆಡ್ಯೂಲ್ ಸ್ವತ್ತುಗಳನ್ನು ಶುದ್ಧ ಕ್ರಯಕ್ಕೆ ಕೊಂಡುಕೊಂಡಿದ್ದು, ನನ್ನ ಸ್ವಯಾರ್ಜಿತ ಸ್ವತ್ತುಗಳಾಗಿರುತ್ತವೆ.

ನನಗೆ ಒಟ್ಟು ಆರು ಜನ ಮಕ್ಕಳಿದ್ದು, ಇವರಲ್ಲಿ ನಾಲ್ಕು ಜನ ಹೆಣ್ಣು ಮಕ್ಕಳು ಹಾಗೂ ಎರಡು ಜನ ಗಂಡು ಮಕ್ಕಳಿದ್ದು, ಇದರಲ್ಲಿ ಮೂರು ಜನ ಹೆಣ್ಣು ಮಕ್ಕಳನ್ನು ಅನುಕೂಲಸ್ಥರ ಮನೆಗೆ ಕೊಟ್ಟು ಮದುವೆ ಮಾಡಿದ್ದು, ಮದುವೆ ಸಂದರ್ಭದಲ್ಲಿ ಕೊಡಬೇಕಾದ ಒಡವೆ ವಸ್ತುಗಳನ್ನು ಕೊಟ್ಟು ಮದುವೆ ಮಾಡಿದ್ದೇನೆ. ಇನ್ನೂ ಉಳಿದ ಎಸ್.ಕೆ. ಲೀಲಾವತಿ ಇವಳ ಮದುವೆ ಮಾಡುವ ಜವಾಬ್ದಾರಿ ನನ್ನ ಎರಡು ಜನ ಗಂಡು ಮಕ್ಕಳಿಗೆ ಸೇರಿದ್ದಾಗಿದ್ದು, ಈಗ ನನಗೆ ವಯಸ್ಸಾಗುತ್ತಾ ಬಂದಿದ್ದು, ನನ್ನ ಆರೋಗ್ಯ ಸರಿಯಾಗಿ ಇರುವಾಗಲೇ ನನ್ನ ಆಲೋಚನಾ ಶಕ್ತಿ ಚೆನ್ನಾಗಿ ಇರುವಾಗಲೇ ಈ ವಿಲ್ ಯಾನೆ ಮರಣ ಶಾಸನ ಪತ್ರವನ್ನು ನನ್ನ ಸ್ವಇಚ್ಛೆಯಿಂದ ಯಾರ ಚಿತಾವಣೆಗೂ, ಒತ್ತಡಕ್ಕೂ, ಪ್ರಭಾವಕ್ಕೂ ಒಳಗಾಗದೇ ಬರೆಯಿಸಿರುತ್ತೇನೆ. ನನ್ನ ಮರಣ ನಂತರ ಷೆಡ್ಯೂಲ್‌ನಲ್ಲಿ ನಮೂದಿಸಿರುವ ಸ್ವತ್ತುಗಳನ್ನು ಸಂಬಂಧಪಟ್ಟ ಕಛೇರಿಯಲ್ಲಿ ಸ್ವತ್ತುಗಳ ಖಾತೆಯನ್ನು ಈ ವಿಲ್ ಪತ್ರದ



