

KADW050000032023



Presented on : 02-01-2023
Registered on : 02-01-2023
Decided on : 09-04-2026
Duration : 3 years, 3 months, 7 days

**IN THE COURT OF THE PRL. SENIOR CIVIL JUDGE AND CJM,
DHARWAD**

PRESENT

**Sri. Venkatesha Naika V, B.Com., LL.B.
Prl. Senior Civil Judge & CJM,
Dharwad**

Dated this the 09th day of April, 2026

O.S. No.1/2023

Plaintiff/s:	1.	Vishal S/o. Basavaraj Huded, Age: 46 years, Occ: Agriculture, R/o. Tadakod Oni, Tq/Dist: Dharwad.
		(By Smt. Shrikala N.A.Adv.,)
		V/s.
Defendants	1.	Vanita D/o. Shiddappa Balagi, Age: 60 years, Occ: Household, R/o. Tadakod Oni, Tq/Dist: Dharwad.
	2.	Chandravati D/o. Shiddappa Balagi, Age: 52 years, Occ: Household, R/o. Balagi Oni, Kamlapur, Tq/Dist: Dharwad.
	2(a).	Shrishail S/o. Channabasappa Sali, Age: 27 years, Occ: Private, R/o.Near Kumbar Oni, Kamlapur, Tq / Dist: Dharwad.

Contd...

	2(b).	Kartik S/o. Channabasappa Sali, Age: 25 years, Occ: Private, R/o.Near Kumbar Oni, Kamlapur, Tq / Dist: Dharwad.
	3.	Mallikarjun S/o. Shiddappa Balagi, Age: 46 years, Occ: Agriculture, R/o.Balagi Oni, Kamlapur, Tq / Dist: Dharwad.
		(D-1 by Sri .VCM., Adv.,) (D-2(a)&2(b) By Smt. SCH., Adv.,) (D-3 By Sri. PDK., Adv.)

Date of institution of suit : 02.01.2023

Nature of suit : Declaration and Injunction

Date of commencement of evidence : 09.07.2024

Date of pronouncement of judgment: 09.04.2026

Total duration : Year/s Month/s day/s
3 years, 3 months, 7 days

(Venkatesha Naika V)
Prl. Senior Civil Judge & CJM.,
Dharwad.

: J U D G M E N T :

The present suit was instituted by the plaintiff claiming the relief of declaration and injunction.

2. The case of the plaintiff in nutshell is hereunder:

The landed properties mentioned hereunder are the subject matter of the present suit.

1. R.S.No.10 measuring 14 acres 37 guntas situated in Dasankoppa village, Dharwad.
2. R.S.No.11 measuring 15 acres 16 guntas situated in Dasankoppa village, Dharwad.
3. R.S.No.189/1 situated in Mummigatti village, Dharwad.
4. R.S.No.189/2 situated in Mummigatti village, Dharwad.
5. R.S.No.189/3 situated in Mummigatti village, Dharwad.
6. R.S.No.189/4 situated in Mummigatti village, Dharwad.

3. That the shares for which the deceased Kamalavva (The executants of the Will) is entitled in respect of properties described at Sl.No.1 and 2 as mentioned above. The deceased Kamalavva @ Kamala was an absolute owner of the suit schedule properties. The plaintiff was a son of the sister of deceased Kamalavva. Kamalavva was residing with the plaintiff and she was suffering from cancer. The plaintiff himself had taken care of Kamalavva thus she had love and affection towards the plaintiff. Hence Kamalavva bequeathed the properties in favour of plaintiff through Registered Will dated 31.01.2019. At the time of execution of Will, testator Kamalavva was in sound

disposing state of mind. The defendants No.1 to 3 being the children of the testator are also consented for execution of the Will. Kamalavva herself executed a Will in the presence of the witnesses and her children in favour of the plaintiff.

4. Kamalavva @ Kamala died on 12.09.2020. After the demise of the testator the plaintiff acquired his right, title and interest in the suit properties as an owner. On the basis of the said Will, the name of the plaintiff has been entered into revenue records. Kamalavva was in joint possession and enjoyment of the property mentioned at Sl.No.1 and 2 as above as a joint owner. That the properties mentioned at Sl.No.3 to 6 above are subject to result of Regular Second Appeal pending before the Hon'ble High Court of Karnataka, Dharwad Bench, Dharwad in RSA.No.100965/2022.

