



**IN THE COURT OF THE SENIOR CIVIL JUDGE AND JMFC,
AT SOMWARPET**

**PRESENT: Smt.Rekha H.C., B.A.L.LB.,
Senior Civil Judge & J.M.F.C.,
Somwarpet.**

OS.No.60/2022

Dated on this the 20th day of July 2026

PLAINTIFF:-

Sri S.M.Chandrappa
S/o late S.A.Mallappa,
Aged 56 years,
Agriculturist,
R/o Doddahanacodu village,
Shanivarasante hobli,
Somwarpete taluk,
Kodagu district.

(By Sri D.L. Advocate)

// Versus //

DEFENDANTS:-

1. Sri S.M.Ramappa
S/o late S.A.Mallappa,
Aged 75 years,
Agriculturist,
R/o Sulimalthe village,
Shanivarasante hobli,
Somwarpete taluk,



Kodagu district.
(Since deceased by his LRS)

- 1(a). Smt.S.R.Somamma
W/o S.M.Ramappa,
Aged 70 years,
R/o Sulimalthe village,
Hankod post,
Somwarpete taluk.
- 1(b). Smt.S.R.Sheela
W/o K.H.Machaiah,
Aged 50 years,
R/o Sulimalthe village,
Hankod post,
Somwarpete taluk.
- 1(c). Smt.S.R.Sunitha
W/o S.N.Nandish,
Aged 48 years,
R/o Temple road,
Somwarpet taluk.
2. Sri S.M.Honnappa
S/o late S.A.Mallappa,
Aged 63 years,
Agriculturist,
R/o Il Chowdlu (Kibbetta) village,
Somwarpete hobli,
Somwarpete taluk,



Kodagu district.

3. Sri S.M.Krishnappa
S/o late S.A.Mallappa,
Aged 53 years,
Agriculturist,
R/o Doddahanacodu village,
Shanivarasante hobli,
Somwarpete taluk,
Kodagu district.
4. Sri S.M.Puttaswamy
S/o late S.A.Mallappa,
Aged 50 years,
Agriculturist,
R/o Doddahanacodu village,
Shanivarasante hobli,
Somwarpete taluk,
Kodagu district.
5. Smt.Girija D/o late S.A.Mallappa,
W/o late Krishnegowda,
Aged 65 years,
House Keeper,
R/o Hanse village,
Yasaloor hobli,
Sakaleshpura taluk,
Hassan district.



6. Smt.Kaveri D/o late S.A.Mallappa,
W/o Joyappa,
Aged 61 years,
R/o Dodda Abboor village,
Somwarpete hobli and taluk,
Kodagu district.
7. Smt.Kamala D/o late S.A.Mallappa,
W/o Veeresha,
Aged 58 years,
Agriculturist,
R/o Goddu village,
Yasalur hobli,
Sakaleshpura taluk,
Kodagu district.

**(D-1 Dead, D-2 & 3 by Sri P.K.G., Advocate,
D1(a) to (c) and 4 to 8 placed Ex-parte)**

Institution of the suit	24-06-2022
Nature of the suit	Declaration
Recording of evidence	31-01-2023
Closing of evidence	16-02-2026
Pronouncing of Judgment	20-07-2026
Total Duration of the Suit	<u>Year/s</u> <u>Month/s</u> <u>Day/s</u> 04 00 26

Sd/-xxxx
(Rekha H.C.)
Senior Civil Judge & JMFC,
Somwarpet.



J U D G M E N T

The plaintiff has filed the suit for the relief of Declaration over the suit schedule properties by virtue of WILL executed by his father late S.A.Mallappa.

2. **Brief case of the plaintiff is as under :-**

The plaintiff has stated that, the 1st defendant is his elder brother through the 1st wife of his father and the defendant No.2 to 4 are his brothers and defendant No.5 to 7 are his sisters through the 2nd wife of his father. The plaintiff stated that, he is the absolute owner in possession and enjoyment of the landed properties bearing sy.no.7/45 measuring 1.20 acres situated in Doddamalthe village and sy.no.1/20 measuring 0.20 acres, situated at Sulimalthe village. The said properties are totally measuring 1.40 acres in extent. The plaintiff's father had given 1.20 acres in sy.no.7/45 of Doddamalthe village to the 2nd defendant when the 1st partition took place on 5-3-1992. The plaintiff's father again purchased the said property by registered sale deed.



