



IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 27TH DAY OF MARCH, 2026

BEFORE

THE HON'BLE MR. JUSTICE SACHIN SHANKAR MAGADUM

REGULAR FIRST APPEAL NO. 2432 OF 2024 (PAR)

C/W

REGULAR FIRST APPEAL NO. 2276 OF 2024 (PAR)

IN RFA No. 2432/2024

BETWEEN:

1. SMT. A.D. LAVANYA PRASAD
W/O SRI G V R PRASAD
RESIDING AT NO. 73/3, MANASA
MILLERS ROAD, VASANTHNAGAR
BENGALURU - 560052.

REPRESENTED BY HER
HUSBAND AND GPA HOLDER
SRI G V R PRASAD
S/O LATE G V S MARULIAIAH
AGED ABOUT 73 YEARS
RESIDING AT NO. 73/3, MANASA
MILLERS ROAD, VASANTHNAGAR
BENGALURU - 560052.

...APPELLANT

(BY SRI. K. SHRIHARI, ADVOCATE)

AND:

1. SMT. UMA DEVARAJ
W/O LATE A.N. DEVRAJ
AGED ABOUT 82 YEARS



NC: 2026:KHC:18372
RFA No. 2432 of 2024
C/W RFA No. 2276 of 2024

2. SRI A.D. SUROOP
S/O LATE A.N. DEVRAJ
AGED ABOUT 62 YEARS

R1 AND R2 ARE
RESIDING AT NO. 73, MAYA
MILLER ROAD, VASANTHNAGAR
BENGALURU - 560052.

...RESPONDENTS

(BY SMT. S. SUSHEELA, SENIOR ADVOCATE FOR
SRI. DAYALU .K.N, ADVOCATE)

THIS RFA IS FILED UNDER ORDER 41 RULE 1 R/W
SEC.96 OF CPC., AGAINST THE JUDGMENT AND DECREE
DATED 10.09.2024 PASSED IN OS NO.62/2015 ON THE FILE
OF LXXV ADDITIONAL CITY CIVIL AND SESSIONS JUDGE,
BENGALURU, DECREETING THE SUIT FOR PARTITION AND
SEPARATE POSSESSION.

IN RFA NO. 2276/2024
BETWEEN:

1. SMT. UMA DEVARAJ
W/O LATE A N DEVARAJ
AGED ABOUT 84 YEARS
2. SRI. A.D. SUROOP
S/O LATE A N DEVARAJ,
AGED ABOUT 63 YEARS

NO.1 AND 2 ARE
RESIDING AT NO. 73
MAYA, MILLERS ROAD
VASANTHANAGARA
BANGALORE - 560 052.

...APPELLANTS

(BY SMT. S. SUSHEELA, SENIOR ADVOCATE FOR
SRI. DAYALU .K.N, ADVOCATE)



NC: 2026:KHC:18372
RFA No. 2432 of 2024
C/W RFA No. 2276 of 2024

AND:

1. SMT A.D. LAVANYA PRASAD
D/O LATE A N DEVARAJ
W/O LATE G V R PRASAD
AGED ABOUT 65 YERS
RESIDING AT NO. 73/3, MANASA
MILLERS ROAD, VASANTHANAGAR
BANGALORE - 560 052.

REPRESENTED BY HER
HUSBAND AND GPA HOLDER
SRI. G V R PRASAD
S/O LATE G V S MARULAIAH
AGED ABOUT 72 YEAS
RESIDING AT NO. 73/3, MANASA
MILLERS ROAD, VASANTHANAGAR
BANGALORE - 560052.

...RESPONDENT

(BY SRI. K. SHRIHARI, ADVOCATE)

THIS RFA IS FILED UNDER SECTION 96 OF CPC, AGAINST
THE JUDGMENT AND DECREE DATED 10.09.2024 PASSED IN
OS.NO.62/2015 ON THE FILE OF THE LXXV ADDITIONAL CITY
CIVIL AND SESSIONS JUDGE, BENGALURU, DECREERING THE
SUIT FOR PARTITION.

THESE APPEALS, COMING ON FOR DICTATING
JUDGMENT, THIS DAY, JUDGMENT WAS DELIVERED THEREIN
AS UNDER:

CORAM: HON'BLE MR. JUSTICE SACHIN SHANKAR MAGADUM



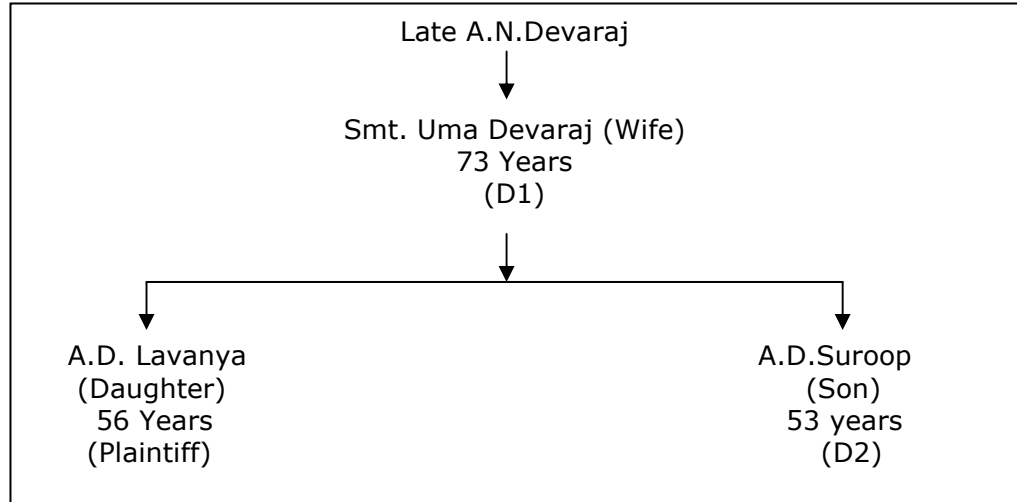
ORAL JUDGMENT

These two appeals are filed assailing the judgment and decree dated 10.09.2024 passed in O.S.No.62/2015 on the file of the LXXV Additional City Civil and Sessions Judge, Bengaluru. RFA.No.2432/2024 is filed by the plaintiff feeling aggrieved by the one-third (1/3rd) share granted by the trial Court. RFA.No.2276/2024 is filed by the defendants being aggrieved by the findings recorded by the Trial Court, particularly in regard to the validity of the partition deed dated 13.06.1974, the due execution of the gift deed dated 31.10.2006 and the proof of the Will dated 04.04.2005. Both the appeals arise out of the judgment and decree passed by the Trial Court and therefore, are taken up together for consideration.

2. For the sake of brevity, the parties are referred to as per their rank before the trial Court.



3. The family tree is as under:



4. Facts leading to the case are as under:

The plaintiff instituted a suit for partition and separate possession in O.S.No.62/2015, claiming one-third share in the suit schedule properties on the assertion that the properties constitute joint family ancestral properties. The plaintiff contended that she, being the daughter of late Devaraj and defendant No.1, is entitled to her legitimate share in the joint family estate. In the said suit, the plaintiff has also challenged the registered gift deed dated 31.10.2006 executed by late Devaraj in favour of



defendant No.2, her brother, contending that the same is not binding on her share. The plaintiff has further sought a declaration that the partition deed dated 13.06.1974, alleged to have been entered into between her father-Devaraj and defendant No.2, is also not binding on her. The plaintiff has also disputed the Will dated 04.04.2005, under which Devaraj is alleged to have made a testamentary disposition bequeathing item No.2 of the suit schedule properties in favour of defendant No.2.

5. Upon service of summons, defendant No.2 entered appearance and contested the suit, placing reliance on the registered gift deed executed by his father in respect of item No.3 of the suit properties and also on the Will dated 04.04.2005 executed by his father in respect of Item No.2 of the suit schedule properties.

