

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 17TH DAY OF OCTOBER, 2025

BEFORE

THE HON'BLE MR. JUSTICE H.P. SANDESH

REGULAR SECOND APPEAL NO.487/2021 (DEC/INJ)

BETWEEN:

SRI. T.P.BHEEMAIAH,
S/O LATE T.M.PONNAPPA,
AGED ABOUT 61 YEARS,
RESIDENT OF MEGHATALU VILLAGE,
MAKKANDUR POST,
MADIKERI TALUK,
KODAGU DISTRICT.

... APPELLANT

(BY SRI. K.S.BHEEMAIAH, ADVOCATE)

AND:

1. SRI. T.P. LOKAPPA,
AGED ABOUT 63 YEARS,
S/O LATE T.M.PONNAPPA.
2. SRI. T.P. KUSHALAPPA,
AGED ABOUT 62 YEARS,
S/O LATE T.M.PONNAPPA.

BOTH ARE RESIDENT OF
MEGHATALU VILLAGE,
MAKKANDUR POST,
MADIKERI TALUK,
KODAGU DISTRICT.

3. SRI. T.P. MANDANNA,
AGED ABOUT 68 YEARS,
S/O LATE T.M. PONNAPPA.
4. SRI T.P. THAMMAIAH,
AGED ABOUT 66 YEARS,
S/O LATE T.M. PONNAPPA.
5. SRI. T.T. POOVANNA,
AGED ABOUT 41 YEARS,
S/O T.P. THAMMAIAH.
6. SMT. T.K. KAMAVVA,
AGED ABOUT 71 YEARS,
W/O LATE T.P. KALAPPA.
7. SRI. T.K. NANAIAH,
AGED ABOUT 42 YEARS,
S/O LATE T.P. KALAPPA.
8. SRI. T.K. JOYAPPA,
AGED ABOUT 42 YEARS,
S/O LATE T.P. KALAPPA.
9. SRI. T.M. MOHAN KUMAR,
AGED ABOUT 42 YEARS,
S/O T.P. MANDANNA.

RESPONDENTS NO.3 TO 9 ARE
RESIDENTS OF MEGHATALU VILLAGE,
MAKKANDUR POST,
MADIKERI TALUK,
KODAGU DISTRICT.

... RESPONDENTS

(BY SRI. NAGIAH, ADVOCATE FOR R1 & R2;
R3, R4, R5, R6, R7, R8 & R9 ARE SERVED)

THIS R.S.A. IS FILED UNDER SECTION 100 OF CPC, AGAINST THE JUDGMENT AND DECREE DATED 08.03.2021 PASSED IN R.A.No.17/2019 ON THE FILE OF THE SENIOR CIVIL JUDGE, MADIKERI, DISMISSING THE APPEAL FILED AGAINST THE JUDGMENT AND DECREE DATED 06.08.2019 PASSED IN O.S.No.18/2015 ON THE FILE OF THE ADDITIONAL CIVIL JUDGE, MADIKERI.

THIS R.S.A. HAVING BEEN HEARD AND RESERVED FOR JUDGMENT ON 10.10.2025, THIS DAY, THE COURT PRONOUNCED THE FOLLOWING:

CORAM: HON'BLE MR JUSTICE H.P.SANDESH

CAV JUDGMENT

Heard the learned counsel for the appellant and the learned counsel for respondent Nos.1 and 2.

2. This second appeal is filed challenging the judgment and decree dated 06.08.2019 passed in O.S.No.18/2015 decreeing the suit in favour of the plaintiffs that they are the owners in possession of the suit schedule property and granting the relief of permanent injunction and confirmation of the same by the First Appellate Court in R.A.No.17/2019 dated 08.03.2021.

