

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 19<sup>TH</sup> DAY OF SEPTEMBER, 2024

BEFORE

THE HON'BLE MR. JUSTICE SACHIN SHANKAR MAGADUM

**R.F.A NO.2115 OF 2012 (PAR/POS)**

**BETWEEN:**

SRI. S.P. MANJUNATH  
S/O LATE S.P. PARAMESHWARA URALA  
@ PARAMESHWARAI AH  
AGED ABOUT 62 YEARS  
AT NO 77/5, 1<sup>ST</sup> FLOOR  
DR. D.V.G. ROAD, BASAVANAGUDI  
BANGALORE 560 004

...APPELLANT

(BY SRI. D.L. JAGADISH, SENIOR ADVOCATE A/W  
SMT. RAKSHITHA .D.J, ADVOCATE)

**AND:**

1 . SRI. S.P. KRISHNA MURTHY  
AGED ABOUT 67 YEARS  
S/O LATE S.P. PARAMESHWARA URALA  
@ PARAMESHWARAI AH  
SINCE DEAD BY LRs

1(A) SMT. SRIDEVI  
W/O LATE S.P.KRISHNA MURTHY  
AGED ABOUT 66 YEARS

1(B) KUM. JOYTTHI .S.K  
D/O LATE S.P.KRISHNA MURTHY  
AGED ABOUT 38 YEARS

- 1(C) MR. RAVI KUMAR .S.K  
S/O LATE S.P.KRISHNA MURTHY  
AGED ABOUT 38 YEARS

ALL ARE R/AT NO. 77/5  
1<sup>ST</sup> FLOOR, DR D.V.G. ROAD  
BASAVANAGUDI  
BANGALORE-560 004.

- 2 . SRI. S.P. RAMA URALA  
S/O LATE S.P. PARAMESHWARA URALA  
PARAMESHWARIAH  
AGED ABOUT 65 YEARS  
AT NO.923, SRI LAKSHMI SARASWATHI NILAYA  
10<sup>TH</sup> CROSS SRINAGAR  
BANGALORE-560 050.

- 3 . SRI. S.P. MAHABALESHWARA  
S/O LATE S.P. PARAMESHWARA URALA  
PARAMESHWARIAH  
AGED ABOUT 59 YEARS  
AT NO 10/12, FLAT NO. 3  
VANASRI APARTMENT  
RATNA VILAS ROAD, BASAVANAGUDI  
BANGALORE-560 004.

- 4 . SRI. S.P. VASUDEVA  
S/O LATE S.P. PARAMESHWARA URALA  
PARAMESHWARIAH  
AGED ABOUT 56 YEARS  
AT NO 63/A, 37TH CROSS  
9TH BLOCK, JAYANAGAR  
BANGALORE-560 069.

- 5 . SMT S.P. SUSHEELA  
W/O YOGISH UPADYA  
AGED ABOUT 69 YEARS

AT NO.16/A, 37<sup>TH</sup> CROSS ROAD  
JAYANAGAR 8TH BLOCK  
BANGALORE-560 082.

- 6 . SMT S.P. JAYALAKSHMI  
W/O SRI. VIJAYA KUMAR  
AGED ABOUT 50 YEARS  
NO. 77/5, DR. D.V.G ROAD  
BASAVANAGUDI  
BANGALORE-560 004.

...RESPONDENTS

(BY SRI. B.C. SEETHARAMA RAO, ADVOCATE FOR C/R3 AND R6  
R1(A TO C); SRI S.VASANTH MADHAV, ADVOCATE FOR R2;  
SRI. R.S.SUBRAHMANYA KAUSHIK, ADVOCATE FOR R3;  
R4 & R5 SERVED)

THIS RFA IS FILED UNDER SECTION 96 OF CPC AGAINST THE  
JUDGMENT AND DECREE DT.18.09.2012 PASSED IN  
O.S.NO.7417/2008 ON THE FILE OF XXII ADDITIONAL CITY CIVIL  
JUDGE, BANGALORE, DISMISSING THE SUIT FILED FOR PARTITION  
AND SEPARATE POSSESSION.

