

KABI210001292019



**IN THE COURT OF THE SR. CIVIL JUDGE,
H.B.HALLI, ITINERARY SITTING AT SENIOR CIVIL
JUDGE, HUVINAHADAGALI.**

Dated this the 23rd day of September- 2023.

PRESENT: Smt. ANUPAMA.D., B.COM., LL.B.
Senior Civil Judge & J.M.F.C., H.B.Halli,
Itinerary sitting at Senior Civil Judge,
Huvinahadagali

O.S. No. 02/2019

PLAINTIFF/S: Smt.Hunasekaye Sumitramma & another

V/s

Defendant/S : Smt.Parashetty Kamma and another

**Orders on IA No.11, 11(a), 12 and 13 filed by defendant
No.2 (IA No.11 to 13) and plaintiff No.2 (IA No.11(a) of
CPC respectively.**

*Present stage of the suit: This suit is now set down for
cross examination of PW.1 to 3.*

2. In this case, the plaintiff has filed this suit against the defendants 1 and 2 for the relief of Declaration and

permanent injunction. During the pendency of the suit, the defendant No.1 died. The defendant No.2 has filed IA No.11 to 13 U/ order 22 rule 4, 22 rule 9 of CPC and u/Sec.5 of Limitation Act respectively, to consider him as legal heir of deceased defendant No.1. In this case the plaintiff No.2 has filed IA No.11(a) U/order 22 rule 1, 2 and 4 by seeking permission of this court to bring the proposed persons mentioned in IA No.11(a) to (d) as legal heirs of deceased defendant No.1.

2.a Since both plaintiff No.2 and defendant No.2 have filed applications under the above said provisions to consider defendant No.2 and the proposed persons mentioned in IA No.11(a) as legal heir of deceased defendant No.1, by considering the rival contentions, this court has taken up all 4 IAs for consideration and provided an opportunity to both side parties to lead their evidence to come to a just decision on these applications.

2.b. In IA No.11 to 13 the defendant No.2 has contended that, he is the son of defendant No.1. The defendant No.1 has executed Will in his favour with regard to her properties; accordingly he is legal heir of deceased defendant No.1. It is also his contention that, the deceased defendant no. 1 is the legally wedded wife of one Parashetty Veerappa and his school records are also been disclosing the name of Parashetty Veerappa in the place of father's name, hence he has moved these three applications to consider him as legal heir of deceased defendant No.1.

2.c On the other hand the plaintiff No.2 has also filed IA No.11(a) by praying this court to consider the persons mentioned in IA No.11(a) i.e. Kuberappa, Vasantha Kumar, Veerabhadrapa and Shantharaj as D.1(a) to D.1(d) in this case. She has contended in the affidavit that, deceased Kamma and Parashetty Veerappa were wife and husband they had no issues. The said Parashetty Veerappa got married with plaintiff No.1 Hunisikayi Sumitramma. The plaintiff No.2 and the proposed legal heirs mentioned in IA No.11(a) are the children of Parashetty Veerappa and plaintiff No.1 Sumithramma. Since the defendant No.1 had no issues and died on 23.06.2020. The proposed legal heirs are the legal heirs of deceased defendant No.1. Hence, she has filed this application to bring the proposed LRs on record as D1(a) to (d) in this case.

3. Applications filed by the defendant no. 2 have been objected by the plaintiff by contending the very same averments taken in her affidavit filed in support of IA 11(a). On those grounds, she prays to dismiss the applications filed by defendant no. 2.

3.a As there were rival contentions between the plaintiffs and defendant no. 2 with respect to consideration of legal heirs of deceased defendant no. 1 and they both have filed interim applications by taking different contentions, this court has taken up the applications for consideration and conducted mini trial.

4. In support of the contentions the plaintiff No.2 has got examined herself as PW.1 and filed her chief examination affidavit. She also got marked 3 documents as per Ex.A.1 to Ex.A.3. On the other hand defendant No.2 has got examined himself as RW.1 by filing chief examination affidavit. He also got produced as many as 16 documents and got marked the same as Ex.AP.1 to 16. PW.1 and RW.1 have been cross examined by the learned counsels for plaintiffs and defendant No.2.

5. I have heard both sides on these applications and carefully gone through the case papers.

6. The points that would arise for my consideration are;

POINTS

- 1. Whether the plaintiff No.2 proves that the proposed legal heirs are the only legal heirs of deceased Def. No.1 and they have to be brought on record as Def.1(a) to (d)?**
- 2. Whether the Defendant No.2 proves that he is the only legal heir of deceased Def. No.1?**
- 3. Whether the plaintiff No.2 is entitled for the relief sought by her in IA No.11(a)?**
- 4. Whether the defendant No.2 is entitled for the relief sought by him in IA No.11 to 13?**
- 5. What order?**

7. After having heard both sides and on careful perusal of the documents produced by the both parties on IA No.11,

11(a), 12 and 13 and also the case papers the above points No.1 to 5 are answered as follows;

Point No.1: In the Negative.