3. The factual matrix of the case of the plaintiffs/respondent Nos.1 and 2 before this Court while seeking

the relief of declaration and permanent injunction is that the suit schedule property originally belongs to their mother Smt.Thangavva and the same was purchased in the year 1974 i.e., on 31.10.1974 and the mother of the plaintiffs was in peaceful possession and enjoyment of the same without interference from anyone during her lifetime. The mother of the plaintiffs bequeathed the suit schedule property to the plaintiffs under a registered Will dated 31.10.2012. On 22.01.2015, the defendants along with eight persons forcibly entered into the suit schedule property and tried to encroach the same and the same was resisted by the plaintiffs and hence they filed the suit seeking the relief of declaration based on the Will as well as that they are in possession of the suit schedule property.

4. The defendant Nos.2 to 7 appeared before the Court through their respective counsel. The defendant No.3 filed the written statement and others adopted the same. However, defendant Nos.1 and 8 were placed *exparte*. The defendant No.3 contended in the written statement that Smt.Thangavva has not purchased the suit schedule property and the same was

not the exclusive property of Smt. Thangavva and the same was purchased by their father in the name of Thangavva and hence Thangavva cannot execute the Will in favour of the plaintiffs and she was not having any absolute right. It is contented that earlier there was a partition and in terms of the partition mahazar, this property was kept to meet the marriage expenses of the daughters and thereafter it should fall on all the other male members of the family and hence there cannot be any declaration and injunction in favour of the plaintiffs.

5. The plaintiffs in order to prove their case, examined plaintiff No.1 as P.W.1 and also examined one witness as P.W.2 and got marked the documents at Exs.P.1 to 6 and Ex.P.1(a) to (e). On the other hand, defendant No.3 examined himself as D.W.1 and also examined the scribe of the document of Ex.P.1 Will as D.W.2 and got marked the documents at Exs.D.1 to 8. The Trial Court having considered both oral and documentary evidence placed on record, answered all the issues in the affirmative in coming to the conclusion that Thangavva had executed a Will dated 31.10.2012 and that plaintiffs are in

possession of the suit schedule property as on the date of filing of the suit and also there is an interference by the defendants in respect of the suit schedule property and hence granted the relief in favour of the plaintiffs.

6. Being aggrieved by the judgment and decree of the Trial Court, an appeal is filed in R.A.No.17/2019 and the First Appellate Court on appreciation of both oral and documentary evidence placed on record, vide judgment dated 08.03.2021 confirmed the judgment of the Trial Court having considered the principles of panchapadi for proving of the Will and did not find any error on the part of the Trial Court in granting the relief as sought.

7. Being aggrieved by the judgment and decree of the Trial Court as well as the First Appellate Court, the present second appeal is filed before this Court. This Court having considered the material available on record, particularly when the ground was urged that earlier there was a partition deed dated 22.04.1976 entered between the mother of the appellant and the respondents and further mother of the appellant and the

respondents has specifically and categorically stated in a suit filed by her in O.S.No.17/1986 that after the marriage of the daughters, the property shall be divided between all the six sons and this Court while admitting this second appeal, framed the substantial question of law, which is extracted hereinbelow:

"Whether defendant No.3 and the plaintiff were joint owners of the suit schedule property by virtue of the mahazar dated 22.04.1976? If yes, whether the suit for declaration and injunction was maintainable?"

8. The learned counsel for the appellant would vehemently contend that there was an oral partition between the mother and children and mahazar also came into effect in the year 1976. When such being the case, both the Courts ought not to have granted the relief in favour of the plaintiffs. The mother was not having any right to execute a Will. The learned counsel would contend that in the earlier judgment and decree passed in O.S.No.17/1986 also recognised the said mahazar and the said Will is marked as Ex.P.1 before the Trial Court dated 31.10.2012. In the earlier judgment also in detail discussed the

same with regard to the mahazar is concerned and when such mahazar is available before the Court and the same is admitted, there cannot be any judgment and decree and hence it requires interference of this Court.

