

**IN THE COURT OF PRINCIPAL SENIOR CIVIL JUDGE AND
C.J.M, AT: BAGALKOT**

Present;

SRI. V. PRAKASH,
B.A.(Law) LL.B.,
Principal Senior Civil Judge and C.J.M.,
Bagalkot.

Dated this 18th day of June 2020

R. A. No.1/2018

Appellant:-

Ningappa S/o Sangappa Handaragal,
Age: 41 years, Occ: Agriculture, R/o
Bommanagi, Tq: Dt: Bagalkot. Now in
Central Prison, Vijayapur.

...Plaintiff

(Rep by Sri.K.V.K, Advocate)

-V/S-

Respondents:-

1. Smt. Yallawwa W/o Yalagurdappa Burli,
Age: 56 years, Occ: Household work,
R/o Bommanagi, Tq: Dt: Bagalkot.
2. Dhariyappa S/o Hanamaappa Judi
Since deceased by legal heirs: ,
- 2(A) Yallawwa W/o Dhariyappa Judi, Age:
42 years, Occ: Household work, R/o
Bommanagi, Tq: Dt: Bagalkot.
- 2(B) Bhagya D/o Dhariyappa Judi, Age: 16
years, a minor by her next friend
Natural mother/Yallawwa/defendant
No.2(A)

- 2(C) Shivamma D/o Dhariyappa Judi, Age: 14 years, a minor by her next friend Natural mother/Yallawwa/defendant No.2(A).
- 2(D) Neelagangawwa W/o Dhariyappa Judi, Age: 48 years, Occ: Household work, R/o Bommanagi, Tq: Dt: Bagalkot.
- 2(E) Parasuram S/o Dhariyappa Judi, Age: 20 years, Occ: Agriculture, R/o Bommanagi, Tq: Dt: Bagalkot.
3. Smt.Lakkawwa W/o Siddappa Judi, Age: 46 years, Occ: Household work, R/o Kanchanagar, Tq: Muddebihal, Dt: Vijayapur.
4. Smt.Renawwa W/o Sangappa Bommanagi, Age: 44 years, Occ: Household work, R/o Bommanagi, Tq: Dt: Bagalkot.
5. Nagaratna D/o Yalaguradappa Judi, Age: 19 years, Occ: Household work, R/o Bommanagi, Tq: Dt: Bagalkot.
6. Sangamma D/o Yalaguradappa Judi, Age: 16 years, a minor by her next friend/respondent No.8/Parvatewwa W/o Yalagurdappa Judi, R/o Bommanagi, Tq: Dt: Bagalkot.
7. Yamanappa S/o Yalaguradappa Judi, Age: 14 years, a minor by his next friend/respondent No.8/Parvatewwa

W/o Yalaguradappa Judi, R/o
Bommanagi, Tq: Dt: Bagalkot.

8. Parvatewwa W/o Yalaguradappa Judi,
Age: 44 years, Occ: Household work,
R/o Bommanagi, Tq: Dt: Bagalkot.

...Defendant No.1(A) to 1(H)

(R.1, 3 to 5 & 8: By Sri.K.G.P, Advocate)

(R.2(B) & (C): By Court Guardian/B.R.K, Advocate)

(R.2(A), (D) & (E): Exparte)

Date & nature of the decree or order appealed against	:	31.10.2017 Declaration & Permanent Injunction
Date of Institution of Appeal	:	02.01.2018
Date of Judgment of R.A.	:	18.06.2020
Duration of the Appeal	:	Year/s Month/s Day/s
		02 05 16

JUDGMENT

1. Appellant/plaintiff has preferred this Regular Appeal against Respondent No.1 to 8/defendant No.1(A) to 1(H) under Order 41 Rule 1 and 2 R/w Section 96 of C.P.C, being aggrieved with the impugned judgment and decree delivered by learned Additional Civil Judge and JMFC, Bagalkot, in O.S.No.17/2008 dated 31.10.2017.
2. The respondent No.1, 3 to 5 and 8 are represented through their counsel. Respondent No.2(b) and (c) are represented by Court Guardian. Respondent No.2(a), (d)

and (e) remained absent before this court hence they were placed exparte.

3. Trial Court records secured.
4. For the sake of convenience, rank of the parties in this Appeal, is taken as referred in the Trial Court.
5. Before the Trial Court, suit was filed by the plaintiff against the defendant for the relief of declaration to declare that, he has become absolute and exclusive owner of suit schedule properties by way of testamentary succession on the basis of a last Will executed by deceased Hanamappa S/o Jumanna Goudar @ Handargal dated 03.09.2007 and for consequential relief of permanent injunction restraining defendant, her men, agents and servants from interfering with the the peaceful possession and enjoyment of the suit schedule properties.
6. The brief facts of the plaintiff case as per the plaint is that, the suit schedule properties were originally belonged to one Hanamappa S/o Jumanna Goudar @ Handargal, who is none other than the brother of the plaintiff. The father of plaintiff and father of deceased Hanamappa are the real brothers and deceased Hanamappa was

unmarried till his death who was residing with the plaintiff and plaintiff was looked after the welfare of the deceased Hanamappa. Prior to the death of deceased Hanamappa, he was suffering from paralysis and he was not in a position to do agricultural work. The plaintiff was looking after the welfare of deceased Hanamappa. Due to love and affection towards plaintiff, the deceased Hanamappa bequeathed the suit schedule properties in favour of plaintiff through Will deed dated 03.09.2007. After the death of deceased Hanamappa, the plaintiff became the owner of suit properties on the basis of the Will deed. The defendant is no way concerned with the deceased Hanamappa who colluding with the bad elements of the village created bogus revenue entries in the name of defendant and entered the name of Nirmala W/o Hanamappa Goudar. The plaintiff approached defendant and requested her to stop illegal acts, but the defendant refused to heed the request. As such the plaintiff constrained to file the suit.

