HC-KAR

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 24TH DAY OF FEBRUARY, 2026

PRESENT

THE HON'BLE MR. JUSTICE D K SINGH

AND

THE HON'BLE MR. JUSTICE S RACHAIAH

REGULAR FIRST APPEAL NO. 1878 OF 2016 (PAR)

BETWEEN:

1. SMT. LAKSHMI PRABHA
AGED ABOUT 57 YEARS
D/O LATE N SRINIVASALU
R/AT NO.42, STEPHEN'S ROAD
FRAZER TOWN
BENGALURU - 560005

...APPELLANT

(BY SRI K K VASANTH, ADVOCATE)

AND:

1. SRI S RAGHUCHANDRAN
AGED ABOUT 54 YEARS
S/O LATE N SRINIVASALU
R/AT NO.42, STEPHEN'S ROAD
FRAZER TOWN
BENGALURU - 560005

PRESENTLY WORKING AT NO.2
BLOCK NO.6/2
KEMOYORAN JAKARTA
PUSAT, JAKARTA
INDONESIA

REPRESENTED BY HIS GPA HOLDER
SRI RAMANA KRISHNA S V

AGED ABOUT 44 YEARS
S/O LATE N SRINIVASALU
R/AT NO.42
STEPHEN'S ROAD
FRAZER TOWN
BENGALURU - 560005

2. SRI RAMANA KRISHNA S V
AGED ABOUT 44 YEARS
S/O LATE N SRINIVASALU
R/AT NO.42
STEPHEN'S ROAD
FRAZER TOWN
BENGALURU - 560005

DR. S RAJENDRAN
S/O LATE N SRINIVASALU
SINCE DECEASED BY HIS LRS

3. SMT. INDIRA RAJENDRAN
@ INDIRA R
AGED ABOUT 52 YEARS
W/O LATE DR. S RAJENDRAN

4. SMT. NANTHINI RAJENDRAN
@ NATHINI R
AGED ABOUT 30 YEARS
D/O LATE DR. S RAJENDRAN

RESPONDENT NOS.3 & 4 ARE R/AT
NO.535, 2ND MAIN
2ND CROSS
NAGENDRA BLOCK
SRINAGAR
BENGALURU - 560050

5. SRI STANLEY JOSEPH
AGED ABOUT 51 YEARS
S/O C M FRANCIS
R/AT NO.42
STEPHEN'S ROAD

FRAZER TOWN
BENGALURU - 560005

...RESPONDENTS

(BY SRI HARSHA, ADVOCATE FOR R-1;
SRI SHASHANK SHRIDHAR, ADVOCATE FOR R-2;
SRI DARSHAN GOWDA L.K., ADVOCATE FOR R-3 & R-4;
R-5 - SERVED AND UNREPRESENTED)

THIS RFA IS FILED UNDER SECTION 96 R/W ORDER XLI RULE 1 OF CPC AGAINST THE JUDGMENT AND DECREE DATED 31.08.2016 PASSED IN O.S.NO.735/2010 ON THE FILE OF XV ADDITIONAL CITY CIVIL AND SESSIONS JUDGE, BENGALURU, DECREEING THE SUIT FOR PARTITION AND SEPARATE POSSESSION.

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

CORAM: HON'BLE MR. JUSTICE D K SINGH
and
HON'BLE MR. JUSTICE S RACHAIAH

ORAL JUDGMENT

(PER: HON'BLE MR. JUSTICE D K SINGH)

I PREFACE:

1. The present Regular First Appeal under Section 96 read with Order XLI Rule 1 of the Code of Civil Procedure, 1908 has been filed impugning the judgment and decree dated 31.08.2016 passed by the learned XV Additional City Civil and Sessions Judge at Bengaluru City (CCH No.3) in Original Suit No.735/2010 instituted by the respondents. The Trial Court has

decreed the suit of the plaintiffs/respondents for partition and separate possession.

