

**IN THE HIGH COURT OF KARNATAKA AT BENGALURU****DATED THIS THE 26TH DAY OF SEPTEMBER, 2023****BEFORE****THE HON'BLE MR JUSTICE V SRISHANANDA****REGULAR FIRST APPEAL NO. 339 OF 2012 (PAR)****BETWEEN:**

1. SMT. B.K. PREMA,
AGED ABOUT 49 YEARS,
W/O. JAYARAM,
R/AT NO.62, 'D' CROSS,
I MAIN ROAD, 2ND CROSS,
GOREGUNTEPALYA,
BANGALORE - 560 022.
2. SMT. B.K. VIMALA,
AGED ABOUT 47 YEARS,
W/O B.K. JANARDHAN,
R/AT NO.30, LALBAGH SIDDAPUR,
10TH "C" MAIN ROAD, 1ST BLOCK,
JAYANAGAR,
BANGALORE - 560 011.

...APPELLANTS

(BY SRI. M.S. SHANKARAGULLI, ADVOCATE)

AND:

1. T. VENKATALAKSHMI,
AGED ABOUT 75 YEARS,
W/O LATE D. KRISHNA.





2. B.K. MANJULA,
AGED ABOUT 51 YEARS,
D/O LATE D. KRISHNA.
3. B.K. SHOBHA,
AGED ABOUT 45 YEARS,
W/O. GANGADHAR,
NO.6, PATEL CHELUVARAYAPPA,
M.R. PALYA, J.C. NAGAR,
BANGALORE - 560 006.
4. B.K. NANDINI,
AGED ABOUT 40 YEARS,
W/O. NAGAKUMAR,
R/O. 8/9, 1ST MAIN,
1ST BLOCK, RMV EXTENSION,
2ND STAGE, ASWATHNAGAR,
BANGALORE - 560 094.
5. B.K. SUNITHA,
AGED ABOUT 38 YEARS,
W/O. ROBERT,
DEFENDANT NOS.1,2 AND 5 ARE
RESIDING AT NO.24,
OLD NO.47, 5TH CROSS,
SWIMMING POOL EXTENSION,
MALLESHWARAM,
BANGALORE - 560 079.

...RESPONDENTS

(BY SRI. C.R. GOPALASWAMY, SENIOR ADVOCATE A/W
SRI. BHARGAV G., ADVOCATE FOR R2 AND R3;
SRI. MANJUNATH G. KANDEKAR, ADVOCATE FOR
R4 AND R5;
R1 - DEAD;
R6 - APPEAL DISMISSED)



THIS RFA IS FILED U/SEC.96 OF CPC, AGAINST THE JUDGMENT AND DECREE DATED:02.11.2011 PASSED IN O.S.2790/2004 ON THE FILE OF THE XXII-ADDL. CITY CIVIL JUDGE, BENGALURU, PARTLY DECREERING THE SUIT FOR PARTITION AND SEPARATE POSSESSION.

THIS APPEAL, COMING ON FOR HEARING, THIS DAY, THE COURT DELIVERED THE FOLLOWING:

JUDGMENT

An application is filed under Order XLI Rule 27 R/w Section 151 of CPC with original Will and copy thereof is furnished by the learned counsel for the appellants.

2. Sri.C.R.Gopalswamy, learned Senior Counsel on behalf of respondents also filed an application under Order XLI Rule 27 (aa) (b) of CPC with certified copy of the Will.

3. Both the applications are taken on record.

4. Heard Sri.Shankaragulli, learned counsel for the appellants and Sri.C.R.Gopalswamy learned Senior Counsel for the respondents.

5. The present appeal is filed challenging the validity of the judgment and decree passed in O.S.No.2790/2004



dated 02.11.2011 on the file of XXII Addl.City Civil and Sessions Judge, Bengaluru.

6. Parties are referred to as plaintiffs and defendants for the sake of convenience as per their original ranking before the Trial Court.

7. Brief facts of the case are as under:

A suit is filed in O.S.No.2790/2004 for partition and separate possession of 1/6th share of the plaintiffs in respect of immovable properties bearing new municipal No.20, II stage, II phase, West of Chord road, Basaveshwaranagar, Bengaluru and immovable property bearing No.24(47) 5th cross, Swimming pool extension, Malleswaram, Bangalore-03 and yet another property in land bearing Sy.No.50 measuring 2 acres 15 guntas bearing Katha No.187 situated in Jakkanahalli village, Dandinashwara hobli, Thuruvekere taluk. The suit on contest was decreed in-part.

8. It is now contention of the appellants that by virtue of the Will, appellants are having 1/6th share in



respect of item No.2 of the suit property. Per contra, contesting respondents claim absolute right over item No.2 of the suit property by virtue of the Will in their family. Original Will is produced along with the application filed on behalf of the appellants under Order XLI Rule 27 of CPC. On the contrary, respondents also claim absolute ownership over item No.2 of the suit schedule property by virtue of an original Will.

9. Whether at all, the Will which has been executed in favour of the appellants is the last and final Will of the deceased Sri.T. Venkatalaksmi or not is the question that has to be decided by the Trial Court after admitting both the Wills on record.

10. If the Will that has been propounded on behalf of the appellants is not proved in accordance with law, automatically, respondent Nos.2 and 3 by virtue of the Will dated 21.07.2004 which is also a registered Will, would take effect and whereby respondent No.2 would become the absolute owner of item No.2.



11. Since, both the Wills were not produced before the Trial Court and same has been filed for the first time before this Court, in this appeal, it is just and necessary to admit both the Wills on record by allowing the applications filed under Order XLI Rule 27 of CPC by the appellants as well as respondent No.2 respectively and remit the matter to the Trial Court for fresh disposal in accordance with law to meet the ends of justice.

12. Accordingly, the following:

ORDER

- i. The applications filed by the appellants as well as respondent No.2 under Order XLI Rule 27 of CPC respectively are allowed and original Will dated 14.02.2019 filed by the appellants and certified copy of the Will dated 21.07.2004 are ordered to be taken on record.
- ii. The copies of the Will is only retained on this file and original and certified copy are returned to the



parties which has to be produced before the Court below in order to facilitate the safe custody of the respective Wills.

- iii. Consequently, appeal is allowed in part. Impugned judgment and decree passed in O.S.No.2790/2004 is set aside in respect of item No.2 of the suit property i.e, the property at Swimming pool extension, Malleswaram, Bangalore-03.
- iv. Matter is remitted to the Trial Court for enquiry and fresh disposal only with regard to item No.2 of the suit property.
- v. Parties shall appear on 25.10.2023 before the Trial Court without further notice.
- vi. Office is directed to return the Trial Court Records with copy of this order forthwith.
- vii. Parties are at liberty to institute final decree proceedings in respect of item Nos.1 and 3 of the suit property without waiting for the



disposal of the suit in respect of
item No.2 of the suit property.

viii. No order as to costs.

Sd/-
JUDGE

KAV
List No.: 1 Sl No.: 59
CT:SNN