THIS RFA HAVING BEEN HEARD AND RESERVED FOR  
JUDGMENT ON 17.09.2024, THIS DAY JUDGMENT WAS  
PRONOUNCED THEREIN, AS UNDER:

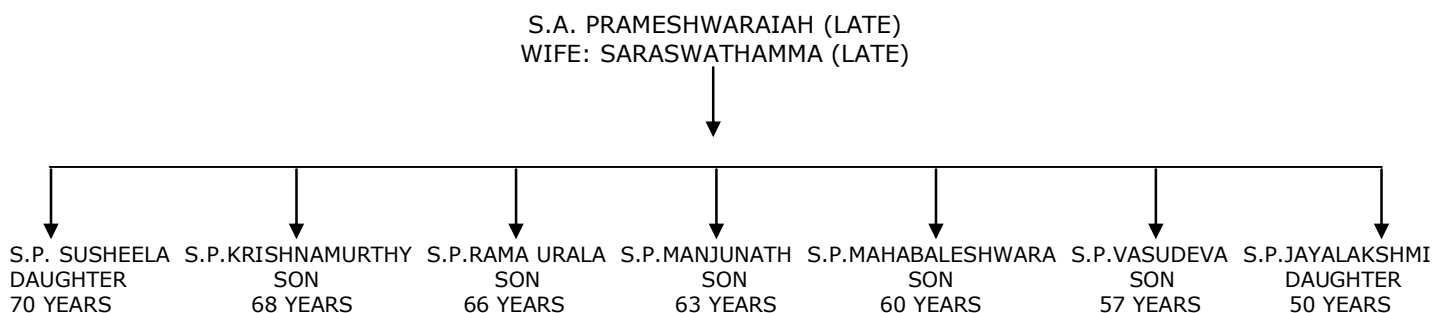
CORAM: HON'BLE MR. JUSTICE SACHIN SHANKAR MAGADUM

### **C.A.V. JUDGMENT**

The captioned appeal is by the plaintiff assailing the judgment and decree rendered by the trial Court in O.S.No.7417/2008. The trial Court dismissed the suit by declaring that propositus S.A.Parameshwara Urala has made testamentary arrangement and therefore, plaintiff who is also beneficiary under the Will cannot maintain the present partition suit. Consequently, suit for partition filed by the plaintiff is dismissed.

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. The plaintiff has filed the present suit by contending that his father was a hotelier and running famous vegetarian hotel at Gandhi Bazaar under the name and style "Vidyarthi Bhavan" and that during his lifetime, the father of plaintiff and defendant Nos.1 to 6 acquired several properties. The present suit is filed in response to legal notice issued by the defendant No.2 asserting that father Parameshwara has made a testamentary arrangement by executing Will on 16.07.2000. The present suit is filed alleging that though plaintiff demanded partition, defendant No.1 who is the eldest son expressed his inability in view of non-cooperation by defendant No.2 who has set up Will and hence, the present suit.

5. The contesting defendant tendered appearance and filed written statement and admitted the relationship between the parties. Defendants also admitted that suit schedule properties are self acquired properties of Parameshwara. The defendants further contended that the present suit is filed by

suppressing the Will executed by said Parameshwara. Defendants on the contrary claimed that plaintiff is in possession of the portion of the property which was allotted to the share of defendant No.2. It is also alleged that plaintiff is allotted ground floor, portion of outhouse and further is squatting over the property allotted to defendant No.2 and this has lead to disharmony between the brothers.

6. In this case, both the plaintiff and the defendants have presented oral and documentary evidence to support their respective claims. The defendants have produced a Will and examined the attesting witness and the scribe to establish that their father died with a testamentary arrangement, rendering the partition suit filed by the plaintiff not maintainable.

7. The Trial Court, after a thorough examination of the oral and documentary evidence, found in favour of the

defendants on issue No. 4 and subsequently dismissed the suit brought by the plaintiff.