ಆಧಾರದ ಮೇಲೆ ಬದಲಾವಣೆ ಮಾಡಿಸಿಕೊಂಡು ಇಷ್ಟಾನುಸಾರ ಸುಖದಿಂದ ಹೋಗತಕ್ಕದ್ದು. ಈ ವಿಲ್ ಪತ್ರದ ಷೆಡ್ಯೂಲ್‌ನಲ್ಲಿ ನಮೂದಿಸಿದ ಸ್ವತ್ತುಗಳನ್ನು ನನ್ನ ಮರಣ ನಂತರ ನನ್ನ ಮೇಲ್ಕಂಡ ನನ್ನ ಗಂಡು ಮಕ್ಕಳಿಗೆ ಸೇರತಕ್ಕದೇ ವಿನಃ ನಮ್ಮ ಕುಟುಂಬದ ಇನ್ಯಾವ ಇತರೇ ಸದಸ್ಯರಿಗೆ ಆಗಲೀ ನನ್ನ ಉಳಿದ ಮಕ್ಕಳುಗಳಿಗಾಗಲೀ ಯಾವ ವಿಧವಾದ ಹಕ್ಕು ಬಾಧ್ಯತೆಗಳು ಇರುವುದಿಲ್ಲ. ಈ ವಿಲ್ ಪತ್ರವು ನನ್ನ ಮರಣ ನಂತರ ಜಾರಿಗೆ ಬರತಕ್ಕದ್ದು. ಈ ವಿಲ್ ಪತ್ರವನ್ನು ರದ್ದುಪಡಿಸುವ ಅಥವಾ ಊರ್ಜಿತಪಡಿಸುವ ಹಕ್ಕನ್ನು ನಾನೇ ಕಾಯ್ದಿರಿಸಿಕೊಂಡಿರುತ್ತೇನೆ. ಈ ವಿಲ್ ಯಾನೆ ಮರಣ ಶಾಸನ ಪತ್ರವನ್ನು ನನ್ನ ಹೇಳಿಕೆ ಮೇರೆಗೆ ಬೆರಳಚ್ಚು ಮಾಡಿಸಿ ಈ ವಿಲ್ ಪತ್ರಕ್ಕೆ ಸಾಕ್ಷಿ ಹಾಕಿಸಿರುವವರ ಸಮಕ್ಷಮ ಓದಿಸಿ, ಕೇಳಿ, ಓಪ್ಪಿ, ಸರಿಯಾಗಿದೆ ಎಂದು ತಿಳಿದುಕೊಂಡು ಈ ವಿಲ್ ಪತ್ರಕ್ಕೆ ಸಹಿ ಮಾಡಿರುತ್ತೇನೆ.

If the recitals are given reference to, it can be noted that under the said will the testator appears to have disclosed about all his children, wherein, it is stated that he himself had performed the marriage ceremonies of his three daughters by giving away the golden ornaments and necessary financial consideration and they



are well settled. It is also stated that the marriage of his daughter by name S.K. Leelavathi, the 8th defendant was due to be performed and by fixing the liability of the performing the marriage of 8th defendant upon the 3rd defendant and late S.K. Chandrashekar, it is stated that the testator / S.B. Kalleshappa had bequeathed the properties mentioned under the Will equally amongst his two male children i.e., 3rd defendant and late S.K. Chandrashekar. The aforesaid recitals though sounds to have given reasons for not bequeathing the properties in favour of his daughters and wife of testator / late S.B. Kalleshappa, but whether the said will has been executed by said S.B. Kalleshappa out of his own free will has to be determined by considering the oral evidence of one of the



attesting witnesses i.e., DW-2 and the scribe of the will, who deposed before this court as DW-3. DW-2 who is stated to be an attesting witness, in his chief-examination, has stated about the entire family history of said S.B. Kalleshappa and his children and also about the acquisition of the properties mentioned therein, which is stated to be the self-acquired properties of S.B. Kalleshappa. Apart from the same, it is also stated in his chief-examination that the plaintiff and defendants are not in joint possession and enjoyment over the suit schedule properties. He also states that the male children of late S.B. Kalleshappa used to take care of the welfare of said S.B. Kalleshappa. As regard to the particulars of the will in his chief-examination, DW-2 states as follows:--