7. After institution of suit, the suit summons was ordered to be issued to the defendant. On service of same, the defendant has appeared before the Trial Court through her counsel and filed her Written Statement. During the pendency of suit, defendant reported to be dead and her

legal heirs were impleaded as defendant No.1(A) to 1(H) and defendant No.1(B) has filed his Written Statement and same has been adopted by others.

8. In the written statement of defendant, she denied the entire averments of plaint except the ownership of deceased Hanamappa over the suit properties contending that, she is the legally wedded wife of deceased Hanamappa and their marriage took place on 09.11.2006 and she lead happy married life with deceased Hanamappa. Due to love and affection towards defendant, the deceased Hanamappa gave Varadi before the Tahsildar, Bagalkot and entered the name of defendant along with his name and mutation was also accepted to that effect and she became the joint owner in possession of the suit properties. The plaintiff with an intention to grab the suit properties got created the Will and filed false suit. Accordingly, prayed to dismiss the suit with compensatory cost of Rs.25,000/-.
9. In the written statement of defendant No.1(B) it is contended that, he is the nearest legal heir of deceased defendant who died during the pendency of suit and requested the court to treat the averments made in the Written Statement filed by the original defendant as part

and parcel of his Written Statement. He denied the averments made in the plaint as false, frivolous and not tenable in the eyes of law or on facts but admitted the contentions taken up by the original deceased defendant in her Written Statement. He further contended that, at the time of execution of alleged Will deed, the deceased Hanamappa was in mindless condition because at that time he was undergone paralysis stroke attack for second time. The name of original defendant was entered by the revenue department on the basis of varadi given by deceased Hanamappa himself during his lifetime i.e., on 30.07.2007 after following all procedural aspects and by paying all necessary legal fees. However, during the said statutory period plaintiff somehow comes to know that, property will leave from his hand and schemes to gulp the property and executes the alleged Will purported to have been executed by deceased Hanamappa on 03.09.2007. And very interestingly the said Hanamappa died on 17.09.2007 i.e., within 14 days from the date of execution of alleged Will, which shows the bad intention of plaintiff to gulp the legitimate claim of original defendant. After demise of defendant the present defendants have been in peaceful possession and enjoyment of the suit schedule properties without anybody's interruption. It is further contended that, the plaintiff and another person have

been convicted with imprisonment of life by the Hon'ble District and Sessions Court, Bagalkot for committing murder of Nirmala Hanamappa Gouddar @ Handaragal, which clearly goes to show that the alleged story of taking care of deceased during his lifetime and so also the story of alleged Will will never arise at all. After demise of said Hanamappa, present defendants have taken care of deceased defendant Nirmala, who died issue-less and present defendants are having their legitimate share in the properties of deceased Nirmala. Hence present defendants constrained to seek counterclaim against the plaintiff that, they are exclusive and absolute owners of the suit schedule properties by way of succession through deceased defendant Nirmala as her class-II heirs. The cause of action for counterclaim arose during the pendency of present suit and also when the Nirmala died issue-less. Hence defendant No.1(B) prayed to declare that, the defendants are the absolute and exclusive owners of suit schedule properties as legal heirs of deceased Nirmala as she dies issue-less and accordingly prayed to allow their counterclaim.

10. The plaintiff has filed rejoinder to the counterclaim of defendant No.1(B) contending that, present defendants No.1(A) to (H) are not related with deceased Nirmala in

any way and hence they are not having any right to file this counterclaim. The counterclaim is barred by time and defendants have not made out any reason to file the same. The court fee paid on the counterclaim is not correct and valuation properties made is also improper. The plaintiff has preferred appeal against the conviction judgment passed by the District and Sessions Court, Bagalkot before the Hon'ble High Court of Karnataka and it is still pending and hence at this stage he cannot be considered as convicted for the alleged offence of murder of deceased Nirmala. The present defendants No.1(A) to (H) are not legal heirs of deceased Nirmala the original defendant. The surviving members' certificate produced by present defendants in respect of deceased defendant Nirmala is concocted and created by present defendants in collusion with revenue authorities. Thus the defendants No.1(A) to (H) are not entitled to be declared as owners of the suit schedule properties and accordingly prayed to dismiss the above counterclaim with cost.

11. On the basis of the above pleadings, Trial Court has framed the following;

ISSUES

- 1 Whether plaintiff proves that, he is the absolute owner in possession of the suit properties based on the Will executed by

his brother Hanamappa Goudara @ Handargal on 03.09.2007?

- 2 Whether the plaintiff proves that, the defendant is stranger to the suit properties and she is interfering with his possession and enjoyment of the suit properties?
3. Whether the defendant proves that, she is the legally wedded wife of Hanamappa and after his death, she has succeeded all the suit properties as she is the only surviving legal heir of Hanamappa?
- 4 Whether the plaintiff is entitled for the suit claim?
- 5 What order or decree?

12. The Trial Court has also framed additional issues, which are as follows;

ADDITIONAL ISSUES

- 1 Whether the defendants prove that, the deceased Nirmalal died issue-less?
- 2 Whether the defendant proves that, they are the Class-II legal heirs of deceased Nirmala and thereby they are entitled for suit property by way of succession?
- 3 Whether the defendants are entitled for relief sought for?
- 4 What order or decree?

