



IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 27TH DAY OF MARCH, 2026

BEFORE

THE HON'BLE MR. JUSTICE ASHOK S.KINAGI

REGULAR SECOND APPEAL NO. 902 OF 2025

(DEC/PAR)

BETWEEN:

SRI DEVENDRA NAYAK
AGED ABOUT 55 YEARS,
S/OF LATE SMT. KALYANI AND
SRI. SHYAMA NAYAK,
R/AT PARADOTTU HOUSE,
MARNE VILLAGE,
KARKALA TALUK – 574 101

...APPELLANT

(BY SRI. JAYAKARA SHETTY H., ADVOCATE)

AND:

1. SMT. LALITHA @ SUNITHA KAMATH
AGED ABOUT 62 YEARS,
D/O LATE SMT. KALYANI AND
SRI. SHYAMA NAYAK,
R/AT MAHALAXMI KRIPA,
KADUHOLE, MARNE VILLAGE,
MUNIYAL POST, KARKALA TALUK,
UDUPI DISTRICT – 574 101
2. SMT. SUJATHA @ NAYANA
AGED ABOUT 54 YEARS,
D/O LATE SMT. KALYANI AND
SRI.SHYAMA NAYAK,





R/AT ARASUBAIL HOUSE,
HADIYANGADY,
SHIRLAL VILLAGE,
KARKALA TALUK – 574 101

3. SMT. SUSHILA NAYAK @ RAMADEVI TENDULKAR,
AGED ABOUT 73 YEARS,
D/O LATE SMT. KALYANI AND
W/O R.R.TENDULKAR,
R/AT JYOTHI NAGARA,
1ST CROSS, CHITLAPAKKAM,
CHENNAI 600 064.
4. SMT. PREMA @ SHARADA NAYAK
AGED ABOUT 63 YEARS,
W/O LATE UPENDRA NAYAK,
R/AT BALABETTU HOUSE,
KUKKUNDOOR VILLAGE,
KARKALA TALUK – 576 116
5. SMT. VIDHYA NAYAK
D/O LATE UPENDRA NAYAK,
AGED ABOUT 40 YEARS,
R/AT BALABETTU HOUSE,
KUKKUNDOOR VILLAGE,
KARKALA TALUK – 576 116
6. SMT. VEENA NAYAK
AGED ABOUT 37 YEARS,
D/OF LATE UPENDRA NAYAK,
R/AT BALABETTU HOUSE,
KUKKUNDOOR VILLAGE,
KARKALA TALUK – 576 116
7. SRI. VIJAY NAYAK,
AGED ABOUT 35 YEARS,
S/O LATE UPENDRA NAYAK,
R/AT BALABETTU HOUSE,
KUKKUNDOOR VILLAGE,
KARKALA TALUK – 576 116

...RESPONDENTS



THIS RSA IS FILED U/S. 100 OF CPC AGAINST THE JUDGMENT THE JUDGMENT AND DECREE DATED 10.03.2025, PASSED IN RA NO. 25/23, ON THE FILE OF THE II ADDITIONAL DISTRICT AND SESSIONS JUDGE, UDUPI, DISMISSING THE APPEAL AND CONFIRMING THE JUDGMENT AND DECREE DATED 06.07.2023, PASSED IN OS NO. 71/2021 ON THE FILE OF THE SENIOR CIVIL JUDGE AND ACJM, KARKALA.

THIS APPEAL, COMING ON FOR ADMISSION, THIS DAY, JUDGMENT WAS DELIVERED THEREIN AS UNDER:

CORAM: HON'BLE MR. JUSTICE ASHOK S.KINAGI

ORAL JUDGMENT

1. This Regular Second Appeal is filed by the appellant challenging the judgment and Decree dated 10.03.2025 passed in R.A.No.25 of 2023 by the learned II Additional District and Sessions Judge, Udupi (for short 'the first appellate Court'), and the judgment and decree dated 06.07.2023 passed in O.S.No.71 of 2021 by the learned Senior Civil Judge and ACJM, Karkala, Udupi (for short 'the trial Court').
2. For convenience, the parties are referred to based on their rankings before the trial Court. The appellant was defendant no.2, respondents no. 1 and 2 were



the plaintiffs and other respondents were the defendants.

