

Date of institution of the suit : 11.02.2013
Nature of the suit : Suit for Declaration.

Date of the commencement of recording evidence : 13.08.2014

Date on which the judgment was pronounced : 05.11.2018

| | Year/s | Month's | Day's |
|----------------|--------|---------|-------|
| Total duration | : -05- | -08- | -24- |

(Vivek Gramopadhye)
Addl. Civil Judge, Karwar.

:- J U D G M E N T :-

The plaintiff has filed this suit seeking for the relief of declaration of ownership on the basis of Will executed by his father dated 05.12.2007 and consequential relief of injunction against the defendants.

2. The plaint averments in brief can be seen as under:

The plaintiff avers that he is permanent resident of Devalwada of Siddar village and defendant No.1 is the permanent resident of Nadumaskeri village in Kumta Taluka and she is a Primary School teacher and belongs to different caste from that of the plaintiff. It is further averred that the defendant No.1 is the wife of late brother of plaintiff by name Manohar Sairoba Gurav and he was working in Police Department and married to the defendant No.1 against the wish and will of his father Sairoba and since the date of marriage with defendant No.1, the late brother and defendant No.1 are staying separately from the family of Sairoba and

plaintiff. It is further averred that the defendant No.2 is the younger sister of plaintiff and he is residing with her husband and mother of the plaintiff is expired on 13.1.2013 and late father of plaintiff has executed the Will bequeathing his right in the suit land of the plaintiff. It is further averred that the defendant No.2 and late mother of plaintiff had given their no objection for entering the name of plaintiff in the revenue records on the basis of registered Will dated 5.12.2007 and defendant No.2 is only a formal party to the suit. It is further averred that the suit schedule property is self acquired property of late father Sairoba Apa Gurav and the Land Tribunal, Karwar has granted occupancy right to the father of the plaintiff on 27.11.1976 and Tahsildar has issued form No.10 to father of plaintiff on 19.5.1981 and the name of father of plaintiff was entered in the record of right of suit land as owner, on the basis of form No.10 under Siddar village Mutation Entry No.2433, dated 16.9.1981. It is further averred that the plaintiff is looking after day today requirements of her parents with great love and affection and on the other hand late brother of the plaintiff had inter caste

marriage with defendant No.1 and has always resided separately. It is further averred that late brother of the plaintiff and husband of the defendant No.1 expired on 2.1.1991 and even after his death, the defendant No.1 has not at all looked after her parents in law and has specifically stated in a family meeting that she is not interested in the property owned by father of the plaintiff and also clarified that she is not interested in looking after her in laws. It is further stated that in view of love and affection with which the plaintiff has taken care of his parents, the late father of the plaintiff bequeathed the property in favour of the plaintiff on 5.12.2007. On that day at about 10.00 A.M. he went to the Sub-Registrar Office along with two attesting witnesses and after following legal formalities he executed the Will in favour of the plaintiff and the attesting witnesses also signed on the said Will and the Will is registered at 10.36 A.M. on 05.12.2007 for registration before the Sr. Sub Registrar, Karwar and the Will is registered. It is further case of the plaintiffs that after execution of the Will, father of the plaintiff has handed over Will to the plaintiff for taking necessary steps

to get his name entered in the revenue records and father of plaintiff has expired on 19.02.2011 after execution of the Will. It is further stated that after the death of father of the plaintiff, plaintiff submitted application to Tahsildar, Karwar for mutating his name in the record of rights of the suit property and mutation entry came to be registered in favour of the plaintiff against which the defendant No.1 filed objections and Tahsildar, Karwar ordered for cancellation of the entry and against the said order, the plaintiff preferred Appeal to Assistant Commissioner, Karwar which came to be rejected. It is further stated that the mutation entry came to be cancelled only because the Will is required to be proved in the Civil Court and in view of the said order, the plaintiff has filed this suit claiming the above mentioned relief.

3. On issuance of suit summons, the defendants No.1 and 2 have appeared through their respective advocates and defendant No.1 has contested the case and has filed her written statement.

4. The crux of the written statement can be seen**as under:**

The plaint averments with regard to defendant No.1 being wife of brother of the plaintiff is admitted. But rest of the facts narrated in the plaint are denied in toto by the defendant No.1. It is further stated that after the marriage of defendant No.1 and her husband were staying in Shirwad and that is only for purpose of service and they were not living outside the family. It is further stated that the Form No.7 was filed by late Sairoba Apa Gurav on behalf of entire family and therefore, question of execution of Will relating to the entire property does not arise. It is further stated that the purported Will is bogus and created document and the Will was not executed in a fit state of mind and it was executed without bringing the contents of the will to the knowledge of the executant and hence it is not at all binding upon the executant and also the persons who are entitled for joint family property. Hence, she seeks for dismissal of the suit.

5. The defendant No.2 has also filed her written statement and in the written statement, it is admitted that the claim of the plaintiff and has sought for decretal of the suit in favour of the plaintiff.

6. On the basis of the rival pleadings between the parties following five issues were framed by my learned predecessor:

- 1) Whether plaintiff proves that his father Sairoba Apa Gurav executed a registered Will on 5.12.2007 in favour of the plaintiff and the plaintiff became a absolute owner of the suit schedule property?
- 2) Whether the plaintiff further proves that he is in the lawful possession and enjoyment in the suit schedule property?
- 3) Whether the plaintiff further proves the alleged interference by the defendant?

- 4) Whether the defendants prove that the suit is improperly valued and court fees paid is insufficient?
- 5) Whether the plaintiff entitled for the relief claimed?
- 6) What order or decree?

7. The plaintiff to substantiate his case has examined himself as P.W-1 and has got marked 8 documents at Exs.P.1 to P.8. To further substantiate the case of the plaintiff, the plaintiff has examined another two witnesses as P.W-2 and 3. On the other hand, to substantiate the case of the defendants, the defendant No.1 has examined herself as D.W-1 and has got marked 21 documents at Exs.D.1 and D.21. To further case of the defendants, the defendants have examined two witnesses as D.W-2 and 3.

8. Heard learned advocate for the plaintiff and learned advocate for the defendants

9. My answer to the above issues are as under:-

Issue No.1 : In the **Negative**

Issue No.2 : In the **Negative**

Issue No.3 : In the **Negative**

Issue No.4 : In the **Negative**

Issue No.5 : In the **Negative**

Issue No.6 : As per final order, for following:

:- REASONS :-

10. ISSUE NO.1:

The plaintiff's case in brief is that the defendant No.1 is wife of brother of the plaintiff and she belongs to a different caste and brother of the plaintiff got married to defendant No.1 against the wish and will of Sairoba Apa Gurav and severed all contact with the family and it is the plaintiff who took care of Sairoba Gurav and that of plaintiff's mother and keeping in view the services rendered by the plaintiff, late Sairoba Gurav executed a registered Will on 5.12.2007 in favour of plaintiff and thereby the plaintiff became an absolute owner of the property by virtue of the said Will. On the basis of the Will, the plaintiff went to enter in the name of the record of rights, defendant No.1 was objected to the same and hence, the plaintiff has filed this suit.