5. Such being the facts the defendant No.3 without having a right, title and interest over the properties transferred by testator Kamalavva causing an unnecessary interference towards the use and

enjoyment of the property by the plaintiff. Hence, the plaintiff was constrained to file the present suit claiming aforementioned reliefs.

6. The defendant No.1 though appeared through an advocate however did not try to resist the claim of the plaintiff by filing a written statement.

7. The defendant No.2 appeared before the court and filed a written statement, the defendant No.2(a) and 2(b) adopted the written statement of defendant No.2. The defendant No.2, defendant No.2(a) & 2(b) filed their written statement in support of the case of the plaintiff by admitting the entire plaint averments.

8. The defendant No.3 resisted the claim filing a detailed written statement denying the plaint averments.

9. **The sum and substance of the written statement of the defendant No.3 is hereunder:**

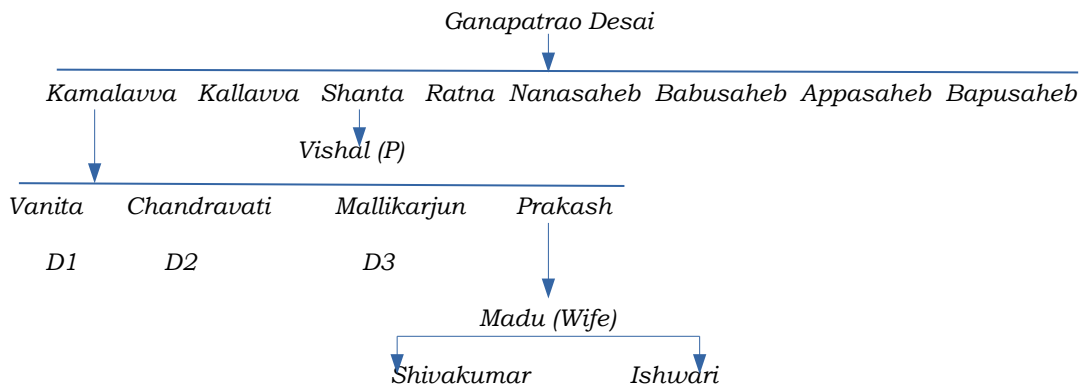
The defendant No.3 admitted that the testator Kamalavva died on 12.09.2020 also not disputed about the relationship of plaintiff and defendants. However, the defendant further contended that the suit of the

plaintiff is false, frivolous and vexatious and not maintainable in the eye of law or on facts. Since the present suit is one for declaration and injunction however the description of the suit properties itself is too vague and not in strict compliance of Order VII Rule 3 of CPC. The plaintiff himself did not clarify the extent of the property with the boundaries to which the Kamalavva had her 1/8th share. The plaintiff is claiming right in respect of an undivided interest in an undivided property based upon a created and fabricated Will with an undivided share. All the persons having interest in the suit properties and all the persons representing the particular branches of the family are necessary parties for effective adjudication of the suit. But the present claim is bad for non-joinder of necessary parties. The plaintiff has filed the present suit with a sole intention to grab the properties belonging to the defendants on the basis of creating and fabricating a Will. The plaintiff was not in actual nor juridical possession of the suit property. The suit is not properly valued and court fee paid thereon is

insufficient hence the plaintiff suit is not sustainable.

10. Further contended that Kamalavva had no such right to transfer her undivided interest or share in favour of either plaintiff or anybody else. Further contended that he was never present at the time of execution of alleged Will and he has not signed to such and said created document. further averred that the plaintiff has not acquired any right, title and interest and he is not a joint owner accordingly he was in joint possession along with the other owners.

11. It is the specific contention of the defendant No.3 that the suit properties originally belong to one Ganapathrao Desai. The testator Kamalavva was one of the coparceners to the Desai family as she was a daughter of Ganapathrao Desai. The detailed genealogy of the Desai family annexed hereunder;



12. After the death of propositus/Ganapatrao Desai the suit properties are succeeded by the Kamalavva and her siblings as per succession. Since Ganapatrao died intestate leaving behind the mother of the plaintiff and siblings of the mother of the plaintiff as his legal heirs. Meanwhile some of the properties are transferred by the children of said Ganapatrao Desai. Accordingly the suit bearing O.S.No.39/2005 came to be filed on the file of IIIrd Addl Civil Judge, Senior Division, Dharwad and same was disposed off on 17.07.2012. Again the judgment challenged by preferring regular appeal bearing R.A.No.126/2012 and R.A.No.148/2012 before the IVth Addl District and Sessions Judge, Dharwad. The appeal filed by the mother of the defendant came to be allowed in part and declared that she was to be entitled for 8/56th share in the suit properties, but the suit properties do not belong to late Kamalavva alone.