6. The Trial Court, on the basis of the rival pleadings, framed appropriate issues and called upon the parties to adduce their oral and documentary evidence.



The plaintiff did not enter the witness box. Instead, her husband, acting as her General Power of Attorney holder, stepped into the witness box and tendered oral and documentary evidence. On the other hand, defendant No.2 examined himself and also adduced oral and documentary evidence in support of the Will. In order to prove the Will, defendant No.2 examined one of the attesting witnesses and also examined the son of the other attesting witness who was predeceased. The defendant also relied upon Exs.D-6 and D-7, which are affidavits purportedly executed by the plaintiff and defendant No.1 acknowledging the testamentary arrangement made by late Devaraj.

7. However, the Trial Court, upon appreciation of the evidence on record, answered Issue Nos.1 to 4 in the affirmative, holding that the plaintiff has succeeded in proving that the gift deed dated 31.10.2006 was obtained by fraud, coercion and undue influence. While answering Issue No.3, the Trial Court further held that the partition



deed dated 13.06.1974 is not binding on the plaintiff. The Will dated 04.04.2005 was also held to have not been proved in accordance with law, and accordingly Issue No.4 was answered in the negative.

8. The Trial Court, upon appreciation of the pleadings and evidence on record, proceeded to decree the suit and held that the plaintiff is entitled to one-third share in the suit schedule properties, thereby granting a preliminary decree for partition and separate possession. Being aggrieved by the findings recorded by the Trial Court, particularly in regard to the validity of the partition deed dated 13.06.1974, the due execution of the gift deed dated 31.10.2006 and the proof of the Will dated 04.04.2005, defendant No.2 has preferred an appeal in RFA No.2276/2024 before this Court.

9. On the other hand, the plaintiff has also preferred a cross appeal in RFA No.2432/2024, contending that the Trial Court has erred in restricting her entitlement



to one-third share and seeking a declaration that she is entitled to a larger share in the suit schedule properties.

10. Learned Senior Counsel appearing for defendant No.2 in RFA No.2276/2024, reiterating the grounds urged in the memorandum of appeal, would vehemently contend that the plaintiff, despite having specifically challenged the registered gift deed dated 31.10.2006 and the Will dated 04.04.2005 executed by her father in favour of defendant No.2, has not entered the witness box to substantiate her allegations. Instead, the suit has been prosecuted through her husband, who has stepped into the witness box as a General Power of Attorney holder and has adduced oral and documentary evidence on her behalf. Learned Senior Counsel would submit that when serious allegations such as fraud, coercion and undue influence are made against registered documents executed by the father, the non-appearance of the plaintiff in the witness box assumes significance and an adverse inference ought to have been drawn by the Trial Court.



11. Referring to the registered partition deed dated 13.06.1974, marked as Ex.D-2, learned Senior Counsel would submit that suit item No.2, namely property bearing No.73, was the subject matter of the said partition. Placing reliance on Ex.D-2, it is contended that under the said registered partition deed, the plaintiff was allotted a sum of Rs.75,000/-, while property bearing No.73/1 was allotted to the father, Devaraj. It is further contended that out of the property bearing No.73, a portion was subsequently carved out and renumbered as property No.73/3, which was conveyed under a registered release deed dated 23.11.1991, marked as Ex.P-2. According to the learned Senior Counsel, the plaintiff having derived a benefit from the property traceable to the registered partition deed of 1974, is estopped from questioning the very same partition deed.

12. Learned Senior Counsel would further submit that the property which was the subject matter of the said partition was not even included in the schedule of the



present partition suit. When an I.A. was filed by defendant No.2 seeking inclusion of the property that had fallen to the share of the father under the 1974 partition, now referred to as item No.4, the plaintiff, in her objections, has clearly acknowledged the existence and knowledge of the registered partition deed dated 13.06.1974. This, according to the learned Senior Counsel, clearly demonstrates that the plaintiff had prior knowledge of the partition and yet has chosen to challenge it belatedly.

13. Placing further reliance on Ex.D-41, learned Senior Counsel would draw attention to a suit filed by one Amarjit Singh against the plaintiff's father and the present plaintiff in O.S.No.4021/1993. It is pointed out that in the said proceedings the plaintiff's father, Devaraj, had sold a portion of property bearing Survey No.73 to the said Amarjit Singh, and the present plaintiff had also filed a written statement in the said suit. Referring to the pleadings in O.S.No.4021/1993, learned Senior Counsel would submit that there are categorical averments



acknowledging Devaraj as the absolute owner of property bearing Survey No.73, which, according to her, clearly contradicts the present plea taken by the plaintiff in the partition suit.

14. It is therefore contended by the learned Senior Counsel that the present suit, insofar as it seeks a declaration that the registered partition deed dated 13.06.1974 is not binding on the plaintiff, is clearly barred by limitation. Placing reliance on Articles 58 and 59 of the Limitation Act, 1963 (for short 'the Limitation Act'), she would submit that a suit seeking declaration or cancellation of a document must be instituted within the prescribed period from the date on which the right to sue first accrues. According to her, even assuming that the plaintiff was a minor at the time of the partition in 1974, the cause of action at the latest arose in the year 1991, when a registered release deed dated 23.11.1991, marked as Ex.P-2, came to be executed in favour of the plaintiff. She would submit that the mutation entries and khata



standing in the names of the plaintiff and Amarjit Singh in respect of property bearing No.73 clearly demonstrate that the partition deed had been acted upon, and therefore the challenge raised in the present suit, instituted decades later, is hopelessly barred by limitation.

15. Insofar as the Will dated 04.04.2005 is concerned, learned Senior Counsel would vehemently argue that the plaintiff herself had earlier acknowledged the testamentary arrangement. She would point out that the plaintiff and defendant No.1, her mother, had filed affidavits before the BBMP consenting for change of khata in favour of defendant No.2 on the basis of the said Will, which affidavits are marked as Exs.D-6 and D-7. These documents, according to her, clearly indicate that the plaintiff had accepted the Will and the consequent mutation in favour of defendant No.2.

16. Learned Senior Counsel would further submit that when the plaintiff subsequently disputed the Will by



contending that it was fabricated, defendant No.2 filed an application before the Trial Court seeking reference of the disputed signature of Devaraj on the Will for expert examination. The said application was strongly opposed by the plaintiff, but the Trial Court nevertheless allowed the same. Aggrieved by the said order, the plaintiff approached this Court by filing W.P.No.4082/2023. It is pointed out that in the course of the said proceedings, the plaintiff strangely acknowledged the signature of her father on the Will and virtually admitted its execution.

17. Learned Senior Counsel would further submit that in order to prove the Will, defendant No.2 has examined one of the attesting witnesses as well as the son of the other attesting witness who was predeceased, thereby complying with the statutory requirements relating to proof of a Will. When this evidence is considered in conjunction with the affidavits at Exs.D-6 and D-7 and the observations made by this Court in W.P. No.4082/2023, it clearly establishes the due execution of



the Will. According to the learned Senior Counsel, the Trial Court has failed to advert to these crucial pieces of evidence, and therefore the finding recorded by the Trial Court holding that the Will is not proved is perverse and unsustainable.