- 5 Whether the plaintiff proves that, deceased Hanamappa Goudar @ Handaragal has executed a Will dated 03.09.2007 bequeathing suit properties in his favour?
13. Before the Trial court plaintiff got himself examined as P.W.1 through court commissioner, 5 more witnesses were examined as P.W.2 to 6 and got marked 20 documents as Ex.P.1 to 20 and closed his side. On the other hand, defendant No.1(B) was examined as D.W.1 and got marked 89 documents as Ex.D.1 to D.89. Though defendants got examined one more witness as D.W.2 by name Rayappa Basappa Goudar, but he did not tendered himself for cross-examination.
14. After hearing the arguments on both sides and perusing the documents, the Trial Court by answering Issues No.1, 2, 4 and Additional Issue No.5 in the Negative and Issue No.3, Additional Issue No.1 to 3 in the Affirmative dismissed the suit of the plaintiff and decreed the counter claim filed by the defendant No.1(B) declaring that, the defendants are the absolute owners of the suit schedule properties.
15. Assailing from the impugned Judgment and Decree, the plaintiff has preferred this Appeal against the respondents by setting out the grounds of Appeal as follows;

GROUND OF APPEAL

- 1 The judgment and decree passed by the Trial Court is illegal and contrary to law.
- 2 The Trial Court has failed appreciate the evidence on the record with fact of the case and to frame proper issues.
- 3 The plaintiff has proved the execution of Will by examining the scribe of Will as P.W.3 and attesting witness as P.W.2, wherein the deceased Hanamappa bequeathed the suit schedule properties in favour of plaintiff. The Trial Court committed an error of law in holding that the signature of deceased Hanamappa on Will was not proved.
- 4 The Trial Court wrongly observed that, the present plaintiff was present at the time of execution of Will by the deceased Hanamappa, which is contradictory to the evidence placed on record. The Trial Court ought to have held that the deceased Hanamappa during his lifetime while he was in sound disposing state of mind has executed the Will at Ex.P.20 as respondent No.2 clearly admitted before the Trial Court that just prior to the death of said Hanamappa respondent No.2 purchased 6 acres of land from said Hanamappa. The Trial Court wrongly concluded that, plaintiff failed to give answers in respect of suspicious

circumstances surrounded with the Will at Ex.P.20. The Trial Court wrongly come to the conclusion that plaintiff and two others have committed the murder of original defendant Nirmala with an intention to grab the suit properties.

- 5 The Trial Court has not considered the citations submitted by the plaintiff in a proper prospective and come to the conclusion that, Will at Ex.P.20 is not proved by the plaintiff. The Trial Court wrong in observing that, deceased defendant Nirmala is wife of deceased Hanamappa though she was a stranger to the family of plaintiff and deceased Hanamappa.
- 6 The Trial Court ought to have seen that though the parents of said Nirmala are alive, they are not examined to prove the factum of marriage of the said Nirmala and deceased Hanamappa because defendants failed to prove Ex.P.51 to 89 photographs under section 65B of Indian Evidence Act and same are inadmissible in the evidence. The Trial Court has not seen the difference of age between the deceased Hanamappa and deceased Nirmala at the time of their marriage. The Trial Court failed to observe that Ex.P.40 is prepared and issued after filing of this suit i.e., in the year 2010. The defendants failed to prove that deceased Nirmala is the wife of deceased Hanamappa and hence

question of declaring them as legal heirs of deceased Nirmala does not arise at all.

Therefore, on these grounds the appellant prayed this court to allow the Appeal and to set aside the impugned Judgment and Decree.

16. Heard the arguments from both sides.
17. I have perused the available materials on record.
18. Now the points that arise for my consideration are;

POINTS

1. Whether the impugned judgment and decree is illegal, perverse and opposed to law, facts and probabilities of the case? If so, the impugned judgment and decree needs to be interfered with by this court?

2. What Decree or Order?

19. My answer to the above points are;

Point No.1 : In the Negative
Point No.2 : As per final order
for the following;

REASONS

20. **Point No.1:-** The Learned Counsel for the appellant/plaintiff would submit that, the Trial Court without considering the evidence adduced by the plaintiff

in support of the Will relied by him which was executed by deceased Hanamappa by examining P.W.2 and 3 who are the attesting witness and scribe of the said Will, wrongly dismissed the suit. The Trial Court wrongly held that, there is a contradictions in the evidence of P.W.2 and 3 with regard to due execution of the Will without properly appreciating the oral evidence of the P.W.2 and 3. The Trial Court failed to take into consideration the admission on the part of D.W.1 with regard to the sound disposing state of mind at the time of death of deceased Hanamappa. The Trial Court wrongly held that, Ex.P.20 Will is surrounded with suspicious circumstances. The Trial Court without properly understanding the principles laid down in the judgments relied on by the Learned Counsel for plaintiff wrongly held that, principles are not applicable to the case on hand and wrongly relied the judgments produced by the respondents which are not at all applicable to the facts and circumstances of the present case. The evidence of P.W.1 is supported by P.W.2 and 3 with regard to the due execution of the Ex.P.20 Will and the evidence of P.W.4 to 6 supports the version of plaintiff with regard to his ownership and possession over the suit schedule properties, but the Trial Court not considered the same. The findings recorded by the Trial Court on all the issues are incorrect. The Trial

Court wrongly held the relationship between deceased defendant and deceased Hanamappa only the basis of the photographs relied by the defendants which are not proved before the court in accordance with law and also wrongly decreed the counter claim made by the defendants and accordingly prayed for allow the appeal by setting aside the judgment and decree.