13. Kamalavva had executed a registered General Power of Attorney in favour of defendant No.3 empowering him to do acts as mentioned in the

irrevocable GPA dated 24.07.201 by knowing the said fact, the plaintiff created and concocted a disputed Will. The Will as relied on and referred by the preponder/plaintiff is surrounded by suspicious circumstances. All these circumstances are not properly dispelled with an aid of reliable and cogent evidence. Considering these grounds the defendant No.3 prays to dismiss the suit with exemplary cost.

14. On the basis of rival pleadings, the court framed the following;

I S S U E S

- 1. Whether the plaintiff proves that mother of the defendants deceased Kamalavva @ Kamala, on 31.01.2019, executed a registered Will in his favour bequeathing her share in the suit properties?**
- 2. Whether the plaintiff proves that he is in joint possession of the suit properties along with other joint owners?**
- 3. Whether the defendant No.3 proves that on 24.07.2018 his mother Kamalavva executed a registered irrevocable GPA in his favour?**
- 4. Whether the suit suffers from non joinder of necessary parties?**

- 5. Whether the suit is properly valued and proper court fee is paid?**
- 6. Whether the plaintiff proves the alleged interference of the defendant No.3 with his joint possession of the suit properties?**
- 7. Whether the plaintiff is entitled for declaration as sought for?**
- 8. Whether the plaintiff is entitled for the relief of perpetual injunction against the defendants as prayed for?**
- 9. What order or decree?**

15. In order to substantiate their respective contentions, the plaintiff himself entered into the witness box and filed an affidavit in lieu of chief examination and was examined as P.W-1. Apart from his oral testimony the plaintiff further produced as many as 12 documents and got exhibited as Ex.P.1 to Ex.P.12. The plaintiff also examined two more independent witnesses as P.W-2 and P.W-3.

16. In order to substantiate the specific contention concerned, the defendant No.3 entered into the witness box and was examined in part and at the request of the learned counsel for the plaintiff cross

examination was deferred. thereafter D.W-1 remained absent and not tendered for cross-examination hence evidence was expunged.

17. Written arguments/synopsis filed for the plaintiff and defendant No.3.

18. Perused the available materials on record.

19. My findings to the aforementioned issues are as follows:

Issue No.1 : In the Negative,
Issue No.2 : In the Negative,
Issue No.3 : In the Negative,
Issue No.4 : In the Affirmative,
Issue No. 5 : In the Negative,
Issue No.6 : In the Negative,
Issue No.7 : In the Negative,
Issue No.8 : In the Negative,
Issue No.9 : As per final order for the following;

: REASONS :

20. **Issue No.1 & 2:** *Since these issues are interconnected, hence taken together for common discussion to avoid repetition.*

21. The present suit is one for the relief of declaration and perpetual injunction against the defendants. The defendant No.1 though appeared before the court however did not resist the claim of the

plaintiff by filing a written statement. The defendant No.2, defendant No.2(a) & (b) appeared and filed their written statement however they have admitted the claim of the plaintiff. The defendant No.3 alone was resisting the claim of the plaintiff.

22. The defendant No.3 denied the entire averments of the plaint except admitting the relationship with the plaintiff as the plaintiff was the son of his aunt and further admitted that the mother of defendant No.3 died on 12.09.2020. The defendant No.3 has raised objections having regard to the execution of the Will in question that the in sound disposing state of mind of testator Kamalavva and the alleged Will is created and concocted by the propounder, the Will in question surrounded with suspicious circumstances. Hence, initial burden shifts on the propounder/plaintiff to discharge the same with reliable and cogent evidence. The plaintiff himself stated that Smt.Kamalavva the mother of the defendant No.3 was suffering from cancer and after execution of the Will she died in the month of October-2020. The

plaintiff produced the Registered Will and got exhibited as Ex.P1. In this case the plaintiff/proponder of Ex.P1 himself stated that he came to know about the execution of Will/Ex.P1 by testator Kamalavva through his friend by name, Prakash Muttagi. As per the version of P.W-1 the disputed Will/Ex.P1 is handed over by Prakash Muttagi to the plaintiff. Now it is the duty of the proponder of the Will to prove that the Ex.P1 is free from all suspicious circumstances and the said document executed by testator Kamalavva and she was in sound disposing state of mind.