3. The plaintiff further stated that, his father late S.A.Mallappa was the absolute owner in possession and enjoyment of the suit properties by virtue of partition deed. The said 2nd partition took place on 5-3-1992 as per the partition settlement between the plaintiff, defendant No.3 and 4 and their father late S.A.Mallappa the said partition deed has drawn as per the family settlement in the presence of panchayathdars. The plaintiff, defendant No.3 and 4 and their father late S.A.Mallappa including the panchayathdars have signed the said original partition dated 5-3-1992.

4. The plaintiff further stated that, prior to the 2nd partition his father late Mallappa got partitioned his family properties and allotted separate shares to the defendant No.1 and 2 by virtue of registered partition deed which was registered as document No.230/1982-83 in the Office of the Sub Registrar, Somwarpete on 22-5-1982, the copy of the same is herewith produced since the plaintiff is not in possession of the original partition deed. Late S.A.Mallappa father of the parties had retained one share after the 1st partition which included the share of his minor children namely the plaintiff, defendant No.3 and 4. Hence, after attaining majority the plaintiff, defendant No.3 and 4 including their father again got partitioned that is the 2nd partition. The



defendant No.5 to 7 defendants being daughters are married and settled along with their respective families hence they consented for partition among male issues of late S.A.Mallappa and did not opt for share. The said female defendants consented for partition among the brothers and father by their consent by conduct. The defendant No.5 to 7 are parties to the suit as a measure of caution and care and fairness in proceeding to secure the ends of justice.

5. The plaintiff further stated that, his father S.A.Mallappa died on 31-8-1998, S.A.Mallappa lived with the plaintiff till his death. The plaintiff and his wife looked after his father. Late S.A.Mallappa opted to live with one of his sons as per his wish and opted to settle his share of properties who looks after him. The plaintiff's father has bequeathed his share of properties by virtue of WILL in his favour on 18-7-1997. The plaintiff's father had unfettered power to bequeath the suit properties. The said WILL has been drafted by D.M.Poovaiah, Advocate of Somwarpete and duly signed by two witnesses namely C.T.Joyappa of Dodda Abbor and D.M.Gopalakrishna of Doddahanacode. The said witnesses are son-in-laws of late S.A.Mallappa and brother-in-laws of all the parties to the suit.



6. The plaintiff further stated that, defendant No.3 got entered his name to the whole extent of the land in sy.no.6 of Kibbetta by unjust and illegal devices hence the plaintiff approached D.M.Gopalakrishna to get settle his grievances as Gopalakrishna served as President of Doddamalthe Grama Panchayath. D.M.Gopalakrishna revealed about the said WILL of plaintiff's father and handed over the same to the plaintiff. The plaintiff came to know about the said WILL on 14-1-2022 through D.M.Gopalakrishna. Hence the plaintiff came to know about the said last and legitimate WILL of his father which is bonafide one. The plaintiff is unable to seek change of khatha of the suit properties due to the non registration of the said WILL. Therefore the plaintiff has filed the suit.

7. After registration of the suit, the suit summons issued to the defendants. The defendant No.1 to 3 have appeared before the court, defendant No.1(a) to (c) and 4 to 8 are kept ex-parte. The defendant No.1 and 3 have filed the written statement and in their written statement they have contended that the 1st partition was not took place on 5-3-1992. As claimed by the plaintiff the 2nd partition did not took place on 5-3-1992 and the 3rd defendant was not a party to that partition deed and said deed might have created by plaintiff, defendant No.4 only. Said



Mallappa was not a party to that partition. The RTC is standing in the name of Mallappa since there is no partition between share holders by metes and bounds. Said Mallappa had no right or power to execute such WILL since the suit properties are joint family properties of defendant No.3, 4 and plaintiff and said Mallappa.

8. The defendant further contended that, WILL dated 18-7-1997 was executed in favour of plaintiff, it must be forged, fabricated, created by use undue influence and coercion and under threat. Said Mallappa had no right or power to execute such WILL and he was not in good health since more than 2 years earlier to his death. He was not in a position to execute any WILL. The said Gopalakrishna was not appointed as executor and no such WILL was handed over to him. The plaintiff and said Gopalakrishna have created a document as WILL.