11. The defendant No.1's case in brief is that the plaintiff is not at all absolute owner of the property and late Sairoba Gurav had got rights in the property as a head of the entire family and not in his individual capacity and purported Will executed by Sairoba Gurav is bogus, concocted and made up document and does not confer any right of the plaintiff and hence, she seeks for dismissal of the suit.

12. The plaintiff to substantiate his case has examined himself as P.W-1 and has filed affidavit in lieu of his examination-in-chief. In his affidavit filed in lieu of his examination-in-chief, he has reiterated the plaint averments. During the course of his examination-in-chief, at Ex.P.1 he has got marked the Death Certificate, at Ex.P.2 he has got marked the R.T.C. of the suit schedule property, at Ex.P.3 he has got marked the letter given by his mother and sister stating that they have no objection to enter the name of the plaintiff with regard to suit schedule property, at Ex.P.4 he has got marked the Order passed by Land Tribunal granting the property to the plaintiff, at Ex.P.5 he has got marked Form No.10, at

Ex.P.6 he has got marked the Certified copy of Mutation Entry abstract, at Ex.P.7 he has got marked Will dated 5.12.2007, at Ex.P.8 he has got marked the Death Certificate of one attesting witness Subray Gurav and he seeks for decretal of the suit.

13. The learned advocate for the defendant No.1 has cross-examined the plaintiff and during the course of his cross-examination he admits that apart from defendant No.1 his late brother Manohar's children Bharati and Gurumurti are his brother's legal heirs. Further he has denied the suggestions that the suit schedule property is ancestral property. Further he states that the house in the survey No.158 house is built by his father along with himself and his brother late Manohar. Further he admits that “ಕಾರವಾರ ಟ್ರಬುನಲನವರು ಇಡೀ ಕುಟುಂಬದ ವ್ಯವಸ್ಥೆಗಾಗಿ ನಮ್ಮ ತಂದೆಯವರ ಹೆಸರಿಗೆ ಯಜಮಾನರಾಗಿ ಮಂಜೂರು ಮಾಡಿರುತ್ತಾರೆ ಅಂದರೆ ಸರಿ.” Further he admits that “ನನ್ನ ತಮ್ಮ ಮನೋಹರ ಸಿದ್ದಾಪೂರದ ಅರ್ಬನ್ ಬ್ಯಾಂಕಿನಲ್ಲಿ ಸಾಲ ಮಾಡಿ ತಂದು ಸರ್ವೆ ನಂ.158 ರಲ್ಲಿ ದಾವಾ ಸೋತ್ತಿನಲ್ಲಿ ಮನೆ ಕಟ್ಟಿರುತ್ತಾರೆ ಅಂದರೆ ಇರಬಹುದು.” Further he admits that he was worked in A.P.M.C., Sirsi, as Supervisor and his brother Manohar was worked as a Police Constable in Ankola. Further he has

denied the suggestions that Sairoba Gurav was not in a fit to state of mind for execution of a Will. Further he admits that since 1975 he was in Government service. Further he denies the suggestions that he has not at all taken care of his ailing parents. Further he admits that “ನನ್ನ ದಾವೆಯಲ್ಲಿ ಭಾರತಿ ಮತ್ತು ಗುರುಮೂರ್ತಿಯವರನ್ನು ಪಕ್ಷಗಾರರನ್ನಾಗಿ ಮಾಡಲಿಲ್ಲ ಎಂದರೆ ಸರಿ.” Further he admits that he used to write letters to defendant No.1 and admits that Ex.D1 letter was written by him. Further he admits that at Ex.D.2 letter was written by him and Ex.D.3 letter was written by him to his brother Manohar. Further he states that “ನನ್ನ ಹೆಸರಿನಲ್ಲಿ ಖಾತೆ ಮಾಡಲು ನನ್ನ ತಾಯಿ ಮತ್ತು ನನ್ನ ತಂಗಿ ನಿರಾಪೇಕ್ಷಣಾ ಪತ್ರವನ್ನು ಕೊಟ್ಟಿದ್ದರು ಎಂದರೆ ಸರಿಯಲ್ಲ.” Further he admits that “ನಾವು 2000 ನೇ ಇಸವಿವರೆಗೆ ಒಟ್ಟು ಕುಟುಂಬದಲ್ಲಿಯೇ ಇದ್ದೇವು ಎಂದರೆ ಸರಿ. ನಾನು ಜೀವನ ಮಾಡಿಕೊಂಡಿದ್ದ ಸರ್ಕಾರಿ ನೌಕರಿ ಬಿಟ್ಟರೆ ನಮ್ಮ ಇಡೀ ಕುಟುಂಬಕ್ಕೆ ದಾವಾ ಸ್ವತ್ತು ಒಂದೇ ಆಸ್ತಿ ಇದ್ದು ಅದು ಒಟ್ಟು ಕುಟುಂಬದ ಆಸ್ತಿ ಎಂದರೆ ಸರಿ.” Further he admits that “ಒಟ್ಟು ಕುಟುಂಬದ ಒಳಿತಿಗಾಗಿ ದಾವಾ ಸ್ವತ್ತನ್ನು ಕುಟುಂಬದ ಯಜಮಾನನಾದ ನಮ್ಮ ತಂದೆಯವರ ಹೆಸರಿಗೆ ಜಮೀನನ್ನು ಮಂಜೂರು ಮಾಡಿದ್ದರು ಎಂದರೆ ಸರಿ.” Further he denies the suggestions that because suit schedule property was granted in favour of his father for the welfare of the entire family the property is joint family property. Further he denies the suggestion that because it was joint family

property, his father had no exclusive right to execute Will with regard to the suit schedule property. Further he admits that “ಎಲ್ ಮಾಡಿಸುವ ಕೆಲವು ಹಿಂದೆ ನಾನು ಮನೆಗೆ ಬಂದಿದ್ದೆ . ಇನ್ನಾವತ್ತು ನಾನು ಮನೆಗೆ ಬಂದೇ ಇರಲಿಲ್ಲ.” Further he denies that he has not at all taken care of his father and it was defendant No.1 and her husband who have taken care of his father. Further he denies the suggestions that attesting witnesses are his good friends and he is misusing them and that he is deposing falsely before the court. Further he denies the suggestions that the Will executed by the father under pressure from the plaintiff. Further he states that “ನಿಶಾನೆ.ಪಿ 3 ಪತ್ರವನ್ನು ನನಗೆ ಅನುಕೂಲವಾಗುವಂತೆ ನಾನೇ ಬರೆದುಕೊಂಡಿದ್ದು ನಮ್ಮ ತಾಯಿ ಅದಕ್ಕೆ ಸಹಿ ಮಾಡಿಯೇ ಇಲ್ಲಾ ಎಂದರೆ ಸರಿ. ನಿಶಾನೆ.ಪಿ 3 ನ್ನು ನನಗೆ ಅನುಕೂಲವಾಗುವಂತೆ ನಾನೇ ಸೃಷ್ಟಿ ಮಾಡಿಕೊಂಡಿರುತ್ತೇನೆ ಎಂದರೆ ಸರಿ.” Further he has denied the suggestions made by the learned advocate for the defendant No.1.