2. The parties are referred to as per their ranking before the Trial Court, for the sake of convenience.

II <u>FACTS</u>:

3. Briefly stated the facts of the case are that the suit schedule property was originally purchased by late N. Srinivasalu, the father of the plaintiffs and the defendant Nos.1 and 2, in the joint names of himself and his wife under a registered Sale Deed dated 23.05.1979. Late N. Srinivasalu and his wife Smt. Adilakshmi had three sons and one daughter viz., Dr. S. Rajendran, S.Raghuchandran, Ramana Krishna S.V. and Smt. S. Lakshmi Prabha. The plaintiffs are the younger brothers of the defendants.

4. The said N. Srinivasalu died intestate on 15.11.1996 leaving behind his wife and four children and on 18.01.2020, Adilakshmi died intestate leaving behind the plaintiffs and defendant Nos.1 and 2. After the death of Adilakshmi, the plaintiffs had instituted the aforesaid suit seeking partition and

separate possession of their alleged shares in the suit schedule property.

5. Smt. Adilakshmi had executed a registered gift deed dated 09.12.2005 in respect of northern half of the suit schedule property measuring 2475 sq.ft and another Gift Deed dated 25.03.2006 in respect of her undivided 1/5th share in the southern half portion of the suit schedule property in favour of the defendant No.2. The plaintiffs had also sought a declaration that both the gifts deeds were invalid and not binding on them.

III <u>CASE OF THE PLAINTIFF</u>:

6. The case of the plaintiffs before the Trial Court was that the plaintiff No.1 had contributed Rs.8,00,000/- for the construction of some portion of the first floor of the suit schedule property and the plaintiff No.2 had contributed Rs.3,00,000/- for renovation of the existing ground floor. After the death of late N. Srinivasalu, his wife Smt. Adilakshmi and the children i.e., the plaintiffs and the defendant Nos.1 and 2 were in joint possession and enjoyment of the suit schedule property jointly. The defendant Nos.1 and 2, being elders to the plaintiffs, they were looking after the suit schedule property.

7. On 27.01.2010, the plaintiffs had approached the defendant Nos.1 and 2 to effect partition and give their share in the suit schedule property. However, the defendant Nos.1 and 2 did not act upon the request. The defendant No.3 was a tenant in respect of some portion of the suit schedule property and paying rent to the defendant Nos.1 and 2. Therefore, they had filed the suit seeking partition and separate possession of their share in the suit schedule property.

IV <u>CASE OF THE DEFENDANT</u>:

8. The defendant No.2 had filed the written statement which was adopted by the defendant No.1. The case of the defendants was that late N. Srinivasalu and his wife Smt. Adilakshmi had jointly purchased the suit schedule property bearing new No.42 measuring 4950 sq.ft under the registered Sale Deed dated 23.05.1979. It was further stated that Smt. Adilakshmi had sold away her land which she had acquired from her grandmother and also her jewelry and contributed the money to purchase the suit schedule property. Their father and mother were joint owners and were in joint possession and enjoyment of the suit schedule property. After the death of

N. Srinivasalu on 15.11.1966, the khata of the suit schedule property had been made out in the name of Smt. Adilakshmi.

9. During their last stage, both Sri N. Srinivasalu and Smt. Adilakshmi were completely dependent on the defendant No.2 for their livelihood. The plaintiffs never bothered to look after their parents. Further, the plaintiffs had renounced Hinduism and converted themselves as Christians. As a result, Smt. Adilakshmi was completely dependent upon the defendant No.2 for her living. The defendant No.2 had looked after Smt. Adilakshmi with utmost care till her death. The mother died on 18.01.2010. Out of love and affection, Smt. Adilakshmi had executed a registered gift deed in favour of the defendant No.2 on 09.12.2005 in the Sub-Registrar's Office, Shivajinagar and gifted northern half of the suit schedule property measuring 2475 sq.ft. to the defendant No.2 and the possession was delivered to the defendant No.2. On 25.03.2006, Smt. Adilakshmi had executed one more gift deed in favour of the defendant No.2 in respect of her undivided 1/5th share in the southern half portion of the suit schedule property. At the time of execution of the registered Gift Deed dated 25.03.2006, the

defendant No.1 was present and he had put his signature on the gift deed as an attesting witness. Smt. Adilakshmi died intestate on 18.01.2010 and after her death, the plaintiffs had started claiming their share in the suit schedule property.