18. Insofar as the registered gift deed dated 31.10.2006 is concerned, learned Senior Counsel would contend that the plaintiff, despite challenging the said document, has not entered the witness box and has instead chosen to prosecute the suit through her husband acting as a General Power of Attorney holder. Drawing attention to the pleadings in the plaint, particularly paragraph 13, she would submit that the allegation made therein is only to the effect that the defendant No.2 "might have got the gift deed executed by practising fraud, coercion and undue influence." According to the learned Senior Counsel, such a vague plea does not satisfy the mandatory requirement under Order VI Rule 4 of the Code of Civil Procedure, 1908, which requires that allegations of



fraud, coercion or undue influence must be pleaded with specific particulars. Learned Senior Counsel would further submit that when the registered gift deed was confronted to PW.1 during cross-examination, he has admitted the existence of the document, whereupon the same came to be marked as Ex.P-11. It is pointed out that PW.1 has categorically stated that he has no personal knowledge regarding the alleged coercion or undue influence in the execution of Ex.P-11. Therefore, according to the learned Senior Counsel, the very foundation of the plaintiff's challenge to the gift deed stands demolished.

19. Learned Senior Counsel would further point out that one of the attesting witnesses to the gift deed has been examined as DW.5, and through his evidence the defendant No.2 has clearly established the due execution of the registered gift deed. Despite the said evidence on record, the Trial Court has, according to her, recorded a finding against the validity of the gift deed without assigning cogent reasons. She would also submit that the



Trial Court has failed to advert to several material aspects of the matter, including the question of limitation, the observations made by this Court in W.P.No.4082/2023, and the significant admissions elicited in the cross-examination of PW.1. It is further contended that the Trial Court has failed to apply the principle embodied under Section 114(g) of the Indian Evidence Act, 1872 (for short 'the Evidence Act') which permits the Court to draw an adverse inference against a party who, despite having personal knowledge of the facts, fails to enter the witness box.

20. In view of these circumstances, learned Senior Counsel would submit that the findings recorded by the Trial Court, particularly in relation to the Will and the gift deed, suffer from serious perversity and non-consideration of material evidence on record. Placing reliance on the judgments cited in support of these propositions, she would therefore seek setting aside of the judgment and



decree passed by the Trial Court and dismissal of the suit filed by the plaintiff.

21. Learned counsel appearing for the plaintiff, on the other hand, supports the judgment and decree passed by the Trial Court. Referring to Section 120 of the Evidence Act, he would submit that the husband of the plaintiff was competent to depose on her behalf, and therefore the evidence tendered through the husband acting as the General Power of Attorney holder cannot be discarded merely on the ground that the plaintiff herself has not entered the witness box.

22. With regard to the registered partition deed dated 13.06.1974, marked as Ex.D-2, learned counsel would contend that the said document has never been acted upon. Referring to the evidence of DW.2 and other witnesses, he would argue that the alleged payment of Rs.75,000/- to the plaintiff under the said partition deed has not been established. It is further pointed out that the



plaintiff was a minor in the year 1974, and in the absence of convincing evidence demonstrating that the amount of Rs.75,000/- was actually paid to or received on behalf of the plaintiff, the alleged partition cannot be said to have been acted upon or proved in accordance with law.

23. Insofar as the Will dated 04.04.2005 is concerned, learned counsel would contend that irrespective of the observations made by this Court in the earlier writ proceedings, the burden of proving the Will squarely lies on the propounder of the Will, namely defendant No.2. According to him, the Will is surrounded by suspicious circumstances, and therefore the propounder is required to dispel the same by leading cogent and satisfactory evidence. Placing reliance on certain contradictions elicited in the cross-examination of DW.1, learned counsel would argue that the execution and genuineness of the Will have not been satisfactorily proved.



24. With regard to the registered gift deed, learned counsel would submit that the suit schedule properties are joint family ancestral properties, and therefore Devaraj, the father of the plaintiff, had no absolute right or competence to execute a gift deed in respect of the joint family properties in favour of defendant No.2. On this premise, he would contend that the Trial Court was justified in holding that the gift deed is not binding on the plaintiff's share.

25. Lastly, insofar as the quantification of the plaintiff's share is concerned, learned counsel would submit that if the partition deed of 1974 is ignored, the plaintiff would be entitled to one-third share in the suit schedule properties as a coparcener. It is further contended that upon the death of the plaintiff's mother, the plaintiff would also succeed to one-ninth share out of her mother's one-third share, and thus the plaintiff would in total be entitled to $\frac{4}{9}^{\text{th}}$ share in the suit schedule



properties. On these grounds, learned counsel seeks dismissal of the appeal in RFA.No.2276/2024.

26. Heard learned Senior Counsel appearing for the defendants and learned counsel appearing for the plaintiff. Perused the records. On meticulous examination of the pleadings, oral and documentary evidence, the following points would arise for consideration:

(i) Whether the Trial Court was justified in holding that the registered partition deed dated 13.06.1974 is not binding on the plaintiff?

(ii) Whether the Trial Court was justified in holding that the registered gift deed dated 31.10.2006 executed by late Devaraj in favour of defendant No.2 is vitiated by fraud, coercion and undue influence and consequently not binding on the plaintiff?

(iii) Whether defendant No.2 has succeeded in proving the due execution and attestation of the Will dated 04.04.2005 in accordance with law?



(iv) Whether the suit filed by the plaintiff seeking declaration that the registered partition deed dated 13.06.1974 and the gift deed dated 31.10.2006 are not binding on her is barred by limitation under Articles 58 and 59 of the Limitation Act?

(v) Whether the plaintiff, having not entered the witness box and having prosecuted the suit through her husband as GPA holder, has discharged the burden of proving the allegations of fraud, coercion and undue influence?

(vi) Whether the judgment and preliminary decree passed by the Trial Court granting one-third share to the plaintiff call for interference in the appeal filed by defendant No.2 in RFA No.2276/2024?

(vii) Whether the plaintiff in RFA No.2432/2024 is entitled to a larger share than what has been granted by the Trial Court?

(viii) What order?



Finding on Point Nos.(i) & (iv):

27. The core question that arises for consideration is whether the plaintiff, being a daughter of late Devaraj, had the locus to question the registered partition deed dated 13.06.1974, which is produced and marked in evidence as Ex.D-2. Under the said registered partition deed, the properties bearing Survey No.73, comprising suit item Nos.1, 2 and 4, were the subject matter of partition and the said properties were allotted to Devaraj, the father of the plaintiff. The plaintiff seeks to dispute the said partition primarily on the ground that the alleged payment of Rs.75,000/-, which is stated to have been made to her under the terms of the partition, has not been substantiated by acceptable evidence and therefore the partition deed cannot be said to have been acted upon.

28. Even assuming for a moment that the payment of Rs.75,000/- has not been satisfactorily proved, the fundamental question that still requires consideration is



whether the plaintiff, as a daughter during the lifetime of her father Devaraj, had any enforceable right in the coparcenary property so as to question the partition effected in the year 1974. The answer, in the considered opinion of this Court, has to be in the negative. At the relevant point of time in the year 1974, the plaintiff, being a daughter, did not possess coparcenary rights in the joint family property, and therefore she had no independent or vested right to seek reopening of the partition effected between the male members of the family.

29. Once a registered partition deed has been executed and acted upon, the burden squarely lies on the person challenging the same to establish that the partition was either sham, nominal or otherwise not binding. In the present case, the material on record indicates that the partition was indeed acted upon. A significant circumstance in this regard is the registered release deed dated 23.11.1991, marked as Ex.P-2, under which a portion of property bearing Survey No.73, which came to



the share of Devaraj under the partition, was conveyed in favour of the plaintiff. The said property is presently referred to as item No.4 in the suit schedule. It is not in dispute that the plaintiff, having derived title to the said portion under the registered release deed, subsequently gifted the same in favour of her husband. Having thus derived benefit from a property traceable to the very partition which she now seeks to question, the plaintiff cannot be permitted to selectively challenge the partition deed.

