

KAHV510041932022



Presented on : 20-10-2022
Registered on : 20-10-2022
Decided on : 08-06-2026
Duration : 3 years 7 months 19
days

**IN THE COURT OF THE III ADDL.SENIOR CIVIL
JUDGE & J.M.F.C, RANEBENNUR**

**PRESIDED OVER BY SRI. MAHANTESH G. BHUSAGOL, B.A, (Law) LL.B.
III Addl. Sr. Civil Judge & J.M.F.C, RANEBENNUR.**

O.S. No.184/2022 C/W OS No.2/2023

Dated: This the 8th day of June, 2026.

Plaintiff:

Vijayalaxmi Angaragatti,
Wife of Chandrashekhar,
Age: 48 Years, Occ: House wife,
R/o. 2nd stage, 3rd cross,
Ishwarnagara, Ranebennur city,
Dist: Haveri.

(By Sri. C.N.S, Advocate)

// Versus //

Defendant/s :

1. Neelawwa Hullatti,
Wife of Hanumanthappa,
Dead by Lrs; plaintiff and 2nd defendant.
2. Shobha H Hullatti,
@ Shobha Eledahalli,
Wife of Somappa Eledahalli,
Age: 51 years, Occ: Teacher,
R/o. 2nd cross, Cholamaradeshwaranagara,
Ranebennur City, Dist: Haveri.

**(Defendant No.1 by Sri. D.M.M, Adv. and
Defendant No.2 by Sri H.M.S Adv.)**



Date of Institution of suit	20.10.2022
Nature of the suit	Declaration and consequential relief
Date of Commencement of evidence	29.01.2024
Date of pronouncement of judgment	08.06.2026
Total Duration	Year/s Month/s Day/s 3 7 19

Plaintiff in OS No.2/2023

1. Shobha H Hullatti,
@ Shobha Eledahalli,
Wife of Somappa Eledahalli,
Age: 51 years, Occ: Teacher,
R/o. 2nd cross, Cholamaradeshwara nagara,
Ranebennur City, Dist: Haveri.

(By Sri. H.M.S, Advocate)

// Versus //

Defendant/s :

1. Vijayalaxmi Angaragatti,
Wife of Chandrashekhar,
Age: 48 Years, Occ: House wife,
R/o. 2nd stage, 3rd cross,
Ishwarnagara, Ranebennur city,
Dist: Haveri.
2. Smt Neelawwa Hullatti,
W/o late Hanumanthappa,
Age: 74 years, R/o. Raja Rajeshwari
Nagar, 24th Ward, Ranebennur, Town,
Dist: Haveri.(Since died on 05.06.2025 and LR's
are already on record.



**(Defendant No.1 by Sri. C.N.S, Adv. and
Defendant No.2 by Sri M.T.B Adv.)**

Date of Institution of suit	03.01.2023
Nature of the suit	Partition and Separate possession and Permanent injunction and Declaration.
Date of Commencement of evidence	29.01.2024
Date of pronouncement of judgment	08.06.2026
Total Duration	Year/s Month/s Day/s 3 5 5

(Mahantesh G. Bhusagol)
III Addl. Sr. Civil Judge &
J.M.F.C, Ranebennur.

J U D G M E N T

Since, both these cases are arises out of same fact in issues, between the same parties and in respect of the same suit property. hence, they are consolidated (clubbed) together, as per the order dated 17.08.2024 and evidence was recorded in O.S No.184/2023. In order to avoid conflict decisions and for the sake of convenience, common judgment is passed.

2. The plaintiff in O.S No.184/2023 institute the suit for the relief of declaration by declaring herself is the absolute



owner of the suit house, by virtue of registered Will dated 01.02.2018, executed by her father in her favour.

Also sought for the consequential relief of restraining the defendants from interfering with the plaintiff's possession and enjoyment of suit house.

3. The plaintiff in O.S No.2/2023 institute the suit for the relief of partition and separate possession of the plaintiff's 1/3rd share in the suit schedule property.

Sought for consequential relief to grant permanent injunction against the defendant No.1 by restraining her agents, power of attorney holders, or any one acting on her behalf from alienating, leasing, creating any type of charge, lien etc., or acting against to the interest of this plaintiff upon the suit schedule property.

Also, sought another relief that, the Will dated 01.02.2018 registered in the office of the Sub registrar, Ranebennur, in its vide document No. RNR-3-00072-2017-18 of book No.III stored in CD No. RNRD402 is not binding upon this plaintiff and to be declared, as null and void and to be cancelled.

2. The brief facts of OS No.184/2023 are as follows;

It is the case of the plaintiff's that, one Hanumanthappa is father and late. defendant No.1 is mother of plaintiff and defendant No.2. The plaintiff and defendant No.2 were got married and residing at their matrimonial homes. Late. Hanumanthappa was working in the Karanataka Minor Irrigation Department and in the year 1984, he has purchased NA plot No.4 formed in Sy



No.888/1 of Ranebennur. Thereafter, he constructed suit house. The said suit house is self acquired property of late Hanumanthappa. He was retired in the year 2022 at Ranebennur. The parents of the plaintiff were residing in the suit house and also used to stay in the house of defendant No.2. The plaintiff and her husband and children took care of plaintiff's parents, in their advanced age and by providing all requirements, including medical needs and etc.,.

3. The plaintiff further averred in the plaint that, towards love and affection over the plaintiff and they were in the hope that, plaintiff will look after, in well in the rest of their life. Accordingly, late. Hanumanthappa bequeathed the suit house in favour of plaintiff by executing register Will dated 01.02.2018. The said fact was within the knowledge of defendants and husband of defendant No.2. Thereafter, late. Hanumathappa died on 25.09.2021, while staying at the house of defendant No.2. Immediately, after the death of late Hanumanthappa, the plaintiff came into the possession of the suit house, as being owner and she let out the suit house on rent and collecting the rent from the tenants. Thereupon, the plaintiff asked defendant No.2 and her husband to give original Will deed, to her to take necessary steps. But, they were not given the said Will, in-spite of repeated request. Then, the plaintiff without any alternative, sought the certified copy of the said Will and made application to the Tahashildar Ranebennur to change the Khata of the suit house. Then, the plaintiff on 01.06.2022 came to know that,



the defendants already got mutation to the suit house, by entering the names of the plaintiff and defendants. The defendants without the knowledge and consent of the plaintiff, got effected the said mutation. Though, the plaintiff requested the defendants to change the kata of suit house, but, they refused to do so. Even, the defendants are trying to interference the plaintiff's possession and enjoyment. Hence, plaintiff constrained to file the present suit.

4. In response of service of suit summons of O. S No.184/2022 from the court, the defendant No.1 and 2 appeared before the court through their respective counsels and both have filed their separate written statements. Thereafter, the during the pendency of the suit the defendant No.1 died and her LR's are already on records.

5. In the written statement of defendant No.1, wherein she admitted the description of the suit property and also relationship between the parties. Further, the defendant No.1 admitted the plaint averments put forth by the plaintiff in the plaint. Further, she admitted that, her husband bequeathed the suit house by executing Will on 01.02.2018 and got it registered in favour of plaintiff. Further she admitted that, when they were residing at defendant No.2 house, the said Will was got executed and the original Will remained in the house of defendant No.2. After the death her husband Hanumanthappa, plaintiff came in possession and enjoying the said property. Further, she also admitted the other facts narrated in the plaint averments. Hence, she prayed before



the court to decree the suit of the plaintiff in the interest of justice.

6. In the written statement of defendant No.2, except she admitting the relationship between the parties, but, she denied other facts put forth by the plaintiff in the plaint. Further, in the written statement contended that, late. Hanumanthappa during his life time, he had got several ancestral properties at Ramanagondanahalli village and Shidenur of Byadagi taluk. The grand father of defendant No.2 had purchased land baring Sy No.70/1B measuring 05 acre situated at Ramanagondanahalli village and he died on 20.07.1971. After his demise, his two sons by name Malakappa and Hanumanthappa and his wife Subbawwa have succeeded the said property. Out of the income derived from the said ancestral and joint family property, the father of the defendant No.2 has purchased the suit schedule property in his name, as being karta of the family. Further, in the year 1993 out of the joint family income derived from the agricultural land and also obtained loan from the husband of the defendant No.2 and constructed the residential house, over the suit property. Since, late. Hanumanthappa being employee of Irrigation Department receiving meager salary and he addicted to bad habits, such as drinking alcohol and other bad voices. The husband of the defendant No.2 is brother of defendant No.1, due to which, he helped so much to the family of the late Hanumanthappa.



7. Further, late Hanumanthappa and his brother Malakappa have jointly alienated the ancestral and joint family property in favour Basavaraj Koppad in the year 2000 and repaid the loan amount. Further, the father of defendant No.2 inherited another ancestral and joint family residential property, bearing property No.491 totally measuring 205.00 Sq mtr. situated at Shidenur village. The said property also alienated and clear the joint family loan. Further, he helped the husband of the plaintiff for a construction of residential building. The father of defendant No.2 was always in condition of intoxication and due old age, he was suffering from ill health and not doing any work properly, for the last 6-8 years, before he dies. The plaintiff misusing the old age and ill health of her father and she fraudulently got registered the Will in her favour by manipulating, creating just to knock off the valuable suit schedule property.

8. Further, in the written statement averred that, since, the suit schedule property is an ancestral and joint family property of defendants and the plaintiff, hence, deceased Hanumanthappa has no independent power or right, to execute testament/Will in favour of the plaintiff. After the death of Hanumanathappa the plaintiff and defendant No.1 and 2 being successors got mutated their names, in the Revenue records and they are in actual physical possession and enjoying the said property. The plaintiff has fraudulently got registered the Will, behind the back of the defendant No.2, by cheating and in fraudulent manner, when testator was in sick and by intoxication. The



said Will is not binding upon the defendant No.2. Further, the Will is to be declared as null and void and to be cancelled. After the death of late Hanumanthappa, the plaintiff and defendants have become co-owners and they are joint owners of the suit schedule property, by having equal share in the suit schedule property. All the original documents pertaining to the suit schedule property are in the custody of defendant No.1 and both the plaintiff and defendants are enjoying the suit schedule property, till the month of may 2022. Thereafter, the plaintiff and defendant No.1 have changed their conduct of behavior, against the interest of the defendant No.2, for which, she demanded to effect the partition in the suit schedule property, but, they refused to effect the partition. Accordingly, she has filed O.S No.2/2023 for partition and separate possession. Hence, the defendant No.2 prays to dismiss the suit.

9. The brief facts of O.S No.2/2023 are as follows;

According to the plaintiff, one Hanumanthappa and defendant No.2 are her parents and defendant No.1 is her sibling. During the life time of late. Hanumanthappa had got several ancestral properties. The father of late. Hanumanthappa had purchased the land bearing Sy No.70/1B measuring 1 acre and he died on 20.07.1971 by leaving behind his two sons by name Malakappa and Hanumappa and his wife Subbawwwa. They succeeded the said agricultural land. Out of the income of the agricultural land, late. Hanumanthappa purchased the suit plot No.8



formed in Sy N.888/1 of Ranebennur taluk. Hence, the suit schedule property is Hindu ancestral joint family property and not self acquired property of late Hanumanthappa. Further, from the income derived from the agricultural land and also obtained the loan from the husband of the plaintiff, late. Hanumanthappa in the year 1993, he has constructed the building, upon the suit schedule property. Late. Hanumanthappa addicted to alcohol and other bad voices and he was getting meager salary in Irrigation Department. The husband of the plaintiff helped, so many times and got married the plaintiff without any demands.

10. Further, the plaintiff averred in the plaint that, late. Hanumanthappa and his brothers Malakappa have jointly alienated the ancestral property, in the year 2000 in favour of one Basavaraj Channabaaappa Kopad, through a registered sale deed and clear the loan, obtained for the construction of the residential building. The father of the plaintiff having another ancestral and joint family property, bearing V.P.C No.491 situated at Shidenur village, the said property also alienated and from the consideration amount, cleared the joint family loan and also helped the defendant No.1, for the construction of her husband's building. Since the suit schedule property purchased and constructed with joint family and ancestral property therefore, the father of the plaintiff has no independent power or right to execute the Will in favour of defendant No.1. The father of the plaintiff was always in condition of intoxication and due to old age, he was not doing any work properly from last 6-8 years till his death.



11. Further, the defendant No.1 by taking undue advantage of ill health of late Hanumanthappa, fraudulently and by cheating the testator, under the impression of intoxication, in order to knock of the valuable suit schedule property got executed the Will in favour of defendant No.1. The late. Hanumantappa died on 21.05.2021 and the plaintiff, defendant No.1 and 2 are his successors and co-owners of the said property, hence, they are in joint possession and enjoying the said property jointly. The defendant No.1 filed false suit by creating concocted and fraudulent Will, in O.S No.184/2022 and after receipt of the suit summons the plaintiff came to know about the said facts. Thereupon, the plaintiff demanded for partition in the suit schedule property, but, the defendant No.1 and 2 refused to effect the partition, accordingly she constrained to file the present suit.

12. In service of suit summons of O.S No.2/2023 from the court, the defendant No.1 and 2 appeared before the court, through their respective counsels. The defendant No.1 filed her written statement and same is adopted by defendant No.2 by filing adoption memo. Thereafter, during the pendency of the suit, the defendant No.2 died and her LR's already on record.