10. It is further stated that since the plaintiffs had renounced Hinduism and converted themselves to Christianity, the claim of the plaintiffs is hit by Section 26 of the Hindu Succession Act.

V <u>ISSUES FRAMED BY THE TRIAL COURT</u>:

11. On the basis of the pleadings, the Trial Court, vide order dated 19.08.2014, has framed the following issues:-

> *"1) Whether the plaintiffs prove that the suit schedule property was purchased by their parents?*
>
> *2) Whether the 2nd defendant proves that after the demise of her father, her mother had acquired the exclusive right over the suit schedule property?*
>
> *3) Whether the 2nd defendant proves that her mother had absolute power to execute the Gift Deeds dated 9th December 2005 and 25th March 2006?*

4) Whether the plaintiffs prove that they have put up first floor construction in the suit schedule property by spending their self earned money as pleaded?

5) Whether the plaintiffs are entitled to any share in the suit schedule property?

6) If so, what is their share?

7) Whether the plaintiffs are entitled to mesne profits from the 2nd defendant?

8) To what order or decree?"

12. An additional issue i.e., "whether defendant No.2 proves that the suit is not maintainable as the same is barred by limitation?" was framed on 03.01.2015.

13. In order to prove their case, the plaintiff No.2 stepped into the witness box as PW.1 and adduced 10 documentary evidence as Ex.P.1 to Ex.P.10. The defendant No.2 was examined as DW.1 and Smt. Indira Rajendran wife of late Rajendran-defendant No.1 was examined as DW2 and at their instance, 20 documents were marked as Ex.D.1 to Ex.D.20.

VI <u>FINDINGS OF THE TRIAL COURT</u>:

14. The Trial Court has decided issue Nos.1 and 3 together. Issue No.1 was decided in the affirmative whereas, issue No.3 got decided in the negative. Issue Nos.2 and 4 were also decided in the negative whereas, issue Nos.5 and 6 got decided in the affirmative and issue No.7 was also decided in the negative.

15. The Trial Court has held that the suit schedule property was jointly purchased by late N. Srinivasalu and his wife Smt. Adilakshmi under the registered Sale Deed dated 23.05.1979 and there was no dispute regarding the joint acquisition of the property, and the suit schedule property jointly belonged to the parents. However, the Trial Court has rejected the contention of the defendant No.2 that Smt. Adilakshmi had acquired exclusive ownership over the northern half portion of the suit schedule property pursuant to the oral arrangement between herself and her husband. There was no partition deed, neither any written arrangement was available. No independent witness was produced to establish that the northern portion had fallen exclusively to the share of Smt. Adilakshmi. The Trial

Court has held that the property remained undivided and intact throughout, and therefore, Smt. Adilakshmi had no exclusive right over any specifically demarcated northern half portion of the property.

16. So far as the question of validity of the gift deeds is concerned, the Trial Court has held that the defendant No.2 had failed to prove due execution and validity of the registered gift deeds dated 09.12.2005 and 25.03.2006 executed by Smt. Adilakshmi in favour of the defendant No.2. No attesting witness was examined, neither the scribe of the gift deed was examined to prove the execution of the gift deeds. When the plaintiffs had specifically disputed the genuineness of the gift deeds, it was required to examine the attesting witness to prove the gift deeds. Even the gifted portions were not properly identifiable. The boundaries were not clearly established and the actual delivery of possession of the portion in the gift deeds were not proved. The Trial Court has, therefore, held that the property continued to remain intact and undivided and therefore, the alleged delivery of possession in favour of the defendant No.2 was doubtful.

17. It has been further held by the Trial Court that the admissions made by the defendant No.2 during the cross-examination that Smt. Adilakshmi continued to reside in the property, collected rents from the tenants and remained in control of the property till her death would prove that the alleged transfer of possession under the gift deeds was not believable. The Trial Court further held that Smt. Adilakshmi was suffering from prolonged illness and was dependent on defendant No.2 during her later days and the defendant No.2, taking advantage of her mother's ill-health and dependency, had obtained the gift deeds in her favour. The defendant No. 2 had failed to produce any evidence showing that the gift deeds were voluntarily executed by her mother and in view thereof, the Trial Court treated the transaction of the gift deeds as suspicious as the defendants have failed to dispel such suspicion.