14. Further, to substantiate the case of the plaintiff, the plaintiff has examined one of the attesting witness Pavato S/o Narasu Gurav as P.W-2 and during the course of his examination-in-chief filed by way of affidavit, he states that he is one of the attesting witness to the registered Will dated

5.12.2007 executed by late Sairoba Apa Gurav and he states that on 4.12.2007 at about 9.00a.m. late Sairoba Apa Gurav met him and requested him to sign on the Will as a attesting witness and took him along with another attesting witness Subray Ram Gurav to Sub-Registrar Office at 10.00 A.M. on 5.12.2007 and on 5.12.2007 at about 9.00 A.M. they signed on the Will and at around 10.15 A.M. late Sairoba Gurav signed on the said Will on each page in physically fit condition with knowledge regarding the contents of the said Will and the consequences thereof. It is further stated that the signature on the Will is that of late Sairoba Gurav and the same is done in his presence and in the presence of another attesting witness and he signed on the Will in the presence of another witness Subray Gurav, Sairoba Gurav is signed on the Will in the presence of attesting witness. The Will is duly registered with the Sub-Registrar office and the original Will was given back to the testator Sri. Sairoba Apa Gurav at about 10.45 A.M. and thereafter the testator, himself and another attesting witness came back to Siddar. He further stated that the plaintiff has alone taken care of Sairoba and therefore Sairoba

has executed a Will in favour of the plaintiff. Further during the course of his examination-in-chief, the signature on Ex.P.7 and the signature of Sairoba Apa Gurav and another attesting witness Subray Gurav were marked

The learned advocate for first defendant has cross-examined P.W.2 and during the course of his cross-examination he has denied the suggestions that the suit schedule property is ancestral joint family property of the plaintiff and defendants. Further he admits that “ವಾದಿ ತಾನು ನಿವೃತ್ತನಾಗುವವರೆಗೂ ಮನೆಯಿಂದ ಹೊರಗೆ ಇದ್ದು ನೌಕರಿ ಮಾಡಿಕೊಂಡಿದ್ದಾ ಎಂದರೆ ಸರಿ.” Further he admits that “ವಾದಿ ಅಪಾ ಗುರವ ಯಾವ ವರ್ಷದಲ್ಲಿ ಮನೆಗೆ ಬಂದಾ ಎಂದರೆ 5-6 ವರ್ಷಗಳ ಹಿಂದೆ ಬಂದಿದ್ದ. 2008-09 ನೇ ಸಾಲು ಆಗಬಹುದು.” Further he has denied the suggestions that the plaintiff used to beat his father regularly. Further he states that “ನಿಶಾನೆ ಪಿ-7 ಮರಣ ಶಾಸನವನ್ನು ವಾದಿ ಮತ್ತು ಎಸ್.ಆರ್.ಬಿ ವಕೀಲರು ಸೇರಿ ಮಾಡಿರುತ್ತಾರೆ ಎಂದರೆ ಸರಿ. ನಾನು ಮುಂದುವರೆದು ಹೇಳುವುದೇನೆಂದರೆ ಸರಿಯಲ್ಲ.” Further he has denied the suggestions that late Sairoba Gurav was not in a fit state of mind for execution of the Will and has denied the suggestions made by the learned advocate for the defendant No.1.

15. To substantiate the case of the plaintiff, the plaintiff has examined another witness as P.W.3 Pramod S/o Shanta Kinnerkar and he has filed his affidavit in lieu of his examination-in-chief and during the course of his examination-in-chief by way of affidavit, he states that Sairoba Gurav has discussed with him and other pancha members and also in the presence of Mohan Kusta Gurav where the defendnt No.1 also present and she has specifically refused to stay with her in laws and also refused to looked after the maintenance of her father and has stated that as she has no interest in the self acquired property of the Sairoba and left the house of Sairoba in their presence and hence, the responsibility of looking after late Sairoba Gurav was given to Apa Sairoba Gurav and he looked after Sairoba Gurav and his mother with at most responsibility and keeping that in view Sairoba Gurav executed a Will in favour of plaintiff and defendant No.2 and mother-in-law of P.W.3 have given their no objections to enter the name of the plaintiff in the record of rights.

The learned advocate for the defendant No.1 has cross-examined P.W.3 and during the course of his cross-

examination, he admits that “2nd defendant Meera is hale and healthy and she has no problem in deposing directly before the court. However he admits that “ಸದ್ರಿ ಸ್ವತ್ತು ಸುಮಾರು 60 ವರ್ಷಗಳಿಂದಲೂ ಬಂದಿದೆ, ಎಷ್ಟು ತಲೆ ಮಾರಿನಿಂದ ಅಂತಾ ಹೇಳಲಾಗುವುದಿಲ್ಲ. ನಮ್ಮ ಮಾವ ಪಂಚಾಯಿತಿಗೆ ನನ್ನನ್ನು ಕರೆಸಿದ್ದಾಗ ನನ್ನ ಹೆಂಡತಿ ಇರಲಿಲ್ಲ. ಆದಿನ ವಾದಿ ಅಪ್ಪಾ ಗುರವ ಇದ್ದರು.” Further he admits that nothing was taken down on writing with regard to panchayat and date of said meeting is also not specified in the examination-in-chief. Further he admits that he has not at all seen the deed giving property to plaintiff No.1 and further he admits that at the time of execution of the said Will neither the defendant No.1 nor her son and daughter’s were appraised regarding the execution of the said document. Further he states that “ಪಾವಟೋ ಗುರವ ನನಗೆ ಪರಿಚಯ ಇದ್ದಾರೆ. ಅವರು ನನಗೆ ಮಾವನಾಗಬೇಕು, ಅಂದರೆ ನಮ್ಮ ತಾಯಿಯ ದೊಡ್ಡಪ್ಪನ ಮಗ.” Further he admits that “ಅವರು ನಮ್ಮ ಸಂಬಂಧಿಕರು ಎಂದರೆ ಸರಿ.” Further he denied the suggestions made by the learned advocate for the defendant No.1.

16. To substantiate the case of the defendants, the defendant No.1 has entered in to witness box as D.W.1 and

has filed affidavit in lieu of examination-in-chief and during the course of examination-in-chief, she has reiterated the averments made in the written statement. Further she has got marked at Exs.D.1 to D.13 letters written by the plaintiff and testator of the Will i.e. father-in-law of defendant No.1 and at Exs.D.14 to D.21 she has got marked eight Acknowledgmentd of Money orders sent to her father-in-law and she seeks for dismissal of the suit.