13. In the written statement of defendant No.1, denied the plaint averments put forth by the plaintiff in the plaint. Further, it is contended that, the present suit is filed, as a counter to suit filed in O.S No.184/2022, by the defendant



No.1, in respect of the very same property. The suit property is the absolute and self acquired property of late. father of defendant No.1, as he was in service in Karanataka Minor Irrigation Department. Out of his savings of his salary, he had purchased the plot, during the year 1984 and constructed the resident house, in the said plot. He retired from his service in 2002 and he used to satay with his wife in the house of plaintiff. Hence, all their belongings kept in the house of plaintiff, at Ranebennur.

14. Further, in the written statement of the defendant No.1 averred that, the defendant No.1, her husband and her children have taken care of parents of the defendant No.1, which, it create love and affection towards her. Hence, late. Hanumanthappa had bequeathed the suit house, in favour of defendant No.1, under the registered Will on 01.02.2018, with the knowledge of plaintiff and her husband. Late. Hanumanthappa given another property to the plaintiff and he died on 25.01.2021, while staying in the house of the plaintiff. Hence, the original Will remained in the house of the plaintiff itself. Though, the defendant No.1 requested the plaintiff and her husband to handover the original Will, but, it went in vain. After the death of Hanumanthappa the defendant No.1 immediately came in possession, of suit house and let it for rent and for receiving rent from the tenants. The defendant No.1 made efforts to got effect her name through registered Will deed, but, by that time, the plaintiff and her husband's got mutated their names to the suit property. Accordingly, the defendant No.1 constrained to



file O.S No.184/2022. Hence, prays to dismiss the suit with cost.

15. Upon considering the pleadings of the parties, this court has framed the following;

ISSUES IN OS No.184/2022

1. Whether the plaintiff proves that she is the absolute owner of suit property by virtue of the registered will dated 01.02.2018 ?
2. Whether the plaintiff further the alleged interference by the defendants ?
3. Whether the defendant No.2 proves that the suit is barred by law of limitation ?
4. Whether plaintiff is entitled for the relief as prayed for?
5. What decree or order?

ISSUES IN OS No.2/2023

1. Whether the plaintiff proves that the suit schedule property is the ancestral joint family property ?
2. Whether the plaintiff proves that the Will dated 01.02.2018 is null and void and not binding on her ?
3. Whether the defendant No.1 proves that the suit schedule property is the self acquired property of late Hanumanthappa ?



4. Whether defendant No.1 proves due execution of Will dated 01.02.2018 ?
5. Whether the plaintiff is entitled for the reliefs as sought for ?
6. What order or decree ?

16. The plaintiff in order to substantiate the case, She herself got examined as PW1 and produced 8 documents as Ex.P.1 to P.8 and also got examined another witness as PW.2 and closed her side. On the other hand, defendant No.2 in OS No.184/2022 and plaintiff in OS No.2/2023 and got examined as DW.1 and got marked 24 documents as Ex.D.1 to D.24 and closed her side of evidence.

17. Heard arguments and perused the materials on record.

18. My findings on the issues in OS No.184/2022 are as follows:-

- Issue No.1 : In the Affirmative,
- Issue No.2 : In the Affirmative.
- Issue No.3 : In the Affirmative,
- Issue No.4 : In the Affirmative,
- Issue No.5 : As per the final
order, for the following;



19. My findings on the issues in OS No.2/2023 are as follows:-

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

REASONS

20. ISSUE No.1 AND 3 of O.S No.2/2023 :- To avoid the repetition of facts and evidence, these issues are taken together for common discussion.

For the sake of convenience the parties, in both the suits are herein, after referred to in the same rank, as plaintiff and defendants, as mentioned in O.S.No.184/2022. Further, the executant of the Will by name late. Hanumanthappa, hereinafter referred as 'testator' for brevity as testator.

21. According, to the defendant No.2, the property bearing Sy. No.70/1B measuring 05 acre of Ramanagondanahalli village, purchased by the father of late. Hanumanthappa. The income derived from the said agricultural land, late. Hanumanthappa purchased the suit schedule plot No.4 formed in Sy No.888/1. Further, in the year 1993 late. Hanumanthappa, out of the income of the joint family and obtained loan from the husband of the



defendant No.2, constructed the residential building. In the year 2000, late. Hanumanthappa sold the said agricultural property, in favour of Sri Basavaraj Channabasappa Koppad, Thereupon, he has clear the loan obtain to construct the building, over the suit schedule property. Therefore, the burden is on the defendant No.2 to prove that, the suit schedule property is ancestral and joint family property of plaintiff and defendants.

22. As against, the learned counsel for plaintiff vehemently argued before the court that, late. Hanumanthappa was in service in Karanataka Irrigation Department and out of his overall savings of his salary, he had purchased the NA plot, in the year 1984 and in the said NA plot constructed the residential house. He was retired from his service in the year 2022. Hence, the suit schedule property was self acquired property of late Hanumanthappa. Therefore, the onus is on the plaintiff to prove and establish before the court that, the suit schedule property is self acquired property of late Hanumanthappa.

23. Undisputed facts are as follows ;

The relationship between the plaintiff and defendant Nos.1 and 2 is not disputed by the parties. Further, it is an admitted fact that, the husband of the defendant No.2 is brother of defendant No.1. Further, it is admitted that, the suit schedule property plot purchased in the name of late Hanumanthappa and there after he has constructed the residential building.



24. The burden is on the defendant No.2 to prove that, the suit schedule property is Hindu undivided ancestral or joint family property of herself and defendant No.1 and plaintiff. The defendant No.2 in order to prove the said facts, she has filed her affidavit in lieu of examination in chief by reiterating her plaint averments averred in OS No.2/2023 and written statement averments of O.S No.184/2022. Hence, the defendant No.2 herself got examined as DW.1. Further, in support of her case, she has produced as many as 24 documents marked as Ex.D.1 to D.24.

25. As against, in order to rebut the contention of the defendant No.2 and in order to prove her defence, the plaintiff herself got examined before the court as PW.1, by reiterating the plaint averments filed in O.S.No. 184/2022 and Written statement averments averred in O.S.No. 2/2023 and in order to substantiate her plaint averments, she has filed 8 documents marked as Ex.P.1 to P.8. Further she got examined one attesting witness of Ex.P.2 as PW.2.

26. The defendant No.2 in support of her case, has produced 24 documents, out of that, Ex.D.2 is mutation extract pertaining to M.R No.841, which discloses that, Hanumamappa Malakappa Hullatti purchased Sy.No.70/1B towards southern side 5 acre agriculture land, dated 14.12.1965 for a consideration amount of Rs.1,000/-, from Bharamappa Kariyallappa Kakol. On the basis of the sale deed, the mutation was got effected.



27. Ex.D.3 is another mutation extract, pertaining to M.R No.994 and the document extract that, Hanumappa Malakappa Hullatti died on 20.07.1971 by leaving behind his two sons Malakappa and Hanumappa and his wife Subbawwa. They have succeeded the property, on the basis of succession and the mutation was granted, in the name of Malakappa Hanumappa Hullatti, as he being elder son and manager of the family.

28. Ex.D.4 to D.11 are the hand written old RTC pertaining to Sy No.70/1B measuring 05 acre, at Col No.9 it could be seen that, Malakappa Hanumappa Hullatti undivided joint family manager name was deleted and inserted the names of Malakappa, Hanumappa as children of Hanumappa Hullatti. The said property stands in their names, from the year 1977-78 to 1998-99.

29. Ex.D.12 is sale deed and same is extract before the court that, Hanumappa S/o Hanumappa Hullatti purchased the plot No.4 formed in Sy.No.888/1 of non agricultural property, purchased from Drakshayani W/o Doddabasappa Gundappalavar on 07.12.1984 for a consideration amount of Rs.3,000/-. Ex.D.13 is record of rights pertaining to Sy. No.888/1 plot No.4, which stands in the name Hanumappa S/o Hanumappa Hullatti.

30. Ex.D.14 is certified copy of sale deed, which discloses that, on 30.03.2000 Malakappa and Hanumappa



children of Hanumappa Hullatti had executed sale deed in favour of one Basavaraj S/o Basappa Koppad, in respect of Sy. No.70/1B measuring 05 gunta, for a consideration amount of Rs.1,40,000/-. Ex.D.15 is mutation extract pertaining to M.R No.1643, on the basis of sale, the mutation was got effected in the name of Basavaraj Channabasappa Koppad and as per Ex.D.11, hand written RTC pertaining to Sy No.70/1B from 1997-98 to 2002-03, wherein on the basis of sale Malakappa Hanumappa children of Hanumappa Hullatti names were deleted and inserted the name of Basavaraja Channabasappa Koppad.

31. Ex.D.17 is Panchayath extract, pertaining to VPC No.491, stands in the name of Hanumanthappa S/o Hanumappa Hullatti. Ex.D.16 is another sale deed executed by Hanumappa S/o Hanumanthappa Hullatti in favour of Basavaraj S/o Malakappa Hullatti, for a consideration amount of Rs.2,00,000/- and executed the sale deed on 24.03.2017, in respect of VPC No.491 of Shidenur Gram Panchayat.

32. So, on conjoint perusal of these documents, which are suffice before the court that, Sy. No.70/1B measuring 05 acre agriculture property purchased by grand father of defendant No.2 and the said property succeeded by his children. Further, as per Ex.D.14 both had alienated the said property for a consideration amount of Rs 1,40,000/- on 30.03.2000. Further, the another property VPC No. 491 of Shidenur Gram Panchayat alienated by late.



Hanumanthappa in favour of Basavaraja S/o Malakappa Hullatti for a consideration amount of Rs.2,00,000/- dated 24.03.2017. Further, as per Ex.D.12 late Hanumanthappa purchased plot No.4 of Sy.No.888/1 from its vendor on 07.12.1984, for a consideration amount of Rs.3,000/-.

33. During the cross examination of PW.1 she admitted that, her grand father having house and agricultural property at Shidenur village. Further she admitted that, her father and uncle Malakappa jointly alienated agricultural the property, in the year 2001, in favour Basavaraj Koppad. Further, she admitted that, in the year 2007 the house property situated at Shidenur village alienated in favour of son of Malakappa, by name Basavaraj. Further, she admitted that, before alienating the said properties, Malakappa and Hanumanthappa jointly cultivated the said property and received the income derived from the said agricultural land.

34. So, the admission and documents put forth before the court, which are established before the court that, the agricultural property, purchased by the grand father of defendant No.2 and house property inherited by late Hanumanthappa and his brother Malakappa. Since, the agricultural property purchased by grand father of defendant No.2 and alienates by his tow children. Therefore, the said property is not ancestral joint family property, on the hand of late Hanumanthappa and Malakappa, as it was purchased property by their father.



35. On the other hand, as per recitals of Ex.D.16 sale deed, wherein it is mentioned that, the said property is ancestral joint family property. Therefore, the VPC No.491 was ancestral joint family property, on the hand of late Hanumanthappa and Malakappa.

36. It is the contention of the defendant No.2 that, the plot No.4 formed in Sy. No.888/1 purchased by late Hanumanthappa, after deriving the amount from the joint family agricultural property. Hence, argued that, the said property is joint family property of plaintiffs and defendants.

37. Per contra, leaned counsel for plaintiff argued before the court that, the said property purchased by late Hanumanthappa, out of his saved salary amount. Hence, it is his self acquired property.

38. In this regard, the defendant No.2 has produced sale deed marked as Ex.D.12, wherein the property purchased by late Hanumanthappa on 07.12.1984. To the contrary, the plaintiff has also produced Ex.P.1 mutation extract No.14303, wherein on the basis of sale, the mutation was got effected in the name of late. Hanumanthappa.

39. It is worth to note here that, as on the date of purchase of plot No.4 by late Hanumanthappa, he was in service, as it could be seen in Ex.D.12 document. Further said fact also admitted by defendant No.2. So, it is proved before the court that, as on the date of purchased the plot



No.4 formed in Sy No.888/1, late. Hanumanthappa was Government Servant.

40. DW.1 during her cross examination, admitted that, her father service at Minor Irrigation Department and he was worked there for 28 to 30 years. Further, she admitted that, her father transferred to Ranebennur in the year 2004-05 and he was retired from his service in the year 2004. So, the admission given by DW.1, which also depicts before the court that, as on the date of purchased the property late. Hanumanthappa was in service.

41. During the cross examination of PW.1, wherein she admitted that, her father retired from the service in the year 2005 and he was receiving meager salary amount. Further the witness voluntarily deposed that, he had been managing the family. She denied the suggestion hat, since her father receiving meager salary amount, due to which, in order to construct the residential house, he borrowed loan. Further she denied the suggestion that, in order to repaid the said loan, in the year 2001 he alienates the 05 acre agricultural property. Further the witness deposed, the said consideration amount given to her sister Shobha. Further she denied that, her father in order to construct the house, received loan from the husband of defendant No.2.

42. On the other hand, during the cross examination of DW.1, wherein she denied the suggestions that, her father not derived any income from agricultural property. The



income from the agricultural land of Ramanagondanahalli is meager and which was not sufficient, for the maintenance of her grand mother and uncle. Further, her father was in service, due to which, he was not receiving any income from the said agricultural property.