23. As per the version of P.W-1 his friend Prakash Muttagi was present at the time of execution of Ex.P1 and himself narrated the above execution of the Will and handed over the document. So far as the proof of execution of Will as per the Section 63 of the Indian Succession Act coupled with Section 67 of the Bharatiya Sakshya Adhiniyam, 2023 is concerned, witness by name, Prakash Muttagi was examined as P.W-2. According to the proponder of the Will/plaintiff, P.W-2 was one of the attestors to the disputed

Will/Ex.P1. Similarly, one more independent witness by name, N.S.Kamath was examined as P.W-3. As per the version of the plaintiff, P.W-3 was drafted and prepared the said Will.

24. According to the plaintiff the disputed Will/Ex.P1 was executed by Smt. Kamalavva @ Kamala W/o. Siddappa Balagi on 21.01.2019 and the said Will was registered on 31.01.2019. So far as the proof of Will/Ex.P1 is concerned now it is just and necessary to analyse the evidence on record. P.W-2 being the attester of Ex.P1 deposed that he went to the court but not the house of the deed writer Sri. N.S.Kamath. As per the version of the P.W-2 himself and testator Kamalavva Balagi went to the court on 21.01.2019 along with three children of Kamalavva Balagi and grandson of Smt Kamalavva by name, Vijaykumar. As per the testimony of P.W-2 Kamalavva Balagi and her daughter Chandravati, Mallikarjun and elder daughter of Kamalavva went in autorikshaw to the court. But the deed writer deposed that Kamalavva and her children by name, Vanita, Mallikarjun, Chandramma and one

witness by name, Prakash Muttagi came to his house. The testimony of P.W-2 and 3 appears to be contradictory to each other having regard to the approach of the testator at the inception itself. The testimony of these two witnesses creates doubt in the mind of the court that whether the Ex.P1 was drafted or written either in the court or at the house of P.W.3 itself is not properly explained. This also appears to be one of the suspicious circumstances in the process of execution of Ex.P1. P.W-3 deposed that after having proper information and thereafter he had prepared and drafted the Ex.P1 and he had obtained signatures of attesor and witnesses on 31.01.2019 at the office of the Sub-Registrar. On the other hand P.W-2 as an attesor of the disputed Will/Ex.P1 deposed that the testator herself has given information for preparing Will and put her signature at the court. The testimony of P.W.2 itself throws light that neither P.W.2 nor the testator are having put their signature to the Will/Ex.P1 at the Office of the Sub-registrar. In this context I would like to reproduce the facts elicited

through the mouth of P.W-2 for convenience hereunder:

"ನಿಷಿ-1 ನ್ನು ನೊಂದಣಿ ಮಾಡಿಸುವ ಕಾಲಕ್ಕೆ ನಾನು ಉಪನೊಂದಣಾಧಿಕಾರಿಗಳ ಕಚೇರಿಗೆ ಹೋಗಿದ್ದೆ ಆದರೆ ನೊಂದಣಿ ಮಾಡುವ ಕಾಲಕ್ಕೆ ನಾನು ಒಳಗೆ ಹೋಗಿರಲಿಲ್ಲ. ಯಾವ ದಾಖಲೆಯನ್ನು ನೊಂದಣಿ ಮಾಡಿಸಿದ್ದಾರೆ ಅದು ಬರೆದಿದ್ದರೋ ಅಥವಾ ಮುದ್ರಿಸಿದ್ದಾರೋ ಎನ್ನುವ ಕುರಿತು ನನಗೆ ಮಾಹಿತಿ ಇಲ್ಲ."