"ನಂತರ ಮೇಲ್ಕಂಡ ಎಸ್.ಬಿ. ಕಲ್ಲೇಶಪ್ಪ ಇವರು ದಾವಾ ಷೆಡ್ಯೂಲ್ ಸ್ವತ್ತುಗಳನ್ನು 3 ನೇ ಪ್ರತಿವಾದಿ ಮತ್ತು 4 ನೇ ಪ್ರತಿವಾದಿಯ ಗಂಡ ಎಸ್.ಕೆ.ಚಂದ್ರಶೇಖರ್ ಇವರಿಗೆ ವಿಲ್ ಯಾನೆ ಮರಣ ಶಾಸನ ಪತ್ರದ ಮೂಲಕ ನೀಡಲು ಉದ್ದೇಶಿಸಿದ್ದು, ಸದರಿ ವಿಚಾರವನ್ನು ಅವರು ನಾನು ಮತ್ತು ಇತರೆ ಸಾಕ್ಷಿಗಳು ದಿನಾಂಕ 12.12.2006 ರಂದು ಕಡೂರು ಪಟ್ಟಣಕ್ಕೆ ಬಂದು ನ್ಯಾಯವಾದಿಗಳಾದ ಎಂ.ಎಸ್.ಲೋಕೇಶ್ ಇವರನ್ನು ಸಂಪರ್ಕಿಸಿ ವಿಲ್ ಯಾನೆ ಮರಣ ಶಾಸನ ಪತ್ರವನ್ನು ತಯಾರು ಮಾಡಿಕೊಡುವಂತೆ ತಿಳಿಸಿದ್ದು ಮೇಲ್ಕಂಡ ಎಸ್.ಬಿ.ಕಲ್ಲೇಶಪ್ಪ ಇವರು ಹೇಳಿದಂತೆ ವಿಲ್ ಯಾನೆ ಮರಣ ಶಾಸನ ಪತ್ರವನ್ನು ತಯಾರು ಮಾಡಿದ್ದು, ಅದರಂತೆ ದಾವಾ ಷೆಡ್ಯೂಲ್ ಸ್ವತ್ತುಗಳನ್ನು 3 ನೇ ಪ್ರತಿವಾದಿ ಮತ್ತು 4 ನೇ ಪ್ರತಿವಾದಿಯ ಗಂಡ ಎಸ್.ಕೆ.ಚಂದ್ರಶೇಖರ್ ಇವರುಗಳಿಗೆ ಮೇಲ್ಕಂಡ ವಿಲ್ ಯಾನೆ ಮರಣ ಶಾಸನ ಪತ್ರದಂತೆ ನೀಡಿರುತ್ತಾರೆ ನಂತರ ಸದರಿ ವಕೀಲರು ವಿಲ್ ಯಾನೆ ಮರಣ ಶಾಸನ ಪತ್ರದಲ್ಲಿ ಬರೆದ ಅಂಶಗಳನ್ನು ಓದಿ ನಮ್ಮಗಳಿಗೆ ತಿಳಿಸಿರುತ್ತಾರೆ ನಂತರ ಮೇಲ್ಕಂಡ ಎಸ್.ಬಿ.ಕಲ್ಲೇಶಪ್ಪ ಇವರು ನನ್ನ ಸಮಕ್ಷಮ ಸದರಿ ವಿಲ್ ಯಾನೆ ಮರಣ ಶಾಸನ ಪತ್ರಕ್ಕೆ ಸಹಿ ಮಾಡಿದ್ದು, ನಾನು ಸಾಕ್ಷಿಯಾಗಿ ಸಹಿ ಮಾಡಿರುತ್ತೇನೆ, ಮೇಲ್ಕಂಡ ಎಲ್ಲಾ ವ್ಯವಹಾರಗಳು ನನ್ನ ಸಮಕ್ಷಮ ನಡೆದಿರುತ್ತದೆ."

If the said averments are taken into consideration with its literal meaning, it discloses that said S.B. Kalleshappa with an



intention to execute a will in favour of his sons had informed the same to DW-1 and others, and on 12.12.2006 they have visited an Advocate / DW-3 with a request to prepare a will and the same has been prepared by the said Advocate / DW-3. In the chief-examination, he also states that the said S.B. Kalleshappa had affixed his signatures in his presence and he has signed the same as one of the attesting witnesses. The said will is marked under Ex.D-1 and the signatures of DW-2 and the testator / S.B. Kalleshappa have been marked as Ex.D-1(a) and Ex.D-1(b) respectively. But during the course of cross-examination, contrary to the chief-examination, he has deposed that it was S.B. Kalleshappa, who went early to meet Advocate and DW-2 came subsequently. He further deposed that by



the time he visited the court premises, the will in question was already been prepared. The relevant portion is re-produced as hereunder:-

"ಎಲ್ಲಾರೂ ಒಟ್ಟಿಗೆ ಬಂದಿದ್ದರು ಎಂದರೆ ಸಾಕ್ಷಿ ಇಲ್ಲ ಕಲ್ಲೇಶಪ್ಪರವರು ಮೊದಲೇ ಬಂದಿದ್ದರು , ಆನಂತರ ನಾನು ಬಂದೆ ಎಂದು ನುಡಿಯುತ್ತಾರೆ. ನಾನು ಬರುವ ಪೂರ್ವದಲ್ಲಿ ನಿ.ಡಿ-1 ರ ವಿಲ್ ನಾಮೆಯ ಬರವಣಿಗೆ ಮಾಡಲಾಗಿತ್ತು ಎಂದರೆ ಸರಿ."

