

(2013) 09 KAR CK 0236

In the Karnataka High Court

Case No : Regular Second Appeal No. 1950 of 2010

Smt. Kamala

APPELLANT

Vs

Sujatha and Others

RESPONDENT

Date of Decision : 11-09-2013

Acts Referred:

Citation : (2013) 09 KAR CK 0236

Hon'ble Judges : A.S. Pachhapure, J

Bench : Single Bench

Advocate : Sriyuths P.P. Hegde and H. Malatesh, for the Appellant;

Final Decision : Dismissed

Judgement

A.S. Pachhapure, J.—Though the matter is listed for hearing on interlocutory applications to condone the delay and for granting stay, it is taken up for admission with the consent of learned Counsel for the appellant. Kamala - the first defendant in the Trial Court has challenged the judgment and decree for partition granted by the Trial Court and confirmed in appeal by the First Appellate Court.

2. The facts relevant for the purpose of this appeal are as under:

One Neelu Hengsu is the propositus who died in the year 1994 leaving behind three daughters and a son. Plaintiffs 1 to 8 are the children of Mailu Hengsu, the deceased plaintiff whereas the appellant herein (defendant No. 1) is the third daughter, the second defendant Girija @ Janaki is the another daughter whereas defendants 3 and 4 are the daughters of Annu Naika who is the son of Neelu Hengsu. The plaintiff sought for partition of 1/4th share in the suit properties and as her request for share was not considered by the defendants, hence a suit came to be instituted.

The first defendant filed the written statement denying the allegations made and it is her specific contention that her mother Neelu Hengsu bequeathed the suit

property in her favour under the Will dated 19.09.1990 and by executing it in the presence of attesting witnesses, she claims to be the absolute owner of the suit properties on the basis of Will.

The Trial Court framed the issues and the plaintiff examined PW1 and in his evidence, documents Exs. P1 to P8 were marked. The defendants examined DWs. 1 to 3 and documents Exs. D1 to D23 were marked. The Trial Court held that the Will is not proved and granted 1/4th share to each of the LRs of deceased Neelu Hengsu. Aggrieved by the judgment and decree, the first defendant (appellant herein) preferred RA No. 129/2006 and it came to be dismissed on merits affirming the findings of the Trial Court. Aggrieved by the concurrent findings of the Court below, the present appeal is filed.

2. I have heard learned Counsel for the appellant.

3. It is the submission of learned Counsel for the appellant that the Will Ex. D23 has been proved satisfactorily and the said Will is a registered document and the execution has been proved by examining DW2 - the attesting witness and DW3 - the scribe and therefore he submits that when the Will Ex. D23 is proved on the basis of evidence of DWs. 2 and 3, there were no reasons for the Courts below to reject the execution and attestation of the Will. He would submit that as the first defendant was looking after the deceased Neelu Hengsu, her mother because of her love and affection, bequeathed the suit properties to the first defendant and the mere presence of first defendant at the time of execution of Will is not a suspicious circumstance, therefore, he submits that there are no suspicious circumstances at all in the execution and attestation of Will Ex. D23.

4. As could be seen from the evidence of DWs. 1 to 3, DW2 is said to be the attesting witness of the Will Ex. D23. In the Will, the testator has mentioned that she has only three daughters and she do not have a male child. It is not in dispute that Annu Naika, the father of defendants 3 and 4 was the son of Neelu Hengsu and this fact is suppressed in the Will Ex. D23. The reason for suppressing the fact that Annu Naika was the son of Neelu Hengsu is not explained by any of the witnesses examined by the defendants to prove the Will Ex. D23. This would show that there is suspicious circumstance in its execution and attestation. No material is placed on record to remove this suspicion that arose in execution of the Will.

5. That apart, it is in the evidence of DW2 that Neelu Hengsu was 80 years old at the time of execution of Will. She was suffering from Asthama and she was not well. She was an illiterate women, except Tulu language, she did not know any other language. There is no mention of fact that the contents of Will were explained to the propounder of the Will. Therefore, the mere registration of the Will Ex. D23 itself is insufficient to prove the execution of Will and remove the suspicious circumstance. Furthermore, there is a clear admission of DW2 in his evidence that he signed the Will as attesting witness at the request of Kamala, the first defendant, thereby it leads to an inference that DW2 is an interested

witness and this admission of DW2 would also prove the fact that first defendant was present at the time of execution of Will. It is relevant to note that she is the sole beneficiary out of all the daughters of Neelu Hengsu and except her presence, there were no other independent witnesses at the time of execution of Will. That apart, all the three daughters of Neelu Hengsu are married and were staying with their husbands. There was no special reason for Neelu Hengsu to bequeath the properties in favour of first defendant only. The relationship of Neelu Hengsu with her other daughters was cordial. So in such circumstances, the Courts below have taken into consideration the fact that all the family properties were bequeathed in favour of first defendant under the disputed Will Ex. D23 and for these reasons, it was held that there are numerous suspicious circumstance surrounding the due execution and attestation of Will and as they were not explained or removed by any plausible explanation, the Courts below rejected the request of defendant-appellant herein. Therefore, the Trial Court and also the First Appellate Court has granted equal shares to all the legal representatives of propositus Neelu Hengsu. I do not find any substantial question of law for consideration in this appeal.

In the result, the appeal fails and is dismissed. No order as to cost.

As the matter is taken up for admission on merits, the interim applications for condonation of delay and stay needs no consideration and hence they are disposed of.