9. Per contra, the learned counsel for respondent Nos.1 and 2/plaintiffs would contend that it is not in dispute that the property was purchased by Thangavva on 31.10.1974 and also there is no dispute with regard to the partition among the mother and children. The learned counsel would contend that as against the recitals of the mahazar, defendant No.3/appellant started plucking the coffee in the said land and he was not given any exclusive right and also he made an attempt to get the records transferred in his favour in the revenue records of jamabandi and when the same came to the notice of the mother, the mother and sisters have filed the suit referred above and the same is decreed. The Trial Court and the First Appellate Court taken note of the earlier judgment as well as the material available before the Trial Court and the First Appellate Court and reasoned order was passed and hence it does not require any

interference of this Court that too in a second appeal. The learned counsel contend that though earlier there was a mahazar, the same is not acted in terms of earlier provision and hence Will was executed and the appellant has also not filed any suit claiming any share in respect of the property and the earlier judgment has attained its finality. The learned counsel would contend that the mother becomes absolute owner of the property under Section 14 of the Hindu Succession Act. The learned counsel contend that the house was constructed prior to the sale deed and the contention of the appellant cannot be accepted that he only constructed the house. D.W.1 in the cross-examination admitted that there was a partition, but not produced the same before the Court and now without placing the said mahazar before the Court, cannot seek any relief in the second appeal in the absence of any document. The learned counsel contend that in the earlier suit not declared all the male children as the owners of the property and admittedly, the property belongs to Thangavva and she had executed a Will and the same is proved and question of interference does not arise. Hence, prayed the Court to dismiss the second appeal.

10. Keeping in view the contentions urged by the respective learned counsel and also considering the material available on record, this Court has to analyze the material available on record whether it is a fit case to reverse the finding considering the substantial question of law framed by this Court.

11. Having considered the material available on record and also the substantial question of law framed by this Court, the main contention of appellant is that himself and plaintiffs were joint owners of the suit schedule property by virtue of mahazar dated 22.04.1976. Hence, the suit for declaration and injunction was not maintainable. It is not in dispute that earlier, the mother and male children of Thangavva have got partitioned the property by virtue of mahazar dated 22.04.1976 and the same is not the part of records and not marked by either of the parties before the Trial Court in O.S.No.18/2015 as well as the First Appellate Court in regular appeal as additional documents, except the discussion made in the proceedings. However, the plaintiffs relied upon the certified copy of the judgment and decree passed in O.S.No.17/1986, wherein the said mahazar

was marked and detailed discussion was made by the Trial Court which is marked as Ex.P6.

12. First of all, the said mahazar is not before any of the Courts i.e., the Trial Court, First Appellate Court or before this Court. But, the contention is raised before this Court to frame a substantial question of law based on the said mahazar and the same is framed. It is to be noted that, even considering the said mahazar also, it is not in dispute that suit schedule property is not the subject matter of the partition between the mother and male members. But, the same was kept reserved for the performance of marriage of plaintiff Nos.2 to 4 in the earlier suit. It is also important to note that the parties have not acted upon in terms of the mahazar dated 22.04.1976 and it is also borne out from the records, when the mother and daughters i.e., plaintiff Nos.2 to 4 contend that though the said property was reserved for marriage expenses, they have filed a suit against the present appellant arraying him as a sole defendant in O.S.No.17/1986, wherein also they sought for declaration that they are immediate beneficiaries of the suit schedule property by

virtue of the partition and mahazar dated 22.04.1976 and for permanent injunction restraining the defendant, his agents and his labourers from interfering with the possession of suit schedule property.