25. At the same time it is also just and necessary to quote the fact elicited through the mouth of P.W-3 that:

ಕಮಲಮ್ಮ ಇವರ ಮಕ್ಕಳ ಹೆಸರು ವನಿತಾ ಬಾಳಗಿ, ಮಲ್ಲಿಕಾರ್ಜುನ ಸಿದ್ದಪ್ಪ ಬಾಳಗಿ, ಚಂದ್ರಮ್ಮ ಸಾಲಿ ಬಂದಿದ್ದರು. ಅವರ ಜೊತೆ ಪ್ರಕಾಶ ಮುತಗಿ ಎನ್ನುವವರು ಬಂದಿದ್ದರು. ಇವರೆಲ್ಲರೂ ನಮ್ಮ ಮನೆಗೆ ಬಂದಿದ್ದರು. ಅವರಿಂದ ಮಾಹಿತಿ ತೆಗೆದು 2-3 ದಿನಗಳ ನಂತರ ಮೃತ್ಯು ಪತ್ರ ತಯಾರಿಸಿದೆನು. ಸದರಿಯವರಿಗೆ ನೀಡಿದ ಮಾಹಿತಿಯ ಕರಡನ್ನು ತಯಾರಿಸಿದೆನು. ಕರಡು ಪ್ರತಿಯ ಮೇಲೆ ಕಮಲಮ್ಮ ಇವರ ಸಹಿ ಪಡೆಯಲಿಲ್ಲ. ಮೃತ್ಯು ಪತ್ರವನ್ನು ದಿ: 21.01.2019 ಕ್ಕೆ ನನ್ನ ಕಚೇರಿಯಲ್ಲಿ ಸಿದ್ಧ ಮಾಡಿಕೊಂಡೆನು. ನಂತರ ದಿ: 31.01.2019 ರಂದು ಇವರೆಲ್ಲರ ಸಹಿಯನ್ನು ಉಪನೊಂದಣಾಧಿಕಾರಿಗಳ ಕಚೇರಿಯಲ್ಲಿ ಪಡೆದೆನು..... ಮೃತ್ಯು ಪತ್ರದ ಕರಡು ಪ್ರತಿ ತಯಾರಿಸಿದ 10 ದಿನಗಳ ನಂತರ ನೊಂದಣಿ ಮಾಡಿಸಿದ್ದೇನೆ. ಆ ಅವಧಿಯಲ್ಲಿ ಮೃತ್ಯು ಪತ್ರದ ಕರಡು ಪ್ರತಿ ನನ್ನ ನನ್ನಲ್ಲೇ ಇತ್ತು ಎಂದರೆ ಸರಿ.

26. On comparative study of facts elicited through the mouth of material witnesses i.e., P.W-2 and P.W-3 coupled with the recitals of Ex.P1 itself show that both the witnesses are given the evidence contradictory to each other. Hence I am of the view that Ex.P1 is

surrounded with suspicious circumstances. There is a clear contradiction in the statement of P.W.2 and 3. proof of Ex.P1 completely depends upon the testimony of P.W.2 and 3. But the testimony of the witnesses appears to be not trustworthy as P.W.2 being the attesor of Ex.P1 deposed that the testator sign or affix her mark at the court but not at the house of P.W.3. The testimony of P.W.2 itself is contradictory to his own statement. Perusal of the facts deposed by P.W.2 in his chief examination and the facts elicited during cross examination itself goes contradictory. As per the testimony of P.W.2 it is clear that P.W.2 had not signed Ex.P1 on 31.01.2019 at the Office of Sub-Registrar. P.W.3 deposed that he had taken signatures of testator, attestors and the children of testator at the Office of the Sub-registrar on 31,01,2019. Hence the testimony of P.W2 appears to be not within the parameters of Section 63(c) of the Indian Succession Act. The propounder of the Will had tried to comply with Section 67 of BSA, but, the testimony of P.W.2 the attesor of Will is not in accordance with the Section

63(c) of the Indian Succession Act. absolutely no evidence that he has put his signature to Ex.P1 at the Office of the Sub-registrar particularly on the date of registration of the document.

27. Since Will itself is a peculiar document that creates the right, title and interest of a person in respect to his/her properties after his/her death. Such being the fact the court has required to take care of all the materials and analyze the evidence in the light of the well settled principles of law. The testimony of P.W-2 and P.W-3 suffers from clear corroboration. For the defendant No.3 it is elicited through the mouth of P.W-2 and 3 that the Will/Ex.P1 itself is not free from suspicious circumstances as regard to an execution of Will, the date and place of execution of the Will, the date and place of obtaining signatures of the testator and witnesses on the Ex.P1 by P.W-3 and the date and place at which P.W-3 has put his signature are not in consonance with the well settled principles of law that the Will in question was proved in accordance with law and further there was no evidence that the Will in

question is free from all suspicious circumstances. Further it is pertinent to note that as per the version of P.W.2 the children of testator Kamalavva are also present at the time of execution of Ex.P1. But the defendant No.3 has taken specific contention that he was not present and in his absence the disputed document was created and signature of defendant No.3 also not found place in Ex.P1 thus the presence of P.W-3 is not proved with an aid of reliable and cogent evidence.

28. From over all consideration of the both oral and documentary evidence placed on record it is clear that Ex.P1 is surrounded with suspicious circumstances. Further there was no evidence on record to demonstrate a sound disposing state of mind of the testator at the time of execution of Ex.P1. Hence, Ex.P1 cannot create any right, title and interest over the suit schedule properties in favour of the plaintiff. Since Ex.P1 itself is not proved, such being the fact how the plaintiff came into possession of the suit property is not established with an aid of reliable and

cogent evidence. Hence, the assertion that the plaintiff was in use and enjoyment of the suit properties itself is not proved. Hence, **Issue No.1 and 2** are answered in the **Negative**.