18. The Trial Court also rejected the contention of the defendants that the suit was barred by limitation. The trial Court has accepted the plaintiffs' case that they came to know about the gift deeds only after the death of Smt. Adilakshmi in

the year 2010. The suit was filed soon thereafter and therefore, the challenge to the gift deeds was within the prescribed period of limitation.

19. The Trial Court also did not accept the plea that the plaintiffs had converted themselves to Christianity and therefore, lost their rights under the Hindu Succession Act. The trial Court has been of the view that the defendant No.2 had failed to produce any documentary or oral evidence proving conversion of the plaintiffs to Christianity. However, the Trial Court has rejected the contention of the plaintiffs about their contribution in the construction of first floor portion of the building and renovation of the ground floor in absence of any supporting evidence proving such financial contribution.

20. The Trial Court has held that the gift deeds were not proved and were executed in suspicious circumstances and they were not binding on the plaintiffs. It was further held that the suit schedule property remained joint and therefore, the plaintiffs and the legal representatives of the defendant No.1 were entitled to $1/4^{th}$ share each in the suit schedule property. The claim for mesne profits was rejected on the ground that

there was no sufficient evidence regarding the actual rental income or exclusive receipt of rents by the defendant No.2.

21. The present appeal has been filed only by the defendant No.2 and the legal representatives of the defendant No.1 have not chosen to challenge the impugned judgment and decree.

VII <u>POINT FOR CONSIDERATION IN THE APPEAL</u>:

22. The only point for determination in this appeal is whether the Trial Court was justified in declaring the registered Gift Deeds dated 09.12.2005 and 25.03.2006 as invalid and not binding on the plaintiffs and the legal representatives of the defendant No.1?

VIII <u>ANALYSIS & CONCLUSION</u>:

23. The gift deeds were duly registered documents executed by Smt. Adilakshmi in favour of the defendant No.2. A registered document carries a presumption of genuineness unless rebutted by cogent, convincing and credible evidence. The Trial Court has proceeded on the presumption that non-examination of the attesting witnesses was fatal to the defence of the defendant No.2. However, the Trial Court has failed to

appreciate that the gift deeds were not mere private writings, but registered instruments executed before the Sub-Registrar. The Trial Court has also erred in holding that delivery of possession and exact demarcation of the gifted property were mandatory requirements for a valid gift deed under Section 123 of the Transfer of Property Act, 1882 (hereinafter referred to as 'the Transfer of Property Act').

24. The Supreme Court, in the case of ***GOVINDBHAI CHHOTABHAI PATEL vs PATEL RAMANBHAI MATHURBHAI ([2020] 16 SCC 255)***, has held that a registered gift deed need not be proved by examining an attesting witness unless its execution is specifically denied. On examination of Section 68 of the Indian Evidence Act along with Section 123 of the Transfer of Property Act, it has been observed that mere allegation that the gift deed is invalid, suspicious or not binding are insufficient. There must be a clear and specific denial that the executant actually signed or executed the document. Since a registered document carries a presumption of genuineness, examination of an attesting witness is unnecessary unless the execution itself is directly

disputed. The following paragraphs of the said judgment, which are relevant, are extracted hereunder:-

> *"**22.** Section 68 of the Evidence Act, reads as under:*
>
> *"**68. Proof of execution of document required by law to be attested**.—If a document is required by law to be attested, it shall not be used as evidence until one attesting witness at least has been called for the purpose of proving its execution, if there be an attesting witness alive, and subject to the process of the court and capable of giving evidence:*
>
> *Provided that it shall not be necessary to call an attesting witness in proof of the execution of any document, not being a will, which has been registered in accordance with the provisions of the Indian Registration Act, 1908 (16 of 1908), unless its execution by the person by whom it purports to have been executed is specifically denied."*
>
> ***23.** A gift deed is required to be compulsorily attested in terms of Section 123 of the Transfer of Property Act, 1882. Similar is the provision in respect of execution of a will which is required to be attested in terms of Section 63 of the Succession Act, 1925. Section 68 of the Evidence Act makes it mandatory to examine one of the attesting witnesses for the purpose of proving of the execution of will but such limitation is not applicable in respect of proof of execution of any document which has*

been registered in accordance with the provisions of the Registration Act, 1908, unless the execution is specifically denied.