30. Yet another significant transaction which demonstrates that the partition deed was acted upon is the registered sale deed dated 26.10.1977, executed by Devaraj in respect of a portion of property bearing Survey No.73, which was later renumbered as 73/2, in favour of one Amarjit Singh. The said Amarjit Singh had subsequently instituted O.S.No.4021/1993 against Devaraj and the present plaintiff when a dispute arose in relation to the said property. The pleadings and the boundaries



indicated in the said suit clearly disclose that the remaining extent of the property continued to be held and enjoyed by Devaraj, which further corroborates the fact that the partition effected in the year 1974 had been acted upon by the parties. Therefore, this Court deems it fit to extract para 3 of the plaint filed by Amarjit singh filed in O.S.No.4021/1993. Para 3 reads as under:

"3. The plaintiff submits that the entire property bearing Old No.73, Millers Road, Bangalore measuring in an extent of East to West 250 feet 6" and North to South (80+76)/2 belonged to the first defendant, the father of the second defendant herein."

31. It is also relevant to note that plaintiff who is also as arrayed as defendant No.2, at para 4 of the written statement has candidly admitted the contents of para 3 of the plaint. Para 4 of the written statement in O.S.No.4021/1993 is extracted, which reads as under:

"4. Regarding Para No.3: - This Defendant admits the same as true."



32. On examining these crucial pleadings at undisputed point of time, the property item No.1 bearing property No.73 was divided into three parts. One portion was sold in favour of Amarjit Singh with the specific boundaries under registered sale deed dated 26.10.1977 evidenced at Ex.D-1. The same is as under:

". All that piece and parcel of land with building bearing municipal New No.73/2, Miller Road, Bangalore, bounded on the East by the house of Mrs. C.J.Machaiah, West by Building bearing No.73 of the Vendor and 18 feet wide approach road and north by the building of Major Rajan beyond the compound wall and on the South by the building of Smt. Shivamma Devegowda beyond the Compound wall, and measuring East to West 69 feet and North to South on the Eastern side 76 feet and on the Western side 78 feet, more fully delineated in the plan annexed to this deed and marked as ABCD. The Vendor has given to the purchaser the right to use the 18 feet wide approach road marked as DIEFKG and 10 feet approach road marked as MLKG as passage in common with the vendor. The Vendor shall construct a wall along with line JC and a wall along the line JH marked in the plan at his own cost within two months from this day the site is away from the main road and behind the two buildings. The market value will not fetch as per present



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rate. Hence the value showed in the document is over the value. "

(Emphasis supplied)

33. Subsequently, Devaraj conveyed one more portion to the present plaintiff under registered release deed dated 23.11.1991 which is referred as item No.4. The boundaries are as under:

" THE SCHEDULE ABOVE REFERRED TO

All the piece and parcel of immoveable property bearing No.73/3, situated in Millers Road, Corporation Division No.72, Bangalore, measuring East to West 28 Feet 6 Inches or 8.686 Meters on the Southern side: 8 Feet 20 Feet 6 Inches or 2.438 meters + 6.248 meters on the Northern side and North to South 76 Feet or 23.164 meters on the Eastern side and 33 Feet 6 Inches 42 Feet 6 Inches or 10.210 Mts. + 12.954 Mts. on the Western side in total 1826 Sq.Ft. or 169.635 Sq.Mts. along with constructed structure and common passage for ingress and egress.

Bounded on:

EAST BY : Property No.72/2

WEST BY : Property No.73



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NORTH BY : Major Ramaswami's Property
and K.T.Apartments.

SOUTH BY : Smt. Shivamma Devegowda's
Property."

(Emphasis supplied)

34. The schedule in the suit filed by Amarjit Singh
in O.S.No.4021/1993 is also extracted which reads under:

" SCHEDULE

*All that piece and parcel of land with building,
bearing Municipal New No. 73/2, in Miller Road,
Bangalore, bounded on the East by the house of Mrs. C.I.
Machaiah, West by building bearing No.73 of the Vendor
and 18 feet wide approach road and North by the building
of Major Rajan, beyond the compound wall and on the
South by the building of Smt. Shivamma Devegowda
beyond the Compound wall, and measuring East to West
69 feet and North to South on the Eastern side 76 feet
and on the Western side 78 feet, more fully delineated in
the plan annexed to this deed and marked as ABCD.*

*The Vendor has given to the purchaser the right to
use the 18 feet wide approach road marked as D1FFKG
and 10 feet approach road marked as MLKG as passage in
common with the vendor."*

(Emphasis supplied)



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35. Remaining portion of the property bearing No.73 which is subject matter of Will (Ex.D-32) is bounded as under:

" SCHEDULE 'A' PROPERTY

All that piece and parcel of the House property bearing No. 73, Miller Road, Bangalore - 560052 and bounded on the:

EAST By: Property No. 73/3 Mr. Lavanya Prasad.

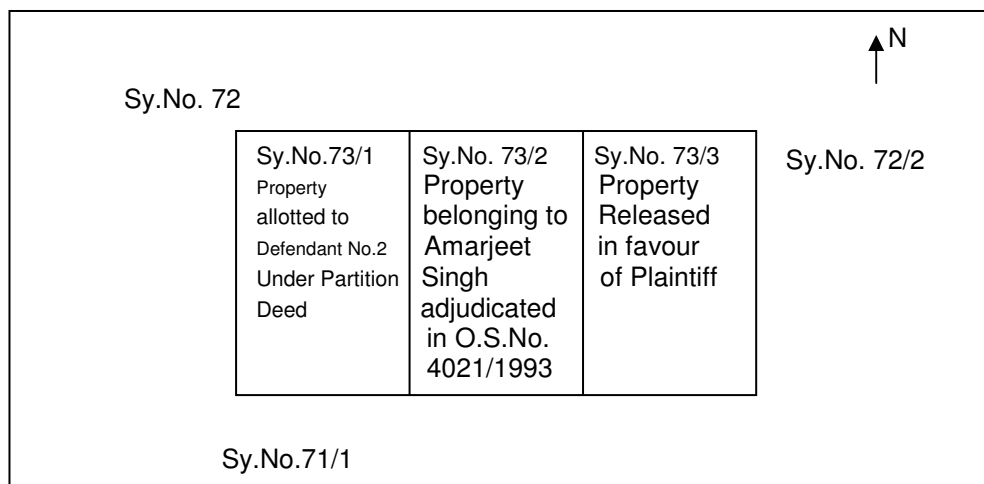
WEST BY: Property No. 73/1 A.D. Surop's property.

NORTH BY: Property No. 72. Mr. parthasarty.

SOUTH BY: Property No.71 Smt. Shivamma Devegowda."

(Emphasis supplied)

36. If the boundaries in all these three documents are taken together, following sketch would emerge, which is as under:



37. If these transactions are viewed cumulatively, it becomes evident that the registered partition deed dated 13.06.1974 had been given effect to and acted upon for decades. The plaintiff herself has derived benefit from the property flowing from the said partition in the year 1991, and therefore she is estopped from contending that the partition deed is not binding on her.

38. It is also relevant to note that the present suit has been instituted several decades after the execution of the partition deed, evidently in the backdrop of the amendment to Section 6 of the Hindu Succession Act, 1956 (for short 'the Hindu Succession Act'). However, if



the partition had already been effected under a registered instrument prior to the coming into force of the amended Section 6, the same cannot be reopened on the basis of the subsequent statutory amendment. The partition in the present case having been effected in the year 1974, the plaintiff cannot invoke the amended provisions of Section 6 to unsettle the said arrangement.

39. Apart from the above, the challenge to the partition deed is also hopelessly barred by limitation. The relief sought by the plaintiff is essentially one for declaration that the registered partition deed is not binding on her, which squarely attracts Articles 58 and 59 of the Limitation Act, 1963. The cause of action, at the very least, arose when the plaintiff obtained the benefit of the property under the registered release deed dated 23.11.1991, and therefore the suit instituted decades thereafter is clearly time-barred.