43. Further during the cross examination of DW.1, wherein she admitted that, her father in the year 1984, has purchased the plot and at that time, he was services at Naragund. At that time, his two daughters and his wife were jointly residing. Due to daughters are minors, hence, late Hanumanthappa saved money. Further she denied the suggestion that, from savings of his salary money, he purchased the said property. Further she admitted that, her father constructed the resident house in the year 1993. Even after the construction of the said house some portion of vacant portion is left.

44. So, considering the evidence of both the parties, though PW.1 during her cross examination admitted that, her father received meager salary amount. But, she herself deposed before the court that, her father managing the family. On the other hand, categorically denied that, late Hanumanthappa not receiving any income from the agricultural land and also denied that, the property purchased by late Hanumanthappa, out of the salary income.

45. It is relevant to note here that, as per Ex.D.4 to D.11 record of rights, at Col No.8, the source of water not



shown in the said RTC . Further, the names of crops shown cotton, groundnut and toordal etc., So, these crops usually, grown in the dry lands, based on the rain. Further, in the sale deed marked as Ex.D.14, wherein its recitals discloses that, the property is not having any source of water and growing maize corn, cotton and others. Further, in the sale deed, it recited that, the said property is inconvenient to them, for cultivation, and to purchase another property, due to which, they alienates the said property.

46. So, considering the crop grown in the said agricultural land and also the recitals of the sale deed which clearly extract before the court that, no much income derived from the said agricultural land. Even through it is burden is on the defendant No.2 that, the late Hanumanthappa purchase the vacant plot No.4 out of the income derived from the agricultural land. But, in order to proof of the same, no documents are put forth to show that, what income received from the said agricultural land. Even the defendant No.2 has not produced piece of documents from the APMC or other receipts from the market to show the income of derived from the agricultural property.

47. It is worth to note here that, in order to show that, the said agricultural property was fertile land and grown sufficient crop, in the said land, even the defendant No.2 has not put forth any documents. Further, the defendant No.2 even not adduced oral evidence of the neighbor land of Sy



No.70/1B of Ramanagondanahalli in order to show that, the sufficient income derived from the said agricultural land.

48. On the other hand, as admitted by PW.1 and DW.1, as on the date of purchased the vacant plot No.4, late Hanumanthappa was working at Naragund and at that time the plaintiff and defendant No.1 were minors. Though, DW.1 denies that, since they were minors and late. Hanumanthappa saved money and from the said money, he has purchased the property, but, except she denies the said suggestion no evidence is led before the court to show that, late Hanumanthappa was addicted to drinking of alcohol and bad voices.

49. On the other hand, DW.1 during her cross examination admitted that, till she got married she was residing at her parental house, along with plaintiff and her parents. Further she admitted that, her mother has know the family matters. Further she admitted that, her mother in both suits arrayed, as defendant and she filed her written statement, claiming the suit schedule property is separate property of her husband.

50. So, as per the admission of DW.1, if the mother of defendant No.2 and plaintiff knows everything about the family matters, then, as per written statement she contended that, the suit schedule property is self acquired property of late Hanumanthappa. This fact yet another fact to disbelieve the contention of the defendant No.2.



51. It is pertaining to note here that, as per Ex.D.12 late Hanumanthappa purchased the open plot No.4, in the year 1984 and he had constructed the residential building i.e., suit house in the year 1993. But, the agricultural property alienates by him, in the year 2000 and house property alienates by him in the year 2017. Further DW.1 admitted that, as on the date of purchase of plot and construction of residential building, he was in service. Thus, neither the agricultural property sold to construct the residential building, as it was constructed in the year 1993.

52. On the other hand, as discussed in above paras, the defendant No.2 has not placed any sufficient materials to show that, the income derived from the agricultural property, late Hanumanthappa purchased the plot No.4. Further, the defendant No.2 has not placed any documents in order to show that, late Hanumanthappa in order to construct the residential building made loan and borrowed loan from the husband of defendant No.2. In this regard DW.1 herself deposed before the court that, she unable to say that, what loan amount borrowed by her father from her husband and she has no documents in order to show that, the loan was availed by her father.

53. Therefore, considering the over all above said discussion, though the defendant No.2 has produced sale deed and mutation extract and old hand written RTC, in order to show that, late Hanumanthappa having joint family



and having ancestral house property, but, the point for the consideration before the court is that, whether late Hanumanthappa has purchased the suit plot, only on the derived income from the agricultural produce. In that regard, no oral or documentary evidence placed by defendant No.2 to believe her contention.

54. On the other hand, as discussed the plot purchased in the year 1984 and the residential suit house constructed, in the year 1993. Moreover, parties are admitted during their evidence that, as on the date of purchase, the plot and construction of suit house late Hanumanthappa was in service at Irrigation Department.

55. Though, PW.1 during her cross examination admitted that, late Hanumanthappa received meager salary amount, but, the property purchased in the year 1984 for a consideration amount of Rs.3,000/- and considering the age of the plaintiff and defendant No.2, which suffice before the court that, they were minors, as on the date of purchase the said plot.

56. Therefore, it depicts before the court that, the late. Hanumanthappa had purchased the suit plot, on the income derived from his salary and not from the derived income from the agricultural land. Therefore, it is proved before the court that, the suit plot purchased out of the income derived from the salary of late Hanumanathappa. If really, the property purchased out of the joint family, income from the agricultural property bearing Sy No.70/1B , then the brother



of late Hanumanthappa by name Malakappa also entitle to get share. But, neither the defendant No.2 made them as party to the suit, nor they themselves claims partition against the late Hanumanthappa during his life time. Moreover, as admitted by the parties, at the time of purchase the suit NA plot No.4, the plaintiff and defendant No.2 were minors. Hence, there were no any contribution of them to purchase the suit house. Which is yet another fact to consider that, the suit house property is separate property of late Hanumanthappa.

57. Under such circumstances, the defendant No.2 fails before the court to show that, the suit house is ancestral and joint family property of plaintiff and defendants. But it is proved before the court that, the suit house property is self acquired property of late Hanumanthappa. **Under such circumstances, in respect of O.S.No. 2/2023, I answer Issue No.1 of in the Negative, and Issue No.3 in the Affirmative.**

58. ISSUE NO.1 of O.S No.184/2022 and ISSUES No.2 and 4 of OS No.2/2023 :

It is the case of the plaintiff that, late Hanumanthappa towards love and affection on her and he has hope that, plaintiff will look after them well, in the rest of their life, hence, late Hanumanthappa (testator) executed registered Will dated 01.02.2018 by bequeathing the suit house, in favour of plaintiff, in the presence of attesting witnesses. Hence, the plaintiff is owner and possessor of suit house, on



the basis of alleged Will. Therefore, the heavy burden is on the plaintiff to prove, due execution of Will by removing suspicious circumstances surrounding for execution of the said Will.

59. As, against, the learned counsel for defendant No.2 argued before the court that, Since, the suit house is ancestral and joint family property of plaintiffs and defendants, therefore, the testator has no ownership and right to execute the Will. As on the date of execution of alleged Will, the testator was not in sound mind and plaintiff by way of fraudulent and by cheating late Hanumanthappa under the impression of intoxication, sought his signature. Therefore, the Will is not executed in accordance with law. There are some surrounding suspicious circumstances, while executing the Will. Therefore, late Hanumanthapappa not intended to execute Will in favour of plaintiff. Accordingly, she is entitle to get half share in the suit house.

60. In this case, the heavy burden is on the plaintiff, as she being propounder of Will to prove, due execution of Will by testator by bequeathing suit house. The plaintiff in order to discharge her burden, she herself got examined before the court as PW.1 and produced certified copy of Will, marked as Ex.P.2 and produced death certificate of late Hanumanthappa i.e., testator. Further, she has examined one of the attesting witness to the alleged Will by name Puttanagouda S/o Channabasanagouda Mudigoudar as PW.2.



61. On the other hand, defendant No.2 has also produced certified copy of Will as per Ex.D.24 and death certificate of testator as Ex.D.18 and RTC of suit house, as at Ex.D.19 and 22. The mutation also produced as Ex.D.23.

62. Before discussion on the fact in issue, let me consider the law on testamentary right to prove the due execution of Will and also to consider requirement to prove the execution of Will.

63. Sec.63 of Indian Succession Act 1925 reads as follows;

63. Execution of unprivileged Wills.

Every testator, not being a soldier employed in an expedition or engaged in actual warfare, or an airman so employed or engaged, or a mariner at sea, shall execute his Will according to the following rules:

(a) The testator shall sign or shall affix his mark to the Will, or it shall be signed by some other person in his presence and by his direction.

(b) The signature or mark of the testator, or the signature of the person signing for him, shall be so placed that it shall appear that it was intended thereby to give effect to the writing as a Will.

(c) The Will shall be attested by two or more witnesses, each of whom has 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 acknowledgement of his signature or mark, or the signature of such other person; and each of the witnesses shall sign the Will in the presence of the testator, but it shall not be necessary that more than one witness be present at the same time, and no particular form of attestation shall be necessary.

64. Sec.67 of Bharatiya Sakshaya Adhiniyam, 2023, reads as follows;

67. Proof of execution of document required by law to be attested.

If a document is required by law to be attested, it shall not be used as evidence until one attesting witness at least 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:

Provided that it shall not be necessary to call an attesting witness in proof of the execution of any document, not being a will, which has been registered in accordance with the provisions of the Indian Registration Act, 1908 (16 of 1908), unless its execution by the person by whom it purports to have been executed is specifically denied.

65. On combined reading of Sec. 63 of Indian Succession Act with Sec.67 of the Bharatiya Sakshaya Adhiniyam, 2023, it appears that, a person propounding the Will has to prove that, the Will was duly and validly executed.



That cannot be done by simply proving that, the signature on the Will was that of the attester, but, it must also proved that, attestations were also made properly, as require by the clause (c) of Sec.63 of Indian Succession Act 1925. It is true that, Sec.67 of Sakshaya Adhiniyam, 2023, does not say that, both or all the attesting witnesses must be examined. Therefore, the burden heavily cast on the propounder to prove the execution of Will by removing all the surrounding suspicious doubt and he has to prove that, the Will had executed in natural way.

66. Further, on perusal of proviso (c) of Sec.63 of Indian Succession Act 1925, extract that, each of the witness shall sign the Will in the presence of the testator, but shall not be necessary that, more than one witness be present at the same time, and no particular form of attestation shall be necessary. Therefore, it is clear that, all the witnesses were present at the same time, if one of the attesting witness saw that, the testator signed on the Will in his presence, it is sufficient.

67. Therefore, the burden is on the propounder/plaintiff to prove, due execution of the Will. She has produced certified copy of Will marked as Ex.P.2 and it recitals discloses that, one Sri Hanumanthappa S/o Hanumappa Hullatti executed Will on 01.02.2018 before the sub registrar office, Ranebennur in favour of Smt Vijayalakshmi W/o Chandrashekhar Angargatti i.e., plaintiff herein, by bequeathing the suit schedule property. The



document further it discloses that, one Puttanagouda Channabasagouda Mudigoudar and Pulakeshi Biddareppa Ritti were the attesting witnesses to the said document. Further, the said document registered in Ist document RNR-3-00072-2017-18 dated 01.02.2018.

68. Further, Ex.P.2 recitals discloses that, since, the attestor was aged and he was so much weak, hence, he has executed Will in favour of his younger daughter. Separate property mutated in the name of elder daughter by name Shobha. Hence, towards love and affection and there is a faith towards her that, she will look after them well, in rest of their life. Hence, he has bequeathed the said property in her favour.

69. Ex.P.3 is death certificate of late Hanumanthappa and he died on 25.09.2021 and at Sl. No.4 of death certificate shown the place of death as “Cholmaradeshwar Nagar Ranebennur (CMC), Ranebennur, Haveri Karnataka”. Further, as SL. No.9 the permanent address of the deceased shown, as the same in Sl No.4. It is worth to note here that, as per the cause title of the complaints, the address of the defendant No.2 shown as the same shown in the death certificate. So, as per the death certificate of testator, he died at the house of defendant No.2.

70. Ex.P.4 is mutation extract M.R No.1032/2021-22 which discloses that, late. Hanumappa S/o Hanumappa Hullatti died on 25.09.2021 leaving behind his wife Neelavva



and daughters Shobha and Vijalakshmi. Hence, in their names succeeded the property by way of inheritance. Accordingly, as per Ex.P.5 and 6 record of rights pertaining to SY No.888/1 formed plot No.4 the names of plaintiff and defendant No.1 and 2 appeared in the said document.

71. Ex.P.7 is endorsement given by the Tahsildar Ranebennur stating that, as per requisition given to get mutate your name, on the basis of Will, but, as per report of the revenue inspector and other documents, prior to filing the requisition, on dated 23.11.2021 by way of succession of inheritance (Varasa), already mutation was got effected. Therefore, it can be challenge the said mutation, before the competent authority by preferring an Appeal. Ex.P.8 is form No.3 of CMC Ranebennur, pertaining to the suit house property.

72. So, on perusal of documents placed by the plaintiff, which are extract that, the late Hanumappa got executed registered alleged Will in favour of plaintiff in respect of suit house property. But, as per Ex.P.7 document, the mutation was got effected on the basis of succession inheritance. Thereafter, the plaintiff moved for mutation on the basis of Will, but, same was not considered and advised to prefer an Appeal, against the said mutation dairy.