21. Per contra, the Learned Counsel for respondents No.1, 3 to 5 and 8 would submit that, the Trial Court by considering the oral as well as documentary evidence placed on record by both sides rightly dismissed the suit and rightly decreed the counter claim of the defendant. The Trial Court by considering the failure on the part of the plaintiff to prove the due execution of Will, rightly dismissed the suit and there is absolutely no materials before this court to interfere with the findings recorded by the Trial Court. The Ex.P.20 Will deed relied on by the plaintiff is surrounded with suspicious circumstances, hence the suit was rightly dismissed. The Trial Court by considering the oral as well as documentary evidence produced by the defendants rightly held that, deceased defendant by name Nirmala was the wife of deceased Hanamappa. The Trial Court by considering the materials available on record and subsequent conduct of plaintiff in killing the defendant who is also convicted for the offence

committed by him rightly dismissed the suit and accordingly prayed for dismissal of the appeal.

22. With the rival contentions urged by both sides, it is just and necessary to go through the materials available on record. Admittedly, the plaintiff has filed suit before the Trial Court for the relief of declaration of his ownership over the suit schedule properties by virtue of Will deed alleged to have been executed by the deceased Hanamappa dated 03.09.2007 and for the consequential relief of permanent injunction restraining the defendant from interfering with the plaintiff's peaceful possession and enjoyment of the suit schedule properties on the ground that, the suit schedule properties were originally belonged to one Hanamappa S/o Jummanna Goudar @ Handargal, who is none other than the brother of the plaintiff. The father of plaintiff and father of deceased Hanamappa are the real brothers and deceased Hanamappa was unmarried till his death who was residing with the plaintiff and plaintiff was looked after the welfare of the deceased Hanamappa. Prior to the death of deceased Hanamappa, he was suffering from paralysis and he was not in a position to do agricultural work. The plaintiff was looking after the welfare of deceased Hanamappa. Due to love and affection towards plaintiff,

the deceased Hanamappa bequeathed the suit schedule properties in favour of plaintiff through Will deed dated 03.09.2007. After the death of deceased Hanamappa, the plaintiff became the owner of suit properties on the basis of the Will deed. The defendant is no way concerned with the deceased Hanamappa who colluding with the bad elements of the village created bogus revenue entries in the name of defendant and entered the name of Nirmala W/o Hanamappa Goudar. The plaintiff approached defendant and requested her to stop illegal acts, but the defendant refused to heed the request. As such the plaintiff constrained to file the suit.

23. The suit of the plaintiff is resisted by the defendant by filing her Written Statement and denying the entire averments of plaint except the ownership of deceased Hanamappa over the suit properties contending that, she is the legally wedded wife of deceased Hanamappa and their marriage took place on 09.11.2006 and she lead happy married life with deceased Hanamappa. Due to love and affection towards defendant, the deceased Hanamappa gave Varadi before the Tahsildar, Bagalkot and entered the name of defendant along with his name and mutation was also accepted to that effect and she became the joint owner in possession of the suit

properties. The plaintiff with an intention to grab the suit properties got created the Will and filed false suit.

24. During the pendency of suit original defendant by name Nirmala reported to be dead on 11.08.2009. Subsequently, the defendant No.1(A) to (H) who are the children of sister of deceased Hanamappa impleaded in this suit seeking leave of the court and subsequently filed Additional Written Statement contending that, they being the legal heirs of sister of deceased Hanamappa succeeded the suit schedule properties as original defendant died issueless. Further they have taken contention that, the plaintiff has committed the murder of defendant and convicted for imprisonment for life. Further they have taken similar contentions in their written statement which are taken up by the original defendant and also sought for the relief of declaration of ownership over the suit schedule properties by way of counter claim.
25. From the pleadings of both parties it appears to me that, the suit of the plaintiff is based on the Will deed dated 03.09.2007 alleged to have been executed by the deceased Hanamappa in favour of plaintiff. The admitted fact available on record is that, the deceased Hanamappa was the original owner of the suit schedule properties.

The plaintiff is claiming his ownership over the suit schedule properties on the basis of the alleged Will deed dated 03.09.2007 executed by deceased Hanamappa which is seriously disputed by the original defendant on the ground that, she being the legally wedded wife of deceased Hanamappa became the owner of the suit schedule properties after the death of her husband. After the death of original defendant, the defendant No.1(A) to 1(H) have claimed their ownership over the suit properties as they are the legal heirs of the original defendant. On the background of the contentions taken up by the original defendant and defendant No.1(A) to (H), the burden is heavily lies on the plaintiff to prove the Will deed dated 03.09.2007. Whether the plaintiff succeeded in establishing the due execution of the Will deed dated 03.09.2007 or not is to be discussed. Hence, it is just and necessary to go gthrough the materials available on record.

26. As I have already stated above, the entire claim of the plaintiff is based on the Will deed dated 03.09.2007 alleged to have been executed by the deceased Hanamappa. The plaintiff has also produced the original Will deed dated 03.09.2007 before the Trial Court as per Ex.P.20 through P.W.2. To prove its due execution, the

plaintiff has got examined one of the attesting witnesses by name Lakkappa Lakkannavar and Scribe by name Lingappa Totad as P.W.2 and P.W.3. The evidence of P.W.1 to 3 is to be scrutinized carefully on the background of the contentions taken up by the original defendant as well as defendant No.1(A) to (H) who are the legal heirs of original defendant.