The learned advocate for the plaintiff has cross-examined the D.W.1 and during the course of her cross-examination, she admits that her marriage with late brother of the plaintiff is inter caste marriage. Further she states that she got retired from the service in the year 2012. Further she has admitted that she has worked as a teacher in Belegodu, Halalukotta Hasur of Siddapur Taluka and Hosageri and Hosanagar in Kumta Taluka and was residing there at the time of her service. Further she states that she used to come to home during vacation and during festival time. Further she admits that her husband also used to reside at the place of his service and that the suit schedule property is granted by Land

Tribunal, Karwar. Further she admits that “ನನ್ನ ಮಾವ ಸೈರೋಬಾ ಆಪಾ ಗುರವ ಗೇಣಿ ಪಡೆದುಕೊಂಡು ಸ್ವಂತಾರ್ಜಿತ ವ್ಯವಸಾಯ ಮಾಡುತ್ತಿದ್ದರು ಎಂದರೆ ಸರಿ. ಅವರೂ ಜೀವಂತವಿರುವವರೆಗೂ ಸದರಿ ಗೇಣಿ ಜಮೀನಿಗೆ ಅವರಿಗೆ ಸಂಪೂರ್ಣವಾದ ಹಕ್ಕಿತ್ತು ಎಂದರೆ ಸರಿ. ಅವರ ಜೀವತ ಕಾಲದಲ್ಲಿ ಈ ದಾವೆ ವಾದಿಗಾಗಲೀ, ನನ್ನ ಗಂಡನಿಗಾಗಲೀ ಅಥವಾ ಎರಡನೆಯ ಪ್ರತಿವಾದಿಗಾಗಲೀ ಯಾವುದೇ ರೀತಿಯ ಹಕ್ಕು ಇರಲಿಲ್ಲವೆಂದರೆ ಸರಿ.” Further she admits that as per Exs.P.4 and P.5 her father-in-law had got rights in the suit schedule property and she does not have any document to substantiate that the suit schedule property came to her father-in-law from his ancestors. Further he has denied the suggestions that Sairoba Gurav was not in talking terms with her husband because he had inter caste married with her. Further she admits that Pramod Kinnerkar was husband of second defendant and he has no enmity towards her to depose before the court against her. Further she states that “ವಾದಿ 5-6 ವರ್ಷಗಳ ಹಿಂದೆ ಸೇವೆಯಿಂದ ನಿವೃತ್ತಿ ಹೊಂದಿದ್ದಾನೆ ಎಂದರೆ ಸರಿ. ನಿವೃತ್ತಿಯಾದ ನಂತರ ತನ್ನ ಅತ್ತೆ ಮಾವನೊಟ್ಟಿಗೆ ಅವರ ಮನೆಯಲ್ಲಿ ವಾಸವಾಗಿದ್ದಾನೆಂದರೆ ಸರಿ.” Further she admits that education of her children has taken place in Kumta and not in Siddar. Further she has recognized the photo of her father-in-law at Ex.P.7 and has admitted that there is no enmity between Pavto Gurav and herself.

17. To further substantiate the case of the defendants, the defendant No.1 has examined another witness Chandrakant Kusta Siddarkar as D.W.2 and during the course of his examination-in-chief he states that the suit property is tenanted land of family of the plaintiff and defendants since from the time of grand-father of plaintiff and defendants and late Sairoba Gurav being head of the family of the plaintiff and defendants had filed Form No.7 for the benefit of entire family and occupancy rights granted for benefit of entire family. It is further stated that late Sairoba Gurav was in good terms with defendant No.1 and her husband and he never executed any Will with free mind and during the course of many interaction with late Sairoba Gurav by D.W.2, late Sairoba Gurav has never expressed his desire to execute the Will in favour of anybody. He has stated that the plaintiff has not at all taken care of father his mother during her last days.

The learned advocate for the plaintiff has cross-examined the D.W-2 and during the course of his cross-examination he admits that his children education has taken place in Nandangadda and he is going to Nandangadda since

last 25 years and he is residing in Nandangadda since last 4 years. He admits that he has no documents to substantiate that the father of the Sairoba Gurav used to cultivate in the suit schedule property. Further he admits that “ದಾವಾ ಜಮೀನನ್ನು ವಾದಿಯ ತಂದೆ ಗೇಣಿದಾರರಿಂದ ಪಡೆದು ಸ್ವತಃ ಸಾಗುವಳಿ ಮಾಡುತ್ತಾ ಬಂದಿದ್ದರು ಎಂದರೆ ಸರಿ. ವಿಲ್‌ನಾಮೆಯ ಬಗ್ಗೆ ನನಗೆ ವೈಯಕ್ತಿಕವಾಗಿ ಮಾಹಿತಿ ಇಲ್ಲ. ಅದನ್ನು ಬರೆಯುವಾಗ ನಾನು ಹಾಜರ ಇರಲಿಲ್ಲ. ಸೈರೋಬಾ ವಿಲ್‌ನಾಮೆ ಎಲ್ಲಿ ಮತ್ತು ಯಾರಿಂದ ಮತ್ತು ಯಾವ ಮಾಹಿತಿ ನೀಡಿ ಬರೆಸಿದ್ದಾರೆ ಎನ್ನುವ ಬಗ್ಗೆ ನನಗೆ ಮಾಹಿತಿ ಇಲ್ಲ. ನಾನು ವಿಲ್‌ನಾಮೆ ನೋಡಿಲ್ಲ.” Further he states that “ನನಗೆ ಆ ಬಗ್ಗೆ ಹೇಳಿದ ನಂತರ ನಾನು ವಿಲ್‌ನಾಮೆ ರದ್ದುಪಡಿಸಲು ಹೇಳಿದೆ. ನನಗೆ ಈ ರೀತಿ ಹೇಳುತ್ತಿದ್ದಾಗ ಸೈರೋಬಾ ವ್ಯತಿಬ್ರಷ್ಟನಾಗಿದ್ದಾ.” Further he has denied the suggestions made by the learned advocate for the plaintiff.

18. To further substantiate the case of the defendants, the defendant No.1 has examined one witness Shantaram Raghoba Gaonkar as D.W.3 and during the course of his examination-in-chief by way of affidavit, he states that he is neighbourer and well wisher of the plaintiff and defendants and he knows the facts of the case and family of the plaintiff as well as defendants. It is further stated that the suit schedule property is tenanted property since time of

grandfather of the plaintiff and defendants and form No.7 was filled for the entire family and late Sairoba Gurav was in good terms with defendant No.1 and her husband and never executed any Will in free state of mind and during many interactions with witness he has not at all expressed his desire to execute the Will and the plaintiff has not at all take care of his father and mother during last days.

The learned advocate for the plaintiff has cross-examined D.W.3 and during the course of his cross-examination, he admits that “ವಾದಿಯವರ ಕುಟುಂಬದಲ್ಲಿ ಆದ ವ್ಯವಹಾರಗಳ ಬಗ್ಗೆ ತಮಗೆ ಮಾಹಿತಿ ಇಲ್ಲ ಎಂದರೆ ಸರಿ. ಈ ಪ್ರಕರಣದಲ್ಲಿ ಸಾಕ್ಷಿ ಹೇಳಲು ಯಾರು ಹೇಳಿದರು ಎಂದರೆ 1 ನೇ ಪ್ರತಿವಾದಿ ಎಂದು ಸಾಕ್ಷಿಯು ನುಡಿಯುತ್ತಾರೆ.” Further he admits that he has no documents to substantiate that the suit schedule property is ancestral property of the plaintiff and defendants and that he does not know the survey number of the suit schedule property. Further he has denied the suggestions that due to enmity against the plaintiff, he is falsely deposing before the court and has denied the suggestions that without having any knowledge regarding the facts of the case he is deposing falsely before the court.