8. Learned Senior Counsel for the plaintiff, while reiterating the grounds of appeal, has argued that the mere examination of a witness does not constitute proof of the Will. He contends that the defendants have not substantiated the contents of the document and challenges the findings of the Trial Court on issue No.4 regarding the proof of the Will. He argues that the burden of proof was incorrectly placed on the plaintiff, contrary to the settled legal principle that the onus of proving a Will always rests with the propounder. Furthermore, he argues that the existence of suspicious circumstances increases the burden of proof, and such circumstances must be dispelled by the propounder before the document can be accepted as the testator's last Will. He highlights that the alleged Will allocates a larger share of the properties to defendant No.1, which raises suspicion, and there is no evidence to justify what motivated the testator to selectively

transfer a substantial portion of the properties to defendant No. 2.

9. Learned Senior Counsel also points out details that cast doubt on the Will's genuineness. He refers to an admission during the cross-examination of PW.1 that the testator, Parameshwara, could not read without spectacles and there is no evidence proving that the testator signed the document after reading its contents (Ex.D-9/Will).

10. Conversely, the counsel for the defendants argues that the Trial Court's findings and the plaintiff's cross-examination show that the propounder of the Will successfully dispelled all suspicious circumstances. He asserts that the defendants have satisfactorily discharged the onus of proof, demonstrating that the Will is the last testament of a free and capable testator and was duly executed in accordance with the law.



11. Heard learned Senior Counsel appearing for the plaintiff and learned counsel appearing for the defendants. This Court has independently assessed the pleadings, oral and documentary evidence. The following point would arise for consideration:

*"Whether the finding of the trial Court that defendants have succeeded in proving the due execution of Will suffers from perversity and warrants interference?"*

12. In interpreting a Will, the primary task before the Court is to find out the intention of the testator. Therefore, the Court is entitled to put itself into the testator's arm chair and then test the disputed Will by giving due weight to all the words incorporated in the Will. An attempt should be made to interpret the provisions in such a manner so that effect could be given to every testamentary intention contained in the Will. In construing the Will, the Court has to also look into the surrounding circumstances, the position of the testator,

her/his family relationship. All these significant details are absolutely necessary so as to minutely scrutinize the element of suspicious circumstances surrounding the Will. This is solely an aid to arriving at a right construction of the Will. Therefore, it is trite that true intention of testator has to be gathered not by attaching importance to isolated expressions but by reading the Will as a whole.

13. This Court has carefully considered the submissions made by the learned Senior Counsel for the plaintiff and the learned counsel for the defendants. Upon an independent assessment of the pleadings, oral evidence, and documentary material on record, the key issue for consideration is whether the finding of the Trial Court that the defendants have succeeded in proving the due execution of the Will suffers from perversity and warrants interference.

14. Before addressing the question of proof of the Will, it is important to consider certain relevant details. The

plaintiff, during cross-examination, admitted that the testator was not in the habit of casually signing documents. He further admitted the testator's signature on the Will and that the testator was residing with defendant No. 1 at the time of executing the Will. The plaintiff also acknowledged that defendant No. 1 took care of the testator during his lifetime. These admissions by the plaintiff lend significant credibility to the validity of the Will. The attesting witness, DW4, has clearly identified the testator's signature on the Will, and the scribe, DW5, testified that the Will was drafted as per the testator's instructions. Both witnesses have withstood rigorous cross-examination, and no material contradictions were elicited that could undermine their testimonies.

15. The plaintiff's admissions further support the defendants' case. The acknowledgment that the testator was residing with defendant No. 1, who took care of him, provides a reasonable explanation for the testator's decision to bequeath a larger portion of his property to defendant No. 1.

This relationship and the care provided by defendant No. 1 to the testator effectively dispel any suspicion that the Will was executed under undue influence or coercion. The fact that the scribe and the attesting witness have given consistent testimonies, which have not been materially challenged, further strengthens the presumption of the Will's validity.