13. It is also important to note that the Trial Court in the said suit in O.S.No.17/1986 dealt with the matter in detail, since the said mahazar was marked as Ex.P3 and the parties have admitted the mahazar and extracted paragraph No.4 of the written statement of the present appellant in paragraph No.9 and taken note of the recitals of the said document and the same is extracted and the said property is preserved till the marriage of plaintiff Nos.2 to 4 and the property can be cultivated by either the brothers or any persons and no one can take possession, sale or lease the said property and they are not having any such right and it is also specifically mentioned that the property should stand in the name of the mother and after the marriage of three daughters, the same shall go to six male members and these contents of the documents were taken note of by the Trial Court in the earlier suit. The suit was filed before

the Trial Court earlier when the present appellant made an attempt to knock off the property by got mentioning his name in the Jamabandi and when he acted upon as against the interest of his mother and also unmarried daughters, the suit was filed and decreed in favour of the mother and plaintiff Nos.2 to 4, who are the sisters of this appellant.

14. It is also important to note that in the earlier suit, an observation is made that before performing the marriage of three daughters i.e., plaintiff Nos.2 to 4, one daughter i.e., plaintiff No.2 was married and plaintiff Nos.3 and 4 were not married and before celebrating the marriage of other two daughters i.e., plaintiff Nos.3 and 4, an attempt was made by the present appellant to knock off the property and in detail discussion was made in the said judgment with regard to the very conduct of the appellant herein and granted the relief in favour of mother of daughters. Hence, it is very clear that, even if there is a mention in the mahazar that all male sons have to get share in the property, but the same was not acted upon and it is also very clear that decree was granted in favour of mother

and three daughters and the said judgment is marked as Ex.P6 and dispute between the appellant, mother and sisters of the appellant arose before conducting their marriage.

15. Having considered the discussion made by the Trial Court, it is very clear that though the present appellant claims that he has constructed the building, but nothing is placed on record and taken note of the conduct of the appellant. Since, recital of Ex.P3 is clear that without the consent of all the male members of plaintiff No.1, the property cannot be alienated, mortgaged or take exclusive possession by any of them. On the other hand, the assertion of the defendant i.e., present appellant throughout is that his name is entered in the sixth column of the Jamabandi and further, the property is in his exclusive possession cannot be asserted and the said entry is made against the recitals of document, Ex.P3 of the earlier suit. Hence, an observation is made that this itself is sufficient to accept the contention of the plaintiffs that the defendant is trying to interfere with the possession of the suit property, since he claims possession over the property and even while considering issue

No.3, taken note of the fact the marriage of plaintiff No.2 is over, but other two daughters i.e., plaintiff Nos.3 and 4 is yet to be performed.

16. When such being the material available on record and also the recitals of the document is very clear that the property should stand in the name of plaintiff No.1 and income thereof should be used for the maintenance and the marriage expenses of plaintiff Nos.2 to 3 and further an observation is also made that marriage of plaintiff Nos.2 to 4 is yet to take place. Hence, they are entitled to the income of the suit property both for their maintenance as well as their marriage expenses. It is clear that dispute started in the year 1986 itself and even though the property was preserved for maintenance and marriage expenses, an attempt was made by the present appellant to knock off the property. Having considered all these material on record, the very contention of the appellant is that the property ought to have been divided among the brothers cannot be accepted.

17. It is also important to note that though this property is preserved for maintenance and marriage expenses, it is not in dispute that the said property was purchased by the mother in the year 1974. Though it is contended by the appellant herein that the same was purchased by the father in the name of the mother, the same is not substantiated by the appellant herein. Hence, it is clear that the same is absolute property of mother Thangavva. It is also important to note that when the earlier suit was filed, decree was passed on 06.02.1987 itself. When the mother was absolute owner and the same was preserved for the maintenance and marriage expenses and when an attempt was made by the present appellant to knock off the property claiming the same is in his exclusive possession, a decree was granted. The Trial Court in the present suit also in detail discussed the same while passing an order, particularly when the plaintiffs in the suit have categorically contended that a Will was executed on 31.10.2012 and the Trial Court also taken note of the fact that mother was in exclusive possession of the property in view of the judgment and decree passed in O.S.No.17/1986 and also taken note of sale deed in the name of mother-Thangavva dated

31.10.1974 as per Ex.P2. It is also taken note of that CRC which is standing in the name of late T.P. Thangavva i.e., Coffee Registration Certificate and the Trial Court also taken note of the recitals of the document Ex.P2-sale deed in paragraph No.15 regarding ownership of the present suit schedule property is concerned.