73. *Now let me examine the oral evidence adduced by the parties about the valid execution of the Will.*



PW.1, the plaintiff is propounder of the Will. She is also beneficiary. In the examination in chief, which is by way of an affidavit, she has shown that, the testator is her father, the defendant No.1 is mother and defendant No.2 is her blood sister. Her father executed Will in her favour, as she, her husband and her children were provided all the necessary medical needs and borne all their medical expenses. Further, her father had developed much love, affection towards her and had kept much faith on her. Hence, he had executed the Will in her favour.

74. During her cross examination, it elicited that, she unable to know about how much salary took by her father but, he was working as manager. He retired somewhere in the year 2005. Her father and mother were residing at defendant No.2's house and at suit house. Further she elicited that, after the suit house constructed, they were resided for five year in the said house and return back to defendant No.2's house till his death.

75. Further, she elicited that, in the year 2016 her mother and father returns to suit house, but, further she deposed again they return to defendant No2's house. Further she elicited that, often they went to her house and return to suit house. Further she denied the suggestion that, her father died in the suit house, but, she elicited that, he died in the defendant No.2's house. Further, she denied the suggestion that, her father died in the suit house, and the body was shifted to defendant No.2's house, for cremation.



Again she elicited that, cremation and funeral function held at defendant No.2's house. Due to he died in the said house accordingly, final cremation was conducted in the said house.

76. Further, during the cross examination of PW.1 denied the suggestion that, her father from his childhood having bad habit of drinking of alcohol, smoking and chewing tobacco. She deposed that, prior to the death of her father in the year 2021, he had no any ill health and he died due to cardiac attack. Further, denied the suggestion that, her father in the year 2016, he was not mentally stable and physically sick. Further, she denied the suggestion that, her father not died, due to cardiac arrest, but, prior to two years of his death, he was suffering from ill health. Before the death of her father, on the last day, she saw him at her sister's house. And deposed that, she saw her father at his house.

77. PW.1 further elicited that, defendant No.1 and her husband except residing at suit house, they never resided at the house constructed by her husband, but, she deposed, when her father was getting ill health, then he visited to her house. She elicited that, in the year 2016 her mother and father took all their belongings to suit house from the defendant No.2's house. Further she elicited that, her father and mother took all the their documents and materials to the suit house. Therefore, all the materials of her father, at the time of his death of suit house were not existed in the defendant No.2's house.



78. PW.2 is one Puttanagouda S/o Channabasagouda Mudigoudar, who is one of the attesting witness to the Will. In his examination in chief by way of affidavit, he has stated that, he was also retired person and he has acquaintance with Hanumathappa. He often visited his elders daughters house, which is near by his house and he has also visited to his house. 7-8 years back himself and one Pulakeshi Ritti called by Hanumathappa and they went to the sub registrar office. Through one Bond writer, late. Hanumathappa Hullatti drafted the Will deed. The scribe read in Kannada language, after understood late Hanumathappa in their presence, affix his signature to the said document. Thereafter, himself and Pulakeshi Ritti in their presence they have signed the said document. At the time of execution of the Will Hanumathappa was sound in mind and he was physically good health. He has bequeathed house property existed in Rajarajeshwari Nagar Ranebennur to his second daughter.

79. Through the evidence of PW.2, the certified copy of Will was marked as Ex.P2. He deposed that, he has signed the Will and identified the said signature, on the certified copy of the Will. Since, it was certified copy, accordingly his signature was not marked. Further, he identified the signature of late. Haumanthappa and same were not marked, as the document was certified copy.

80. In the cross examination, he has stated that, he retired from teacher service in the year 2007. In the year 2004, he know about the father of the plaintiff's. Often we



met with each other. He does not know how many properties hold by late Hanumanthappa, but, he narrated about having properties of agricultural land and house at his village. Further PW.2 elicited that, the defendant No.1 and late Hanumanthappa were residing, at defendant No.2's house. Further, he stated that, late Hanumanthappa resided in the suit house, defendant No.2's house and also in the plaintiffs house. It was denied the suggestion that, prior to 5 years of death of late Hanumanthappa was suffering from ill health. Further, he denied the suggestion that, late Hanumanthappa having habit of drinking alcohol, due to which, last five years from the date of his death was suffering from mental and suffering from ill health, due to which, he was not performing any work.

81. Further he elicited that, late. Hanumanthappa died at suit house and took him to hospital from there to defendant No.2's house. His funeral ceremony held at defendant No.2's house. The plaintiff before she construct her house, she residing at defendant No.2's house.

82. PW.2 further elicited that, the Will was drafted at sub registrar office, at the time of writing the Will himself, Pulakeshi and late Hanumanthappa were present. He went at about 1.00 PM., before he went their Hanumanthappa was present and thereafter, himself and Pulakeshi joined him. Further he elicited that, as he stated in his chief affidavit Hanumanthappa in his presence given information to the scribe to prepare it. Further he deposed that, Ex.P.2 was not



in the name of scribe Lakshameshwar, but, it was written by scribe J C Kammar. For which, the witness deposed that, he was may be office helper of Lakshameshwar. Further, he denied the suggestion that, he unable to know who was prepared and who was presented to the sub registrar office. Further admitted that, the Will was registered at 12.58 PM.,.

83. Further he denied the suggestion that, the Will was prepared by husband of plaintiff, thereafter, took his signature on the said Will, the intention of late Hanumanthappa never stated to him and not brought him to the sub registrar office. Further he denied the suggestion that, plaintiff brought him to prepare the said Will. It was denied the suggestion that, when defendant No.2 went to her service, then, the plaintiff by saying that, late Hanumanthappa took him to the hospital, but, fraudulently bought him to sub registrar office and without his knowledge took his signature on the said document. Further he denied the suggestion that, Ex.P.2 document was fraudulently prepared by himself, Pulakeshi and Plaintiff.

84. On the other hand, on behalf of the defendants, defendant No.2 is examined and she also filed her examination in chief by way of an affidavit. She admitted the relationship between defendant No.1 and plaintiff. Her father was always in condition of intoxication and due to old age, he was in sick and he was not doing any work properly, for the last 6-8 years before the he dies. The plaintiff by misusing his old age and ill health of her father, the plaintiff has



fraudulently got it registered the Will in her favour by manipulating, creating just to knock off the valuable suit house. The suit house property is ancestral and joint family property of plaintiff and defendants, hence, her father has no right to execute to Will in favour of plaintiff and etc.

85. During her cross examination, she elicited that, her husband working at PWD department and she is teacher appointed in the year 1998. her husband is brother of defendant No.1. Her house situated at Cholamaradeshwar Nagar Ranebennur. Her mother has know the facts of the family and she died during the pendency of the suit, on 05.06.2025. Her mother filed the written statement, in both the suits and contended that, the suit house is her husband's self acquired property and in his self interest, he has executed Will deed, but, the said suggestions were denied.

86. Further she denied the suggestion that, as on the date of death of her father, he was 73 years old. She denied that, her father has no bad habits. She elicited that, till the death of her father, he was residing at suit house. Further, she deposed that, in the year 2016, they were residing at her house. Further she elicited that, one Puttanagouda i.e., PW.2 was known to her and to his father. Further, she elicited that, the alleged Will Ex.P.2 executed by her father, in the year 2018.



87. It is from this oral and documentary evidence on record, let me scrutinize, whether the Will is proved, is to be determined by this court.

88. The Hon'ble High court of Karnataka, in the case of **Sri J.T. Surappa and others Vs Sri Sachhidananendra Saraswathi Swamiji Public Charitable Trust and others reported in ILR 2008 KAR 2115**, wherein the Hon'ble High Court has elaborately discussed the legal requirement in proof of the Will. Further the Hon'ble Court, clearly held that, the court should follow five steps, so, as to see whether the Will is legal, valid and acceptable. The Hon'ble Court has laid down the five steps, at para 24 of the judgment, which are:

1. Whether the Will bears the signature or mark of the testator and is duly attested by two witnesses and whether any attesting witness is examined to prove the Will.?
2. Whether the natural heirs have been disinherited? If so, what is the reason?
3. Whether the testator was in a sound state of mind, at the time of executing the Will?
4. Whether any suspicious circumstances exist surrounding the execution of the Will?
5. Whether the Will has been executed in accordance with Sec.63 of the Indian Succession Act 1925 read with Sec.68 of the Evidence Act.

89. Perused the above judgment and these are the steps to be consider by the Court to decide, whether the Will



executed in accordance with law or otherwise. Therefore, in this background of mind, let me scrutinize, whether the Will in question is duly executed or there are surrounding suspicious circumstances, for the execution of the said Will.

90. As per the above judgment, the first step is that, *Whether the Will bears the signature or mark of the testator and is duly attested by two witnesses and whether any attesting witness is examined to prove the Will.?*

i). In this case, as produced the alleged Will by the plaintiff marked as Ex.P.2 and defendant No.2 also got marked the alleged will as Ex.D.24. The said document describe before the court that, it was reduced into writing and also signed by the testator, on each page of the Will. Also signed two attesting witnesses, out of that, one witness is examined before the court as PW.2.

ii). However, the plaintiff being propounder of the Will has not produced the original Will before the Court, but, she has produced certified copy of alleged Will and got marked as Ex.P.2. In order to place secondary evidence, she has made foundation that, original Will with the custody of defendant No.2 and same is pleaded in the plaint regarding the original Will, with defendant No.2 and in spite of request made to her, she did not give the original Will to her. Therefore, the plaintiff has to place sufficient material before the court to led secondary evidence. The said facts decided on later part, but, as per the first step, by considering the Ex.P.2, it was



reduced into writing, signed by the testator on each page and also signed by two attesting witnesses, on the said Will. Therefore, the first steps is fulfilled.

91. The second step is that, Whether the natural heirs have been disinherited? If so, what is the reason? :-

i). As per the records of the case in hand, testator has two daughters and wife, at the time of execution of Ex.P.2. The recitals of Ex.P.2 document discloses that, executed the Will in favour of younger daughter i.e., plaintiff, by disinheriting elder daughter i.e., defendant No.2 and Wife defendant herein. Further the recitals of Ex.P.2 Will extracts that, the elder daughter Shobha has given other property by mutating in her name. Since, the younger daughter husband and children taken care of him and also provided medical and hospital facilities to him. Hence, towards love and affection over her, he executed the Will in her favour.

ii). So, as per Ex.P.2 the natural heir i.e, elder daughter and wife disinherited in the Will. Further, the recitals of the said Will extract before the court that, one of the property given and mutated in the name of elder daughter Shobha, due to which, the property bequeathed in favour of younger daughter.

iii). It is worth to note here that, during the cross examination of DW.1, wherein it suggested that, after sale of agricultural property at Ramanagondanahalli and house property at Shidenur, the entire consideration amount given



to her by her father. But the said suggestion was denied. She admitted that, her house was constructed, in the year 2002-03 ground floor constructed by her husband at same time. Further she admitted that, subsequently constructed the first floor house, but, she denied the suggestion that, for construction of her house, her father has given Rs.8,00,000/- money to them.

iv). On the other hand, PW.1 in her examination in chief, at para 5 contented that, “by that time my father Hanumanthappa had given his another property to defendant No.2”. So, the deposition of PW.1 discloses that, while executing the alleged Will, the testator executed another property to the defendant No.2. But, in proof the plaintiff has not produced any iota of documents before the court.

v). In this regard during the cross examination of PW.1 at page 15, it was denied the suggestion that, no property has been given by her father to defendant No.2 and she falsely deposing evidence before the court. Further it was suggested that, after the alienation of the property, when the consideration amount given to defendant No.2, at once she deposed, she unable to say the said facts, but, voluntarily deposed before the court that, in the year 2001, it was alienated, thereafter, given amount to her.

vi). Further, during the cross examination of PW.1 wherein it suggested that, in order repay the loans availed by her father, in the year 2001 sold 5 acre agricultural land and repaid the said loan. The said suggestion was denied and



witness replied that, the entire consideration amount given to her sister Shobha and in order to show the same, she has produced documents.

vii). So, on considering the evidence of both the parties, though the plaintiff in her chief affidavit taken a contention that, by the time of execution of the Will, her father has given another property to defendant No.2. But, as discussed supra, which property given to her, by testator not placed any documents before the court. On the contrary, PW.1 taken a contention that, after the sold out the agricultural land and house property, the entire consideration amount given to defendant No.2. But, in proof not produced any piece of documents before the court. On the other hand, during the cross examination of DW.1, she denied the suggestion that, in order to construct the first floor house Rs.8,00,000/- given by her father.

viii). Therefore, as per the recitals of the Ex.P.2, the propounder/plaintiff is not able to show that, which property given by her father to defendant No.2, for disinherit, while executing registered Will in her favour.

ix). On the other hand, though plaintiff during the cross examination of DW.1 and in her evidence deposed before the court that, after the sold the house and agricultural property, the consideration amount given to defendant No.2. Further, it is also suggested that, in order to construct the first floor house, her father has given Rs.8,00,000/-, but, as per the recitals of the Ex.P.2, it is



shown that, another property khata made in favour of elder daughter i.e., defendant No.2 herein. Therefore, in Ex.P.2 not shown the consideration amount given to elder daughter, but, it was shown Khata was made in her name. Hence, the contention took by the plaintiff cannot be accepted.

x). In this regard I have drawn the attention of the ratio laid down by the Hon'ble Apex Court of India, wherein in the case of **Mahesh Kumar (dead) by Lrs Vs. Vinod Kumar and others reported in (2012) 4 SCC 387**, wherein at para 48 and 49 observed as follows;

48. "The fact that the appellant was present at the time of execution of Will dated 10.2.1992 and that the testator did not give anything to respondent Nos. 1 and 2 from his share in the joint family property are not decisive of the issue relating to genuineness or validity of the Will. The evidence produced by the parties unmistakably show that respondent No. 2 had separated from the family in 1965 after taking his share and respondent No. 1 also got his share in the 2nd partition which took place in 1985. Neither of them bothered to look after the parents in their old age".