Point No.2: In the Affirmative

Point No.3: In the Negative.

Point No.4: In the Affirmative

Point No. 5: as per the final order for the following;

:REASONS:

8. This suit is filed by the plaintiffs against the defendant for the relief of Declaration and permanent injunction with respect to suit schedule properties on the basis of will allegedly executed by deceased Parashetty Veerappa and also for permanent injunction.

8.a In the present case on hand the defendant No.1 has filed written statement. In the plaint the plaintiffs have contended that Parashetty Veerappa had two wives i.e. plaintiff No.1 and defendant No.1. The defendant No.1 is the first wife who had no issues. The plaintiff No.1 is the second wife of Parashetty Veerappa. Through her Parashetty Veerappa got five children namely Kuberappa, Lalithamma, Vasantha Kumara, Veerabhadrapa and Shantharaja. Since the defendant No.1 i.e., the first wife of the Parashetty Veerappa had no issues, the Said Parashetty Veerappa got married with plaintiff No.1. The suit schedule properties are self acquired properties of Parashetty Veerappa. The said

Parashetty Veerappa got executed a Will on 17.06.1998 in favour of plaintiff No.1 and 2. Accordingly, the plaintiffs No.1 and 2 have become absolute owner of the suit schedule properties after the death of the Parashetty Veerappa. The said Parashetty Veerappa was died on 14.10.2009 due to ill-health. After his death without the knowledge and consent of the plaintiffs and other children of Parashetty Veerappa the defendant has got obtained Patta into her name under Powthi varasu. After knowing the said fact the plaintiffs have preferred an objection before the Tahasildar, they have also produced WILL along with their application, but the concerned revenue officer has not considered the said WILL and by colluding with defendants has transferred Katha of the suit schedule properties in the name of defendants. Hence, by having no other way the plaintiffs have filed this suit.

8.b It is the defence of defendant that, property in Sy.No.87, measuring 12.8 acres, situated in Navali revenue village was purchased in the name of Parashetty Veerappa. The said property is the joint family property. The father-in-law of defendant No.1 namely Parashetty Veerabhadrappa had two sons namely Parashetty Veerappa and Parashetty Virupakashappa. Since the Parashetty Veerappa was the elder son of the family, the said property was purchased in his name. Parashetty Veerappa was acting as Kartha of the family. The property mentioned in the alleged WILL claiming by the plaintiffs is the joint family property and not the absolute property of Parashetty Veerappa. Hence, the said

Parashetty Veerappa had no absolute right over the said property to execute the WILL in favour of the plaintiffs. As on the date of execution of WILL i.e. 17.06.1998 Parashetty Veerappa was suffering from heart decease, Asthama and Blood pleasure. He had no knowledge with regard to execution of WILL is concerned. The said Parashetty Veerappa died on 14.10.2009 after his death, his death ceremonies have been done by the defendant No.1 and her son Parashetty Yogesh. After death of Parashetty Veerappa the defendant No.1 has filed an application before the revenue officials to get obtain the Kathas of the suit schedule properties, then the plaintiffs have filed objections before the revenue officials, then the revenue officials registered a case in RTC dispute No.2/2010-11. The revenue officials have issued notice to the plaintiffs and defendant. Both have filed their written objections before the Tahasildar. Then and there itself the defendant has denied the alleged WILL produced by the plaintiff. After conducting thorough enquiry the Tahasildar has directed to enter Katha of the suit schedule properties in the name of defendant No.1 and also directed the plaintiffs to approach Civil Court for declaration of their right over the suit schedule property on the basis of WILL allegedly executed by Parashetty Veerappa. The said order of Tahasildar was passed on 30.11.2011. Since from the said date the plaintiffs ought to have been filed the suit for declaration with in 30.11.2014, but the plaintiffs have not at all filed this suit with in that time and filed the same in the year 2019 which attracts the provision of Limitation Act.

Accordingly, the present suit is not maintainable. She has contended at paragraph No.5 of written statement that she has a son by name Parashetty Yogesh and he is also the necessary party to the present case on hand. On those grounds she prays to dismiss the suit of the plaintiffs.

8.c. After filing of this written statement, IA No.9 has been filed by the 2nd defendant by praying this court to implead him in this suit as 2nd defendant. Upon hearing rival contentions the said application came to be allowed and defendant No.2 has brought on record. During the pendency of this suit, the defendant No.1 died on 23.06.2020. Hence, this defendant No.2 has filed these three IA's No.11 to 13 to consider him as legal heir of deceased defendant No.1. At the same time the plaintiff No.2 has also filed this IA No.11(a) to consider the children of plaintiff No.1 as legal heirs of defendant No.1.

