

**(2015) 01 KAR CK 0091**  
**In the Karnataka High Court**  
**Case No : M.F.A. Nos. 8206 and 8323/2014**

K.G. Nataraj Partner and Others

APPELLANT

Vs

Bhagyalakshmi and Others

RESPONDENT

---

**Date of Decision :** 28-01-2015

**Acts Referred:**

Civil Procedure Code, 1908 (CPC) — Order 39 Rule 1, Order 39 Rule 2, 151  
Evidence Act, 1872 — Section 68  
Succession Act, 1925 — Section 63

**Citation :** (2015) 01 KAR CK 0091

**Hon'ble Judges :** A.V. Chandrashekara, J.

**Bench :** Single Bench

**Advocate :** Phanindra K.N., Advocate, for the Appellant; S.V. Bhat, Advocate, for the Respondent

**Final Decision :** Disposed Off

---

## Judgement

A.V. Chandrashekara, J.—Two separate appeals have been filed challenging the order dated 1.12.2014 passed in O.S. 4619/14 by the XXXVIII Additional City civil Judge, Bangalore. M.F.A. 8206/14 has been filed by defendants 8 to 10 in O.S. 4619/14, while the connected appeal, M.F.A. 8323/14 is by the 4th defendant of the said suit. They are taken up together for common disposal as they have arisen out of a single order dated 1.12.2014.

2. Respondents 1 to 4 are plaintiffs in the said suit. In all there are 10 defendants in the suit. Parties will be referred to as plaintiffs and defendants as per their ranking in the suit.

3. The facts leading to the filing of the suit for the reliefs of partition and separate possession in respect of A and B schedule properties are as follows:

"a) One Smt. Parvathamma was the wife of Rangaswamy. Both are no more. Rangaswamy and Parvathamma have six daughters namely Bhagyalakshmi (1st plaintiff), Pramila (2nd plaintiff), Bhanumathi (5th defendant), Indira

Sathyanarayana (7th defendant) and two sons, R. Muralidhar (6th defendant) and Late Dr. Venugopal who is survived by Nirmala (1st defendant) and daughters, Varalakshmi and Yashasvini (defendants 2 and 3) and son-Parashuram (4th defendant).

b) "A" schedule property is a vacant land measuring 7,803 sq.ft. and "B" schedule property is a commercial building measuring 20" x 107.6". Both the properties are situated in 7th Block, Jayanagar, Bangalore, and they originally belonged to Parvathamma. The said Parvathamma chose to gift the property in favour of her second son-Dr. Venugopal on 22.2.2002 by means of a registered gift deed. The building in "B" schedule existed even prior to the gift deed executed by her.

c) The first son-R. Muralidhar chose to file a suit for partition and separate possession inclusive of "A" and "B" schedule properties and the suit was decreed in part as against which a regular first appeal was filed before this court in R.F.A. 156/09. In the said appeal, a compromise was entered into between the parties and the properties i.e., the two schedule properties of this suit were treated as the absolute properties of Parvathamma Rangaswamy. The said compromise was accepted on 30.5.2001 by this court and consequently final decree was also drawn and engrossed on the requisite non-judicial stamp paper.

d) Subsequently Parvathamma chose to gift "A" and "B" properties in favour of her second son-Dr. Venugopal through a registered gift deed dated 22.2.2002. The donee-Dr. Venugopal died on 2.6.2002 leaving behind him his wife and 3 children and mother-Parvathamma. On 18.10.2008 Parvathamma is said to have bequeathed her 1/5th share in the undivided share in the properties of Dr. Venugopal in favour of 4th defendant i.e., grandson-Parashuram, son of Dr. Venugopal. Parvathamma died on 27.3.2011.

e) Plaintiffs have chosen to file the present suit on 21.6.2014 the ground that Parvathamma died intestate and therefore they are entitled to 1/8th share each out of the 1/5th share. The said suit has been contested by defendants 1 to 4 contending inter alia, among others, that Parvathamma was hale and healthy and she had chosen to bequeath her 1/5th share in the properties through a registered will dated 18.10.2008 and thus they have become absolute owners being legatees, and are also in possession of "B" schedule property, which is a commercial building.

f) In the meanwhile, defendants 1 to 4 have entered into a joint development agreement with defendants 8 to 10 on 12.5.2014 in respect of "A" schedule property.

g) Defendants 8 to 10 have filed a memo adopting the written statement of the 4th defendant. The 1st defendant has filed a separate written statement and has also adopted the written statement of the 4th defendant. Defendants 5 to 7 have also filed written statement sailing with defendant No. 4.

h) During the pendency of the suit, two separate applications came to be filed under Order XXXIX Rules 1 and 2 , C.P.C. against defendants 1 to 4 and 8 to 10 to restrain them from creating any third party right or encumber the suit schedule properties in any manner. The applications came to be contested by the 4th defendant and defendants 8 to 10. Ultimately the learned judge has chosen to allow the applications, thereby restraining defendants 1 to 4 and 8 to 10 from creating any encumbrance or alienating the properties.

i) It is this order which is called in question on various grounds as set out in the appeal memo."

4. Heard the learned counsel for the parties at length.

5. As could be seen from the records, the suit schedule properties originally belonged to Parvathamma and this fact is not in dispute. In fact the absolute ownership of Parvathamma was admitted in judicial proceedings before this court in R.F.A. 156/09 in which a compromise was entered into between the parties and consequently final decree was drawn and endorsed on non-judicial stamp paper. Therefore the said finding has become final.