27. To prove the due execution of Will, the plaintiff has examined himself as P.W.1 who filed his affidavit in lieu of his chief-examination and in Para No.4 of the said chief-examination affidavit he has specifically deposed that, deceased Hanamappa was unmarried and residing with the plaintiff during his lifetime and plaintiff was looking after the welfare of deceased Hanamappa. The said deceased Hanamappa was suffering from paralysis stroke and not in a position to do the agricultural work and therefore plaintiff looking after the welfare of the deceased Hanamappa. Due to the said love and affection, the deceased Hanamappa had executed Will in favour of plaintiff while having sound disposing state of mind on 03.09.2007 bequeathing the suit schedule properties. The Will deed dated 03.09.2007 relied on by the plaintiff was produced before this court at the time of institution of the suit, but the said document not got

marked through the plaintiff and same has been marked through P.W.2 by name Lakkappa Lakkappanavar who is the alleged attesting witness to the Ex.P.20 Will deed. The P.W.2 in his chief-examination supported the version of plaintiff with regard to alleged execution of Will deed. Likewise, P.W.3/Lingappa Totad alleged Scribe of the Will deed deposed before the Trial Court regarding writing of the Will on the basis of the instructions given by the deceased Hanamappa in the house of deceased Hanamappa situated at Bommanagi village. P.W.2 and 3 identified the signatures of deceased Hanamappa as well as their signatures appearing on the Ex.P.20 Will deed. The signature of deceased Hanamappa is marked as Ex.P.20(a), signature of P.W.2 is marked as Ex.P.20(b), and signature of another witness by name Yamanappa is marked as Ex.P.20(c) and signature of P.W.3 is marked as Ex.P.20(d). The evidence of P.W.1 to 3 is to be scrutinized carefully as these witnesses have deposed regarding due execution of the Will which is relied by the plaintiff to prove his case.

28. It is important to note that, P.W.1/plaintiff who claimed his ownership over the suit schedule properties by virtue of Will deed dated 03.09.2007 in his chief-examination simply stated that, deceased Hanamappa bequeathed the

suit schedule properties through Will deed dated 03.09.2007. The theory of execution of Will deed dated 03.09.2007 has been stated by the P.W.2 before the Trial Court. The P.W.2 in his chief-examination deposed that, he know the deceased Hanamappa and he was a relative and he was suffering from paralysis disease hence plaintiff was cultivating the properties belongs to him. The deceased Hanamappa had love and affection towards plaintiff, as the plaintiff was looking after the welfare of deceased Hanamappa. During the last week of August 2007, the deceased Hanamappa expressed his willingness of bequeathing his properties by way of Will and to come with bond-writer to his house. Accordingly, on 03.09.2007 he along with bond-writer Totad went to the house of deceased Hanamappa situated at Bommanagi village. At that point of time, one Yamanappa Ramavadagi belongs to the Bommanagi village was present in the house of deceased Hanamappa. Subsequently, the deceased Hanamappa instructed the bond-writer to write the Will and accordingly bond-writer written the Will. The deceased Hanamappa put his signature and thereafter he along with Yamanappa Ramavadagi subscribed their signatures.

29. During the course of cross-examination of P.W.2, it was elicited from his mouth that, his mother and mother of plaintiff are the direct sisters. Further, it was elicited from his mouth that, he went Bommanagi village on 03.09.2007 at the instance of deceased Hanamappa and thereafter he came to Bagalkot at 3.00 p.m. and again came to Bommanagi along with bond-writer for the purpose of writing of Will. At the time of writing of Will, the plaintiff was very much present and the brother of plaintiff by name Chandappa was also present. The date of alleged execution of Will has been stated by this witness as 03.07.2007. Further it was elicited that, the bond-writer directly written the Will without preparing the notes. He pleads ignorance about the death of original defendant and also regarding the murder of original defendant due to property dispute. Further, he pleads ignorance that, the plaintiff is in jail and he do not know whereabouts of the plaintiff. Further, it was elicited that, at the time of execution of Will, the deceased Hanamappa handed over property extracts to the bond-writer.
30. From the above answers elicited from the mouth of P.W.2 it is clearly establishes that, the P.W.2 is a close relative of plaintiff, as the mother of plaintiff and the mother of P.W.2 are direct sisters. Further, the plaintiff was also

present at the time of alleged execution of Will deed. At this juncture itself for better appreciation of evidence of P.W.2, it is just and proper to go through the deposition of P.W.1.

31. During the course of cross-examination P.W.1 at Page No.8 of his deposition, it was elicited from his mouth that, on 06.09.2007 the deceased Hanamappa had expressed his willingness to bequeath the suit properties through Will. Further, it was elicited that, as on the date of execution of Will, one Lakkappa Lakkannavar and Yamanappa Ramavadagi along with bond-writer were present and his elder brother brought the said Lakkappa Lakkannavar to the house of deceased Hanamappa at 3.00 p.m. and the Will was written. The fact of execution of the Will came to his knowledge on the date of death ceremony of deceased Hanamappa when the cleaning of house was taken up for the ceremony.
32. On combined reading of the above answers elicited from the mouth of P.W.1/plaintiff it is clearly discloses that, above answers contradicts the evidence given by P.W.2 who is materials attesting witness to the Ex.P.20 Will deed. In the chief-examination itself P.W.2 deposed that, he come with the bond-writer to the house of deceased