8.d. On careful perusal of the applications, affidavits and chief-examination affidavits of both parties and also the documents, it is come to know that, the plaintiff No.2 has filed IA No.11(a), but in the affidavit she has not even explained that how the proposed legal heirs are related to defendant No.1. Simply she has contended that, the proposed legal heirs are the legal heirs of defendant No.1 and it is necessary to bring them on record as D.1(a) to (d) to proceed with this case. Even in chief-examination affidavit filed by her in support of IA No.11 (a) she has not even explained about the relationship between proposed legal heirs and deceased defendant No.1. It is true that, the plaintiffs have explained

that the deceased Parashetty Veerappa is the husband of plaintiff No.1, he got her in marriage as a second wife. It is further contended that, the deceased Parashetty Veerappa and the plaintiff no. 1 have five children who are the proposed legal heirs and the plaintiff No.2. But these averments have not been mentioned in the affidavit filed in support of IA No.11(a). Moreover, nowhere in the affidavit she has contended that she is also the legal heir of defendant No.1. It is important to note here that, as per the averments of plaintiff the plaintiff No.1 is the alleged second wife of Parashetty Veerappa, they have also contended in the pleadings that, Parashetty Veerappa got married with defendant No.1 and as such he had no issues through defendant No.1, he got married with plaintiff No.1 and through her he got five children as named above. According to the provisions of Hindu Marriage Act, the second marriage during the subsistence of first wife cannot be called as a valid marriage. When such being the case consideration that the proposed legal heirs mentioned in IA no. 11(a) and the plaintiff No.2 are the legal heirs of defendant No.1 does not arise.

8.e The defendant No.2 has produced Ex.A.4 to 16 to prove that he is adopted son of deceased Parashetty Veerappa. Ex.A.4 to 6 are the study certificate issued by the Head master, Thungabhadra Higher Primary School Huvinahadagali, Head Master Gynana Ganga High School Huvinahadagali, Head Master, High School Hampasagara-2. In those documents the name of father of defendant No.2 is

shown as Veerappa Parashetty. Ex.A.7 is the original SSLC Marks Card in which the name of the pupil is shown as Yogesh Parashetty and his father name is shown as Veerappa Parashetty. Ex.A.8 is the original marks card of PUC. In the said documents also the same details have been mentioned. Ex.A.9 is the pedigree of the family of defendant No.2, in the said document also the name of father of defendant No.2 is shown as Veerappa Parashetty and the name of the mother is shown as Kamma Parashetty. Ex.A.10 and 11 are the original Aadhar card of defendant No.2 and the ration card in which the name of defendant No.2 is shown as Yogesha Parashetty S/o Veerappa Parashetty, in the Ration Card it is shown as Kamma Parashetty son of Veerappa V Parashetty. Ex.A.13 is certified copy of TC of defendant No.2 in the said document also the name of father is mentioned as Veerappa Parashetty. Ex.A.14 is the temporary appointment order of defendant no.2 and Ex.A.15 is the registered Will allegedly executed by the defendant No.1 in favour of defendant No.2. At this juncture much discussion is not required with respect to these documents are concerned. Ex.A.16 is the original Election identity Card of defendant No.2 and in the said document also the name of father is shown as Veerappa. All these documents are clearly go to show that, the defendant No.2 is the son of Veerappa Parashetty. This court is not going to discuss anything about the Will allegedly executed by defendant No.1 infavour of defendant No.2. It is the contention of defendant No.2 that he is the adopted son of defendant No.1 and Parashetty

Veerappa. The valid adoption has to be proved by him before the court. In this case in the cross-examination PW.1 has admitted that the order passed by this court on IA filed by defendant No.2 u/Order 1 rule 10 of CPC to implead him as defendant No.2 in this suit has not been questioned by filing appeal in the appellate court. There by it is clear that the plaintiffs have admitted the relationship of defendant No.2 with defendant No.1. Now the defendant no. 2 has also produced government documents such as his school records to prove his contentions raised in the affidavits. Moreover, since the defendant No.1 herself has contended in her written statement that the defendant No.2 is her son, this court can be safely hold that the defendant No.2 is the legal heir of deceased defendant No.1.

9. Hence, I answered above points accordingly.

10. Point No.5: For the fore going reasons I, proceed to pass the following;

:O R D E R:

IA No.11 to 13 filed by the defendant No.2 U/Order 22 rule 4, 22 rule 9 of CPC and U/Sec.5 of Limitation Act respectively are hereby allowed.

IA No.11(a) filed by the plaintiff No.2 U/order 22 rule 4 of CPC is hereby dismissed.

Consequently the defendant No.2 is considered as legal heir of defendant No.1 in this suit.

The plaintiffs are directed to carry out amendment in the cause title by mentioning the details of death of defendant No.1 and to file amended plaint within 15 days from the date of this order.

No order as to costs.

(Dictated to stenographer transcribed by her revised, corrected and then pronounced by me in the open court, on this the 23rd day of September, 2023)

(ANUPAMA. D)
Itinerary Sr. Civil Judge
Hoovinahadagali.