3. Brief facts, leading rise to the filing of this appeal are as follows:

4. The plaintiffs filed a suit for partition and declaration that the plaintiffs have acquired absolute half undivided right in the suit schedule properties. It is the case of the plaintiffs that the suit schedule properties were granted in favour of father of plaintiffs by Land Tribunal, vide order dated 30.09.1981. Form No. 10 was issued on 21.12.2002. He died intestate on 11.09.1999, leaving behind his wife Kalyani Nayak and her children i.e., the plaintiffs and defendants no. 1 and 2 and husband of defendant no. 3 and one Harishchandra Nayak. After the demise of Shyama Nayak, the legal heirs entered into partition of the suit properties, where 'A' schedule properties were allotted to joint share of Kalyani Nayak and defendant no.1. The plaint 'B' schedule



properties were allotted to Harishchandra Naik vide Schedule 'C' of partition deed and revenue records were entered in the name of the respective parties. Harishchandra Nayak died intestate, unmarried on 07.01.2019. Thus the 'B' schedule properties were inherited by mother Kalyani Nayak as the sole legal heir of deceased Harichandra Nayak, who had absolute right over 'B' schedule property and half undivided right over plaint 'A' schedule property. The revenue records were mutated in the name of Kalyani Nayak i.e., the mother of plaintiffs, who was in sound disposing state of mind. She had executed the registered Wills on 19.03.2015 and 06.08.2019 in favour of the plaintiffs bequeathing the properties owned and possessed by her. The mother of the plaintiffs passed away on 11.10.2000. After the demise of Kalyani Nayak, the plaintiffs became the absolute owners of the suit schedule properties by virtue of registered will deeds. The plaintiffs submitted



an application before the Tahsildar, Karkala. But defendant no.2 objected for mutation. The Tahsildar has issued an endorsement on 23.05.2021 stating that validity of the Will cannot be decided by the revenue authorities and directed the parties to approach the Civil Court. Hence, the plaintiffs filed a suit for partition and declaration.

5. Defendant no. 2 filed a written statement denying the averments made in the plaint, and contended that Kalyani Nayak that his mother was incapable of recognizing people, physically and mentally unwell and lost her memory. It is contended that the plaintiffs have created the alleged Wills and claiming to be the absolute owners based on the alleged Wills. Kalyani Nayak - the mother had no right to execute the alleged Wills bequeathing the suit schedule properties, undivided half share in favour of the plaintiffs. Hence, the plaintiffs have not acquired any



right, title or interest based on the Wills. Hence, on these grounds, prays to dismiss the suit.

6. The summons were issued to defendants no. 1, 3 to 6. Despite service of summons, they remained unrepresented and they were placed ex parte.
7. The trial Court, based on the pleadings of the parties framed the relevant issues.
8. The plaintiffs to substantiate their case, plaintiff no. 1 was examined as PW1, examined four witnesses as PW2 to PW5 and marked 12 documents as Exhibit P1 to Exhibit P12. In rebuttal, defendant no.2 was examined as DW1 and has not produced any documents.
9. The trial Court, after recording the evidence, hearing both sides and after assessing the verbal and documentary evidence decreed the suit of the plaintiffs vide judgment dated 06.07.2023 declaring that the plaintiffs have acquired half undivided right in



the plaint 'A' schedule properties by virtue of a registered Will dated 19.03.2015 executed by their mother. It is also declared that the plaintiffs have acquired right in the plaint 'B' schedule properties by virtue of registered Will dated 06.08.2019. The plaintiffs are together entitled for half share in the suit 'A' schedule properties.