19. The learned advocate for the plaintiff submits that the father of the plaintiff has executed Will in his favour with respect to his self acquired property excluding the defendant No.1 because he was not in good terms with the defendant No.1 as the marriage between the defendant No.1 and deceased son of testator was a inter caste marriage and due to the same reason, the relationship between the parties was not cordial. He further submits that due to the said fact, the defendant No.1 never took care of the testator and during a panchayat has told specifically that she is neither interested taking care of the testator i.e. her father-in-law or her mother-in-law nor she interested in the suit schedule property. On the other hand the plaintiff took all the efforts to ensure that his father and mother are looked after and therefore, out of love and affection towards the plaintiff, the testator executed Will with respect to the suit schedule property in his favour. Further he submits that the Will is executed by the testator in a sound disposable state of mind knowing the effect of execution of the Will. He further states that the plaintiff to substantiate the Will has examined one of the attesting and

another attesting witness has expired and he has produced the death certificate of another attesting witness. Therefore, the question being any suspicious circumstances regarding the execution of the Will does not arise. He further submits that in the absence of suspicious circumstances there is a assumption that the Will is proper and hence, he submits that the plaintiff is exclusive owner of the property.

20. He further draws my attention to Exs.P.4 to P.6 and submits that on perusal of the same, it is clear that Sairoba is the owner of the property and at Exs.P.4 and P.5 are documents of title as they are orders of Land Tribunal and due to the order of the Land Tribunal, the testator has got rights in the property. Further he submits that during the execution of the Will, plaintiff was not present. However, either his presence or absence will not itself become suspicious circumstance. He further submits that Section 63 of Indian Succession Act and Section 68 of Indian Evidence Act, are complied with regarding to proving of due execution of the Will. He further submits that co-parceners can also own separate property apart from joint family property and the burden lies

upon the defendants to prove that the suit schedule property is joint family property. However, the defendants have not produced any document to substantiate their plea apart from their self serving statement before the court and hence, he submits that the suit schedule property is separate property of the testator. He further submits that the defendant No.1 alleges force undue influence and it is settled principle of law that if the same are pleaded the burden is casted upon the defendants to substantiate the same and the said allegations have not at all been substantiated by the defendants where as the plaintiff has discharged the burden by complying with examining of one of the attesting witnesses and therefore, he seeks for decreetal of the suit.

21. He further submits that the Will is dated 5.12.2007 and the testator has expired on 19.2.2011 after a gap of more than 4 years after execution of the Will and this itself proves that testator was keeping good health at the time of execution of the Will. He further submits that the widow of the testator and sister i.e. defendant No.2 have given no objection to enter the name of plaintiff on the basis of Will. It

is only the defendant No.1 who is contesting party to the suit. He further submits that son of Manohar i.e. brother of the plaintiff is not made as a party to the suit, as property is self acquired property of the testator Sairoba and hence, the question of son and daughter of Manohar being entitled for any share does not arise. He further submits that though P.W.2 has been cross-examined at length and there is no cross-examination regarding execution of the Will in compliance of Section 68 of Indian Evidence Act and therefore, the Will is deemed to be proved.

22. In support of his contentions, he relies upon the judgment of Hon'ble High Court of Karnataka reported in ***AIR 2018 NOC 113(KAR) M/s. Horticontracts Bangalore vs. M/s. Agrihorticultural Consultants, Chennai***, whereby, the Hon'ble High Court has held that if averments in the plaint are not specifically denied by the defendant, pleadings in plaint deemed to be admitted, admission did not be supported by evidence as admission itself is proof of the pleadings. He further relies upon the Judgment of Hon'ble High Court of Karnataka reported in ***2000(4) KCCR Page 2609 (DB) in the***

case of Shri. Ramesh Srinivasa Jannu vs. Sri. Srinivas Vittoba Jannu since deceased by L.Rs and others, whereby, the Hon'ble High Court has held that if the leasehold rights are acquired by virtue of Land Reforms Act, there is no presumption that such acquisition was for joint family unless and until proved or established by sufficient proof. Further the Hon'ble High Court has held that the mere fact that the other members of the joint family were allowed to use the self acquired property and utilised its income that itself cannot be considered as abandonment of such property and the blending with the joint family property. Further he relies upon the Judgment of **Hon'ble High Court of Madhya Pradesh in the judgment reported in AIR 2001 Madhya Pradesh 179 in the case of Smt. Rajeshwari and others vs. Balchand Jain and others,** whereby, the Hon'ble High Court of Madhya Pradesh has held that every property purchased by member of joint family property is not joint family property and burden of proving it to be joint family property lies upon the party as asserting the same. He further relies upon the Judgment of **Hon'ble High Court of Karnataka reported in AIR 2009**

(NOC) 2884 (KAR) in the case of K. Madhava Raja Nayak vs. K. Sridhara Nayak and others, which laid down above said principle law only. He further relies upon the Judgment of **Hon'ble High Court of Karnataka reported in AIR 2005 SUPREME COURT 233 in the case of Daulat Ram and others vs. Sodha and others**, whereby, the Hon'ble Apex Court had held that the burden to prove that the Will was forged that it was obtained under influence or coercion or by playing a fraud upon the testator, person who alleges it to be so. Further he relies upon the Judgment of Hon'ble High Court of Karnataka reported in **AIR 2006 KARNATAKA PAGE 165 in the case of Patrick Rebello and others vs. Victor Rebello and others**, whereby, the Hon'ble High Court has held that with regard to state of mind of the testator examination of an independent witness i.e. the advocate who drafted the Will and assist the testator for registration of the same as well as one of the attesting witnesses who are shown to have not been colluded with the plaintiff's, will prove that the said Will is executed in sound state of mind. Further the Hon'ble High Court has held that mere fact that the plaintiff managed to

*persuade the testator to make disposition in the Will loaded in his favour does not render Will invalid and nor could it be said to be a suspicious circumstance, if plaintiff was not sole and only beneficiary and if other heirs were not disinherited of their shares. Further he relies upon the Judgment of Hon'ble High Court of Delhi reported in **AIR 1998 DELHI 390 in the case of Mathew Jacob and others vs. Ms. Salestine Jacob and another**, whereby, the Hon'ble High Court of Delhi has held that to prove the Will is sufficient is one of the attesting witness examining and after compliance of the same the propounder of the Will is not under obligations to produce both the attesting witnesses as it is not the requirement of law and is under statutory obligation to give reasons for the non-production of second witness. Further the Hon'ble High Court of Delhi has held that merely because natural heirs are deprived of inheritance of the property will not be a suspicious circumstance for proving the Will. Further he relies upon the Judgment of Hon'ble High Court of Kerala reported in **AIR 1999 KERALA 274 in the case of Baburajan vs. Parukutty and others** and judgment of Hon'ble High Court of **Himachal Pradesh***

reported in AIR 1998 HIMACHAL PRADESH 37 in the case of Dhyan Chand vs. Smt. Savitri Devi and others, whereby, the Hon'ble High Court has held in same lines as that of Hon'ble High Court of Delhi. Further he relies upon the Judgment of Hon'ble Apex Court reported in **AIR 2005 SUPREME COURT PAGE 4362 in the case of Pentakota Satyanarayana and others vs. Pentakota Seetharatnam and others**, whereby, the Hon'ble Apex Court has held that endorsement by Sub-Registrar that executant has acknowledged the execution before him itself sufficient attestation on examination of the attesting witnesses and Sub-Registrar the claimant under Will is said to have discharged the burden of proof to prove the Will satisfactorily.