9. On the basis of pleadings this court has framed following:

ISSUES

1. Whether the plaintiff proves that the his father S.A.Mallappa has executed his Last Will and



Testament dated 18-07-1997 in his sound disposing state of mind beyond all suspicious circumstances?

2. Whether the plaintiff proves that he is the absolute owner of the suit schedule property?

3. Whether the defendant proves that the suit is undervalued and court fee paid is insufficient?

4. Whether the suit of the plaintiff is maintainable in the present form?

5. Whether the plaintiff is entitled for the relief claimed in the suit schedule property?

6. What order or decree?

10. To prove the case, the plaintiff himself examined as PW-1 and examined 3 witnesses as PW-2 to 4 and got marked Ex.P1 to P7. The defendant No.3 examined as DW-1 but not produced any documents.

11. Heard arguments of Sri D.L. learned counsel for the plaintiff and Sri P.K.G. learned counsel for the defendant No.1 to 3 and perused the records.



12. The findings of this court to the above issues 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

13. **ISSUES No.1 AND 2:-** Both issues are interconnected to each other, hence taken together for discussion.

The plaintiff has filed the suit for Declaration in respect of schedule properties. In order to prove his title to the properties the plaintiff examined himself as PW-1 and in his chief examination he has reiterated the averments made in the plaint. The PW-1 has deposed that his father was absolute owner and possession of the suit schedule properties and he had acquired the said properties through partition deed dated 5-3-1992 between plaintiff and defendant No.3 and 4 and their father Mallappa.

14. The PW-1 further submitted that prior to this partition deed there was a registered partition deed executed between his father and defendant No.1 and 2 on dated 22-5-1982. As per



said partition deed his father retained one share which included the share of his minor children of plaintiff and defendant No.3 and 4. As per said partition deed item No.1 of suit schedule property has allotted to 2nd defendant, thereafter his father purchased the said property through registered sale deed dated 23-5-1988. Then after attaining majority of plaintiff and defendant No.3 and 4 they have divided their share along with their father as per partition deed dated 5-3-1992.

15. The PW-1 further submitted that, his father lived with plaintiff till his death. Therefore he has executed a WILL on dated 18-7-1997 in favour of plaintiff in respect of suit schedule properties. The said WILL has been drafted by T.M.Poovaiah and duly attested by two witnesses and the said WILL has been handed over by his father to Gopalakrishna and his father died on dated 31-8-1998 which is come to knowledge of plaintiff on 14-1-2022.

16. In order to disprove the suit of the plaintiff, defendant No.3 examined as DW-1 and he contended that there is no partition held between plaintiff and defendant No.3 and 4 and their father Mallappa and the said partition deed did not executed on dated



5-3-1992. Even though he was not a party in said deed. Moreover, their father had no right to execute the WILL, further suit schedule properties are joint family properties of plaintiff, defendant No.3 and 4 and their father Mallappa.