49. "The attitude of respondent Nos. 1 and 2 left Shri Harishankar and his wife with no choice but to live with the appellant, who along with his wife and children took care of the old parents and looked after them during their illness. Therefore, there was nothing unnatural or unusual in the decision of Shri Harishankar to give his share in the joint family



property to the appellant. Any person of ordinary prudence would have adopted the same course and would not have given anything to the ungrateful children from his / her share in the property”.

xi). In an another judgment decided on the case of **Ved Mitra Verma Vs Dharma Deo Verma reported in (2014) 15 SCC 578**, wherein at para 8 observed as follows;

8. “The exclusion of other children of the testator and the execution of the Will for the sole benefit of one of the sons i.e. the respondent, by itself, is not a suspicious circumstance. The property being self-acquired, it is the will of the Testator that has to prevail”.

xii). Also in the case of **Gurdial Singh (dead) thorough Lrs Vs Jagir Kaur (dead) and anr. etc., decided in the case Civil Appeal 3509 -3510/2010 decided on 17.07.2025** wherein the Hon’ble Court held that, “mere non mention of some natural heirs would not vitiate the Will”.

Further at para 20 observed as follows;

20. “In this background, we have no hesitation to hold that non-mention of 1st respondent or the reasons for her disinheritance in the Will, is an eloquent reminder that the free disposition of the testator was vitiated by the undue influence of the appellant”.

xiii). Recently, the Hon’ble Apex court of India in the case of **Parvathi Nairthi (dead) and others Vs Laxmi**



Nairthy (dead) through Lrs and others, decided in the case Civil Appeal No.6859/2014 (arising out of SLP.(Civil) No.12822/2013) decided on 21.05.2026, wherein at para 34 observed as follows;

34. *“With regard to the prudence to be drawn while determining the suspicious circumstances, all the Courts have unambiguously opined that the Will in question was validly executed. It is trite to state that when the validity of a Will is to be determined, the overall terms of a Will, the intention of the testator and the surrounding circumstances have also to be seen. Mere exclusion of the natural heirs from the property of the testator, by itself, cannot be construed as a suspicious circumstance so as to invalidate a Will outright. A testator is legally entitled to dispose of his property according to his own wishes, and unless the exclusion is accompanied by suspicious circumstances affecting the genuineness or due execution of a Will, such exclusion alone does not render a Will invalid. Thus, we are of the considered view that the exclusion of the natural heirs cannot be sufficient to vitiate the Will in question, particularly when the Will clearly specifies that the testator has not done any injustice to his wife, children, or other relatives, and that he has given enough to his wife and children who are residing at Bombay”.*

..... underlined by me.



xiv). Therefore, on conjoint reading of these judgments wherein, the Hon'ble court has categorically held that, mere exclusion of the natural heirs from the property of the testator, by itself cannot be construed as a suspicious circumstances, so as to invalidate the Will. On the other hand, the question as to whether the Will is genuine and acceptable document will depend on a consideration of the other circumstances, surrounding its execution.

xv). In this case, as discussed by this court, the plaintiff is not able to establish before the court that, the testator has got mutated another property in the name of defendant No.2. As per records late Hanumanthappa having three properties, out of that, the agricultural property bearing Sy No.70/1B measuring 5 acre and house property bearing VPC No.491 and the present suit schedule property. The agricultural property and house property bearing VPC No.491 alienated by late Hanumanthappa and now left only the suit house. Therefore, the question of late Hanumanthappa got mutated another property in favour of elder daughter Shobha does not arise.

xvi). On the other hand, though, the plaintiff has made efforts before the court to show that, the consideration amount derived by late Hanumanthappa, out of the sale of agricultural property and same was given in favour of defendant No.2 and her husband, in order to construct the first floor house by the defendant No.2 and her husband. But, the said fact is denied by DW.1, during her cross examination. On the contrary, the plaintiff in order to substantiate the said facts, no iota of



documents placed before the court. Even during the cross examination of DW.1, it elicited that, the house property of defendant No.2 constructed in the year 2002-03 at one time. But, as per records the agricultural property sold out in the year 2000 and the first floor house of defendant No.2, when it was constructed not elicited before the court. Therefore, the contention of the plaintiff in that regard cannot be accepted.

xvii). It is worth to note here that, as the Hon'ble Courts, held in its ratios that, mere in disinherited the legal heirs, which itself is not only the ground to invalidate the Will. Consider, the oral evidence put forth before the court, the defendant No.2 working as teacher in a government school, and her husband also working in PWD department. So, the economical condition of defendant No. 2 is stable.

xviii). On the other hand, as per records it is proved that, the plaintiff is house working and her husband is working as clerk. Further PW.1 elicited before the court that, she herself with her husband and children resided at the house of defendant No.2. Since, her husband working at Shigganvi for three year resided in their house. In the year 2013, they left the said house, as they constructed residential building. Further, both the witnesses before the court elicited that, the parents of the plaintiff and defendant No.2, frequently resided at either in the house of defendant No.2 or at suit house.

xix). Therefore, the evidence of the parties depicts before the court that, the economical condition of defendant No.2 is better than, the plaintiff. Due to for that reason, the testator



disinherited the elder daughter to execute the Will in favour of plaintiff. However, husband of the defendant No.2 is brother of defendant No.1. But, the defendant No.1 in her written statement has contented that, testator Hanumanthappa executed Will in favour of plaintiff.

xx). So, this fact is unnatural, as the defendant No.2 is elder daughter and husband of defendant No.2 is brother of defendant No.1, but, she contented in her written statement against the version of the defendant No.2 and her husband. Thus considering the economical condition of the defendant No.2, the testator might have disinherited her to execute Will, in favour of younger daughter. Further, it is a natural thing that, if one of the daughter is economically stable and another daughter is not stable, than the other one, then naturally execute Will in her favour to get her stable.

xxi). Further, in the evidence of both the parties, it put forth before the court that, testator either resided at defendant No.2 house or in the suit house. So, if the Will is executed in favour of defendant No.2, as he being residing in her house, it shows suspicious regarding playing undue influence or coercion or she can get execute the Will, from the testator. But, in this case, the Will is executed in favour of plaintiff, wherein the testator was not resided along with her at any time. So, it shows that, naturally he executed the Will in favour of plaintiff, as her economic condition is not good, compared to the defendant No.2.



xxii). Yet another fact is to be consider by this court that, as per Ex.P.2 will deed, the testator has disinherited his wife, defendant No.1 and elder daughter defendant No.2. The recitals of the Will extract that, he has hope that, after his demise his wife will be take care by the plaintiff. On the other hand, defendant No.1 herself pleaded in her written statement that, her husband voluntarily executed Will in favour of plaintiff, by bequeathing the suit property. Therefore, though, the elder daughter and his wife were disinherited in the Will, but, it cannot be invalidate the execution of Will of the testator. Under such circumstances, considering the reasons for disinherited the wife and elder daughter, the plaintiff has fulfilled the second step.

92. The third step would be to find out, *Whether the testator was in a sound state of mind, at the time of executing the Will?*

i). As per the contention of the defendant No.2, for the last 6-8 years till the death of testator, he was suffering from ill heath and due to old age and always in a condition of intoxication, the testator was not sound in mind to execute the Will in favour of plaintiff. The plaintiff by fraudulently under the impression of intoxication, by cheating late Hanumanthappa illegally got executed Ex.P.2 Will in her favour.

ii). As against, learned counsel for plaintiff argued before the court that, the Will executed by testator on 01.02.2018 and he died on 25.09.2021. Therefore, there was no issue of state of



sound mind of testator, while executing the Will in favour of plaintiff.

iii). It is worth to note here that, the defendant No.2 in order to show that, late Hanumanthappa before his death from last 6-8 years, suffering from ill health not produced any piece of documents before the court. Further, though in the evidence of both the parties elicited before the court that, late Hanumanthappa either resided at defendant No.2's house or in the suit house. Further as admitted by plaintiff during her cross examination that, late Hanumanthappa never resided with plaintiff's house.

iv). So, if late Hanumanthappa was suffering from ill health from last 6-8 years till his death and not working anything and leading life by laying on bed, then, nothing prevented to the defendant No.2 to place medical documents before the court or examine the doctor, to whom the late. Hanumanthappa had been taken treatment, but, unfortunately no documents are put forth before the court.

v). On the other hand, during the cross examination of PW.1, wherein she elicited that, her father died in the year 2021, prior to that, he was not suffering from any ailment. Further elicited that, due to cardiac arrest , her father was died. It was denied the suggestion that, from the year 2016 the mental stable of her father was not in good condition and he was suffering from ill health physically. Further, she admitted that, in order to show that, her father died, due to cardiac arrest not produced any documents before the court. Further



she denied the suggestion that, her father not died, due to cardiac arrest and prior to death of his 2 years, he was suffering from ill health.

vi). During the cross examination of PW.2 denied the suggestion that, late. Hanumanthappa prior to 5 years of his death, he was suffering from ill health. Further he denied that due to Hanumanthappa addicted to alcohol, for which, for last 5 years, he was suffering from mentally and physically and not doing any work.

vii). So, considering the evidence of the parties, wherein both the parties are not produced any medical documents, before the court, in order to show that, late Hanumanthappa died, due to cardiac arrest or suffering from ill health for last 5 years and because of that, he died. On the other hand, on perusal of death certificate of late Hanumanthappa, which discloses that, he was not died at any hospital, but, died at defendant No.2's house. Which probabalize before the court that, if the late Haumathappa taken continuous treatment at hospital and died therein. Then place of death would have shown in the hospital and not in the residential house.

viii). Therefore, it creates suspicious regarding to believe that, late Hanumanthappa died, due to continuous illness. Further, in this regard, in order to discharge the burden the defendant No.2 has not placed any documentary or adduced oral evidence of neighbor of her house or any other party. On the contrary, PW.2 who is neighbor resident house of defendant No.2 and as admitted by DW.1, he is also familiar to her family



and to her late father. But, he denied the suggestion that, from last five years before the death of her father, was suffering from illness and not mentally stable. Therefore, the defendant No.2 except taken contention in her written statement regarding late Hanumanthappa was suffering from last five years, mentally and physically and not able to any work, but, not produced any reliable documents, hence the defendant No. 2 is failed to prove the said fact.

ix). The defendant No.2 in her written statement has taken another contention that, due to old age and always in a condition of intoxication, for which, the state of mind of testator was not good and the plaintiff was fraudulently and by cheating late Hanumanthappa, under the impression of intoxication got executed Will in her favour.

x). Though, the defendant No.2 in her contention pleaded that, late. Hanumanthappa from his childhood having bad habits of drinking of alcohol and other bad voices. But, the said things denied by the plaintiff, either in the written statement filed in O.S. No. 02/2023 or during her cross examination. Even during the cross examination of Pw.2 wherein, he has also denied the said fact, about late Hanumanthappa was in intoxication and having drinking of alcohol. Therefore, in this regard also the defendant No.2 either produced any oral evidence or documentary evidence i.e, in respect of any medical records to show that, late Hanumanthappa was a habit of drinking of alcohol. Even, defendant No.2 has not taken any allegation in her written



statement that, late Hanumanthappa alienated the properties, which are acquired by him from his father for his bad habits.

xi). Therefore, it shows that, the defendant No.2 has taken the said defence, in her written statement only to take defence in that regard. But, in proof she has not produced any iota of documents or oral evidence to believe that, late Hanumathappa, due to always drinking alcohol and he was under the impression of intoxication and due to drinking the alcohol, he was mentally and physically suffering from ill health.

xii). It is worth to note here that, as per Ex.P.2, late Hanumanthappa executed Will by bequeathing the suit house property in favour of plaintiff on 01.02.2018 and as per Ex.P.3 he died on 25.09.2021. Therefore, from the date of execution of alleged Will, he died after 3 years, 7 months 24 days. On the other hand, the defendant No.2 has not placed any medical documents to show that, for last 6-8 years from the death of late Hanumanthappa, he was suffering from ill health and unable to do any work. Therefore, when testator (late Hanumanthappa) died after 3 years 7 months 24 days, which does not create any suspicious regarding he was not state of mind to execute the Will in favour of plaintiff.

xiii). Though, the defendant No.2 has taken another contention in her written statement that, the plaintiff fraudulently and by cheating testator, under the impression of intoxication to late Hanumanthappa got executed the Will in her favour. But, in order to prove regarding late Hanumanthappa was signed his signature under the



impression of intoxication no proof is placed. Even during the cross examination of PW.2 deposed before the court that, before he went to the sub registrar office Ranebennur, Hanumanthappa was present earlier. Further it was suggestion of the learned counsel for defendant No.2 that, as he stated in his chief affidavit Hanumanthappa himself in their presence given information to scribe to prepare the Will.