23. The learned advocate for the defendants on the other hand submits that there are no details as to in what manner the plaintiff participated in drafting and registration of the Will. However, he has detailed the entire day's incident as if he was present at the time of drafting as well as registration of the Will and has stated that he was not present at the time

of registration of the Will. This itself is the suspicious circumstance. He further submits that P.W.2 has stated that he is not at all relative of the plaintiff. However, as admitted by the P.W.3, he is a relative of the plaintiff and therefore, relying upon the evidence of P.W.2 is not just and proper. He further submits that in the absence of another attesting witness or examination of draftsman of the Will i.e. advocate was material and in the absence of the same, the Will cannot be relied upon. He further draws my attention that P.W.3 is husband of defendant No.2. However, defendant No.2 herself has not entered into witness box to substantiate the case of the plaintiff. Further P.W.3 has categorically stated that he has no knowledge regarding the execution of the Will. Further he submits that D.W.1 has thoroughly been cross-examined by the learned advocate for the plaintiff but nothing substantial has been elicited from her mouth and D.W.2 is neighbourer who has clearly deposed that Sairoba was not in a position to execute the Will. Further he submits that in case of Will Arm chair rule has to be applied. In this case, there were no reasons for the testator to execute the Will as alleged by the

plaintiff. He further submits that the property granted in favour of one person by Land Tribunal in favour of the entire family and hence, the testator did not have the capacity the Will away the property. Further he draws my attention at Exs.D.1 to D.10 which are letters written in between the parties as well as the testator and defendants. On perusal of which it clearly goes to show that the said letters were written with love and affection and the same could not have happened if due to the marriage between the defendant No.1 and Manohar being inter caste marriage the relationship between the testator and defendant No.1 and late husband had strained. He further submits that if the relationships were truly strained the defendants could not have sent the money to testator, as can be clearly seen at Exs.D.14 to D.21 and hence, there is a serious doubt regarding the execution of the Will. Further he submits that the son and daughter of late Manohar who are also legal heirs of deceased Manohar are not made parties to the suit in spite of taking specific stand regarding the same since inception of the suit, the plaintiff has not lifted his finger to make them as party to the suit. Further he

submits that no objection certificate was taken from his other and sister of the plaintiff, but no efforts were made to take no objection certificate for defendant No.1 which the plaintiff would have done if actually the defendant No.1 had relinquished her rights in the suit schedule property. Further he submits that P.W.1 clearly admits in his cross-examination at Ex.P.3 is a document created by the plaintiff and it goes to show by the plaintiff is by hook or crook trying to gulp down the property in which the defendant No.1 and her children are also having legitimate share.

24. In support of his contention he draws my attention to the Judgment of Hon'ble High Court of Karnataka reported in ***ILR 2002 KAR 3417 in the case of Babu Madivala and others vs. Kuddu Madivala and others***, whereby, the Hon'ble High Court has held that the occupancy rights granted in favour of one person is deemed to have been granted in favour of the family and hence, the question of it being self acquired property does not arise. He further relies upon the Judgment of Hon'ble High Court of Karnataka reported in ***ILR 2004 KAR 3355*** in the case of ***Sri.***

Parushuram Nemani Kuduchakar and others vs. Smt. Shantabai Ramachandra Kuduchakar and others, whereby, the Hon'ble High Court has held that a suit for partition in respect of agricultural lands is not barred because of the order passed by the Land Tribunal. He further draws my attention to the ***Judgment of Hon'ble Apex Court in the case of Jagdish Chand Sharma vs. Narain Singh Saini(D) through LRs. and others,*** whereby, the Hon'ble Apex Court has held regarding the proof of execution of the Will and hence, he seeks for dismissal of the suit.

25. At the outset it is to be noted here that the nature of the property as to whether it is a joint family property or self acquired property of the testator is in dispute. To substantiate that the suit schedule property is self acquired property, the plaintiff has relied upon at Exs.P.4, P.5 and P.6. Ex.P.4 is the Order passed by the Land Tribunal, dated: 27.11.1976 and Ex.P.5 is Form No.10 issued in lieu of payment of revenue by the testator Sairoba Apa Gurav the premium for grant of occupancy right and Ex.P.6 is the Mutation Entry bearing No.2433 which states that the

property is given to the testator in lieu of order passed by Land Tribunal.

26. The learned advocate for the defendants draws my attention to Ex.P.3 and has states that in the said document it is clearly stated that the suit schedule property is “ಪಿತ್ರಾಜಿತ ಆಸ್ತಿ” and submits in view of admission made by P.W.1 and 3, it is clear that the suit schedule property is joint family property and the testator did not have the capacity to Will away the entire property. It is to be noted here that the D.W.1 during the course of his cross-examination has clearly admitted that the suit schedule property is the self acquired property of the testator and during his life time nobody apart from testator Shri. Sairoba Apa Gurav has rights to deal with the property. It is further to be noted here that the Judgment relied upon the learned advocate for the defendants clearly states that if the property is specifically granted by the Land Tribunal for the benefit of entire family then it is automatically the joint family property even though it is granted in favour of one person it cannot be held to be self acquired property of that person. On perusal of Exs.P.4 and P.5 and on touch

stone of dictums laid down by the Hon'ble Apex Court and Hon'ble High Court of Karnataka it can be seen that the suit schedule property is granted in favour of Sairoba Apa Gurav as he was cultivating the said property. On perusal of the entire documents, it is clear that no where it is stated that the property is granted in favour of Sairoba Gurav as a joint family manager or property is granted for the benefit of the entire family. It is further to be noted here that, it is the defendant who has taken up a contention that the suit schedule property is a ancestral property and it was being cultivated even by father of the testator Sairoba Gurav. However, apart from the oral self serving statement made by the D.W.1 nothing is on record to substantiate the said plea. It is settled principle of law that pleadings without proof cannot be taken in to consideration for deciding the matter involved in the suit. Therefore, in view of Exs.P.4, P.5 and P.6 and in view of clear admission given by D.W.1 during the course of her cross-examination, I am of the view that the suit schedule property is the self acquired property of testator Sairoba Gurav.

27. In view of the above discussion, it is clear that the Sairoba Gurav has capacity to Will the property and now the question arises as to the genuineness of the Will which is registered on 05.12.2007. At the outset, it is to be noted here that the plaintiff in his pleadings at paragraphs No.6 and 7 has in great detail narrated the way in which the will is executed. He has gone to the extent of stating that on 5.12.2007 at 10.00 A.M. testator attended the office of Sub-Registrar along with the attesting witnesses and at 10.15 a.m. Sri. Ravi Belurkar, advocate came to the office of Sub-Registrar with typed Will and Will was presented for registration after signature of the attesting witnesses at 10.36 a.m. and the Will was registered. The plaintiff has written in minute details the way in which the Will is registered. The natural question arises as to whether he was present at the time of execution of the Will. With regard to this, P.W.1 during the course of his cross-examination has stated that his father gave him the Will in the evening on 5.12.2007. Further he has explained that his father explained him in detail the way in which the Will is executed and on the said basis he has instructed his advocate

to draft the Will. However, it is to be noted her that the plaintiff has gone to the extent of stating the time at which each step leading towards signature of the will and he has gone to the extent that the testator had gone to office of sub-registrar at 10.00 a.m. and advocate came at 10.15 a.m. and the will was registered at 10.36 A.M. The said detailing with regard to the steps taken to execution of the Will creates doubt about the due execution of the Will especially as per the plaintiff he was not present at the time of execution of the will and applying the test of common prudent man, no one would have detailed the minutest details and this created a suspicious circumstance.