18. The main contention of the defendant is that as per the settlement between the parties, only Thangavva and her daughters having limited interest and the same is also discussed in paragraph No.15 and also taken note of Section 14 of Hindu Succession Act, 1956, since the property belongs to the mother and she became absolute owner under Section 14(1) of the Hindu Succession Act. As per Section 14(1) of the Hindu Succession Act, women should be in actual or physical possession of the property and she has got the right to deal with the property and in detail discussed the evidence available on record.

19. It is also important to note that though there was reference in the mahazar, but the same was not acted upon and

there was dispute between defendant No.3 i.e., the appellant herein and mother prior to performing the marriage of sisters of this appellant. No doubt, the elder son of Thangavva was examined by the defendant No.3, who supported the case of the present appellant, but the material available on record is very clear that Will was executed by the mother and P.W.2, the attesting witness categorically deposed before the Court that Will was drafted by D.W.2 and all of them went to the office of Sub-Registrar and got registered the Will. With regard to proving of the Will also, the Trial Court taken note of the evidence of P.W.2 as well as the evidence of D.W.2.

20. Though D.W.2 has been examined on behalf of the defendant and his evidence is very clear that Thangavva herself gave instructions to prepare the Will and she came with a draft Will and he got typed the same and went to the Sub-registrar office and registered the same. The material is also very clear that she was very hale and healthy and the same was not discredited before the Trial Court.

21. The First Appellate Court also while re-appreciating both oral and documentary evidence placed on record, in detail discussed the very execution of the Will and Will is one of the most solemn document and executant of the Will cannot be called to deny the execution or to explain, since the Will comes into effect after the death of the executant. The Court can only look into any suspicious circumstances regarding execution of the said Will and the First Appellate Court also taken note of the principles laid down in the several judgments regarding each step for proving the Will and all the five steps were discussed in appeal for proving the Will Ex.P1 and also the evidence of P.W.2 being the attesting witness as well as D.W.2, who is the advocate, who prepared the Will and both of them have deposed about the health condition of the testator and also read over the contents of the Will to the testator before putting her left thumb impression.

22. When both the Courts have taken note of the very health condition of the executant and there is no suspicious circumstances whatsoever surrounding the execution of Will.

Admittedly, the property was bequeathed in favour of the plaintiffs belonging to the mother-Thangavva, who had purchased the property in the year 1974 in terms of the document Ex.P2. The very contention of the appellant that there is a recital in the mahazar that all major sons have to share the property after the marriage cannot be accepted, since the dispute has arisen between the parties, even before conducting the marriage of plaintiff Nos.2 to 4 and all of them filed the suit. The said mahazar also not confers any legal right in favour of appellant. It is not the case of the appellant that he only performed the marriage and crux of the issue is when the dispute had arisen between the mother and sisters of the appellant, only plaintiff No.2 was married and other plaintiff Nos.3 and 4 were not married and there was a finding in the earlier suit against the appellant to that effect and the same has attained its finality.

23. When such being the case, the very contention of the appellant cannot be accepted. Hence, I do not find any error on the part of the Trial Court and the First Appellate Court in

decreeing the suit in O.S.No.18/2015 based on the Will which was executed by the mother, who is the exclusive owner, that too when she was having sound state of mind and the same was duly registered. The fact that another eye witness A. Dharmappa is no more and hence, complied with the provisions of Evidence Act as well as Indian Succession Act is not in dispute, since one of the attesting witness was examined. Therefore, there is no merit in the second appeal and I answer the substantial question of law accordingly.

24. In view of the discussion made above, I pass the following:

ORDER

The regular second appeal is dismissed.

Sd/-
(H.P. SANDESH)
JUDGE

MD/ST