xiv). So, this suggestion also goes to shows that, Hanumanthappa himself given information to prepare the Will. Moreover, the said fact is not denied during the cross examination of attesting witness. Under such circumstance, the evidence of attesting witness also probabalize before the court that, Hanumathappa at the time of execution of the Will, he was not under the impression of intoxication.

xv). Even PW.2 denied the presence of plaintiff, while executing the Ex.P.2 document. Further, he has also denied that, plaintiff herself took late Hnaumanthappa, when defendant No.2 went to school and fraudulently got execute the alleged Will. Therefore, the evidence of PW.2 probabalize before the court that, the testator was sound state of mind, at the time of executing the Will.

xvi). It is worth to note here that, the court has to scrutinize the fact regarding, while considering the sound state of mind of testator, at the time of execution of the Will, the mental soundness and the physical fitness of the testator is an important circumstances, when the testatorial capacity is being



consider. It well settled law that, the propounder has to show by satisfactory evidence that, the Will was signed by the testator and at the relevant point of time, he understood the nature and effect of the dispositions and put his signature to the document of his own free Will .

xvii). In this case, after the execution of alleged Will, the death of testator taken place after 3 years 7 months. The defendant No.2 has not placed any medical documents to show that, weakness of mind of testator, while executing the alleged Will. Further, as per the contention of the defendant No.2 is that, the testator was always under the impression of intoxication by drinking alcohol and due to which, he was suffering from ill heath, for last 6 to 8 years before he died. If that fact is true, then the testator would have causes damages to his liver, due to continues drinking of alcohol, then if the defendant No.2, to produce medical report in that regard, it would believe the fact of continuous drinking of alcohol. But, not produced any documents in that regard.

xviii). It is worth to note here that, propounder/plaintiff in order to show that, the execution of Will by the testator on his own free Will has examined PW.2, who is well known person to testator and DW.1, as he being neighbor of DW.1's house. In his evidence there is no any contradiction evidence or elicited from his mouth to create suspicious regarding, the execution of Will against the free consent of the testator. Further there is a long gap between execution of the Will and the death of testator.



xix). Therefore, there is no any suspicious grounds raised by defendant No.2 to disbelieve that, the testator was not state of mind, while executing the Will or he was not signed the Will without understanding nature and effect of the dispositions and put his signature, on the Will without his free will. Therefore, this court is of the opinion that, if after the execution of the Will immediately within short period, occurred the death of the testator, then strong proof is required that, the contents of the Will were known to the testator and that it was his spontaneous act. But, in this case, as discussed in detail, the death of testator was not taken place immediately, he was died almost after, 3 years 8 months. Therefore, it is proved before the court that, at the time of execution of Will by the testator, he was in a sound state of mind and executed the said Will, after understood the dispositions and signed with free consent. Under such circumstances, the third step is also fulfilled by the plaintiff.

93. The fourth step would be to find out, whether there exists any suspicious circumstances, surrounding the execution of the Will?.

i). It is worth to note here that, a circumstances would be suspicious, when it is not normal or is not normally expected in a normal situation or is not excepted of a normal person or does not expressly mind of the testator. Therefore, fact that, the Will is unnatural, unreasonable and improper calls for close examination.



ii). In this case, a suspicious circumstances raised by learned counsel for defendant No.2 in his argument that, the original Will deed is not produced before the court. Since, the suit property is ancestral and joint family property, accordingly, there was no intention of the testator to execute the Will in favour of plaintiff. Further, in the recitals of the Will shown one of the property got mutated in the name of defendant No.2, but, no property was given to her. Therefore, the Will was not got executed by the testator, with the intention for bequeathing property in favour of plaintiff. Under the impression of the intoxication the plaintiff, by way of fraud and cheating the testator got executed the Will by colluding with other witnesses. Further, the attesting witness PW.2 went to the sub registrar at 1.00 PM., but, the alleged Ex.P.2 registered at 12.58 PM., therefore, PW.2 is not the attesting witness to Ex.P.2 document. Under these suspicious circumstances, the learned counsel for defendant No.2 argued that, the Will is unnatural, unreasonable, improper and not got executed with free Will.

iii). So, far as, in respect of non production of original Will deed is concerned, the plaintiff in the plaint made a foundation that, at the time of execution of the Will by the testator, he was staying in the house of the defendant No.2. Hence, the original Will remained in the house of defendant No.2 itself. In-spite of several requests made by plaintiff, but, the original Will was not given by the defendant No.2 and her husband to get mutate the property on the basis of the said Will.



iv). As against, the defendant No.2 has replied that, no such Will deed is with her. The fact of execution of the alleged Will came to know by the defendant No.2, when she received suit summons from the court, in respect of O.S No.184/2022. Further, she contended in her written statement that, after demise of her father, all the original documents pertaining to the suit schedule property are in the custody of the defendant No.1. Therefore, the defendant No.2 denies the possession of original Will.

v). The Hon'ble Apex Court of India, in the case of **Dhanpat VS Sheo Ram (deceased) through legal representatives and others, reported in (2020) 16 SCC 209**, wherein at para 19 observed as follows;

19. Even though, the aforesaid judgment is in respect of the loss of a sale deed, the said principle would be applicable in respect of a Will as well, subject to the proof of the Will in terms of Section 68 of the Evidence Act. In the present case as well, the Will was in possession of the beneficiary and was stated to be lost. The Will is dated 30th April, 1980 whereas the testator died on 15th January, 1982. There is no cross-examination of any of the witnesses of the defendants in respect of loss of original Will. Section 65 of the Evidence Act permits secondary evidence of existence, condition, or contents of a document including the cases where the original has been destroyed or lost. The plaintiff had admitted the execution of the Will though it was



alleged to be the result of fraud and misrepresentation. The execution of the Will was not disputed by the plaintiff but only proof of the Will was the subject matter in the suit. Therefore, once the evidence of the defendants is that the original Will was lost and the certified copy is produced, the defendants have made out sufficient ground for leading of secondary evidence.

vi). On a plain reading of the above observation made by the Hon'ble Court, wherein it is clearly held that, when the original Will is lost, the certified copy can be produced to prove the Will, by leading secondary evidence.

vii). It is relevant to note here that, as per Sec.65 of Indian Evidence Act,(now sec. 58 of Bhartiya Sakshaya Adhiniyam) a party can produced the certified copy of the Will obtained from the office of the sub registrar. In this case, the plaintiff as well as defendant No.2 have produced certified copy of the Will. the execution of Will is not denied by the defendant No.2, but, it is the contention of the defendant No.2 is that, the plaintiff by way of fraud and cheating late Hanumanthappa (testator) and under the impression of intoxication fraudulently got executed the Will in her favour. Since, the defendant No.2 herself produced the certified copy of the Will marked as Ex.D.24. Hence, she is not disputed the certified copy of the registered document.

viii). The plaintiff for the foundation of leading of secondary evidence has pleaded in the plaint, as well as in her examination in chief that, the original Will with the custody of



defendant No.2, as at the time of execution of the said Will testator was resided in her house.

ix). The plaintiff has issued notice to advocate for defendant No.2, as per under order 12 Rule 8 of CPC to produce the original Will dated 01.02.2018, which is in the possession of his client. But, in-spice of service of the said notice, not produced the Will before the court.

x). The plaintiff in order to prove that, as on the date of the execution of Will, testator was staying at defendant No.2's house, in this regard cross examined DW.1, wherein she denied the suggestion that, the original Will was executed by her father, which is in her possession. Further, she denied the suggestion that, in order to get the property to the plaintiff, on the basis of the Will, for which, herself and her husband hide the said copy. DW.1 further admitted that, till the death of her father, he was staying at suit house. But, she deposed that, in the year 2016, he was staying with her, in her house.

xi). On the other hand, PW.1 during her cross examination admitted that, in the year 2016, her parents came to suit house, from the defendant No.2's house. But, further she deposed that, again they went to her house. Her father died in the house of defendant No.2's. Further, it was suggested made by defendant No.2's counsel, that, defendant No.1 and her husband except suit schedule property, they never resided at the house of plaintiff constructed by her husband.



xii). On the other hand, PW.2 during his cross-examination admitted that, the defendant No.1 and her husband were residing at defendant No.2's house. He has also admitted that, they were also resided at suit house and plaintiff house. Further, it was elicited that, he died at suit house and his body brought to the defendant No.2's house and performed the funeral function.

xii). So, the evidence of the parties, which extract before the court that, though at the time of death of testator died in the suit house, but, his body was brought to the defendant No.2's house. Even, during the cross examination of PW.1 elicited that, all the documents related to her parents took to the suit house, when they went to the suit house. He has also elicited that, at the time of death of her father, the documents related to suit house property are not in the house of the defendant No.2.

xiii). It is worth to note here that, in the written statement of defendant No.1, wherein she pleaded that, her husband Hanumanthappa bequeathed the suit property in favour of plaintiff on 01.02.2018, when they were staying in the house of defendant No.2's house. The Will is in the custody of defendant No.2.

xiv). It is pertinent to note here that, during the cross examination of PW.2, learned counsel for defendant No.2 suggested that, when defendant No.2 went to her service, then plaintiff took the late Hanumanthappa by saying that, he will be took him to hospital, but, she fraudulently brought him to sub



registrar office and without his knowledge took his signature on the said document.

xv). So, this suggestion clearly depicts before the court that, the defendant No.2 admits the signature of testator on the Will. Further, it is the contention of the defendant No.2 that, the plaintiff by way of fraud and cheating the testator, under the impression of intoxication got executed Will deed in her favour. Thus, this suggestion also depicts before the court that, the execution of Will is not seriously disputed by the defendant No.2. But, it challenges that, the testator has not executed the Will, but, by way of fraud and cheating by way of intoxication got executed the said Will. Moreover, as discussed supra the defendant No.2 herself produced the certified copy of the Will and got marked the same as Ex.D.24.

xvi). It is pertinent to note here that, in the evidence of the parties, it extract before the court that, late Hanumanthappa either resided in the house of defendant No.2 or in the suit house. Though, plaintiff admitted during her cross examination that, while returning to the suit house her parents took her all the necessary documents of the suit house property, to their house. But, there is no any particular evidence in respect of on 01.02.2018 late Hanumanthappa, where he had been resided. It is worth to note here that, as per the admission given by the parties, late Hanumanthappa has not resided in the house of plaintiff. Therefore, either the original Will left in the house of defendant No.2 or in the suit house.



xvii). From the evidence of the parties it is elicited that, after the death of testator, the defendant No.1 started residing with plaintiff. Further, as admitted by DW.1 at para 14 that, after her father's death, her mother residing with plaintiff by giving the suit house on rent and plaintiff collecting the rent. Therefore, if the parents of the plaintiff brought all the documents from the house of the defendant No.2, in respect of suit schedule property, then, the original Will ought to be available in the suit house and which was given on rent after the death of testator. But, as per the written statement, filed by the defendant No.1 wherein she contended that, original Will with defendant No.2. Therefore, when Will is not in the suit house, then it would be kept in the house of the defendant No.2.

xviii). Yet another fact, alleged by the plaintiff in her argument that, after the death of testator immediately the defendant No.2 rushed to the Revenue Department to get mutate the suit house, in her name on the basis of succession by way of inheritance, without knowledge to the plaintiff. In order to avoid to get mutate by the plaintiff, on the basis of the Will.

xix). It is relevant to note here that, as per Ex.P. 3 testator was died on. 25.09.2021 and as per Ex.P.4 the mutation register No.1032/2021-22 got effected on. 23.11.2021. So, after two moths from the date of testator was died, the mutation was got effected. Dw.1 admitted during her cross-examination that, without the signature of the plaintiff, she has given waradi to



get mutation, on the consent of the plaintiff. There is no any documents to show that, the plaintiff has given the consent.

xx). Therefore, considering the evidence of DW.1, herself given waradi to get mutation and it also shows that the plaintiff has not signed the waradi. Hence, it create suspicious that, the defendant No.2 given waradi for mutation to avoid, the plaintiff get mutate her name to the suit house , as per Will.

xxi). Moreover, as per Ex.P2 got executed on 01-02-2018 and as per Ex.P.3 testator Hanumantappa died on 25-09-2021 i.e. he died after 3 years 7 months 24 days from the date of execution of the Will. Therefore, there were long gap from the date of execution of the Will, till the death of testator. Under such circumstances, there are possibilities missing of original Will. Therefore, the plaintiff has successfully proved before the court that, the original Will in the possession of the defendant No.2, but, in-spite of given notice to her counsel the said will is not produced before the court.

xxii). It is worth to note here that, as discussed in above paras the execution of will by testator is not disputed by the defendant No.2 in this case. But it was alleged to be the result of fraud and cheating by intoxication. Further, during the cross examination of PW1 or PW2 not put any suggestions particularly, the Will is in the possession of the plaintiff. Admittedly, the beneficiary of the Will is by plaintiff and which is against the interest of defendant No.2. If the original Will possessed by the defendant No.2, naturally she would have



avoid to place before the Court. Therefore, once the execution of Will is admitted and also admitted the signature made by the testator in the presence of PW.2. Under such circumstances, only the original will is not produced as it was left in the house of defendant No.2, but, the certified copy is produced. Hence, the plaintiff has made out sufficient grounds, for leading of secondary evidence.