Hanamappa at the instance of deceased Hanamappa. But the evidence of P.W.1/plaintiff discloses that, bond-writer was brought by the elder brother of plaintiff and Will was written at 3.00 p.m. Furthermore, P.W.1 stated that, Ex.P.20 was came into his possession only on the date of death ceremony of deceased Hanamappa and he was not present at the time of writing the Will, which is also contradicts the evidence of P.W.2 who in his cross-examination unequivocally admits the presence of plaintiff at the time of its alleged execution. From the answers elicited from the mouth of P.W.2 it shows that, the said Will was executed on 03.07.2007 which is also contrary to the contents of Ex.P.20 Will deed, which was alleged to have been written on 03.09.2007. Furthermore, the P.W.2 in his chief-examination deposed that, he along with bond-writer reached the house at 4.00 p.m. which is also contrary to the timings stated by P.W.1 stating that, the Will was written at 3.00 p.m. It is very important to note that, P.W.3 in his cross-examination deposed that, P.W.2 have came to Bagalkot to call him to the Bommanagi village, which is also falsifies from the evidence of P.W.1. Furthermore, the P.W.3 in his cross-examination accepted that, at the time of writing of Will, he had verified RTC extracts pertaining to the year 2007-08 and found the name of deceased Hanamappa and not seen the name of

deceased defendant. He denied the suggestion that, as on the date of writing of Will, the name of defendant was entered in the RTC extract. To ascertain the truthfulness of the evidence of P.W.3, at this stage itself, it is just and and necessary to go through the contents of Ex.P.1 to 5 which are the RTC extracts pertains to the landed properties produced by the plaintiff, wherein it is clearly discloses that, those RTC extracts relates to the year 2007-08 wherein the joint name of deceased Hanamappa and deceased defendant can be seen. These documents also goes against the answers given by P.W.3 with regard to his ignorance about existence of name of original defendant.

33. The contents of Ex.P.20 Will deed discloses that, the said Will deed was alleged to have been signed by one Yamanappa Ramavadagi, who is a native of Bommanagi village, but the said witness has not been examined before the Trial Court for the reasons best known to the plaintiff. As I have already stated above, P.W.2 is a close relative of plaintiff and resident of Gangur village and residing at Bagalkot as on the date of giving evidence before the Trial Court. In the absence of evidence of Yamanappa Ramavadagi, the interested testimony of P.W.2, which is suffering from material contradictions

about the due execution of Will deed creates great doubts in the mind of this court. The evidence of P.W.2 and 3 is not at all sufficient to remove the suspicious circumstances surrounded with the Ex.P.20 Will deed.

34. Now I shall come to the discussion on the disputed aspect of matter of this suit which is a relationship between deceased Hanamappa and deceased Nirmala. The plaintiff in his plaint at paragraph No.4 has specifically pleaded that, the defendant is no way concerned with the deceased Hanamappa who is aged 65 years at the time of his death and deceased defendant is aged about just 18 to 19 years. The bad elements of the village colluding with the deceased defendant created bogus entry in the revenue records, colluding with the revenue authorities entered the name of deceased defendant. The deceased Hanamappa never married the defendant in his lifetime.
35. Per contra, the deceased defendant has specifically disputed the allegations of plaintiff contenting that, she is the legally wedded wife of deceased Hanamappa and their marriage was solemnized on 09.11.2006 at Yalagureshwar Temple at Yalagur of Muddebihal Taluka as per the usage and custom prevailing in their community. After the marriage, the deceased defendant

came to the house of deceased Hanamappa and lead happy marital life and said Hanamappa was residing with defendant till his death and the deceased defendant alone looking after the welfare of the deceased Hanamappa. During the lifetime of deceased Hanamappa, he got entered the name of deceased defendant along with his name in the records of right in the suit property by giving Varadi and mutation was accepted to that effect.

36. From the rival contentions of both sides, the point that has to be determined is as to whether the deceased defendant is the legally wedded wife of deceased Hanamappa. As I have already stated in my previous paragraph, the original defendant died during the pendency of suit i.e., on 11.08.2009 which is after lapse of 1 year and 7 months from the date of filing of the suit. The defendant No.1(A) to (H) who impleaded in this suit, in their Written Statement have taken the specific contention that, the plaintiff along with another person murdered the original defendant and they were convicted for the offence and imprisonment for life was awarded by the Hon'ble District and Sessions Court, Bagalkot. To prove the said aspect, the defendants have also produced the Certified copy of judgment passed by the Hon'ble

District and Sessions Court, Bagalkot in S.C.No.117/2009. The Learned Counsel for defendants further submitted that, the conviction order passed by the Hon'ble District and Sessions Court, Bagalkot was upheld by the Hon'ble High Court of Karnataka by confirming the sentence of imprisonment for life in the appeal preferred by the plaintiff. On the background of death of original defendant, who is a material to prove the factum of marriage has not been examined before the trial court and it is the defendant No.1(B) stepped into the witness box to prove the said disputed fact of relationship. Further, the defendants have also made an attempt to examine the father of deceased defendant who filed his affidavit in lieu of his chief-examination, but he failed to tender himself for cross-examination. Hence, the evidence of D.W.2 was expunged. The D.W.1 by name Dhariyappa produced as many as 89 documents so as to prove the disputed relationship between deceased Hanamappa and deceased defendant, out of which the Ex.D.11 to D.89 has direct bearing on the said disputed aspect..