Further, he has specifically deposed that before the preparation of disputed will in question said S.B. Kalleshappa had not at all informed him about his intention to execute the will in question. The relevant portion is re-produced is hereunder:-

"ನಿ.ಡಿ-1 ರ ವಿಲ್ ನಾಮೆ ಬರೆಯುವ ಪೂರ್ವದಲ್ಲಿ ಕಲ್ಲೇಶಪ್ಪರವರು ಸದರಿ ವಿಲ್ ನಾಮೆ ಬರೆಯುವ ವಿಚಾರವಾಗಿ ನನ್ನ ಬಳಿ ವಿಶ್ವಾಸದಿಂದ ಮಾತುಕತೆ ಮಾಡಿರುತ್ತಾರೆ ಎಂದರೆ ಸಾಕ್ಷಿ ಇಲ್ಲವೆಂದು ನುಡಿಯುತ್ತಾರೆ."



If the cross-examination of DW-2 as a whole is considered, it is apparent that he had not at all been informed by S.B. Kalleshappa regarding his intention to execute the disputed will and by the time he reached the court premises, the disputed will in question was already prepared. He also deposed that before affixing his signature on the disputed will, the other parties had already signed the same. The relevant portion is re-produced as hereunder:-

"ನಿ.ಡಿ-1 ರ ವಿಲ್ ನಾಮೆಗೆ ನಾನು ಸಹಿ ಹಾಕುವ ಮೊದಲೇ ಬೇರೆಯವರು ಸಹಿ ಮಾಡಿದ್ದರಾ ಎಂದರೆ ಸಾಕ್ಷಿ ಹೌದು ಎಂದು ನುಡಿಯುತ್ತಾರೆ."

This aspect pre-supposes that he has not at all seen the testator signing the disputed will. The legal requirement for attestation of the will as per Sec.63 of Indian Succession Act is that



the testator shall sign or affix his mark to the will and the same shall be so placed that it was intended thereby to give effect to the writing as a will and the said will shall be attested by two or more witnesses each of whom has seen the testator sign or affix his mark to the will and each of the witnesses shall sign the will in the presence of testator. This legal requirement envisages that the attesting witnesses shall have seen the testator signing the will and each of the attesting witnesses shall sign the will in the presence of the testator. If the oral evidence of DW-2 is considered, there is no disclosure whatsoever that the testator S.B. Kalleshappa had witnessed the affixing of the signature of DW-2 on the disputed will as an attesting witness. Moreso, the evidence of DW-2 appears



to be more exaggerated and interested when it is disclosed that he is well known to the 3rd defendant since 10 years. The place of adobe of Sri. S.B. Kalleshappa at the time of execution of the disputed will was Yallambalase village, Yagati Hobli, Kadur Taluk and the address of the DW-2 is M. Chomanahalli village. It pre-supposes that both of them are not belong to the same village. Moreso, as it is disclosed in the evidence of DW-2, he is more familiar with late S.B. Kalleshappa since 25 years, then 3rd defendant and according to his evidence said S.B. Kalleshappa used to visit Hirenallur village in connection with his fisheries contract. There is evidence on record to the fact that said S.B. Kalleshappa was involved in getting the Government contracts of Fisheries, but under



the facts and circumstance as discussed above, the evidence of DW-2 does not satisfactorily establishes that the disputed will in question has been executed by late S.B. Kalleshappa and same was duly attested by DW-2 as requires U/S 63 of Indian Succession Act.