xxiii). Therefore, mere the original Will is not produced, which is not fatal to the case of the plaintiff. On the other hand, as **the Hon'ble Apex Court of India in Dhanapat** (Supra case) held that, through the certified copy of the Will can be produced to prove the Will. Under such circumstances, the plaintiff has proved that, the Will is in the possession of defendant No.2 and she made out sufficient grounds for leading secondary evidence by producing Ex.P.2 Certified copy. Hence, mere non production of original Will which does not amounts to suspicious of surrounding execution of the Will.

xxiv). It is an another suspicious circumstances of the execution of the Will, in respect of the suit house property purchased and constructed the residential building from the income of the ancestor or joint family property. As discussed while answering the issue No.1 and 3 of O.S No.2/2023, the suit plot purchased in the year 1983 and suit house constructed in the year 1993. The agricultural property sold out in the year 2000 and house property sold out, in the year 2017.



xxv). Therefore, there is no nexus between them to purchase the property after alienation of the ancestor and joint family property. Even the defendant No.2 has not placed reliable evidence before the Court that, what was the income derived from the ancestral property to purchase the plot, in the year 1983. However, it is also not placed materials to believe that, the husband of the defendant No.2 given loan to construct the suit house by the late Hanumantappa. Therefore, the suit house is self acquired property of Late Hanumantappa and not the ancestral or joint family property. Accordingly, there is no suspicious ground surrounding the execution of the Will, if the property bequeathed in favour of plaintiff and it is not unnatural thing.

xxvi). The last contention of the learned counsel for defendant No.2 is that, though in the Ex.P.2 Will shown that, another property mutated in favour defendant No.2, but, no property is given. Hence, the said recitals itself it unnatural and accordingly, it creates suspicious circumstances surrounding the execution of the Will.

xxvii). Though, in this case the plaintiff has failed to show that, as per the recitals of the Ex.P.2 shown one of the property mutated in the name of defendant No.2, but, same is not proved by the profounder/plaintiff herein. But, this Court while answering the step No.2, for the reasons for disinheriting the legal heirs answered that, either Late Hanumanthappa had helped the defendant No.2 to construct her 1st floor building or



considering the economic status of the defendant No.2 only executed Will in favour of defendant No.2.

xxviii). The Hon'ble Apex Court of India in the case of Dhanapat (Supra case), at para 32 and 33 held that, the whole idea behind the execution of Will is to interfere with the normal line of succession. So, natural heirs may thus be debarred: of course, it may be that, in some cases they are fully debarred and in other cases only partially. Further it is held that, the exclusion of the other children of the testator and the exclusion of the Will for the sole benefit of one of the sons by itself, is not a suspicious circumstances by itself. The property being self acquired, it is the Will of the testator that has to prevail.

xxix). Yet another, suspicious surrounding the execution of the Will alleged that, the attesting witness PW.2 went to the sub registrar at 1.00 PM., but, the alleged Ex.P.2 registered at 12.58 PM., therefore, PW.2 is not attesting witness to Ex.P.2 document.

xxx). No doubt, during the cross examination of PW.2 elicited that, he was present to that place at about 1.00 PM., and prior to that late Hanumanthappa went to that place, thereafter, himself and another witness were reached that place.

xxxi). So, the admission of PW.2 extract that, he was present at 1.00 PM., and before he came to the said place, late Hanumanathappa was already present. Further, he elicited that, the Will was prepared at 12.58 PM., Thus, considering the



admission of PW.2, if he came to the said place at 1.00 PM, and as per Ex.P.2 the document itself was registered at 12.58 PM., then, it shows that, PW.2 was came there after completion of the registration.

xxxii). It is worth to note here that, the entire evidence of PW.2, whispered before the court that, approximately they were present till 1.00 PM., as it was crowded in the said place. Further, he elicited that, Ex.P.2 drafted by scribe J C Kammar and not by Lakshameshwar. But, the said person working at Lakshameshwar's office as helper.

xxxiii). Ex.P.2 discloses that, it was got registered on 01.02.2018 at 12.58.50 PM. PW.2 has also affix his signature to the said document before registration and after the registration. Further, during his chief evidence he has admitted his signature on the certified copy. Further he has also admitted the signature of testator and also admitted that, the said Will drafted by one J C Kammar.

xxxiv). It is worth to note here that, when registration was completed, as per Ex.P.2 at 12.58 PM., and in the registration document, as page 4 shown the signatures of the attesting witnesses. So, the document registered and completed on 01.02.2018 at about 12.58.50 PM., Therefore, before registration the signature of attesting witness was taken place and thereafter again his signature was taken place after registration of the said document. It cannot be possible, if PW.2 came on that day at about 1.00 PM. Therefore, considering the



over all evidence of PW.2, which probabalize before the court that, he was present at the time of drafting the Will, as he has deposed before the court, regarding who has given information to prepare the Will to the scribe.

xxxv). It is worth to note here that, the evidence of PW.2 further it depicts before the court that, they were there up to 1.00 PM., as there were crowded in the said office. If PW.2 present at about 1.00 PM., then deposing the evidence regarding they were waited till 1.00 PM does not arise. Therefore, he came to 1.00 PM., i.e., stray evidence before the court. The court has to looked into the entire evidence of the party and not the stray admission. Under such circumstances, on the basis of PW.2 visited at 1.00 PM., the entire evidence adduced by him cannot be vanished.

xxxvi). Though, further cross examined PW.2, but, nothing worth is elicited to question the trustworthy of the said witness. Therefore, there is no any unnatural thing to disbelieve the evidence of PW.2, as he was not seen, while testator putting signature to the alleged Will. Under such circumstances, the contention raised by the learned counsel for defendant No.2 cannot be accepted for the reasons of PW.2 visited the office at 1.00 PM., on 01.02.2018.

xxxvii). Therefore, mere the plaintiff has not proved before the Court that, what property given by testator to defendant No.2, as per Ex.P2, but, exclusion of the one of the daughter it does not amounts to suspicious circumstances.



Therefore, the suit house is self acquired property of testator. Hence, as his Will and wish, he can bequeath the property in favour of plaintiff. Under such circumstances, the arguments made by the learned counsel for defendant No.2 cannot be accepted. Therefore, there are no any suspicious circumstances surrounding the execution of the Will. This Court is of the opinion that, there is not found any unnatural circumstances for execution of Ex.P2 in favour of plaintiff. Therefore, the 4th step also fulfilled by the plaintiff.

94. The last and fifth step is to consider, whether the Will has been executed in accordance with section 63 of the Act Read with Section 68 of the Indian Evidence Act.?

i) It is worth to note here that, the Will is document required by law to be attested. The executing of Will must be include both execution and attestation.

ii) As per Sec.63 of Indian Succession Act, 1925, which prescribes three rules, which have to be satisfied before the court can declare that, the Will is duly executed. Evidence should be adduced to show that, the testator has signed or affixed his marked to the Will. The said signature or mark of the testator shall be so placed that, it shall appear that, it was intended thereby to give effect to the writing and lastly, the Will shall be attested by two or more witnesses, each of whom has seen the testator sign or affix his mark to the Will, or has received from the testator a personal acknowledge of his signature or mark, and each of the witnesses shall sign the



Will, in the presence of the testator, but, it shall not be necessary that, more than one witness be present at the same time no particular form of attestation shall be necessary.

iii) As per Sec.68 of Indian Evidence Act (sec. 67 of BSA 2023) deals with proof of execution of documents required by law to be attested. A Will is a document which requires to be attested. Under Sec.63 (c) of the Act. Therefore, the said document shall not be used as evidence, until at least one attesting witnesses has been called for the purpose of proving its execution.

iv) In this case, Ex.P.2 is certified copy of Will, which discloses before the court that, signature of the testator affixes on each pages, at the bottom of each page. The document was registered in Sub registrar office Ranebennur, on 01.02.2018. Two attesting witnesses by name P C Mudigoudar i.e., PW.2 herein, and another one P B Ritti were put their signatures, as an attesting witnesses. Out of two attesting witnesses, Puttanagouda Mudigoudar examined before the court as PW.2 and in his affidavit in chief deposed that, in their presence testator has affix his signature and thereafter they each affixes their signatures, as attesting witnesses. Further, PW.2 identified the Will deed, as Ex.P.2 and his signatures and also the signatures of the attesting witnesses identified, but, same were not marked, as it was certified copy.

v) It is worth to note here that, the signature of testator on Ex.P.2 is not denied by defendant No.2. Further, PW.2



admitted that, as per the information given by testator Hanumanthappa in their presence, the Will was prepared by scribe. Further he elicited that, at the time of drafting the Will himself, testator Hanumantappa and one Pulakeshi were present. But, he denied the suggestion that, the Will was prepared by husband of the plaintiff and thereafter his signature was taken. The Will was fabricated and forgery created by the plaintiff, for which himself supported. They prepared the alleged Will. Further he denied the suggestion that, plaintiff fraudulently brought late Hanumathappa to sub registrar office and without his knowledge got executed the alleged Will.

vi) So, on perusal of evidence of PW.2, wherein he has categorically deposed before the court that, in order to draft the Will in their presence given information by testator, to scribe to prepare the said document. It is worth to note here that, during the cross examination of PW.2, nothing suggestion made by the counsel for defendant No.2 regarding in his presence testator late Hanumanthappa not put his signature on alleged Will. Further not suggested regarding in the presence of late Hanumanthappa PW.2 himself and one Pulakeshi have not signed each other, on the alleged Will. Therefore, when these suggestion were not made during the cross examination of PW.2 then, it deems that, the defendant No.2 has admitting the signature of the testator on the Will and also the signatures of the attesting witnesses on the said document.



vii) However, the suggestion of defendant No.2 regarding the testator has never intended to execute the Will in favour of his daughter. Further suggested that, late Hanumanthappa never called him and not stated before him in respect of the execution of the Will. But, the said witness denied the said suggestions. So, it again probabalize before the court that, late Hanumanthappa has intended to execute the Will in favour of his daughter and because of that reason, he brought PW.2 and one Pulakeshi to sub registrar office.

viii) Therefore, during the cross examination of PW.2 not seriously denied the signature of testator on Ex.P.2, which probabalize before the court that, the testator has made his signatures with an intention of giving effect to the Will. Since, he has intention to bequeath the property, by way of Will, for which, he brought two attesting witnesses to the sub registrar office Ranebennur.

ix) Under such circumstances, this court is satisfied that, as per Sec.63 of the Indian Succession Act, 1925 shows that, the testator has signed the Will on the bottom of the each page, with an intention to give effect to the writing. Moreover, the document is registered and on every page the testator has affixed his signatures. Further, the document attested by two witnesses and the evidence of attesting witnesses by Pw.2 discloses that, the testator affix his signature in the presence of testator, and in the presence of testator both the attesting witnesses have affixed their signatures.



x). Further, as per Sec. 68 of Indian Evidence Act, one of the attesting witness is examined before the court as PW.2 and his evidence is trustworthy and nothing worth is elicited before the court to disbelieve his evidence. Therefore, as per steps five the Will was got executed in accordance with sec.63 of the Indian Succession Act, and as per Sec.68 of the Indian Evidence Act, examined the one of the attesting witness. Under such circumstances, the fifth step is also full filled by the plaintiff.

95. In this case, the learned counsel for plaintiff argued before the court that, since, the Will is registered on 01.02.2018. Hence, the court can drawn presumption of genuineness and the burden of its disproving it lies on the defendant No.2.

96. The learned counsel for defendant No.2 argued that, since, the Will is got executed by way of fraudulent and cheating, hence, the presumption cannot be drawn.

97. In this regard I have drawn the attention of the judgment passed by **Hon'ble High court of Karnataka Bangalore in MFA No.3988/2025 C/W MFA 4004/2025, MFA No.4118/2025 between Smt.M.Devamma W/o late K Vishwanath since dead by her Lrs and others Vs Smt. K.V Kalavathi D/o late K Vishwanath and others decided on 07.07.2025** wherein the Honble Court at para 25 observed that,



“a registered Will carries a presumption of genuineness and burden of disproving it lies on the party alleging its validity. This presumption is rebuttable but, cannot be discarded on the basis of delay, especially when there is no statutory bar of limitation period governing the registration of the Wills”.

98. Therefore, the execution of Will, it carries presumption of the genuineness, but, it is an rebuttable, if the contrary evidence is led. In this case, execution of Will by the testator is not denied. But, alleged that, it was got effected by way of fraud and cheating under the impression of intoxication to testator. But, said fact is not proved before the court with cogent and reliable evidence.

99. It is relevant to note here that, the defendant No.2 in O.S No.2/2023 sought relief of decree that, the Will dated 01.02.2018 is not binding upon this plaintiff and to be declared as null and void and to be cancelled. So, the defendant No.2 has sought for relief of declaration to declare the Will, as null and void and to be cancelled. As per the argument of the learned counsel for plaintiff, when Will is sought for declared as null and void, then itself it amounts of admission of execution of the said document.

100. It is worth to note here that, mere seeking of declaration of declared, of the Will, as null and void and cancelled the same, it does not amounts to an admission of its validity or its contains by the plaintiff. Therefore, seeking relief



of cancellation of the Will, itself it does not amounts to admission of execution of the Will.