17. So far as I have perused oral and documentary evidence of both parties, in the cross-examination of PW-1 ನನ್ನ ತಂದೆ ಜೀವಂತವಿರುವಾಗ 1982 ರಲ್ಲಿ ಒಟ್ಟು ಕುಟುಂಬದ ಆಸ್ತಿಯನ್ನು ನಿಪಿ-6 ರಂತೆ ಪಾಲು ಮಾಡಿ ನೋಂದಣಿ ಮಾಡಿಸಿರುತ್ತೇವೆಂದರೆ ಸರಿ. ನಿಪಿ-6 ರ ವಿಭಾಗ ಪತ್ರದಂತೆ ಒಟ್ಟು ಕುಟುಂಬದ ಆಸ್ತಿಯನ್ನು ಮೂರು ವಿಭಾಗಗಳಾಗಿ ಮಾಡಿ ಒಂದು ಪಾಲನ್ನು ಒಂದನೇ ಪ್ರತಿವಾದಿಗೆ, ಇನ್ನೊಂದು ಪಾಲನ್ನು ಎರಡನೇ ಪ್ರತಿವಾದಿಗೆ, ಮೂರನೇ ಪಾಲನ್ನು ನನಗೆ, ಪ್ರತಿವಾದಿ 3, 4 ಮತ್ತು ನನ್ನ ತಂದೆಗೆ ಜಂಟಿಯಾಗಿಟ್ಟುಕೊಂಡಿದ್ದೇವೆಂದರೆ ಸರಿ. ಆ ಸಮಯದಲ್ಲಿ ನಾನು, ಪ್ರತಿವಾದಿ 3, 4 ಅಪ್ರಾಪ್ತ ವಯಸ್ಕರು ಎಂದರೆ ಸರಿ, ವಿಭಾಗವಾದ ನಂತರ ಪ್ರತಿವಾದಿ 1 ಮತ್ತು 2 ಪ್ರತ್ಯೇಕವಾಗಿ ತಮ್ಮ ಭಾಗವನ್ನು ತೆಗೆದುಕೊಂಡು ವಾಸಿಸಲು ಆರಂಭಿಸಿದ್ದರು. ನಾನು, ಪ್ರತಿವಾದಿ 3, 4 ಮತ್ತು 7 ರವರು ನನ್ನ ತಂದೆಯೊಂದಿಗೆ ವಾಸವಿದ್ದೇವೆಂದರೆ ಸರಿ. Therefore as per admission given by the plaintiff after execution of partition deed dated 5-3-1982 defendant No.3 and 4 and plaintiff were residing with their father Mallappa. Even though it has been admitted by defendants and they are not disputed execution of registered partition deed which is marked as Ex-P6.



18. As per plaintiff their father Mallappa purchased the item No.1 of suit schedule property from 1st defendant through registered sale deed dated 23-5-1988 from his own income, which is marked as Ex-P1. Thereafter as per unregistered partition deed dated 5-3-1992 plaintiff, defendant No.3 and 4 and their father Mallappa are divided their joint family properties which are mentioned Ex-P6. As per said partition deed suit schedule properties were allotted to his father's share. Therefore Mallappa is the absolute owner and enjoyment over the said properties as per unregistered partition deed dated 6-3-1992. But defendants are denied the execution of alleged partition deed and defendant No.1 and 3 specifically contended that defendant No.3 was not party in said partition deed. Even though there is no partition held between plaintiff, defendant No.3 and 4 and their father Mallappa. Therefore their father does not have any exclusive right over the said property for execute the WILL.

19. So far as I have perused the contents of alleged partition deed executed on dated 5-3-1992 which is marked as Ex-P7, as per this document, the plaintiff's father Mallappa and defendants Nos. 3 and 4 have divided their ancestral properties through an unregistered partition deed dated 5-3-1992. As per



this partition deed suit schedule properties are allotted to Mallappa who is the father of both parties. So far as on perusal of contents of said document in page No.3 at para No.4 of said document there is a recital that - ಅದು ಅಲ್ಲದೆ ಎಸ್.ಎಂ.ಚಂದ್ರಪ್ಪನವರ ಪಾಲೀನ ಸ್ವತ್ತುಗಳು ಸೋಮವಾರಪೇಟೆ ತಾಲ್ಲೂಕು, ತಹಶೀಲ್ದಾರ್ ರವರ ಕಛೇರಿ ಕೇಸ್ ನಂ.ಎಂ.ಸಿ.ತಕರಾರು:23:95-96 ರ ತಾರೀಖು 21-11-95 ರಂತೆ ಸದರಿ ಚಂದ್ರಪ್ಪನವರು ವರ್ಗಾಯಿಸಿಕೊಂಡಿರುತ್ತಾರೆ ಮತ್ತು ಅನುಭವಿಸಿಕೊಂಡು ಹೋಗುತ್ತಿದ್ದಾರೆ. The alleged contents are disclosed that there is a recital regarding objection filed in M.C.23/1995-96 on dated 21-11-1995. It is pertinent to note that, the Ex-P7 was executed on dated 5-3-1992, but in the said document mentioned the objection filed before Tahsildar Office in M.C.23/1995-96 on dated 25-11-1995. Even though in the cross-examination PW-1 stated that the alleged partition deed was written in the year 1992 and it was typed and signed in the year 1996 as per Ex-P7. But there is no recital in Ex-P7 that it has been written in the year 1992 and same has been typed in the year 1996. Therefore the contents mentioned in page No.3 at para No.4 are clearly shows that Ex-P7 is created document.

