

IN THE COURT OF CIVIL JUDGE & JMFC., SHIGGAON.

: PRESENT:

MISS.NASRAT MUKHTAR AHMED KHAN, B.A. LLB, LL.M
CIVIL JUDGE & JMFC., SHIGGAON.

ORIGINAL SUIT No.24/2014

DATED ON THIS THE 20th DAY OF JUNE-2023

Plaintiff : Smt. Lakshmibayi @ Lakshmauva
w/o Ashok Hanchinamani
Age: 30 years, Occ: Household
R/o Nitaginakoppa, Tq: Hanagal
Dist; Haveri

[By Sri.C.B.P., Advocates]

V/s

Defendants: 1. Smt. Channavva w/o Basavantappa
Chabbi, Aged about: 65 years,
Occ: Household
R/o A M Hirekoppa, Tq: Shiggaon,
Dist: Haveri

[By Sri G.S.A, Advocate]

PARTIES TO I.A.No.VII

Applicants : 1. Smt. Sharada w/o Shripada
(Proposed Dharaneppanavar

Defendants) Aged about 52 years, Occ: Household
R/o Dundshi, Tq: Shiggaon,
Dist: Haveri

2. Abhishek s/o Devaraja Vaiguddi
Aged about 20 years, Occ: Private Job
R/o Dundshi, Tq: Shiggaon,
Dist: Haveri

V/s

Opponents : Smt. Lakshmibayi @ Lakshmauva
(Plaintiff) w/o Ashok Hanchinamani
Age: 30 years, Occ: Household
R/o Nitaginakoppa, Tq: Hanagal
Dist; Haveri

ORDER ON I.A.No.VII

The proposed Defendants No.2 and 3 have filed IA.VII under Order 1 Rule 10(2) r/w Section 151 of CPC., praying this Court to add them as parties to this suit.

2. The proposed Defendant No.2 has filed an affidavit accompanying said IA averring that, this suit is filed by the plaintiff against the deceased defendant stating that, plaintiff and defendant are the only legal heirs to Basavantappa and deceased Sundravva and during the pendency of this suit the defendant by name Channavva has expired and she has movable and immovable properties. The said deceased

defendant during her lifetime had filed detailed written statement dated 13.08.2014 and in the written statement at paragraph no.11 she has stated about the Will deed. The deceased defendant's husband Basavantappa had purchased Gram Panchayat Property No.559 house and front yard and according to the sale deed, his name was entered in the panchayath documents as owner and possessor and after the death of Basavantappa in 1992 his daughter Sundravva died and they have no other legal heirs and thereby only the name of deceased defendant Channavva has been entered to Panchayat Utara for which Gram Panchayat Property No.10 has been allotted. The deceased defendant and deceased Basavantappa have their sister's daughter by name Sharada who had looked after them for many years and proposed Defendant No.3 Abhishek s/o Devaraj is her brother's son and thereby, the deceased defendant when was alive regarding the said property and regarding RS.No.121/1 has given Will deed to them and thereafter in OS.No.24/2014 paper publication was taken regarding LRs and when people were talking about it, she got to know in February 2023. Channavva Chabbi out of her own will in the presence of witness has executed the Will on 25.07.2014 and the said Will deed and sale deed are produced in this suit and thereby, the proposed defendants are having right over the

said property and thereby, they need to be added to this suit as they are necessary parties and without adding them no effective decision can be made. On the other if they are added in this suit no hardship will be caused to the other aside and hence, pray the Court to allow the said application.

3. The plaintiff has filed objection to the said application denying the said averments of proposed defendant and contends that, the deceased defendant Channavva's husband Basavantappa had purchased Gram Panchayat Property No.559 house front yard and backyard and said property is coming within Hosur Village Panchayat limits Ward No.7 Property No.10 and it is in the ownership and enjoyment of Basavantappa and he died on 1992 and his daughter Sundravva also died and said deceased Basavantappa have only plaintiff and defendant as his heirs. The proposed defendant in order to gulp the suit properties without the knowledge of deceased Channavva and fraudulently has got created Will deed in their name and thereby it is doubtful. Further they had to file separate suit before Civil Court and prove said Will deed and they have no occasion to proceed in this case. There was no occasion for the execution of Will deed and the proposed defendant on the basis of said Will deed, will not get any right. In R.S.No.121/1 of Hosur village

Shiggaon taluk name of plaintiff is been entered jointly with defendant and accordingly Hosur revenue authorities have approved M.R.No.41/2011-12. The proposed defendants have already filed case before Tahasildar Shiggaon to enter their names to the suit properties on the basis of Will deed as per No.H24/2021-2022 and there was objection regarding that and accordingly the case was registered as R.T.S. wahi 6/2021-2022 and after enquiry it has rejected the application on 07.04.2022 stating to get the probate from the Civil Court and then it can be proceeded and on the said Order no appeal is preferred and thereby, pray the Court to reject the said application.

4. Heard both and perused the materials on record.

5. On perusal the following points arise for my consideration.

POINTS

1. Whether the Proposed Defendant no 2 and 3 have made out the ground to allow IA.No.VII?
2. What order?

6. On perusal of materials on record and after hearing the arguments canvassed by both, my findings for the above points are here under:-

Points No.1 : In Affirmative

Points No.2 : As per final order

for the following:

REASONS

7. Points No.1:- The plaintiff has filed this suit against the defendant seeking relief of declaration that, she is the only legal heir to deceased Basavantappa and the Proposed defendant no.2 and 3 have filed this application to add them in this suit stating that, the Proposed Defendant No. 2 and 3 are sister's daughter of the deceased defendant and her husband Basavantappa and that ,she has taken care of them for many years and the proposed defendants have stated that, the deceased defendant Channavva in the presence of witnesses has executed Will deed on 25.07.2014 to them and that, the deceased defendant during her lifetime has spoken about the said Will deed at paragraph no.11 of her written statement.

8. On perusal of the written statement of deceased defendant dated 13.08.2014 it appears that, at paragraph no.13 the said defendant has said that, she has been looked after by her sister's daughter by name Sharada for last 10 years and out of her natural love and affection and free will

she has made registered Will in favour of the Sharada and Abhishek and she has further said that, in case of her death the said legatees under the Will are to be brought on record. Hence the said paragraph no.13 of the defendant's written statement has clearly stated about the proposed defendant no.2 and 3 and execution of Will deed by deceased defendant to the proposed defendant no.2 and 3 and whether the said Will deed is got created as alleged by the plaintiff is the matter of trial. Further in the very written statement the deceased defendant has made it clear that, in the case of her death the said legatees of the Will should be brought on record and thereby this suit being one for declaration of LRs, the proposed defendant no.2 and 3 are needed in order to effectively determine the matter at hand. If the said application is allowed no such hardship is seen to be caused to the other side and on the other hand if said application is rejected and proposed defendant no.2 and 3 are prevented from being added to this suit as parties, it will preclude the proposed defendant No.2 and 3 from voicing there say in this suit which inturn would go against the principles of natural justice and thereby, considering the discussion made above, Point No.1 is answered in Affirmative.

9. Point No.2 :- In view of the discussion made above, I proceed to pass the following:

ORDER

IA.No.VII filed by the Proposed Defendant No.2 and 3 under Order 1 Rule 10(2) r/w Section 151 of Civil Procedure Code is hereby allowed with cost of Rs.200/-.

SD/-
(NASRAT MUKHTAR AHMED KHAN)
CIVIL JUDGE & JMFC.,
SHIGGAON.