101. Thus, overall considering the oral and documentary evidence put forth by the parties, wherein one thing is suffice before the court that, the defendant No.1 and testator late Hanumanthappa at Ranebennur either they have resided at the house of defendant No.2 or suit house. It is the case of the plaintiff that, at the time of execution of Will, the testator and defendant N.1 were residing at house of the defendant No.2 and same fact is proved before the court. It is worth to note here that, if testator executed Will in favour of defendant No.2 by residing in her house. Then, it seems unnatural and creates suspicious regarding by way of coercion or force it get execution of the said Will. But, in this case, though the testator either residing in the house of the defendant No.2 or in the suit house, executed Will in favour of younger daughter i.e., plaintiff herein. Therefore, which is not unnatural and it does not creates any suspicious circumstances surrounding the execution of the Will.

102. Yet another fact is as per the admission of DW.1, the mother knows the every fact of the house. If it is true, then, the mother i.e., defendant No.1 herself pleaded in the written statement that, when they were staying at defendant No.2's house late. Hanumanthappa bequeathed the suit property in favour of plaintiff and original document is left in the house of the defendant No.2. Therefore, even though in the Will no right of lifetime maintenance given to the defendant No.1, but, she



has supported the case of the plaintiff by contending that, her husband has got executed the Will in favour of the plaintiff. This is another fact to believe the due execution of the Will.

103. The plaintiff being a propounder has removed all the suspicious circumstances surrounding the execution of the Will. PW.2 who is known to the father of the plaintiff and also known by him by defendant No.2. PW.2 is retired person and he often, met with late Hanumanthappa, due to which, their build cordial relationship. This fact is not disputed by the defendant No.2. PW.2 further admits the execution of Will in favour of plaintiff. Further, PW.2 has not been shaken in the witness box and deposed before the court that, late Hanumanthappa brought himself and Pulakeshi to sub registrar office and in their presence affix his signatures to the Will and thereafter they affixes the signatures in the presence of testator.

104. So, the evidence of PW.2 is supported the case of the plaintiff and there is nothing worth is elicited from his mouth to show suspicious circumstances surrounding the execution of the Will. Hence, the evidence of PW.2 is trustworthy and it believes that, it was the intention of the testator late Hanumanthappa to execute Will in favour of plaintiff.

105. Therefore, this court is satisfied that, testator late Hanumanthappa got executed Will dated 01.02.2018 by bequeathing suit house in favour of plaintiff. Further, as per the evidence of DW.1, which clearly extract before the court that, after the death of late Hanumanthappa, the plaintiff came



into the possession of the suit house and given rent to the suit house and collecting the rent from the tenants. So, itself it also shows that, the plaintiff is in possession and enjoying the suit house, after the death of testator late Hanumanthappa. Under such circumstances, the plaintiff has proved before the court that, late Hanumanthappa had executed Will in her favour and on the basis of testamentary right, the plaintiff is owner of the suit property.

106. On the other hand, though the defendant No.2 has taken contention that, the suit house is ancestral and joint family property of plaintiff and defendants, but, while answering the issue No.1 and 3 of O.S No.2/2023, this court holds that, the suit house property is self acquired property of late Hanumanthappa. Therefore, late Hanumanthappa has got right, to bequeath his property, as per his Will and wish. Under such circumstances, the Will is binding upon the successors of late Hanumanthappa. Hence, as prayed by defendant No.2 the Will cannot be declared as null and void and not binding on her. **Accordingly, I answer Issue No. 1 of O.S No.184/2022 is answered in the Affirmative and Issue No.2 of O.S No.2/2023 answered in the Negative and Issue No.4 of O.S No.2/2023 in the Affirmative.**

107. ISSUE No.2 of O.S No.184/2022 : The plaintiff in the plaint is contended that, the defendants are trying to interfere with the plaintiff possession and enjoyment of suit house by demanding the tenant not to pay the rent to plaintiff



only. Hence, the plaintiff prays to restrain the defendants for causing interference.

108. On the other hand, the learned counsel for defendant No.2 argued that, the possession of the suit house is commonly enjoying by the plaintiff and defendant No.2. Hence, one of the co-owner cannot be restrained, another co-owner for the enjoyment of the suit house. Accordingly, the court cannot restrained the other co-owner for the enjoyment of the suit house.

109. It is worth to note here that, as discussed in above paras, during the cross examination of DW.1, wherein she admitted that, after the death of testator the plaintiff came into the possession of the suit house and given the suit property on rent and collecting the said rent from the tenants. So, admission of DW.1, which clearly establish before the court that, the plaintiff is in possession and enjoying the suit property, by receiving rent amount from the tenants.

110. Since, in this suit the plaintiff has established the fact of due execution of the Will, by her father late Hanumanthappa in her favour and as discussed supra, the plaintiff is in possession and enjoying the suit house property.

111. Now coming to the causing interference for the peaceful possession and enjoyment of the suit house of the plaintiff by the defendants is concerned, no doubt in the written statement of the defendant No.2 wherein she denied the



execution of Will and also denied the possession and enjoyment of the plaintiff over the suit house, on the other hand herself contended that, plaintiff and defendants are in joint possession and commonly enjoying the suit house property.

112. In law if other party, denies the possession, enjoyment and also execution of the documents, under law which itself it amounts to causing interference.

113. In this regard I have drawn the attention of the judgment passed by the Hon'ble High Court of Karnataka reported in **2016 (4) KCCR 3349 between Mohammed Haji S/O Mohammed Peersab V/S The Managing Director NEKRTC Central Office, Kalaburagi**, the Hon'ble court at para 6 observed that;

6. In fact after considering the entire evidence on record, the Appellate Court has given affirmative findings so far as 1st point is concerned holding that the plaintiff has been in possession of suit schedule property. When once possession of the property is proved, the contention taken by the defendant ought to have been properly considered and appreciated by the Trial Court. When the defendant has denied the possession of the plaintiff an also leasehold rights of the plaintiff and created counter plea, then it virtually amounts interference in law so far as possession and enjoyment of the property by the plaintiff is concerned. Therefore, in my opinion the First Appellate Court has committed serious error when it specifically held that the plaintiff has been in possession and enjoyment of the suit schedule property, which should have been protected by means of granting injunction in favour of plaintiff.

..... Underlined by me.



114. Therefore, as per the ratio, when the defendant No.2 has denied the possession of the plaintiff, then it virtually amounts to interference in law, so far as, possession and enjoyment of the property of the plaintiff's is concerned. Therefore, the plaintiff prove that the defendant No.2 causing interference to the suit property, by demanding the rent from the tenants. **Accordingly, I answered the Issue No. 2 of O.S.NO. 184/2022, in the Affirmative.**

115. ISSUE No.3 of OS No.184/2022 : The defendant No.2 argued before the court that, the suit of the plaintiff is barred by law of limitation. As the plaintiff is not filed the suit within its stipulated time. Hence, prays to dismiss the suit.

116. As against, the learned counsel for plaintiff argued that, when plaintiff came to know about the mutation was got effected in the Revenue records by the defendant No.2, thereafter, the plaintiff demanded to handover the original Will deed, but, not handed over original Will and when casing interference of the peaceful possession and enjoyment of the possession, she has filed the suit for declaration and permanent injunction.

117. The plaintiff filed the suit for the relief of declaration on the basis of execution of Will by the testator dated 01.02.2018. The testator was died on 25.09.2021. Thereafter, as per Ex.P.7 the Tahsildar office has issued



endorsement to the plaintiff on 01.06.2022. The plaintiff institute this suit on 17.10.2022.

118. There is no specific provisions under the limitation Act, to file a suit on the basis of Will for the relief of declaration. But, as per Sec.58 of Limitation Act 1963, which speaks for to obtain any other declaration and the period for limitation is three years. The time from which, period begins to run, when the right to sue first accrues.

119. It is well settled law that, the Will came to be enforced after the death of testator. Therefore, the testator died on 25.09.2021 and the suit was filed on 17.10.2022, then, the suit was filed within its limitation. Further, in respect of filing the suit, on the basis of Will sought for declaration, the time begin to run from the knowledge of execution of Will. Therefore, the suit is filed well within its time. **Accordingly, I answer the issue No.3 of OS No.184/2022 answered in the Affirmative.**

120. ISSUE No.4 of O.S No.184/2022 AND ISSUE No.5, OF THE O.S No.2/2023 : To avoid the repetition of facts and evidence, these issues are taken together for common discussion.

The plaintiff of O.S No.184/2022 sought for the relief of declared her as absolute owner of the suit house by virtue of the registered Will dated 01.02.2018. and also sought for consequentially, restraining the defendants from interfering with plaintiff peaceful possession and enjoyment of suit house.



121. The plaintiff of O.S No.2/2023 sought for the relief of partition and separate possession by claiming 1/3rd share of the plaintiff, over the suit house and consequentially, grant permanent injunction from alienating, leasing etc., and also sought for declaration declaring the Will dated 01.02.2018 is not binding upon this plaintiff and to be declare, as null and void and to be cancelled.

122. By considering the oral and documentary evidence put forth by the parties, the plaintiff has proved that, the suit house property is self acquired property of late Hanumanthappa and also proved the due execution of Will dated 01.02.2018 executed by testator late Hanumanthappa by bequeathing the suit house property. On the other hand, the defendant No.2 has failed to prove before the court that, the suit house is purchased and constructed from the income derived from the agricultural and joint family property and also failed to proved that, the suit house is ancestral and joint family property of plaintiff and defendants.

123. Therefore, when plaintiff is proved the due execution of Will, in her favour by the testator and the suit house is self acquired property of the testator, then, the plaintiff is entitle to get declared as absolute owner of the suit property. Further, it is also proved before the court that, the defendant No.2 causing obstruction to the peaceful possession and enjoyment of the suit house, accordingly, the plaintiff is also entitle to restrain the defendant No.2 from causing interference



to the house of the plaintiff. Therefore, the plaintiff is entitle for the relief, as sought in the O.S No.184/2022.

124. On the other hand, the defendant No.2 has failed to prove the facts averred in her plaint. However, she failed to establish before the court regarding there were suspicious circumstances while executing the Will in favour of the plaintiff. Further she failed to establish before the court that, the Will is executed unnaturally in favour of plaintiff. Therefore, defendant No.2 is not at all entitle for any relief, as sought in the plaint filed in O.S No.2/2023. **Accordingly I answer issue No. 4 of O.S No.184/2022 answered in the Affirmative and Issue No.5 of OS No.2/2023 answered in the Negative.**

125. ISSUE No.5 IN O.S.No.184/2022 AND ISSUE No.6 in O.S.No.2/2023 :- In view of the above discussion I proceed to pass the following:

: ORDER :

The suit of the plaintiff filed in O.S No.184/2022 is hereby decreed.

The plaintiff is hereby declared, as absolute owner of the suit house, by virtue of the registered Will, executed by testator on 01.02.2018.

The defendants are hereby restrained, from interfering with the plaintiff's peaceful possession and enjoyment of the suit house.



Consequently, the suit filed by the defendant No.2 in O.S No.2/2023 for the relief of partition and separate possession, declaration and permanent injunction, is hereby dismissed.

In view of the facts and circumstances of the case and relationship of the parties, there shall be no order as to costs.

The entire records of OS No.2/2023 shall be kept in O.S No.184/2022.

Draw decree accordingly.

(Dictated to the Stenographer directly on the computer, computerized by her, corrected by me and then pronounced in the Open Court in this 8th day of June 2026)

(Mahantesh G. Bhusagol)
III Addl. Sr. Civil Judge
& JMFC, Ranebennur.

ANNEXURE

List of witnesses examined for plaintiff

PW.1 : Vijayalaxmi Chandrashekhara Angaragatti.
PW.2 : Puttanagouda Channabasavanagouda Mudigoudar.

List of witnesses examined for defendants

DW1 : Shobha H Hullatti.

List of documents marked for the Plaintiffs

Ex.P1 : Certified copy of ME No.14303,
Ex.P2 : Certified copy of Will,



Ex.P3 : Death Certificate,
Ex.P4 : ME No.1032/21-22,
Ex.P5 : Certified copy of RTC extract bearing Sy
No.888/1/4,
Ex.P6 : Certified copy of RTC extract bearing Sy
No.888/1 Plot No.4,
Ex.P7 : Endorsement dated 01.06.2022,
Ex.P8 : Form No.3.

List of documents marked for defendants

Ex.D-1 : Family Tree Affidavit,
Ex.D-2 : ME pertaining to MR No.841,
Ex.D-3 : ME pertaining to MR No.994,
Ex.D-4 to 11: Certified copies of RTC extracts,
Ex.D-12 : Sale deed,
Ex.D-13 : Certified copy of RTC extract,
Ex.D-14 : Certified copy of sale deed,
Ex.D-15 : ME pertaining to MR No.1643,
Ex.D-16 : Sale deed,
Ex.D-17 : Tax Assessment,
Ex.D-18 : Death certificate,
Ex.D-19 : Form No.3,
Ex.D-20 : Receipt,
Ex.D-21 : cash receipt,
Ex.D-22 : Certified copy of RT extract,
Ex.D-23 : ME No.1032/21-22,
Ex.D-24 : Certified copy of Will.

(Mahantesh G. Bhusagol)

III Addl. Sr. Civil Judge
& JMFC, Ranebennur.