20. Further as per PW-1 after execution of partition deed as per Ex-P7 their father Mallappa was got suit schedule properties



as his share. Therefore he was the absolute owner and enjoyment over the suit schedule properties. Then he executed a unregistered WILL in his favour Plaintiff as per Ex-P2. In order to prove the execution of said WILL plaintiff examined attesting witnesses and scribe of said WILL as PW-2 to 4.

21. So far as I have perused the evidence of PW-2 and 3 who are attested witnesses of alleged WILL. They deposed that, they had put their signature on WILL executed by Mallappa on dated 18-7-1997 in the Office of Poovaiah. They further deposed that after signed by the Mallappa on WILL they had put their signature as attested witnesses to said WILL. They did not state in their affidavit that who was the first witness to sign the will.

ILR 2008 KAR 2115, ILR Sri J.T.Surappa and another V/s Sri Satchidhanandendra Saraswathi Swamiji Public Charitable Trust and others. Held that- (A) Indian Succession Act, 1925-S.2(h). Will Proof of Legal requirements duty of the court five steps to be considered. Held-Under the Act the WILL to be valid, should be reduced into writing, signed by the testator and shall be attested by two or more witnesses and at least one attesting witnesses shall be examined. If these legal requirements are not



*found, in the eye of law there is no will at all. Therefore, the **1st step** is that if the documents produced before the court prima-facie do not satisfy these legal requirements, the court need not make any further enquiry, in so far as its due execution is concerned and can negative a claim based on the said document.*

*Further held- The **2nd step** is that when the legal heirs are disinherited, the court has to scrutinize the evidence with greater degree of care than usual. The **3rd step** would be to find out whether the testator was in a sound state of mind at the terms of executing the WILL. The **4th step** would be to find out whether there exists any suspicious circumstances surrounding the execution of the WILL. The **5th step** is to consider whether the WILL that is executing is in accordance with section 63 of the Act read with section 68 of the Evidence Act.*

22. Further PW-1 deposed that, defendant No 3 got entered his name to the entire extent of land in sy.no.6 of Kibbetta village by illegally. Therefore he approached PW-2 to get settled their dispute, at that time PW-2 revealed that execution of said WILL by father of the plaintiff and handed over the same to him. So far as I have perused the evidence of PW-2 who is the custodian of said WILL did not deposed that Mallappa, handed



over the said WILL to him and he did not deposed that after execution of WILL he had received the said WILL to his custody. Even though on perused the contents of the alleged will there is no recital in the said will as to whose custody it is being given.

23. Further on perusal of evidence of PW-2 and 3 they are admitted that they are close relative of Mallappa, therefore they have attended funeral ceremony of Mallappa. Therefore if Mallappa executed and handed over the said WILL to PW-2 after death of Mallappa definitely he had informed the execution of said WILL. Moreover, Mallappa died in the month of August 1998 and plaintiff came to know about the execution of said WILL in the month of January 2022 through PW-2. After lapse of 25 years PW-2 informed the execution of WILL.

24. Further on carefully perused the contents of alleged WILL, as per this document at the time of execution of alleged WILL testator Mallappa was aged about 79 years and it has been executed on dated 18-7-1997. Further on perusal of contents of Ex-P1, as per this document Mallappa purchased the Item No.1 of suit of suit schedule property through registered sale deed dated 23-5-1988 and at the time of execution of sale deed he was aged about 80 years and the alleged WILL has executed in



the year 1997. Hence, at that time he was aged about 89-90 years. But in alleged WILL age of the testator as shown as 79 years. Therefore at the time of execution of alleged WILL testator Mallappa aged about 89 years. At the time testator was old age its deemed to he was physically illness it appears that the alleged WILL is surrounded with suspicious circumstance about its due execution. Such doubtful circumstances about the execution of will contents of the WILL has not been dispelled by the plaintiff by leading cogent and convincing evidence.