30. *The appellants challenged the gift deed on account of probabilities as the witnesses were not related to the family or the friends or that the gift was not for religious or charitable purposes. The other challenge was on the ground of forgery or fabrication. The entire reading of the plaint does not show that there was any specific denial of execution of the gift deed.*

39. *In Kannan Nambiar v. Narayani Amma [Kannan Nambiar v. Narayani Amma, 1984 SCC OnLine Ker 174 : 1984 KLT 855] , the Division Bench of the Kerala High Court was considering a suit filed by daughter of a donee claiming share in the property. The gift deed was admitted in evidence without any objection. The Court held that specific denial of execution of gift is an unambiguous and categorical statement that the donor did not execute the document. The Court held as under: (SCC OnLine Ker paras 14-15 & 18)*

"14. Ab initio we have to examine whether there is any specific denial of the execution of the document, in the pleadings. Before considering whether there is specific denial we have to consider what is the exact requirement demanded when the proviso enjoins a specific denial. "Specific" means with exactness, precision in a definite manner (see Webster's 3rd New International

Dictionary). It is clear, that something more is required to connote specific denial in juxtaposition to general denial. See Dashrath Prasad Bajooram v. Lallosingh Sanmansingh [Dashrath Prasad Bajooram v. Lallosingh Sanmansingh, 1950 SCC OnLine MP 120 : AIR 1951 Nag 343] .

15. We think that specific denial of execution of gift is an unambiguous and categorical statement that the donor did not execute the document. It means not only that the denial must be in express terms but that it should be unqualified, manifest and explicit. It should be certain and definite denial of execution. What has to be specifically denied is the execution of the document. Other contentions not necessarily and distinctly referring to the execution of the document by the alleged executant cannot be gathered, for the denial contemplated in the proviso.

***

18. The question which elicited the above answer gives a clear understanding of the case of the defendants as they understood their case. Defendants have no case that no document was executed by Anandan Nambiar. Their case is that the document is not valid because it had been executed under circumstances which would render the document invalid. There is no specific denial of the execution of the document. The respondents can seek the aid of the proviso to Section 68 of the Evidence Act. No defect in not calling an attesting witness to prove the document. We do not think that we can ignore Ext. A-1 gift *deed on the ground that no attesting witness has been called for, for proving the gift deed."*

40. *The facts of the present case are akin to the facts which were before the Kerala High Court in Kannan Nambiar [Kannan Nambiar v. Narayani Amma, 1984 SCC OnLine Ker 174 : 1984 KLT 855] . The appellants have not denied the execution of the document but alleged forgery and fabrication. In the absence of any evidence of any forgery or fabrication and in the absence of specific denial of the execution of the gift deed in the manner held in Kannan Nambiar [Kannan Nambiar v. Narayani Amma, 1984 SCC OnLine Ker 174 : 1984 KLT 855] , the donee was under no obligation to examine one of the attesting witnesses of the gift deed. As per evidence on record, the donee was taking care of the donor for many years. The appellants were residing in the United States but failed to take care of their parents. Therefore, the father of the appellants has executed gift deed in favour of a person who stood by him. We find that there is no error in the findings recorded by the High Court."*

25. Section 123 of the Transfer of Property Act reads as under:

*"**123. Transfer how effected.**—For the purpose of making a gift of immoveable property, the transfer must be effected by a registered instrument signed by or*

> *on behalf of the donor, and attested by at least two witnesses.*
>
> *For the purpose of making a gift of moveable property, the transfer may be effected either by a registered instrument signed as aforesaid or by delivery.*
>
> *Such delivery may be made in the same way as goods sold may be delivered."*

26. Thus, the essential requirements under Section 123 of the Transfer of Property Act for the purposes of making a gift of immovable property are its execution, attestation and registration. Once these requirements are fulfilled, the gift becomes complete. In the case on hand, the Trial Court has imposed additional conditions which are not provided under Section 123 of the Transfer of Property Act. Moreover, the subsequent conduct of the defendant No.2 in obtaining the khata and paying taxes pursuant to the gift deeds, strongly corroborates the validity of the transactions. In absence of convincing and credible evidence proving fraud, coercion or fabrication, the Trial Court ought not to have invalidated the gift deeds merely on suspicion and conjunction.