28. Further it is to be noted here that the attesting witness i.e. P.W.2 during the course of his cross-examination has clearly stated that he is not at all relative of deceased Sairoba. However, he states that “ನಿಶಾನೆ ಪಿ-7 ಮರಣ ಶಾಸನವನ್ನು ವಾದಿ ಮತ್ತು ಎಸ್.ಆರ್.ಬಿ ವಕೀಲರು ಸೇರಿ ಮಾಡಿರುತ್ತಾರೆ ಎಂದರೆ ಸರಿ.” However, he has explained the same “ನಾನು ಮುಂದುವರೆದು ಹೇಳುವುದೇನೆಂದರೆ ಸರಿಯಲ್ಲ.”. Where as P.W.3 during the course of his cross-examination has clearly admitted that P.W.2 Pavato Gurav is relative of the plaintiff as

well as that of the defendants. This raises a doubt arise as to why the P.W.2 did not reveal the fact that he is a relative of the plaintiff. Moreover, P.W.2 who is attesting witness has clearly stated that the Will was prepared by the plaintiff and the draftsman of the Will though later he has tried to explain the same by stating the contrary.

29. Further on perusal of Ex.P.7 which is the Will it can be seen that no where it is written that deceased Manohar has left behind his wife and two children and why his wife and two children were not given any share in the suit schedule property. It is settled principle of law as laid down by Hon'ble High Court of Karntaka in the case of **J.T. Surappa v. Satchidhanandendra Saraswathi Swamiji Public Charitable Trust**, reported in **ILR 2008 KAR 2115**, the five steps i.e. "Panchapadi" in enquiry of will are as under,

"24. Therefore, the court has to tread a careful path in the enquiry to be conducted with regard to Will. The said path consists of five steps "PANCHAPADI". The path of enquiry and steps to be traversed are as under:—

- (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 Section 63 of the Indian Succession Act, 1925, read with Section 68 of the Evidence Act?"

On perusal of the said judgment it can be seen that there are five steps to which the Will has to be subjected to, so as to prove the due execution of the Will and one of the step is to look into is to see that the legal heirs who are entitled for the property by way of inheritance are dis-inherited and the reasons for the same. The plaintiff in his pleadings has clearly stated that the relationship between the testator and deceased Manohar as well as defendant No.1 was sore, due to fact that the marriage between the defendant No.1 and deceased Manohar was a inter caste marriage. The fact that the marriage was inter caste marriage is admitted by D.W.1 during

the course of her cross-examination and the said fact is not in dispute. However, the testator in his Will has not at all assigned any reasons for not giving any share to the wife and children of deceased Manohar. The plaintiff has taken up a contention regarding sore relationship between the testator and the plaintiff as well as defendant No.1 and deceased Manohar. However, during the course of his cross-examination he was confronted with Ex.D.1 which is letter written by him to defendant No.1 and on perusal of the same, it can be seen that even after marriage of deceased Manohar and defendant No.1 the relationship was cordial, as on perusal of the latter it can be seen that the plaintiff has specified in detail the incidents which a person would know only if he has cordial and close relationship with another. Moreover, on perusal of rest of the letters some of which are written by deceased Manohar and some of which written by the testator it can be clearly seen that the relationship was very cordial between the testator and deceased Manohar and defendant No.1. Further it is to be noted here that D.W.1 has thoroughly been cross-examined by the learned advocate for the plaintiff,

but no where he has been cross-examined with regard to the letters produced by the defendant No.1. In view of the said letters, the contention taken up by the plaintiff that the defendant No.1 and her children were excluded from the Will due to inter caste marriage between deceased Manohar and defendant No.1 does not stand to reason and non mentioning of reason raises a serious doubt regarding due execution of the Will. Here it is pertinent to note that the judgment of Hon'ble Apex Court reported in in the case of ***Ram Piari v. Bhagwant***, reported in **(1990) 3 SCC 364**, whereby Hon'ble Apex Court has held as under,

“2.....Although freedom to bequeath one's own property amongst Hindus is absolute both in extent and person, including rank stranger, yet to have testamentary capacity or a disposing state of mind what is required of propounder to establish is that the testator at time of disposition knew and understood the property he was disposing and persons who were to be beneficiaries of his disposition. Prudence, however, requires reason for

denying benefit to those who too were entitled to bounty of testator as they had similar claims on him. Absence of it may not invalidate a will but it shrouds the disposition with suspicion as it does not give any inkling to the mind of testator to enable the court to judge if the disposition was voluntary act. Taking active interest by propounder in execution of will raises another strong suspicion. In *H. Venkatachala Iyengar v. B.N. Thimmajamma* [AIR 1959 SC 443 : 1959 Supp 1 SCR 426] it was held to render the will infirm unless the propounder cleared the suspicion with clear and satisfactory evidence. Mere execution of will, thus, by producing scribe or attesting witness or proving genuineness of testator's thumb impressions by themselves was not sufficient to establish validity of will unless suspicious circumstances, usual or special, are ruled out and the court's conscience is satisfied not only on execution but about its authenticity.”

Further it is pertinent to note here that the Judgment of Hon'ble High Court of Karnataka reported in ***I.L.R. 2004 KAR 3611*** in the case of ***Sidram and others vs. Smt. Gouravva***, whereby, the Hon'ble High Court of Karnataka has observed as under:

“30. Therefore, the law on the point is well settled. The suspicious circumstances may be as to the genuineness of the signature of the testator, the condition of the testator's mind, dispositions made in the Will being unnatural, improbable or unfair in the light of the relevant circumstances or there might be other factors in the Will to show that the testator's mind was not free. When under the Will the wife and children are disinherited it casts a serious doubt on the genuineness of the Will. It would be unnatural. In such a case the Court would naturally expect that all legitimate suspicions should be completely removed before the document is accepted as the last Will of the testator. If the propounder himself takes a prominent part in the execution of the Will it confers a

substantial benefit to him or to his kith and kin, that is also a circumstance to be taken into account and the propounder is required to remove the doubts by clear and satisfactory evidence. Therefore, if any of the aforesaid circumstances exists in a given case it could be safely said a suspicious circumstance exists and the propounder is required to remove the doubts by clear and satisfactory evidence.”

30. On perusal of the said judgments, it can be seen that the non mentioning of the reason for which a person is excluded from the Will, raises a serious doubt regarding due execution of the Will and as discussed above, the plaintiff has failed remove the cloud casted upon the Will produced by him at Ex.P.7.