10. Defendant no. 2, aggrieved by the judgment and decree passed in O.S.No.71 of 2021 preferred an appeal in R.A.No.25 of 2023 on the file of II Additional District and Session Judge, Udupi (Itinerary sitting at Karkala).
11. The first appellate court after hearing the learned counsel for the parties, framed the relevant points for consideration and after re-appreciating the entire evidence on record, dismissed the appeal with costs vide judgment dated 10.03.2025.



12. Defendant no.2, aggrieved by the impugned judgments filed his Regular Second Appeal.
13. Heard the arguments of the learned counsel for defendant no. 2.
14. Learned counsel for defendant no.2 submits that the plaintiffs have created the registered Wills and he submits that the testator was not in a sound, disposing state of mind. He further submits that the Wills are surrounded by suspicious circumstances like disinheritance of other natural legal heirs. The said aspect was not properly considered by both the courts below and committed an error in passing the impugned judgments. He also submits that Harishchandra Nayak died intestate and the brothers inherited the estate of deceased Harishchandra Nayak. The said aspect was not considered by the courts below. Hence on these grounds, he prays to allow the appeal.



15. Perused the records, and considered the submissions of the learned counsel for the parties.
16. It is an undisputed fact that the properties were owned and possessed by the father of plaintiffs- Shyama Nayak, who died leaving behind his wife and children, namely the plaintiffs and defendants no. 1 and 2, Upendra Nayak and Harishchandra Nayak. Upendra Naik was passed away on 07.07.2001 leaving behind his mother Kalyani Nayak, wife and children i.e., defendants no. 3 to 6. Harishchandra Nayak also passed away, leaving behind his mother Kalyani. After the demise of Harichandra Nayak, the mother succeeded to the estate of the deceased Harichandra Naik under Section 8 of the Hindu Succession Act. After her demise, the properties of Harishchandra Nayak devolved upon the mother and she became the absolute owner of the suit schedule properties. She had executed registered Wills dated 19.03.2015 in respect of 'A' schedule properties and



06.08.2019 in respect of 'B' schedule properties. The plaintiffs in order to prove the execution of Wills, examined the witnesses and contesting witnesses and scribe as PW2 to PW5. They have deposed that Smt. Kalyani Nayak - the mother of the plaintiffs had executed the registered Wills in favour of the plaintiffs in respect of 'A' schedule half undivided share on 19.03.2015 and entire 'B' schedule properties on 06.08.2019 in favour of the plaintiffs.

17. Both the courts below considering the evidence of PW2 to PW5 who were the attesting witnesses and a scribe to the registered sale deeds have rightly held that the plaintiffs have proved that the mother Kalyani Nayak had executed the Wills in favour of the plaintiffs bequeathing half undivided share in the 'A' schedule properties and entire 'B' schedule properties. In rebuttal, defendant no.2, except examining himself, has not produced any records to show the mental disposing state of mind of the testator.



Though defendant no.2 contended that the Wills are surrounded by suspicious circumstances that is exclusion of other natural legal heirs wherein DW1 in the course of cross-examination has admitted that the mother -Smt. Kalyani Nayak was not residing with him and he has also admitted regarding the partition effected as per Ex.P2. As per Ex.P2 his mother was allotted with the suit 'A' schedule properties along with defendant no. 1 and she has got a half equal right in the 'A' schedule property and he also admitted that 'B' schedule properties were fell to the share of Harichandra Nayak and he died and after his death the said property 'B' schedule property devolved upon the mother as being the class 1 legal heir as per Schedule I of the Hindu Succession Act.

18. Both the Courts below have concurrently recorded a finding of fact against the defendants. Hence, I do not find any error in the impugned judgments and any



substantial question of law that arises for consideration in this appeal.

19. Accordingly, I proceed to pass the following order:

ORDER

- i. The Regular Second Appeal is dismissed.
- ii. Judgment and decree passed by both the courts below are hereby confirmed.
- iii. No order as to the costs.
- iv. Pending interlocutory application, if any, shall stand disposed of accordingly.

Sd/-
(ASHOK S.KINAGI)
JUDGE

SKS