16. The Hon'ble Supreme Court in **Jagjit Singh v. Pamela Manmohan Singh**<sup>1</sup>, has held that the propounder of a Will must prove its due execution by providing reliable evidence, including the testimony of attesting witnesses. However, once the initial burden of proof is discharged, the onus shifts to the person challenging the Will to prove the existence of suspicious circumstances that could invalidate it. In the present case, the defendants, as propounders of the Will, have produced credible evidence, including the testimony of DW4 and DW5, and the admissions made by the plaintiff, which effectively dispel any suspicion surrounding the Will's

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<sup>1</sup> (2010) 5 SCC 157

execution. The evidence demonstrates that the Will was executed by a free and capable testator in accordance with the legal requirements.

17. Furthermore, the Hon'ble Supreme Court in the aforementioned case emphasized that when the attesting witness and the scribe provide consistent and credible testimonies, which align with the conduct of the testator, and when there are admissions by the opposing party regarding the authenticity of the testator's signature and his state of mind, the suspicious circumstances are considered dispelled. In the present case, the attesting witness DW4 and the scribe DW5 have provided consistent evidence that withstands cross-examination, and the plaintiff's admissions regarding the testator's signatures and his sound mental state further support the validity of the Will.

18. Upon a meticulous reassessment of the evidence, this Court is satisfied that the defendants have successfully

discharged their burden of proof under Section 68 of the Indian Evidence Act, read with Section 63 of the Indian Succession Act. The evidence clearly establishes that the Will in question is the valid and last testament of a free and capable testator. The defendants have succeeded in removing all legitimate suspicions regarding the Will's genuineness. Therefore, the Will stands proved in accordance with law, and the initial onus of proof has been satisfactorily discharged by the defendants.

19. The plaintiff, during cross-examination, admitted that the testator paid Rs.50,000/- to the plaintiff's son in the year 2000, the same year in which the disputed Will was executed. This fact is significant as it demonstrates that the testator was in a sound disposing state of mind and in good health at the time of making the Will. The act of making a substantial financial gift to the plaintiff's son indicates that the testator was fully aware of his affairs and capable of making thoughtful decisions regarding the distribution of his assets.

The timing of this financial transaction, coinciding with the execution of the Will, reinforces the conclusion that the testator had the requisite mental capacity and clarity to execute a valid Will in accordance with his intentions. Thus, the plaintiff's own admission supports the presumption of the testator's sound mental and physical condition at the relevant time, further dispelling any suspicion regarding the genuineness of the Will.

20. The plaintiff is not entirely excluded from the Will, as he has been allotted a share, albeit a lesser one. Merely because the plaintiff receives a smaller portion of the estate does not justify judicial interference, as it is the prerogative of the testator to decide how his property should be distributed. The desire and intention of the testator, as expressed in the Will, must be respected, and courts are bound to honor such wishes when there is no evidence of coercion, fraud, or undue influence. Various personal, financial, or familial considerations may influence the testator's decision on how to distribute his

property, which may not always be explicitly articulated in the Will. Courts are limited in their scope to intervene when the propounder of the Will has successfully dispelled all suspicious circumstances, and the document reflects a valid exercise of testamentary freedom.

21. The testator, a successful businessman and hotelier, consciously decided to distribute his property according to his wishes. The evidence reflects that the defendants took care of the testator in his final years, while the plaintiff did not reside with him. These facts, elicited during the cross-examination of PW.1 and supported by the evidence presented by the defendants, further corroborate the validity of the Will. Accordingly, the point raised for consideration is answered in the negative.

22. In light of the foregoing reasons, this Court finds no grounds to interfere with the findings of the Trial Court. The defendants have successfully proved the due execution of the



Will and dispelled all suspicious circumstances surrounding it.  
The Will is valid and legal as per the provisions of the law.

23. For the foregoing reasons, this Court proceeds to  
pass the following:

ORDER

The appeal is dismissed.

**SD/-  
(SACHIN SHANKAR MAGADUM)  
JUDGE**

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