29. **Issue No.3:** Here the defendant No.3 has taken a specific contention that the mother Kamalavva executed registered irrevocable GPA on 24.07.2018 in his favour. In this case the defendant No.3 though he resisted the claim of plaintiff but has not tried to produce evidence to fortify his specific contention. No iota of evidence as forthcoming on record to substantiate his specific contention. In the absence of reliable and cogent evidence for the defendants it is not appropriate to discuss much more about the contention of the defendant No.3. Hence, the contention of the defendant No.3 is not proved hence, **Issue No.3** answered in the **Negative**.

30. **Issue No.4:** The present suit instituted claiming the relief of declaration and perpetual injunction in respect to the suit schedule properties by virtue of the registered Will/Ex.P1 executed by testator

Kamalavva in favour of the proponent/plaintiff. The recitals of Ex.P1 goes to show that the testator intended to transfer her 1/8th share in the suit property in favour of the propounder. It is clear that as on the date of execution of Ex.P1 the share of the testator was not determined by the Court of law. Ex.P1 appears to be silent about the extent and boundary particulars of the land likely to have fallen to the share of testator/Kamalavva. Such being the facts the duty of the plaintiff to narrate the boundary particulars to which he might have acquired right, title and interest by virtue of Ex.P1/Will. Since the plaintiff stated that he was in use and enjoyment of the property along with the co-owners/joint owners but the portion in which the plaintiff was in use and enjoyment of the property that itself is not established. In this context I would like to reproduce the facts elicited through the mouth of P.W.1 for sake of convenience hereunder:

ದಾವಾ ಅನುಸೂಚಿ ಕ್ರಮ ಸಂಖ್ಯೆ 1 ಮತ್ತು 2 ರ ಸ್ವತ್ತಿನ ಉತಾರಿನಲ್ಲಿ ಒಟ್ಟು 8 ಜನರ ಹೆಸರು ದಾಖಲಿದೆ. ಆ 8 ಜನರು ಸದರಿ ಸ್ವತ್ತುಗಳ ಮಾಲೀಕರು ಎಂದರೆ ಸರಿ. ದಾವಾ ಅನುಸೂಚಿ ಕ್ರಮ ಸಂಖ್ಯೆ 3 ರಿಂದ 6 ರ ಸ್ವತ್ತಿನ ಉತಾರಿನಲ್ಲಿ ಒಟ್ಟು 8 ಜನರ ಹೆಸರು ದಾಖಲಿದೆ. ಆ 8 ಜನರ ಹೆಸರು ಹೇಳಬಹುದಾದ್ದು ಎಂದು ಕೇಳಿದರೆ ಸಾಕ್ಷಿಯು

ಸಾಧುನವರವರು ಖರೀದಿ ಮಾಡಿದ್ದಾರೆ ಈ ಕುರಿತು ಪ್ರಕರಣ ಮಾನ್ಯ ಉಚ್ಚ ನ್ಯಾಯಾಲಯದಲ್ಲಿ ಬಾಕಿ ಇದೆ ಎಂದು ಹೇಳುತ್ತಾರೆ .

31. The fact that elicited through the mouth of P.W-1 that itself further clinches that the testator alone was not the owner of the properties at the time of execution of disputed Will. Perusal of Ex.P2 and 3 the RTCs pertaining to lands mentioned at [Sl.No.1](#) & 2 of the paragraph No.3 of the plaint that itself goes to show that the testator and mother of the plaintiff and other persons are having their joint right and accordingly their names reflected jointly in both the RTCs i.e., Ex.P2 and 3. In this case the share as well as the portion of property likely to be fallen to the share of Kamalavva is not yet determined. Hence in order to decide the right of Kamalavva in the suit schedule properties concerned the presence of co-owners reflected in Ex.P2 and 3 seems very much necessary. In this context the P.W-1 during his cross examination admitted and said fact quoted hereunder;