16. Moving to the evidence of DW-3, who is a practicing Advocate at Kadur had stated in his chief-examination that on 12.12.2006 while he was present in the court house premises at Kadur, Sri. S.B. Kalleshappa along with other witnesses had contacted him and expressed his willingness to bequeath his properties in favour of his male children and after collecting the necessary documents he has prepared the will under the instructions of said S.B. Kalleshappa and has subscribed his signature as a scribe of



the said will. He also states that S.B. Kalleshappa and other witnesses have affixed their respective signatures to the disputed will in his presence. Now his evidence is required to be weighed under the light of the common course of events. As it disclosed in his evidence, he has sufficiently put in practice for about 28 years, which go to show that as on 12.12.2006 he had put in almost about 8 to 10 years of his practice in the law courts. If it had been a document writer or some other person, it is within the understanding that without any proper legal knowledge the normally tend is to prepare the documents unmindful of legal consequences, but as far as in this case, said S.B. Kalleshappa has contacted a practicing Advocate, who was put in sufficient practice and that too the



meeting has taken place at Kadur Court house premises and it is beyond doubt that the expectation of the testator would be to prepare the will with such a precision that it shall be used as a conclusive proof of its due execution. With this backdrop, if the disputed will in question is considered, it is apparent that same is prepared on a plain assure sheets (legal sheets). Could it be expected that an Advocate who is holding sufficient practice would advice his client to prepare a will on a legal sheet. It is somewhere can be stated as not in the natural course of events. As per the evidence of DW-3, said S.B. Kalleshappa had visited him on 12.12.2006 at about 2.30 p.m. and the said will was got prepared with in a span of three hours i.e., within 5.30 p.m. on the same day. What was



the urgency for preparing the will within such a small span of a time, at-least should have been explained to the satisfaction of the court. No doubt, there is no hard and fast rule that the will shall be written in a particular form, but the circumstances shall so disclose that there were no other option available except to prepare the will on a plain legal sheets. This court definitely not at all accusing anyone, but only considering the natural course of events if at all any layman approaches an Advocate, he is expected to provide necessary legal advice so as to safeguard the interest of his client and in this case, it was generally expected that the advise should have been to register the will or at least to get it attested through the Notary Public so as to give complete effect to the disputed will in question.



Under such circumstances, the evidence of DW-3 that Sri. S.B. Kalleshappa had only requested to prepare will on a plain paper only, cannot be believed as the same is generally beyond the natural course of events. The 3rd defendant is also one amongst the Advocates practicing the law courts at Kadur, who is known to DW-3 for about more than 10 years. As already discussed in the forgoing paras, how the 3rd defendant got the custody of the disputed will has not been satisfactorily explained to believe the evidence of 3rd defendant. Though said S.B. Kalleshappa was resided along with 3rd defendant till his death in the year 2007 under the same roof, but no information is shared by late S.B. Kalleshappa regarding the execution of the said will in favour of the 3rd defendant is appears to



be quite unnatural when there is no rivalry or mis-trust amongst each other. It is stated that the 3rd defendant acquired the knowledge about the will only in the year 2020 through his uncle Sri. Basavarajappa, who was the better person to explain how he has gained the access to the will in question and why he remained silent until the filing of the suit or until the appearance of 3rd defendant under this suit. All those aspects should have been satisfactorily explained and the doubtful circumstances should have been dispelled by the propounder i.e., 3rd defendant and in consideration of all the oral and documentary evidence referred above, this court is not convinced to believe that the said will was voluntarily executed by S.B. Kalleshappa on 12.12.2006 bequeathing the



properties mentioned therein in favour of 3rd defendant and late S.K. Chandrashekar. Thus, it has to be held that the 3rd defendant has been unsuccessful in establishing the fact that the disputed will in question in-fact has been executed by late S.B. Kalleshappa out of his own free will. The 3rd defendant has utterly failed to dispel all the doubtful circumstance narrated above in order to believe the due execution of the will in question by deceased S.B. Kalleshappa. Accordingly, **Additional Issues No.2 and 3 under consideration are answered in the Negative.**

17. **Issue No.2** :- The 3rd defendant has taken a contention that the suit is bad for non-joinder of necessary parties and partial partition, wherein, he has taken a contention that the



plaintiff has not included the house property, which is under the occupation of defendant No.1. The plaintiff by way of amendment included the house property along with another property i.e., item No.9 and 10 properties. The documents of the same are produced under Ex.P-10 and 11, wherein, it is noticed that both the properties are existing in the name of late S.B. Kalleshappa. In the course of cross-examination of PW-1, an admission is taken with regard to suit schedule item No.9 property, the said property is in the occupation of the siblings of said S.B. Kalleshappa, but it is admitted that the said property is till date existing in the name of S.B. Kalleshappa only. It is an alienated land and in consideration of documentary evidence, it has to be held that the



item No.1 to 10 properties are the joint family properties of plaintiff and defendants. The 3rd defendant in his evidence admitted that all the joint family members have been made as parties and except the aforesaid suit schedule properties, there are no other joint family properties available. Accordingly, **issue No.2 under consideration is answered in the Negative.**