25. Thus the evidence of PW-3 who is the scribe of alleged WILL he deposed that on 18-7-1992, Mallappa stated him that to make a Will in favour of his son Chandrappa in respect of suit schedule property and he was prepared a WILL as per wish of Mallappa and testetor Mallappa came to his office along with Joyappa and Gopalakrishna. But he did not deposed that what time Mallappa arrived at his office, how long Mallappa given information to write the will, how long he took to prepare the will, how long the will was read, and when Mallappa signed it. According to PW-2 to 4 the testator was in a sound state of mind before affixing his signature, he read the contents of the same and he put his signature in WILL. So far as perused the signature of the testator found in WILL, he has affix his signature right



bottom of page below the typed matter. Even though signature of the testator found in said WILL there is a 'Into (x) mark' mentioned in alleged WILL. Therefore the said mark indicates testator Mallappa voluntarily not executed said will

26. Further this court ascertain whether the requirement of section 63 of the Indian Succession Act, 1925 is fulfilled in alleged WILL. So far as I have perused Section 63 of the Indian Succession Act, 1925.

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 acknowledgment 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.

The aforesaid provision makes it clear before a WILL is said to be duly executed, the three rules mentioned in the aforesaid section shall be complied with. It is mandatory.

The WILL is to be proved as provided under section 68 of Indian Evidence Act, which reads as under:

68. 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: 1) 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.

27. The Hon'ble Supreme Court has laid down the principles to be considered while proving the WILL in **Civil Appeal No.3351/2014 between Meena Pradhan and others V/s Kamla Pradhan and another dated 21-9-2023**. Wherein the Hon'ble Supreme Court has laid down the principles for prove the validity and execution of the WILL is as under:-

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



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

lii. A will is required to fulfill all the formalities required U/s 63 of the Succession Act, that is to say:

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

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

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

d) Each of the attesting witnesses shall sign the WILL in the presence of the testator, however, the



presence of all witnesses at the same time is not required;

iv) For the purpose of proving the execution of the WILL, at least one of the attesting witnesses, who is alive, subject to the process of court, and capable of giving evidence, shall be examined;

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

vi) If one attesting witness can prove the execution of the will, the examination of other attesting witnesses can be dispensed with;

vii) Where one attesting witness examined to prove the will fails to prove its due execution, then the other available attesting witness has to be called to supplement his evidence.

Viii) Whenever there exists any suspicion as to the execution of the will, it is the responsibility of the propounder to remove all legitimate suspicions before it can be accepted as the testator's last will.



In such cases, the initial onus on the propounder becomes heavier.

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

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

xi) Suspicious circumstances must be real, germane and valid and not merely the fantasy of the doubting mind. Whether a particular feature would



qualify as suspicious would depend o the facts and circumstances of each case. Any circumstance raising suspicion legitimate in nature would qualify as a suspicious circumstance for example, a shaky signature, a feeble mind, an unfair and unjust disposition of property, the propounder himself taking a leading part in the making of the will under which he receives a substantial benefit, etc.,

28. Therefore the execution of WILL of Mallappa in favour of plaintiff as per Ex-P2 has failed to prove by the plaintiff U/s 63 of Indian Succession Act and S.68 of Indian Evidence Act. Though it is proper to consider the principles laid down by the Hon'ble Apex Court in **H.Venkatachala Iyyengar V/s Thimmajamma** wherein Hon'ble Apex Court laid down the principles in respect of proof of the WILL wherein it is held that propounder have to prove the due execution of the WILL and remove the suspicious circumstances from the mind of the court by cogent and satisfactory evidence. Therefore, one of the facts to be proved by the propounder that he shall remove the suspicious circumstances surrounded the WILL apart from proving other factors. But in this present suit plaintiff utterly failed to alleged WILL has executed by Mallappa with sound state of mind.



Moreover at the time of execution of WILL suit schedule properties are joint family properties of plaintiff, defendant No.3 and 4 and their father Mallappa. Therefore testator does not have any exclusive right in respect of suit schedule properties. Hence, this court answered **Issue No.1 and 2 in the Negative.**

29. **Issue No.3:-** This suit filed by the plaintiff for the relief of Declaration as per WILL he is the absolute owner of suit schedule properties and valued the suit properties U/s 24(A) R/w 7(2A) of Karnataka Court Fee and Suit Valuation Act and paid the amount.