27. Upon the death of N. Srinivasalu, Smt. Adilakshmi not only became the absolute owner of her own share, but also inherited $1/5^{th}$ share in her deceased husband's share in the property as a Class-I heir. Consequently, she possessed the legal competence to execute the gift deeds. The Trial Court has ignored the surrounding circumstances and the subsequent conduct demonstrating acceptance of the gift. The mutation entries, tax paid receipts and khata extracts produced by the defendant No.2 would indicate that the gift deed had been acted upon. These circumstances clearly would establish that the donor intended to transfer her interest in favour of the defendant No.2. The appreciation of evidence by the Trial Court was, therefore, selective and incomplete.

28. Once the execution and registration of the gift deed was not in dispute, it was for the plaintiff to prove the execution of the gift deed was a result of fraud, coercion or undue influence by leading cogent and credible evidence. In the present case, the defendant No.2 had produced the original registered gift deeds marked as Ex.D.4 and Ex.D.5. Once such documents were produced before the Court, the initial burden stood

discharged by the defendant. In the case of ***PREM SINGH AND OTHERS vs BIRBAL AND OTHERS ([2006] 5 SCC 353)***, the Supreme Court has held that a registered document carries the presumption of validity and genuineness. Once the document is duly registered, the burden shifts to the person challenging it to prove fraud, illegality or invalid execution. Mere allegations are insufficient. The party disputing the document must adduce cogent evidence to rebut the presumption attached to the registered instrument. The relevant paragraph of the said judgment is extracted hereunder:-

> *"27. There is a presumption that a registered document is validly executed. A registered document, therefore, prima facie would be valid in law. The onus of proof, thus, would be on a person who leads evidence to rebut the presumption. In the instant case, Respondent 1 has not been able to rebut the said presumption."*

29. The plaintiffs did not produce any evidence to prove the alleged manipulation and misuse of the ill-health of Smt. Adilakshmi. Mere allegations and suspicions cannot invalidate solemn registered documents. The Trial Court has overlooked this settled principle and shifted the burden on the defendant

No.2 to prove the validity of the gift deeds. In the case of ***RANGANAYAKAMMA AND ANOTHER vs K.S. PRAKASH (DEAD) BY LRS. AND OTHERS ([2008] 15 SCC 673)***, it has been held by the Supreme Court that the allegations of fraud, undue influence or coercion cannot be accepted on vague assertions. Such allegations must be specifically pleaded with material particulars and strictly proved by cogent evidence. The burden lies on the party alleging fraud, coercion as these are serious allegations that cannot be presumed by the Court.

30. In view of the aforesaid discussion, we are of the view that the Trial Court has failed to appreciate that the execution of the gift deeds was supported by further actions including mutation entries, tax paid receipts and long standing conduct of the defendant No.2 in relation to the property. The Trial Court also failed to appreciate that the plaintiffs had failed to discharge their burden of proving invalidity of the gift deeds and it was not for the defendant No.2 to prove the validity of the gift deeds once their execution and registration were not in dispute.

31. In view of the aforesaid, we set aside the finding of the Trial Court regarding the validity of the gift deeds and allow the appeal to that extent. The plaintiffs, however, would be entitled for partition and separate possession of $1/10^{th}$ share each along with the legal heirs of the defendant No.1 and the defendant No.2 of the suit schedule property.

32. Let decree be drawn accordingly. However, there will be no order as to costs.

In view of disposal of the appeal, pending IAs, if any, do not survive for consideration and accordingly, they stand disposed of.

Sd/-
(D K SINGH)
JUDGE

Sd/-
(S RACHAIAH)
JUDGE

BKV
List No.: 2 Sl No.: 13
CT: SN