ಕಮಲವ್ವಾ ಇವರಿಗೆ ಇಬ್ಬರು ಗಂಡು ಮಕ್ಕಳು ಮತ್ತು ಇಬ್ಬರು ಹೆಣ್ಣು ಮಕ್ಕಳು ಎಂದರೆ ಸರಿ. ಕಮಲವ್ವಾ ಇವರ ಮಗ ಪ್ರಕಾಶ ಇವರನ್ನು ಅಥವಾ ಅವರ ಹೆಂಡತಿ ಮಕ್ಕಳನ್ನು ಈ ದಾವೆಯಲ್ಲಿ ಪಕ್ಷಗಾರರನ್ನಾಗಿ ಮಾಡಿಲ್ಲ ಎಂದರೆ ಸಾಕ್ಷಿಯ ಅವರು ಬೇರೆ ಊರಿನಲ್ಲಿ ಇರುತ್ತಾರೆ ಎಂದು ಹೇಳುತ್ತಾರೆ. ನನ್ನ ದಾವಾ ಪತ್ರದಲ್ಲಿ ಕಮಲವ್ವಾ ಇವರ **1/8** ಹಿಸ್ಸೆಯ

ದಾವಾ ಸ್ವತ್ತುಗಳ ಚೆಕ್ ಬಂದಿ ಕಾಣಿಸಿಲ್ಲ ಎಂದರೆ ಸರಿ. ಸಾಕ್ಷಿಯು ಅವು ಇನ್ನೂ ಹಿನ್ನೆಯಾಗಿಲ್ಲ ಎಂದು ಹೇಳುತ್ತಾರೆ .

32. In the light of the facts elicited through the mouth of P.W-1 it is clear that so far as effective adjudication of the suit concerned the presence of co-owners and the children of Kamalavva seems necessary. Prakash and his wife and children are residing in some other places. Mere the person who has right, title and interest in the suit schedule properties residing in some other place that itself is not a ground that his presence is not necessary to decide the case on hand. The mere leaving of sharer separately without any partition that cannot be construed as he has no right, title and interest over the suit property. But his possession appears to be a constructive possession. Hence, in my considered view the presence of Prakash if Prakash died his wife and children seems very much necessary for effective adjudication of the suit. In the absence of necessary parties present suit for declaration of title and injunction cannot be adjudicated effectively and

juridically. Even though there was no evidence for the defendant No.3 that itself is not a sole ground to decree the suit in the absence of necessary parties. Hence the suit is bad for non-joinder of necessary parties, thus, **Issue No.4** answered in the **Affirmative**.

33. **Issue No.5:** In this case the defendant No.3 has taken specific contention of maintainability of the suit as the suit is not properly valued and court fee paid thereon is insufficient. In this case the plaintiff claiming the relief of declaration and injunction to an extent 1/8th share of Kamalavva is considered valued the reliefs and accordingly the court fee was paid by the plaintiff. But the defendant though he has taken such specific contention that he was not tried to produce the materials that speaks about the suit is under valued and court fee paid thereon is insufficient. Absolutely there is no material and evidence as forthcoming for the defendant No.3 to substantiate his specific contention. Hence, in the absence of material evidence it is not appropriate and correct to discuss much more about the contention urged by defendant

No.3 thus holding that the defendant No.3 miserably failed in his attempt to prove the same. Hence, **Issue No.5** is answered in the **Negative**.

34. **Issue No.6:** In this case the plaintiff as averred that he became the owner of the suit property by virtue of a Will executed by Kamalavva @ Kamala on 31.01.2019 and thus he was in use and enjoyment of the property and the defendant No.3 without having any right, title and interest over the suit property is trying to interfere with his possession. So far as to decide the issues effectively and judiciously concerned, the findings and conclusions recorded by the Court in respect to issue No.1 and 2 seem essential and play a vital role. It is held that the plaintiff has miserably failed to prove that on 31.01.2019 the testator Kamalavva had executed a Will in his favour and said Will is free from all suspicious circumstances. Further there was no evidence having regard to the plaintiff was in use and enjoyment of the suit property. Such being the facts the contention of the plaintiff that the defendant No.3 causing interference towards his

possession over the suit schedule properties cannot be accepted and not sustainable. Hence, the plaintiff miserably failed in his attempt to prove the issue thus **Issue No.6** answered in the **Negative**.