Therefore as per Section 24 of Karnataka Court Fee and Suit Valuation Act, In a suit for a declaratory decree or order, whether with or without consequential relief, not falling under section 25,-

(a) where the prayer is for a declaration and for possession of the property to which the declaration relates, fee shall be computed on the market value of the property or on [rupees one thousand] [Substituted by Act 13 of 1982 w.e.f. 1.4.1982], whichever is higher;



30. **Issue No.3:-** In this suit plaintiff sought relief of declaration, therefore for the purpose of court fee this suit has been valued as per Section 24(a) R/w 7(2)(A) of Karnataka Court Fee Act. Therefore this suit is properly valued under Section 24(a) of Karnataka Court Fee and Suit Valuation Act. Hence, this court answer the above **issue No.3 in the affirmative.**

31. **Issue No.4:-** This suit filed by the plaintiff this court has declared to he is the absolute owner of suit schedule properties virtue of WILL executed by his father on dated 18-7-1997. Even though he claim the right over suit schedule properties on the basis of alleged WILL executed by his father and said properties fall on to their father through partition deed. Therefore plaintiff disclosed legal right to sue and cause of action. Though plaintiff full fill the all formal requirement. Therefore this suit is maintainable. Hence, this court answer the above **issue No.4 in the Affirmative.**

32. **Issue No.5:-** While answering Issue No.1 and 2 plaintiff failed to prove the execution of alleged partition deed dated 5-3-1992 and WILL dated 18-7-1997. Therefore as per registered partition deed suit schedule properties fall on to share of



plaintiff, defendant No.3 and 4 their father Mallappa and there is no partition between them. Even though as per Ex-P1 Mallappa was purchased the item No.1 of suit schedule property through registered sale deed Therefore Mallappa purchased the said property on dated 23-5-1988 on behalf of joint family, out of joint family income. Therefore Mallappa did not have any exclusive right execute the WILL in favour of the plaintiff. Hence, plaintiff is not entitled any right and ownership over suit schedule property. Therefore, this court concludes that the plaintiff has failed to prove that his father Mallappa has bequeathed the suit schedule property by executing Ex-P2 WILL in his favour. Hence this court answer the **issue No.5 is Negative.**

33. **Issue No.6:** In view of the findings to the above issues, this court proceed to pass the following:-

ORDER

The suit filed by the plaintiff is hereby dismissed with cost.

Draw decree accordingly.

(Dictated to the Stenographer, directly on computer, corrected and initialed by me and then pronounced by me in the open court on this **20th day of July 2026**)

**Sd/-xxxx
(Rekha H.C.)
Senior Civil Judge
Somwarpet.**



ANNEXURE

WITNESS EXAMINED ON BEHALF OF THE PLAINTIFFS:

PW-1 : S.M.Chandrappa
 PW-2 : Gopalakrishna
 PW-3 : Joyappa
 PW-4 : Poovaiah

DOCUMENTS MARKED ON BEHALF OF THE PLAINTIFFS:

Ex.P1 : Original sale deed dated 23-5-1988
 Ex.P2 : WILL dated 18-7-1997
 (a) signature of Mallappa
 (b) signature of Gopalakrishna
 (c) signature of Joyappa
 (d) signature of Poovaiah
 Ex.P3 : Death certificate
 Ex.P4, 5 : RTC
 Ex.P6 : C/c of partition deed dated 22-5-1982
 Ex.P7 : C/c of partition deed dated 5-3-1992

WITNESS EXAMINED ON BEHALF OF THE DEFENDANTS:

DW-1 : S.M.Krishnappa

DOCUMENTS MARKED ON BEHALF OF THE DEFENDANTS:

----- Nil -----

SCHEDULE

Sl.No.1:- All the part and parcel of the landed property bearing sy.no.7/45 measuring 1.20 acres in extent, situated in Doddamalthe village and bounded by



East : Land of sy.no.7/17

West : Land of sy.no.7/17

North : Land of sy.no.7/17

South: Land of sy.no.124

Sl.No.2:- All the part and parcel of the landed property bearing sy.no.1/26 measuring 0.20 acres (20 cents) in extent, situated in Sulimalthe village and bounded by

East : Land of sy.no.1/22

West : Land of sy.no.1/2

North : Land of sy.no.1/2

South: Government Paisary land

The serial No.1 and 2 lands are in Shanivarasante hobli, Somwarpete taluk, Kodagu district.

Sd/-xxxx

**(Rekha H.C.)
Senior Civil Judge,
Somwarpet.**