40. Another significant circumstance which cannot be ignored is that the plaintiff has not entered the witness box to substantiate her challenge to the partition deed. A careful reading of the plaint averments also indicates that the plaintiff has consciously avoided specifically referring to the registered partition deed, and has instead pleaded that property bearing Survey No.73/1 was transferred by Devaraj in favour of defendant No.2 allegedly to avoid income tax liabilities. Such a plea, in the absence of clear pleadings and supporting evidence, cannot displace a registered document of partition.

41. In the absence of the plaintiff entering the witness box and discharging the burden of proving that the partition deed is not binding on her, and having regard to the fact that she has derived benefit from the very same property traceable to the partition, she is clearly estopped from questioning the validity of the partition deed.



42. Accordingly, this Court is of the considered opinion that the Trial Court was not justified in holding that the registered partition deed dated 13.06.1974 is not binding on the plaintiff. The said finding recorded by the Trial Court is therefore unsustainable and liable to be set aside, and accordingly, Point No.(i) is answered in the **Negative** and Point No.(iv) is answered in the **Affirmative**.

Finding on Point No.(ii):

43. The challenge to the registered gift deed dated 31.10.2006, executed by late Devaraj in favour of defendant No.2, is primarily founded on the allegation that the said document was obtained by practising fraud, coercion and undue influence.

44. This Court therefore deems it fit to advert to the pleading in the plaint questioning the validity of the



gift deed. Para 13 of the plaint is relevant and the same is extracted which reads as under:

"13. The Plaintiff submits after the death of her father the Defendant No.2 transferred/mutated the khatha in his name in respect of the item No.3 of the suit schedule property without the knowledge and consent of the Plaintiff. The copy of the RTC and Mutation are herewith produced as ANNEXURES- J & K for kind perusal of this Hon'ble. The Plaintiff recently found out from the RTC that the Defendant No.2 has got the Item No.3 of the Suit Schedule Property in his favour by way of gift said to have been executed by late Sri. A.N. Devaraj vide gift dated 22-12-2006. The Plaintiff submits that her father had no intention of making any such gift and the Plaintiff suspects the Defendant No.2 might have got the gift deed executed in his favour by practicing fraud, coercion and under influence and the said gift deed dated 22-12-2006 is not binding on the Plaintiff."

45. However, on a careful examination of the pleadings and evidence on record, this Court finds that the plaintiff has failed to plead or establish any specific particulars in support of these allegations. In the plaint, the plaintiff has merely stated that the defendant "might have got the gift deed executed by practising fraud,



coercion and undue influence” upon Devaraj. Such vague and speculative assertions, without any material particulars, do not satisfy the mandatory requirement under Order VI Rule 4 of the Code of Civil Procedure, which requires that allegations of fraud, coercion or undue influence must be pleaded with specific particulars and supported by cogent evidence.

46. In the present case, the plaintiff has not examined any independent witnesses nor placed any credible material on record to demonstrate that the execution of the gift deed was vitiated by any such circumstances. More importantly, the plaintiff herself has not entered the witness box to substantiate the allegations made in the plaint. Instead, the suit has been prosecuted through her husband, who has stepped into the witness box as PW.1 in the capacity of a General Power of Attorney holder.



47. During the course of cross-examination of PW.1, the registered gift deed dated 31.10.2006 was confronted to him and the same was marked as Ex.P-11. PW.1 has admitted the existence of the gift deed. Significantly, he has also categorically stated that he has no personal knowledge regarding the alleged forcible execution of the gift deed. This admission clearly demonstrates that PW.1 was not privy to the circumstances under which the document came to be executed, and therefore his testimony does not advance the case of the plaintiff in establishing the allegations of fraud, coercion or undue influence.

48. Despite the plaintiff failing to discharge the initial burden of proof, the defendant No.2 has adduced positive evidence in support of the due execution of the gift deed. In this regard, one of the witnesses to the gift deed has been examined as DW.5, who has clearly deposed that late Devaraj voluntarily executed the gift deed in favour of defendant No.2. The testimony of DW.5



lends support to the genuineness and due execution of the gift deed. Nothing substantial has been elicited in the cross-examination of DW.5 so as to discredit his testimony.

49. The cross-examination of PW.1 further reveals that he has repeatedly expressed ignorance regarding the circumstances surrounding the execution of the gift deed, which indirectly establishes that he lacked personal knowledge of the transaction. In such circumstances, the evidentiary value of his testimony is limited, and the allegations of fraud, coercion and undue influence remain wholly unsubstantiated.

50. The Trial Court, however, without adequately examining these crucial aspects, has proceeded to hold that the gift deed is a concocted and fabricated document. Such a conclusion, in the absence of convincing evidence and in disregard of the material brought on record by the defendant No.2, cannot be sustained. The Trial Court has



failed to appreciate that the burden initially rested on the plaintiff to establish the circumstances of fraud, coercion or undue influence, and that such burden was never discharged.

51. Furthermore, the evidence adduced by the defendant No.2, including the testimony of DW.5, has been largely ignored by the Trial Court, which has resulted in an erroneous appreciation of the evidence on record. When the pleadings lack specific particulars, when the plaintiff herself has not stepped into the witness box, and when the only witness examined on her behalf admits lack of personal knowledge, the finding recorded by the Trial Court declaring the gift deed to be invalid is clearly unsustainable.

52. In the considered opinion of this Court, the findings recorded by the Trial Court in respect of the gift deed dated 31.10.2006 suffer from serious perversity and non-consideration of material evidence on record.



Accordingly, this Court holds that the Trial Court was not justified in declaring the registered gift deed dated 31.10.2006 as vitiated by fraud, coercion and undue influence. Point No.(ii) is accordingly answered in the ***Negative.***

Finding on Point No.(iii):

53. The initial burden to prove the Will dated 04.04.2005 undoubtedly rested on defendant No.2, who is the propounder and beneficiary under the testamentary document. In order to satisfy the statutory requirements relating to proof of a Will, particularly those contemplated under Section 63 of the Indian Succession Act, 1925 and Section 68 of the Evidence Act, 1872 the propounder is required to establish that the Will was duly executed by the testator and attested by at least two witnesses.

54. In the present case, the material on record indicates that defendant No.2 has led cogent and



satisfactory evidence to establish the due execution and attestation of the Will. In this regard, one of the attesting witnesses to the Will has been examined before the Court, and in addition, the son of the other attesting witness who had predeceased has also been examined. Through their evidence, the defendant No.2 has attempted to demonstrate the circumstances under which the Will came to be executed by late A.N. Devaraj.

55. Apart from examining the attesting witnesses, the defendant No.2 has also taken additional steps, by way of abundant caution, to dispel the allegations of fabrication and concoction levelled by the plaintiff. In this regard, the defendant No.2 filed an application under Order XXVI Rule 10-A of the Code of Civil Procedure, seeking reference of the disputed signature of late Devaraj appearing on the Will for expert examination and comparison with admitted signatures. Strangely, this application was seriously opposed by the plaintiff, despite



the fact that she had alleged that the Will was fabricated. The Trial Court nevertheless allowed the said application.

56. Aggrieved by the said order, the plaintiff approached this Court by filing W.P.No.4082/2023. During the course of hearing of the said writ petition, the learned counsel appearing for the plaintiff made a statement before this Court that the petitioner was not insisting upon reference of the signature for expert examination and further submitted that the petitioner was not inclined to have the matter referred for signature verification. In view of the said statement made on behalf of the plaintiff, this Court passed a detailed order recording the same and disposed of the writ petition. The statement made by the plaintiff before this Court assumes significance, as it indicates that the plaintiff herself did not press for examination of the signature of the testator, despite having earlier disputed the Will. This Court therefore deems it fit to extract the observations made by this Court in W.P.No.4082/2023. These observations are crucial and



would have a direct bearing on the validity of the Will.