35. **Issue No.7 & 8:** *Since the issues are interrelated and having the same set of facts hence to avoid repetition both issues taken together for common discussion.*

In this case proponder of Will himself has knocked the door of the Court claiming the relief of declaration and perpetual injunction. Further it is pertinent to note that in the written argument filed for the plaintiff mainly focused on there was no evidence for the defendant No.3. In a suit for declaration and injunction I am of the view that there is no necessity to lead evidence for the defendant unless he had taken such specific contention about title of the suit property. But the initial burden always lies on the plaintiff to plead and prove the mode of succession of right, title and interest over the immovable property particularly in the present suit schedule properties. Mere weakness of the defendant cannot be a ground to declare that the plaintiff was an absolute owner of the suit schedule

properties. It is well settled principle of law that in a suit for declaration of title and injunction the heavy burden lies on the plaintiff as himself has approached the court of law claiming title over the suit schedule properties. In this context the plaintiff produced the Will and marked it as Ex.P1 but the same was not proved in accordance with law. Further the revenue records produced and marked as Ex.P2 to Ex.P5 and Ex.P7 to 12. It is well established principles of law that the revenue records are not a proof of title or even confirmed the title of a person in respect to immovable properties. In this context I would like to rely and refer to the decision of the Hon'ble Apex Court reported in **(2014) SCC 269** between **Union of India and others V/s. Vasavi Cooperative Housing Society Limited and others**. It is held that:

Para No.15: It is trite law that, in a suit for declaration of title, burden always lies on the plaintiff to make out and establish a clear case for granting such a declaration and the weakness, if any, of the case set up by the defendants would not be a ground to grant relief to the plaintiff.

Para No.19: The legal position, therefore, is clear that the plaintiff in a suit for declaration of title and possession could succeed only on the strength of its own title and that could be done only by adducing sufficient evidence to discharge the onus

on it, irrespective of the question whether the defendants have proved their case or not. We are of the view that even if the title set up by the defendants is found against, (sic them), in the absence of establishment of plaintiff's own title, plaintiff must be non-suited.

Para No.24: We are of the view that even if the entries in the Record of Rights carry evidentiary value, that itself would not confer any title on the plaintiff of the suit land in question. Ext.X-1 is Classer Register of 1347 which, according to the trial court, speaks of the ownership of the plaintiff's vendor's property. We are of the view that these entries, as such, would not confer any title. Plaintiffs have to show, independent of those entries, that the plaintiff's predecessors had title over the property in question and it is that property which they have purchased. The only document that has been produced before the court was the registered family settlement and partition deed dated 11.12.1939 of their predecessor in interest, wherein, admittedly, the suit land in question has not been mentioned.

36. The law laid down by the Hon'ble Apex Court in the aforementioned decision is aptly applicable to the facts and circumstances of the case on hand. Mere the name reflected in the Ex.P2 and 3 of testator Kamalavva without definite share that itself not sufficient to hold that testator Kamalavva had 1/8th share in the suit schedule properties unless and until her shares are determined by the court of law considering all these materials aspects I am of the view that the title of Smt. Kamalavva to an extent of 1/8th

share in the suit properties itself is not proved. When the testator herself has not had 1/8th share in the suit schedule properties, the question of transferring such properties does not arise. Hence, the plaintiff certainly is not entitled for both declarative and consequential relief of injunction against the defendants. Hence, **issue No.7 and 8** answered in the **Negative**.

37. **Issue No.9:** In view of my findings on aforementioned issues, I proceed to pass the following;

ORDER

The suit of the plaintiff is dismissed with cost.

Draw the decree accordingly.

(Dictated to the stenographer, transcription typed by her, corrected and Judgment/order is pronounced in the open court by me on the 09th day of April, 2026).

**(Venkatesha Naika V)
Prl. Senior Civil Judge & CJM.,
Dharwad.**

: ANNEXURE :

1. List of witnesses examined for plaintiffs:

PW-1	: Vishal Basavaraj Huded
PW-2	: Prakash Muttagi
PW-1	: Narayan Shankar Kamath

2. List of documents marked for plaintiffs:

- Ex.P-1 : Registered will dated 31.01.2019
- Ex.P.2 : Certified copy of Application given to
Tahasildar, Dharwad
- Ex.P.3 : Certified copy of Application given to
Tahasildar, Dharwad
- Ex.P.4 : C.C of M.R.No.1704 Khata Transfer Order
- Ex.P.5 : C.C of Notice issued by Village Accountant
Mummigatti
- Ex.P.6 : C.C of death certificate of Kamala Balagi
- Ex.P.7-12 : RTCs bearing Sy.Nos.10, 11, 189/1, 189/2,
189/3, 189/4

3. List of witnesses examined for defendants:

- DW-1 : Mallikarjun Siddappa Balagi (**Discarded**)

4. List of documents marked for defendants:

-Nil-

(Venkatesha Naika V)
Prl. Senior Civil Judge & CJM.,
Dharwad.