6. Parvathamma having become the owner of "A" and "B" schedule properties, has chosen to gift them to her second son-Dr. Venugopal through a registered gift deed dated 22.2.2002. Unfortunately Dr. Venugopal died on 2.6.2002 leaving behind him his wife and 3 children and mother-Parvathamma. The case of the plaintiffs is that Parvathamma died intestate and therefore all her children are entitled to 1/8th share each and therefore they requested the court to grant 1/40th share.

7. After 7 1/2 years, an application was filed under Section 151 , C.P.C. in R.F.A. 156/09 to recall the compromise accepted on 30.5.2001 and to permit them to contest the suit. Two other applications were also filed to implead the wife and children of the deceased Venugopal as parties in the appeal and to condone the delay in filing the application for recalling. All the three applications were dismissed. Therefore for all practical purposes, the compromise entered into before this court in R.F.A. 156/09 has attained finality.

8. What is argued before this court by the learned counsel for the appellants is that whoever relies on a will which is strongly disputed by the other side, is expected to prove the same. It is argued that the burden is always on the prepounder of the will to ward off all suspicious circumstances. It is true that a will is expected to be proved in accordance with law as per Section 63 of the Succession Act and Section 68 of the Evidence Act. If the circumstances surrounding execution of the will are found to be suspicious, they have to be warded off effectively and the principles laid down in the case of H. Venkatachala Iyengar Vs. B.N. Thimmajamma and Others, have to be kept in mind.

9. I have perused the registered will relied on by the defendants in the present case. It contains photographs of the executors/testator of the document. It is

evident that reasons have been given by the testatrix as to why she has excluded the other natural heirs. What is argued by the learned counsel for the plaintiffs is that the reasons allegedly assigned by the testatrix are not valid reasons to exclude the otherwise natural heirs. On going through the entire contents of the will, it is clear that the testatrix was living with her second son- Dr. Venugopal till his death and later on with his wife and children; Venugopal had looked after her daughters affectionately. Thus execution of the registered will by Parvathamma will have to be viewed in the light of the original gift deed in favour of Venugopal. If Parvathamma had died before Venugopal, the question of executing the will would not have arisen and if Venugopal were to be alive, he would have become the absolute owner of the entire properties, i.e. "A" and "B" schedule properties on the strength of the gift deed executed in his favour. This vital aspect of the matter has not been looked into by the trial court.

10. What is observed by the trial court is that in the compromise petition filed before this court, the signature of Parvathamma is found whereas her LTM is found in the registered will. One cannot overlook the fact that Parvathamma was aged 76 years as on the date of execution of the will and she was aged 70 years when the compromise was entered into before this court. Apart from that, the photograph of Parvathamma is found on the registered will. The learned judge has not discussed anything about the important documents filed by the plaintiffs, i.e. application to recall the order of compromise, filed by Pramila, Dakshayini and others. This document has a greater bearing on the suit and that has not at all been considered by the trial court. In the light of the will being executed after execution of the gift deed in favour of Venugopal, the approach adopted by the trial court is improper and incorrect that to without keeping in mind the real state of affairs.

11. Soon after concluding arguments, it was suggested to the learned counsel for the parties to explore the possibility of a settlement. To this, Mr. R. Abhinav, learned counsel has fairly submitted that his clients are not interested in alienating the property either by way of sale or mortgage in respect of "B" schedule. Similarly Mr. K.N. Phaneendra representing defendants 8 to 10 has submitted that his clients would be willing to earmark one flat measuring 1,200 sq.ft as security so as to protect the interest of the plaintiffs in case they were to ultimately succeed in the suit. Taking advantage of the submissions made by the learned counsel for the defendants, this court is of the opinion that the order of temporary injunction granted against the defendants could be modified, instead of vacating the Temporary Injunction.

12. Even if the plaintiffs were to ultimately succeed, their share would be 1/40th share each and it would be 1/10th together in so far as plaintiffs is concerned and would work out to 780 sq.ft in "A" schedule property. Thus the interest of the plaintiffs could be secured by directing defendants 8 to 10 to reserve a flat in the proposed construction measuring 1,200 sq.ft.

13. In the result, both the appeals are disposed of in terms stated below:

"ORDER

I) The order dated 1.12.2014 passed in O.S. 4619/14 is modified. Defendants 1 to 4 are restrained from alienating "B" schedule property either by way of sale or mortgage pending disposal of the suit. However they are entitled to lease the property as and when the tenements become vacant.

II) Defendants 8 to 10 are at liberty to put up construction in schedule "A" property and they are directed to reserve one flat approximately measuring about 1,200 sq.ft. to protect the interest of the plaintiffs, in case they succeed ultimately in the suit.

III) Since the entire matter revolves around the due execution of the will, the trial court shall dispose of the matter at the earliest. Parties to co-operate with the court to dispose of the matter at the earliest by framing appropriate issues before the end of February 2015.

IV) It is made clear that whatever observation made by the trial court or this court is only for the limited purpose of disposing of the interlocutory applications or these appeals and shall not influence the learned judge while deciding the case on merits."

Registry to send a copy of this to the Trial Court at the earliest.