The same are extracted as under:

"3. Drawing the attention of this Court to issue No.4, the learned counsel for the petitioner submits that the burden of proof with regard to allegation of forging and creation of Will dated 04.04.2005 and its binding nature is specifically casted on the plaintiff and in all normal circumstances, the order in the nature of referring the documents for signature verification ought to have been made at the instance of the plaintiff. The plaintiff, being conscious of the burden casted on her, has not made such an application. While referring to issue No.6 the learned counsel for the petitioner further submits that though the burden of proving the Will is also casted on the defendants, that would not require proof of signature as the said burden is casted on the plaintiff.

4. The learned counsel, drawing the attention of this Court to the earlier order passed by this Court in W.P.No.16047/2022 dated 26.08.2022 wherein, at the instance of the petitioner this Court while allowing the writ petition had directed the trial Court to dispose of the matter expeditiously within a period of six months, submits that the petitioner is aggrieved by the impugned order only to the extent that the same is causing undue delay in disposal of the suit. The learned counsel further submits that entire case of the plaintiff hinges upon adjudication with regard to the validity and otherwise of



the Deed of Partition dated 13.06.1974, the outcome of determination of the said document will have bearing on the subsequent documents namely the Gift Deed and the Will. Therefore, he submits that the petitioner despite being conscious of her burden of proving the allegation of forging of Will as per issue No.4 is not insisting for referring the matter for signature verification, and that petitioner is not inclined to have the matter referred for signature verification. The learned counsel further submits that as regards the other requirements of law with regard to proof of Will would be canvassed.

5. *Per contra, Sri N. Ravindranath Kamath, learned senior counsel appearing for the learned counsel for the defendants, submits that the application in question was necessitated in view of issue No.6 whereby the trial Court casted burden of proof of Will on the defendant. He submits that if the petitioner is clear that no grounds on the genuineness of signature of the testator would be raised and the defendants are discharged of their burden of proof of signature on the Will, they would not have any objection in the matter for not referring the matter for signature verification.*

6. *The aforesaid submissions of the learned counsel for the parties are taken on record. "*



57. In addition to the above evidence, the defendant No.2 has also placed reliance on Exs.D-6 and D-7, which are affidavits executed by the plaintiff and defendant No.1 (mother) before the BBMP authorities. These affidavits were filed immediately after the demise of Devaraj in connection with the mutation proceedings relating to the property bequeathed under the Will. In the said affidavits, the plaintiff and her mother have categorically acknowledged the testamentary arrangement made by late Devaraj and have expressed their no objection for transfer of khata in favour of defendant No.2 in respect of item No.2 of the suit schedule properties.

58. In order to prove these documents, the defendant No.2 filed an application before the Trial Court seeking summoning of the original records from the BBMP office. Pursuant to the summons issued by the Court, the Assistant ARO of BBMP appeared before the Court and produced the original records, and the affidavits filed by the plaintiff and defendant No.1 were marked as Exs.D-6



and D-7. This Court therefore deems it fit to extract the affidavits filed by the plaintiff and defendant No.1/mother acknowledging the testamentary arrangement made by Devaraj. The same reads as under:

Ex.D-6

"AFFIDAVIT

I, LAVANYA PRASAD, aged about 53 years, W/o. G.V.R. Prasad, residing at No.73/3, Millers Road, Bangalore-52, do hereby solemnly affirm and state on oath as follows:

1. I submit that the Khatha of the property I. D. No. 78-46-73 property No.73, Millers road, Bangalore-52, stands in the name of my father i.e. late A.N. Devaraj. I submit that he was absolute owner in possession and enjoyment of the said property and he had executed the will dated 04-04-2005 bequeathed the property to my brother A. D. SUROP and I submit that my father A.N. Devaraj expired on 20-03-2012.

2. I submit that my father late A.N. Devaraj is survived by my mother Smt. Uma Devaraj, my brother A.D. Surop and myself Smt. Lavanya prasad.

3. I further submit that I have no objection to transfer the khatha of the property I. D. No.78-46-73 of the Property No.73, Millers road, Bangalore-52, in the records of



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Bruhat Bangalore Mahanagara palike in favour of my brother A. D., Surop s/o. A.N. Devaraj, aged 51 years, he has succeeded by virtue of will executed by my father.

Hence, I on wearing this affidavit to produce before the concerned authorities for Transfer of the Khatha of the above said property in favour of my Brother A. D. Surop.

What is stated above are all true and correct, to the best of my knowledge, information and belief.

Indetified by me

Deponent

Sd/-

Sd/-

Advocate.

Bangalore.

Date: 21.03.2012

"

Ex.D-7

"AFFIDAVIT

I, SMT. UMA DEVARAJ, W/o. late A.N. Devaraj, aged about 72 years, residing at No. 73, Miller's road, Bangalore-560052 do hereby solemnly affirms and state on oath as follows:

1. I submit that the Khatha of the property I.D. No.78-46-73, of the Property No.73, Miller's road, Bangalore-52, stands in the name of my husband A.N. Devaraj. I submit



that he was absolute owner in possession and enjoyment of the said property and he had executed the will dated 04-04-2005 and he had bequeathed the property to my son A. Surop and I submit that my husband A.N. Devaraj expired on 20-03-2012.

2. I submit that my husband late A.N. Devaraj is survived by my son A. D. Surop and my daughter Smt. Lavanya Prasad and myself Smt. Uma Devaraj.

3. I further submit that, I have no objection to transfer the Khatha of the property I. D. No. 78-46-73, of the property No.73, Millers road, Bangalore-52, in the records of the Bruhath Bangalore Mahanagara palike in favour of my son A.D. Surop.

As he has succeeded by virtue of will executed by my husband.

Hence, I am swearing this affidavit to produce before the concerned authorities for the Transfer of katha of the above said property in favour of my Son, A. D. Surop.

What is stated above are all true and correct to the best of my knowledge, information and belief.

Indetified by me

Deponent

Sd/-

Sd/-

Advocate.

Bangalore.



Date: 13.08.2012"

59. These documents clearly establish that at an undisputed point of time, immediately after the death of Devaraj, the plaintiff herself had acknowledged the Will and consented to mutation in favour of defendant No.2. Such conduct on the part of the plaintiff significantly weakens her subsequent plea that the Will is fabricated.

60. When the oral evidence of the attesting witnesses, the documentary evidence placed on record, the affidavits at Exs.D-6 and D-7, and the statement made by the plaintiff before this Court in W.P. No.4082/2023 are considered cumulatively, it becomes evident that the defendant No.2 has successfully established the due execution and attestation of the Will. The material on record also demonstrates that the propounder has adequately dispelled the alleged suspicious circumstances surrounding the execution of the Will.



61. On the contrary, the plaintiff, despite initially disputing the Will, has failed to produce any convincing material to substantiate the allegation of fabrication, and her own conduct, particularly the execution of affidavits acknowledging the testamentary arrangement, indicates that she had accepted the Will at an earlier point of time. Therefore, on an overall appreciation of the evidence on record, this Court is of the considered opinion that defendant No.2 has successfully proved the due execution and attestation of the Will dated 04.04.2005 in accordance with law. Point No.(iii) is accordingly answered in the ***Affirmative.***

Finding on Point No.(v):

62. The plaintiff has laid a serious challenge to the registered gift deed dated 31.10.2006 as well as to the Will dated 04.04.2005, alleging that these documents were obtained by practising fraud, coercion and undue influence upon late Devaraj. When such allegations are



made against solemn and registered documents, the law casts a heavy burden on the person making such allegations to establish the same through clear pleadings and cogent evidence.