31. Further it is to be noted here that the defendant No.1 since inception of the suit i.e. by after filing of the written statement has taken up a specific contention that her son and daughter i.e. Gurumurthy and Bharati are not made parties to the suit. P.W.1 during the course of his cross-examination on 7.4.2015 was clearly cross-examined regarding

the said fact and he admits regarding having knowledge that out of the wedlock between Manohar and defendant No.1, Bharati and Gurumurthy are born. As per section 8 of Hindu Succession Act, sons and daughters are also entitled in the share of their father and Bharati and Gurumurthy who are admittedly daughter and son of Manohar are not made as a parties to the suit. Therefore, this suit is also bad for non-joinder of necessary parties.

32. Further it is to be noted here that the plaintiff has taken a specific contention that the Will is executed in his favour because he was taken care of his father i.e. testator and his mother and hence, to discharge the burden upon the testator, the testator has willed away the property in his favour. In Ex.P.7 Will also the said reason is assigned for execution of the Will in favour of the plaintiff. However, during the course of cross-examination of the learned advocate for the defendant, P.W.1 clearly admits that “ವಿಲ್ ಮಾಡಿಸುವ ಕೆಲವು ಹಿಂದೆ ನಾನು ಮನೆಗೆ ಬಂದಿದ್ದೆ . ಇನ್ನಾವತ್ತು ನಾನು ಮನೆಗೆ ಬಂದೇ ಇರಲಿಲ್ಲ.” Further P.W.2 who is attesting witness also cross-examined regarding the said fact

and he admits that the plaintiff was also not residing with testator and the mother of the plaintiff and the plaintiff was working till his retirement and was staying out side. Further he admits that “ವಾದಿ ಅಪಾ ಗುರವ ಯಾವ ವರ್ಷದಲ್ಲಿ ಮನೆಗೆ ಬಂದಾ ಎಂದರೆ 5-6 ವರ್ಷಗಳ ಹಿಂದೆ ಬಂದಿದ್ದ. 2008-09 ನೇ ಸಾಲು ಆಗಬಹುದು.” On perusal of the evidence of P.W.1 and 2 and D.W.1 has also cross-examined by the said fact by the learned advocate for the plaintiff and during the course of his cross-examination she was put a question “ವಾದಿ 5-6 ವರ್ಷಗಳ ಹಿಂದೆ ಸೇವೆಯಿಂದ ನಿವೃತ್ತಿ ಹೊಂದಿದ್ದಾನೆ ಎಂದರೆ ಸರಿ.” Therefore, on perusal of the evidences led by the party and cross-examined by the said witness it can be seen that the plaintiff himself was also working and he had come to Siddar Village after his retirement in 2008-09 only, the Will is dated 5.12.2007. Therefore, the question of plaintiff personally taking care of the testator and the deceased mother does not arise. The plaintiff has not produced a shred of document to show that he was taking care of his father and mother financially and on the other hand the defendant No.1 has produced at Exs.D.14 to D.21 various money orders by which she has sent money to testator. Therefore, in view of the said clear facts which

comes out of the evidences led by the parties, I am of the view that the Will produced by the plaintiff at Ex.P.7 is surrounded by various suspicious circumstances and the Hon'ble Apex Court and Hon'ble High Court of Karnataka in various Judgments has clearly laid down that the burden to substantiating the Will and after substantiating the Will the burden to clear the suspicious circumstances surrounding the Will is upon the plaintiff and on failure of the plaintiff to clear suspicious circumstances, I am of the opinion that the plaintiff has failed to prove that the Sairoba Apa Gurav has executed registered Will on 5.12.2007 in his favour and the plaintiff has become absolute owner of the suit schedule property and ***hence, I answer issue No.1 in the negative against the plaintiff.***

33. Issue No.2:

As far as issue No.2 is concerned, it is to be noted here that the plaintiff has not been able to substantiate the Will produced at Ex.P.7 and though he is in possession of the property. In view of the non proving of the Will, the defendant No.1 also entitled for share in the suit schedule property along

with her children and hence, I am of the opinion that the plaintiff has not been able to prove that he is in lawful possession of the property as against the defendant No.1. Hence, ***I answer issue No.2 in the negative.***

34. Issue No.3:

As far as issue No.3 is concerned, it is to be noted here that the plaintiff has not been able to prove the Will dated 5.12.2007 and that he is in lawful possession of the property as against defendant No.1 and therefore, the question of defendant in view of she being co-owner disturbing the peaceful possession and enjoyment of the property by the plaintiff does not arise and hence, ***I answer issue No.3 in the negative against the plaintiff.***

35. Issue No.4:

As far as valuation of the suit is concerned, it is to be noted here that the suit property is valued at Rs.1,000/- and the court fee is paid accordingly and apart from taking up a contention that the defendants have not led any cogent evidence to substantiate the said plea and therefore, I am of

the opinion that the defendants have failed to prove the suit is improperly valued and court fee paid is insufficient and hence, ***I answer issue No.4 in the negative against the defendants.***

36. Issue No.5:

As far as issue No.5 is concerned, it is to be noted here that the plaintiff has failed to prove that he is the absolute owner of the property by virtue of registered Will dated 5.12.2007 and that he is lawful possession and enjoyment of the suit schedule property as against the defendant No.1 and interference by the defendant in lawful possession and enjoyment of the property by the plaintiff. I am of the opinion that the plaintiff is not entitled for the reliefs claimed and hence, ***I answer issue No.5 in the negative against the plaintiff.***

37. Issue No.6:

Therefore, I proceed to pass the following:

-: **ORDER** :-

The suit of the plaintiff is hereby dismissed with costs.

Draw decree accordingly.

(Dictated to the stenographer, transcribed by her, transcript revised by me, corrected & signed & then pronounced in the Open court on this the **5th day of November 2018.**)

(Vivek Gramopadhye)
Addl. Civil Judge, Karwar.

-: **ANNEXURES** :-

1. **No. of witnesses examined for plaintiff:-**

P.W.1 : Sri. Apa s/o. Sairoba Gurav.

P.W.2 : Sri. Pavato s/o. Narasu Gurav

P.W.3 : Sri. Pramod s/o. Shanta Kinnerkar

2. **No. of witnesses examined for defendants:-**

D.W.1 : Smt. Sannamma w/o. Manohar Gurav

D.W.2 : Chandrakant Kusta Siddarkar

D.W.3 : Shantaram Raghoba Gaonkar

3. **List of documents marked for plaintiff :-**

Ex.P.1 : Death Certificate

- Ex.P.2 : Record of Rights
Ex.P.3 : Letter (Neerakshepana Patra)
Ex.P.4 : Order passed by Land Tribunal
Ex.P.5 : Form No.10
Ex.P.6 : Certified copy of Mutation Entry
Ex.P.7 : Will dated 5.12.2007
Ex.P.8 : Death Certificate

4. **List of documents marked for defendants :-**

- Exs.D.1 to 13 : Letters
Exs.D.14 to 21 : Acknowledgment of Money orders

(Vivek Gramopadhye)
Addl. Civil Judge, Karwar.

Order pronounced in the open court,
(vide separate Judgment)

-: **ORDER** :-

The suit of the plaintiff is
hereby dismissed with costs.

Draw decree accordingly.

Addl. Civil Judge, Karwar.