37. It is important to note that, Ex.D.11 to 27 documents were summoned before the Trial Court at the instance of defendants from the office of Tahsildar, Bagalkot. Ex.D.11

is the original check list maintained by the office of Thasildar, Bagalkot, Ex.D.12 is a Varadi and Ex.D.13 to 15 are the mutation orders. Ex.D.16 and 17 applications submitted by the deceased Hanamappa. Ex.D.17 is the bond paper. Ex.D.18 is the challan for having paid the fee. Ex.D.19 is the genealogical tree. Ex.D.20 to 27 are the RTC extracts pertains to suit schedule landed properties. As I have already stated above, defendants have taken up the specific contention that, during the lifetime of deceased Hanamappa he filed application before the Tahsildar, Bagalkot requesting to enter the name of deceased Hanamappa in the records of the suit properties along with name of deceased defendant. By considering the application along with bond executed by the deceased Hanamappa, the Tahsildar, Bagalkot accepted the mutation and entered the name of deceased Hanamappa along with name of deceased Hanamappa. It is important to note that, while marking Ex.D.11 to 27 documents which are summoned from the office of Tahsildar, Bagalkot, the plaintiff as well as Learned Counsel for plaintiff not raised their little finger opposing for marking contending that, those documents are not executed by deceased Hanamappa. Furthermore, the Ex.D.16 and D-17 are the applications were submitted before the Tahsildar, Bagalkot during the lifetime of

deceased Hanamappa and the deceased Hanamappa has not at all questioned the said aspect and even plaintiff has also not taken much interest to challenge the said mutation order. The Learned Counsel for appellant/plaintiff would submit that, during the course of cross-examination of D.W.1, he denied the signature of deceased Hanamappa appearing on Ex.D.16 and 17 and the said aspect is sufficient to show that, the deceased Hanamappa never filed application to enter the name of deceased defendant. On the background of the above arguments it is proper to go through the materials.

38. Admittedly, during the course of cross-examination the D.W.1 has denied signature of the deceased Hanamappa appearing on Ex.D.16 and 17. According to me, the said answers not in any way come to the aid of plaintiff, since in the subsequent paragraphs of the deposition of D.W.1 at page No.12, he identified the signatures of deceased Hanamappa on Ex.D.17 as Ex.D.17(a) which is a bond executed by deceased Hanamappa expressing his willingness to enter the name of deceased defendant in the record of rights along with his name. The denial of signatures on the Ex.D.16 and 17 by the D.W.1 is a stray sentence and much importance cannot be given to the said answer. Furthermore, the D.W.1 has also produced

photo album and photographs of the said album are marked as Ex.D.51 to 85 and C.D. pertains to the said photographs marked at Ex.D.86. The marriage invitation card marked at Ex.D.87. I have carefully gone through the contents of photographs available in the album, wherein it is discloses that, the said photographs were taken during the marriage ceremony of deceased Hanamappa and original defendant. It is not the case of plaintiff that, the persons appearing in the said photographs as husband and wife are not deceased Hanamappa and original defendant and said photographs were created for the purpose of false claim. It is important to note that, the Learned Counsel for plaintiff during the course of cross-examination of D.W.1 suggested that, the said photographs were taken when the deceased Hanamappa was under the influence of alcohol. The said suggestion also cannot be taken into consideration, since all the photographs produced before the Trial Court clearly establishes the fact that, the marriage ceremony were held between the deceased Hanamappa and original defendant and all the photographs discloses the compliance of all the procedures of marriage ceremony according to their customs. Further, no photographs shows the contention taken up by the Learned Counsel for plaintiff regarding influence of alcohol to the deceased

Hanamappa. Those photographs further disclose that, deceased Hanamappa voluntarily participated in the marriage ceremony and there is absolutely no material before this court to suspect the contents of photographs. Apart from that, Ex.D.17 marriage invitation card further corroborates the version of defendants with regard to marriage ceremony held between deceased Hanamappa and defendant.

39. The Learned Counsel for appellant/plaintiff further contended that, defendants have not adduced evidence of witnesses who alleged to have attended the marriage ceremony. Hence, the contention of defendants cannot be considered. Admittedly, the defendants have not examined any of the independent witnesses before the Trial Court to prove the facts of marriage, but the D.W.1 in his chief-examination specifically deposed regarding his presence during the marriage and nothing has been elicited from his mouth during the course of his cross-examination to disprove his version. On the basis of oral evidence adduced by the D.W.1 along with documentary evidence it can be safely held that, the marriage ceremony was held between deceased Hanamappa and defendant. The defendants have also made an attempt to examine the father of defendant, who filed his affidavit in

lieu of his chief-examination and deposed regarding the marriage, but he failed to tender himself for cross-examination. The Learned Counsel for respondents/defendants would submit that, since the plaintiff committed the murder of original defendant, no one from the village have come forward to give evidence in support of the contention of defendants in view of apprehension of danger to their life from the plaintiff. The arguments canvassed by the Learned Counsel for respondents/defendants is to be believed since the plaintiff of this suit has committed the murder of original defendant, that too during the pendency of the suit and the death of defendant was taken place in the suit schedule property itself. The arguments of Learned Counsel for appellant/plaintiff regarding failure on the part of plaintiff to prove the marriage cannot be considered, since in the case on hand the plaintiff has filed suit for the relief of declaration of his ownership over the suit schedule properties which are standing in the name of defendant and her husband on the basis of the created Will deed and subsequently he committed the murder of original defendant and made the original defendant not to appear before the Trial Court to disprove his claim. Hence, the arguments of Learned Counsel for appellant/plaintiff cannot be accepted.