63. In the present case, the plaintiff has not entered the witness box to substantiate the allegations made in the plaint. Instead, the suit has been prosecuted through her husband, who has deposed as PW.1 in the capacity of a General Power of Attorney holder. Though Section 120 of the Evidence Act renders a spouse competent to testify, the question that arises in the present case is not merely of competence but of personal knowledge of the facts in issue.

64. A careful reading of the evidence of PW.1 clearly reveals that he does not possess personal knowledge regarding the circumstances under which the impugned documents were executed. In fact, in the course of cross-examination, PW.1 has candidly admitted that he



has no personal knowledge regarding the alleged coercion or undue influence said to have been exercised upon Devaraj in executing the gift deed. His evidence therefore does not establish the factual foundation necessary to prove the allegations of fraud, coercion or undue influence.

65. It is a well-settled principle of evidence that when a party makes allegations relating to matters which are within her personal knowledge, such party is expected to enter the witness box and subject herself to cross-examination. Failure to do so permits the Court to draw an adverse inference under Section 114(g) of the Evidence Act, particularly when the party who is best placed to depose on the facts chooses to remain away from the witness box.

66. In the present case, the plaintiff, who has questioned the validity of registered documents executed by her own father, was the most competent person to depose regarding the surrounding circumstances. By



choosing not to enter the witness box and by merely examining her husband, who admittedly lacks personal knowledge of the material facts, the plaintiff has failed to discharge the burden of proof cast upon her.

67. Therefore, this Court is of the considered view that the plaintiff has not discharged the burden of proving the allegations of fraud, coercion and undue influence, and her failure to step into the witness box further strengthens the presumption against her case. Accordingly, Point No.(v) is answered in the ***Negative***.

Finding on Point No.(vi):

68. In light of the findings recorded on the preceding points, this Court finds that the Trial Court has failed to properly appreciate both the pleadings and the evidence on record. The Trial Court has proceeded to hold that the registered partition deed dated 13.06.1974 is not binding on the plaintiff, without examining the legal



position that the plaintiff, being a daughter at the relevant point of time, did not possess coparcenary rights prior to the amendment to Section 6 of the Hindu Succession Act and therefore had no locus to question the partition effected between the male members of the family.

69. The Trial Court has also failed to consider the material circumstances demonstrating that the partition deed had been acted upon, including the subsequent transactions involving the property and the fact that the plaintiff herself derived benefit from a portion of the property through a registered release deed dated 23.11.1991. Having accepted and enjoyed the benefits flowing from the property traceable to the partition, the plaintiff could not have selectively challenged the very partition which formed the basis of such transactions.

70. Similarly, in respect of the gift deed dated 31.10.2006, the Trial Court has held that the same was vitiated by fraud, coercion and undue influence without



there being specific pleadings or satisfactory evidence to substantiate such allegations. The Trial Court has also failed to appreciate the evidence of DW.5, who has deposed regarding the execution of the gift deed, and has overlooked the admissions made by PW.1 in the course of cross-examination.

71. With regard to the Will dated 04.04.2005, the evidence placed on record clearly establishes the due execution and attestation of the Will, and the defendant No.2 has also produced contemporaneous documents such as the affidavits at Exs.D-6 and D-7, which demonstrate that the plaintiff herself had earlier acknowledged the testamentary arrangement and expressed no objection for mutation in favour of defendant No.2. These material circumstances have not been properly appreciated by the Trial Court.

72. Thus, the cumulative effect of the evidence on record indicates that the findings recorded by the Trial



Court suffer from serious errors in appreciation of evidence and application of law. The conclusions reached by the Trial Court are therefore unsustainable and call for interference by this Court in exercise of appellate jurisdiction under Section 96 of the Code of Civil Procedure.

73. Though this Court has come to conclusion that the Will dated 04.04.2005 has been duly proved in accordance with law, an important aspect emerges on a closer scrutiny of materials placed on record with reference to the identity and correlation of the properties covered under the Will. This Court has drawn a sketch in terms of boundaries indicated in the registered partition deed, the suit instituted by Amarjit Singh vide Ex.D-39, and the release deed executed by plaintiff's father Devaraj in favour of plaintiff pertaining to property bearing Sy.No.73.

74. This Court having drawn the sketch has examined the description of the properties. It is only at



this juncture, this Court was in a position where it noticed that the portion which was the subject matter of the sale in favour of Amarjit Singh under registered sale deed dated 26.10.1977 vide Ex.D-38, which subsequently became the subject matter of O.S.No.4021/1993 corresponds to property bearing Sy.No.73/2. Surprisingly, the very same portion appears to have been included in the testamentary disposition under the Will dated 04.04.2005 executed by the late Devaraj.

75. This gives rise to a significant legal consequence. Once it is evident that Devaraj had already alienated a portion of property bearing Sy.No.73/2 in favour of Amarjit Singh during his lifetime, the question as to whether the testator retained any subsisting right, title or interest in the said portion so as to validly bequeath under the Will, is a matter requiring independent adjudication. The mere proof of due execution of the Will does not by itself confer title upon the legatee/defendant No.2 in respect of properties over which the testator may



not have had a valid subsisting right and title at the time of execution of the Will.

76. In the present case, Amarjit Singh who claims title under registered sale deed and whose rights were the subject matter of adjudication in O.S.No.4021/1993 is not a party to the present proceedings. Therefore, any finding rendered in this appeal in relation to property bearing Sy.No.73/2 cannot bind said Amarjit Singh or affect his rights. In absence of a necessary party and in view of prior alienation, title of defendant No.2 over the property covered under the Will, namely Sy.No.73/2 cannot be conclusively adjudicated in the present proceedings merely on the basis of the Will.

77. Accordingly, while holding that the Will dated 04.04.2005 stands duly proved, this Court clarifies that the right, title and interest of defendant No.2, if any, in respect of property bearing Sy.No.73/2 remains open and is left to be established independently in appropriate



proceedings in accordance with law and any observations made herein shall not prejudice the rights of the third parties including Amarjit Singh.

78. Accordingly, this Court holds that the judgment and preliminary decree passed by the Trial Court granting one-third share to the plaintiff cannot be sustained and are liable to be set aside. Point No.(vi) is accordingly answered in the ***Affirmative***.

Finding on Point No.(vii):

79. This point arises in the appeal preferred by the plaintiff seeking enhancement of her share in the suit schedule properties. The claim of the plaintiff is that she is entitled to a larger share than the one-third share granted by the Trial Court, and that upon proper appreciation of the nature of the properties and succession, her entitlement ought to be re-determined.



80. However, this Court, while dealing with the connected appeal in RFA No.2276/2024 filed by defendant No.2, has already recorded a categorical finding that the plaintiff is not entitled to question the registered partition deed dated 13.06.1974, and further that the gift deed dated 31.10.2006 and the Will dated 04.04.2005 are valid and binding. This Court has also held that the plaintiff has failed to establish any right, title or share in the suit schedule properties, and consequently the suit itself has been held to be not maintainable and liable to be dismissed.

81. In view of the said findings, the very foundation on which the plaintiff has sought determination and enhancement of her share does not survive. Once it is held that the plaintiff is not entitled to any share in the suit schedule properties, the question of examining whether she is entitled to a larger share than what was granted by the Trial Court does not arise for consideration. Therefore, the appeal filed by the plaintiff in RFA No.2432/2024



seeking enhancement of share is rendered infructuous and does not warrant independent adjudication.

82. Accordingly, point No.(vii) is answered in the ***Negative***, holding that the appeal in RFA No.2432/2024 does not survive for consideration in view of the findings recorded in the connected appeal.