18. **Issue No.3:-** In consideration of discussions held in forgoing issues, it is well established that the suit schedule properties were the self-acquired properties of late S.B. Kalleshappa and since the existence of the will has been disproved, it has to be considered that said S.B. Kalleshappa died intestate and his properties are required to be divided amongst



the plaintiff and defendants as per Sec.8 of Hindu Succession Amendment Act. Admittedly, said S.B. Kalleshappa had left behind his wife Smt. Meenakshamma (1st defendant), Smt. S.K. Latha (plaintiff), Smt. Sarswathi (2nd defendant), Sri. S.K. Jagadeesh (3rd defendant), late S.K. Chandrashekar (husband of 4th defendant and father of defendants No.5 and 6), Smt. Sunitha (7th defendant) and Smt. S.K. Leelavathi (8th defendant). Therefore, the plaintiff, defendants No.1 to 3, 7 and 8 are entitled for 1/7th share each and the defendants No.4 to 6 together are entitled for 1/7th share in the suit schedule properties. Accordingly, the **Issue No.3 under consideration is answered partly in the affirmative.**



19. **Issue No.4:-** In view of the findings on the foregoing issues, the following;

ORDER

Suit is partly decreed.

The plaintiff, defendants No.1 to 3, 7 and 8 are entitled for 1/7th share each and the defendants No.4 to 6 together are entitled for 1/7th share in the suit schedule properties.

No order as to costs.

With the backdrop of judgment dated 13.06.2022 of *Hon'ble Supreme Court of India - 2022 SCC online SC 737 (Kattukandi Edathil Krishnan V/s Kattukandi Edathil Valsan)*, the office is directed to put up this file on 03.06.2026 for final decree proceedings as contemplated under Order XX Rule 18 of CPC.



The parties are directed to appear on the above referred date without expecting any further notice.

Draw Preliminary decree accordingly.

(Dictated to the Stenographer, directly on computer, printout taken by him, corrected and then pronounced by me in the open court, today this 11th day of March -2026)

Sd/-
(IRFAN)
Senior Civil Judge,
Kadur.

A N N E X U R E

I List of witnesses examined on behalf of the plaintiff:

PW-1 : Smt. S.K. Latha.

II List of witnesses examined on behalf of defendants:

DW-1 : Sri. S.K. Jagadeesha.

DW-2 : Sri. Nagaraja C.P.

DW-3 : Sri. M.S. Lokesh.

**III List of documents marked on behalf of the plaintiff:**

- Ex.P.1 : RTC (Sy.No.143/1 of Yallambalse Village)
Ex.P.2 : RTC (Sy.No.141 of Yallambalse Village)
Ex.P.3 : RTC (Sy.No.94/1 of Yallambalse Village)
Ex.P.4 : RTC (Sy.No.94/2 of Yallambalse Village)
Ex.P.5 : RTC (Sy.No.59 of Yallambalse Village)
Ex.P.6 : RTC (Sy.No.58 of Yallambalse Village)
Ex.P.7 : RTC (Sy.No.35/3 of Yallambalse Village)
Ex.P.8 : RTC (Sy.No.36/3 of Yallambalse Village)
Ex.P.9 : Self-declared Genealogical Tree.
Ex.P.10 : RTC (Sy.No.143/2 of Yallambalse Village)
Ex.P.11 : Assessment Register Extract.

IV List of documents marked on behalf of defendants:

- Ex.D.1 : Original Will dated 12.12.2006.
Ex.D.1(a) : Signature of DW-2.
Ex.D.1(b) : Signature of late S.B. Kalleshappa.
Ex.D.1(c) : Signature of DW-3.

Sd/-
(IRFAN)
Senior Civil Judge,
Kadur.

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