40. The Learned Counsel for appellant/plaintiff has relied upon the principles laid down in the decisions reported in 2011 SAR (Civil) 35 (Gopal Swaroop Vs. Krishna Murari Mangal and others), 2014 SAR (Civil) 1208 (Leela Rajagopal and others Vs. Kamala Menon Cocharan and others), 2018 (4) KCCR 3065 (DB) (Smt.Shantamma and others Vs. Smt.Bhavanevva and others), 2016 (2) KCCR 1060 (N.Sriram and others Vs. Smt.Ananthalakshmi Sathyavathi and another) and 2007 (4) KCCR 2810 (M/s Mahesh Centre and Another Vs. People Charity Fund by Trustees).
41. The Learned counsel for respondents relied upon the principles laid down in the decision reported in 2011 SAR (Civil) 712 in which the Hon'ble Supreme Court laid down the principle as to burden of proof and the party pleads has to prove his case. There is no quarrel in respect of the principles laid down in the said decision and the plaintiff failed to prove his burden of proving the Will relied by him.
42. I have carefully gone through the principles laid down in the 2011 SAR (Civil) 35 (Gopal Swaroop Vs. Krishna Murari Mangal and others), wherein the Hon'ble Supreme Court held that, the examination of one of the attesting

witnesses is sufficient to prove the Will. The principles laid down in the above said decision cannot be made applicable to the case on hand since the attesting witness examined in this case is a close relative of plaintiff and theory of calling bond-writer at the instance of deceased Hanamappa has been falsified from the evidence of plaintiff.

43. In the decision reported in 2014 SAR (Civil) 1208 (Leela Rajagopal and others Vs. Kamala Menon Cocharan and others) the Hon'ble Supreme Court held that, mere participation of beneficiary is not a vitiating factor. The principles laid down in the above said decision cannot be made applicable to the case on hand, since in the instant case this court not considered the evidence adduced by the plaintiff to prove the due execution of Will on the background of failure on the part of plaintiff to remove the suspicious circumstances surrounded with the Will and also on the background of material contradictions which creates doubt in the mind of court with regard to presence of attesting witness at the time of alleged execution of Will deed.
44. In the decisions reported in 2018 (4) KCCR 3065 (DB) (Smt.Shantamma and others Vs. Smt.Bhavaneevva and others) and 2016 (2) KCCR 1060 (N.Sriram and others

Vs. Smt.Ananthalakshmi Sathyavathi and another) the Hon'ble High Court of Karnataka laid down principles with regard to burden of proving Will and to remove the suspicious circumstances surrounded with the Will. The principles laid down cannot be made applicable to the case on hand since the plaintiff failed to remove suspicious circumstances.

45. In the decision reported 2007 (4) KCCR 2810 (M/s Mahesh Centre and Another Vs. People Charity Fund by Trustees) the Hon'ble High Court of Karnataka held that, the stray admission of a witness is not a criteria to arrive conclusion. This principle also cannot be made applicable to the case on hand for a simple reason that, this court by considering the entire materials available on record has come to the proper conclusion that, the plaintiff has failed to prove the issues involved in the suit.
46. It is pertinent to note that, the subsequent acts and deeds of the deceased Hanamappa in entering the name of deceased defendant along with his name in the record of rights and also entering the name of the defendant in the voters list also substantiate the relationship between deceased Hanamappa and defendant. Since the plaintiff failed to prove the due execution of the Will deed dated

03.09.2007, the plaintiff absolutely has no right, title or interest over the suit schedule properties and further he cannot be allowed to dispute the relationship of deceased Hanamappa and deceased defendant. The Trial Court by considering the oral as well as documentary evidence rightly answered the issued framed in the suit. Further, the Trial Court by referring Section 35 and 41 of Indian Evidence Act rightly drawn the presumption with regard to Ex.D.41 Voters List.

47. It is further important to note that, relationship of defendant No.1(A) to 1(H) with deceased Hanamappa has not been seriously disputed and same has been unequivocally admitted by plaintiff and his witnesses. Hence the Trial Court as per the provisions of section 15(b) of Hindu Succession Act, rightly held that, the defendant No.1(A) to 1(H) are the legal heirs of original deceased defendant who are the children of direct sister of deceased Hanamappa and there is absolutely no materials before this court to interfere with the findings recorded by the Trial Court. Accordingly, I answer Point No.1 in the **Negative**.
48. **Point No.2:-** In view of my findings on Point No.1, certainly the appeal is liable to be dismissed by

confirming the judgment of Trial Court. Having regard to the facts and circumstances of the case and relationship between the parties, I am not inclined to impose cost. Therefore parties to the appeal shall bear their own cost. In the result, I proceed to pass the following;

ORDER

Regular Appeal preferred by the Appellant/plaintiff under Order 41 Rule 1 and 2 R/w section 96 of C.P.C is hereby **dismissed**.

Judgment and Decree delivered by Learned Additional Civil Judge & J.M.F.C, Bagalkot in O.S.No.17/2008 dated:31.10.2017 is hereby **confirmed**.

There shall be no order as to cost.

Draw decree accordingly.

Re-transmit the Trial Court records forthwith.

(Dictated to the Stenographer directly on Computer, script corrected and signed by me, then pronounced in the Open Court on this the **18th day of June 2020**)

(V. Prakash)

Principal Senior Civil Judge and C.J.M.,
Bagalkot.