Conclusions and Reasons for Reversal:

83. Having carefully examined the pleadings of the parties, the oral and documentary evidence on record, and the reasoning assigned by the Trial Court, this Court finds that the findings recorded by the Trial Court on the material issues suffer from serious errors of law as well as improper appreciation of evidence. The conclusions reached by the Trial Court are therefore unsustainable and warrant interference in the present appeal under Section 96 of the Code of Civil Procedure. The reasons for reversing the findings of the Trial Court on the points formulated are discussed hereunder.



84. At the outset, insofar as the registered partition deed dated 13.06.1974 is concerned, the Trial Court has proceeded on an erroneous premise in holding that the said partition deed is not binding on the plaintiff. The evidence on record clearly indicates that the partition effected under the said registered instrument had been acted upon for several decades. The subsequent transactions relating to the properties, including the registered sale deed executed by Devaraj in favour of Amarjit Singh in the year 1977 and the registered release deed dated 23.11.1991 executed in favour of the plaintiff, unmistakably demonstrate that the properties allotted under the partition were dealt with and enjoyed by the parties in accordance with the arrangement recorded in the partition deed. Significantly, the plaintiff herself has derived benefit under the said arrangement by obtaining a portion of property through the release deed of 1991 and has even proceeded to deal with the said property subsequently. Having accepted and enjoyed the benefits



flowing from the property traceable to the partition, the plaintiff is clearly estopped from questioning the very partition which forms the foundation of her own title to a portion of the property.

85. Apart from the above, the plaintiff, being a daughter at the time when the partition was effected in the year 1974, did not possess coparcenary rights under the law as it then stood. The amendment to Section 6 of the Hindu Succession Act, 1956, which conferred coparcenary rights on daughters, came into effect much later and cannot have the effect of reopening a partition which had already been effected through a registered instrument decades earlier. The Trial Court has failed to appreciate this settled legal position and has erroneously entertained a challenge to the partition deed at the instance of the plaintiff.

86. Equally significant is the fact that the challenge to the partition deed is hopelessly barred by limitation.



The relief sought by the plaintiff is essentially one for declaration that the partition deed is not binding on her, which squarely attracts Articles 58 and 59 of the Limitation Act, 1963. The cause of action, at the very least, arose when the plaintiff obtained the benefit of the property through the registered release deed dated 23.11.1991, yet the suit has been instituted decades thereafter. The Trial Court has failed to advert to this crucial aspect and has proceeded to grant relief despite the clear bar of limitation.

87. The findings recorded by the Trial Court in respect of the registered gift deed dated 31.10.2006 also cannot be sustained. The plaintiff has alleged that the said gift deed was obtained by practising fraud, coercion and undue influence, yet the pleadings in the plaint do not contain any specific particulars of fraud, coercion or undue influence as required under Order VI Rule 4 of the Code of Civil Procedure. The allegations are vague and speculative in nature. More importantly, the plaintiff has not stepped



into the witness box to substantiate these allegations. Instead, the suit has been prosecuted through her husband acting as a General Power of Attorney holder, who has candidly admitted during cross-examination that he has no personal knowledge regarding the circumstances surrounding the execution of the gift deed. In the absence of the plaintiff herself entering the witness box and placing credible material on record, the allegations made against a solemn registered document remain wholly unsubstantiated.

88. The Trial Court has also failed to appreciate that the initial burden of proving fraud, coercion or undue influence squarely rested on the plaintiff, and such burden was never discharged. On the contrary, the defendant No.2 has examined one of the witnesses to the gift deed as DW.5, who has clearly deposed regarding the voluntary execution of the document by late Devaraj. This evidence has not been properly appreciated by the Trial Court. The conclusion reached by the Trial Court that the gift deed is



fabricated is therefore unsupported by evidence and is clearly perverse.

89. Similarly, the finding recorded by the Trial Court regarding the Will dated 04.04.2005 is also unsustainable. The defendant No.2, who is the propounder of the Will, has examined one of the attesting witnesses and has also examined the son of the other attesting witness who had predeceased, thereby complying with the statutory requirement relating to proof of a Will. Apart from the oral evidence, the defendant No.2 has also produced contemporaneous documentary evidence in the form of affidavits executed by the plaintiff and defendant No.1 before the BBMP authorities, marked as Exs.D-6 and D-7, wherein the plaintiff had acknowledged the testamentary arrangement made by late Devaraj and had expressed no objection for mutation of the property in favour of defendant No.2. These documents clearly indicate that the plaintiff had accepted the Will at an earlier point of time.



90. Further, when the defendant No.2 sought reference of the disputed signature for expert examination by filing an application under Order XXVI Rule 10-A of the Code of Civil Procedure, the same was vehemently opposed by the plaintiff, and even before this Court in W.P.No.4082/2023, the plaintiff chose not to insist upon such examination. The conduct of the plaintiff in this regard further weakens the allegation that the Will is fabricated. When the evidence on record is appreciated cumulatively, it becomes evident that the defendant No.2 has successfully established the due execution and attestation of the Will and has also dispelled the alleged suspicious circumstances.

91. Another significant circumstance which has been overlooked by the Trial Court is the failure of the plaintiff to enter the witness box. When a party alleges fraud, coercion or undue influence in relation to documents executed by her own father, such matters are within the personal knowledge of that party, and the



failure to depose in support of such allegations invites an adverse inference under Section 114(g) of the Indian Evidence Act. The Trial Court has failed to apply this well-settled principle.

92. Thus, on an overall appreciation of the material on record, it is evident that the Trial Court has misdirected itself in law and has failed to properly appreciate the evidence placed on record by the parties. The conclusions recorded by the Trial Court declaring the partition deed, gift deed and the Will as not binding on the plaintiff are therefore contrary to the evidence and settled legal principles.

93. Consequently, this Court is of the considered opinion that the judgment and preliminary decree passed by the Trial Court granting one-third share to the plaintiff cannot be sustained. The impugned judgment is liable to be set aside, and the appeal filed by defendant No.2 in RFA No.2276/2024 deserves to be allowed.



94. In view of the foregoing discussion and the findings recorded on the points formulated for consideration, this Court is of the opinion that the judgment and preliminary decree passed by the Trial Court cannot be sustained and are liable to be interfered with in exercise of appellate jurisdiction under Section 96 of the Code of Civil Procedure, 1908.

Finding on Point No.(viii):

95. Accordingly, this Court proceeds to pass the following:

ORDER

(i) The appeal filed in RFA No.2276/2024 filed by the defendants is ***allowed***.

(ii) The judgment and preliminary decree dated 10.09.2024 passed in O.S.No.62/2015 by the Trial Court are hereby set aside.

(iii) Consequently, the suit filed by the plaintiff in O.S.No.62/2015 seeking partition



and separate possession and for declaration that the registered partition deed dated 13.06.1974, the gift deed dated 31.10.2006 and the Will dated 04.04.2005 are not binding on her, stands dismissed.

(iv) It is however clarified that though this Court has held that Will dated 04.04.2005 is duly proved, insofar as property bearing Sy.No.73/2 is concerned, the same appears to have been the subject matter of prior registered sale deed dated 26.10.1977 in favour of Amarjit Singh and subsequent proceedings in O.S.No.4021/1993. Since said Amarjit Singh is not a party to the present proceedings, the right title and interest of defendant No.2 over property bearing Sy.No.73/2 shall remain open and is left to be adjudicated independently, in the event, defendant No.2 chooses to file a suit for declaration of title based on the Will.

(v) In view of the dismissal of the suit, the appeal filed by the plaintiff in RFA No.2432/2024 seeking enhancement of share does not survive for consideration and is accordingly ***dismissed***.



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(vi) In the facts and circumstances of the case, parties shall bear their own costs.

(vii) Pending interlocutory applications, if any, stand disposed of.

Sd/-
(SACHIN SHANKAR MAGADUM)
JUDGE

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List No.: 2 Sl No.: 101