
(2003) 12 AP CK 0024
In the Andhra Pradesh High Court
Case No : SA No. 509 of 1996

Somula Bhaskar Reddy and Others

APPELLANT

Vs

Somula Ramachandra Reddy and Another

RESPONDENT

Date of Decision : 10-12-2003

Acts Referred:

Hindu Succession Act, 1956 — Section 14(1), 14(2), 20

Citation : (2004) 4 ALD 165 : (2004) 5 ALT 367

Hon'ble Judges : B.S.A. Swamy, J

Bench : Single Bench

Advocate : P. Innayya Reddy, for the Appellant; K. Somakonda Reddy, for the Respondent

Final Decision : Dismissed

Judgement

B.S.A. Swamy, J.—The appellants herein are the Plaintiffs in O.S. No. 22 of 1985 on the file of the District Munsif, Allagadda, Cuddapah District. Aggrieved by the judgment and decree of the Appellate Court in A.S. No. 23 of 1991 reversing the judgment of the Trial Court and dismissing the suit, they preferred this appeal.

2. The facts of the case are that one Somala China Subba Reddy was addicted to bad habits and vices. At the instance of well wishers of the family pressed him for partition. Somala China Subba Reddy executed a registered deed dated 21-10-1935 marked as Ex.A.1 relinquishing his right over the properties in favour of his minor children. By the date of relinquishment deed, he had two sons by name Somala Rama Subba Reddy, Venkata Subba Reddy and the third son Somala Ramachandra Reddy was in the womb of the mother. Since all happened to be minors the properties were kept in the custody of their mother for management. After that, the mother and sons lived together up to 1969 and in that year there was an oral partition between the brothers and the plaintiff schedule property was given to the mother in lieu of her maintenance. It is also on record that the mother Thimmakka was looked after by third son Ramachandra Reddy throughout. As per the evidence of P.W. 1 the wife of late

Ramasubba Reddy, Thimmakka executed a registered Will bequeathing her properties in favour of the third son Ramachandra Reddy under Ex.B.2 dated 1-1-1974. Thereafter in August, 1974 she died. From the pleadings it is seen that Rama Subba Reddy died ten years back leaving two sons and his wife, Plaintiffs 1 and 2 and P.W. 1 respectively and Venkata Subba Reddy died four years back leaving his widow - second defendant. The legal representatives of Rama Subba Reddy filed the present suit for partition and separate possession of 1/3rd share in the suit schedule properties by contending that at the time of partition this property was given to late Thimmakka for her lifetime in lieu of her maintenance and thereafter it has to revert back to the three sons. Second defendant remained ex parte. First defendant in his written statement stated that the property was given to late Thimmakka at the time of oral partition in lieu of her right to maintenance and after the Act 1956 the limited estate enlarged into absolute estate enabling her to deal with the property in the manner she likes. Hence late Thimmakka is fully empowered to execute the Will Ex.B.21 in his favour and the plaintiffs cannot claim any share in the property. Of the above pleadings the Trial Court framed the following issues:

- (1) Whether Thimmakka had any absolute right in the plaint schedule lands?
- (2) Whether the Will of Thimmakka is true, valid and binding on the plaintiff?
- (3) Whether the plaintiff is entitled to 1/ 3rd share in the plaint schedule property and are entitled for the relief asked?

3. The third plaintiff, Somula Nagamma the widow of late Ramasubba Reddy was examined as P.W. 1 and one Timmala Reddy, a mediator in the oral partition was examined as P.W. 2 and the certified copy of relinquishment deed dated 21-10-1935 is marked as Ex.A.1. The legal notice issued by the plaintiffs and the reply received from the first defendant by the plaintiffs were marked as Exs.A-2 and A-3. On behalf of the defendants, first defendant was examined as D.W.1. One Somala Subba Reddy was examined as D.W.2, to identify the signature of the attesor, Tirupal Reddy, on the Will dated 21-1-1974 executed by late Thimmakka. The Trial Court held that the suit properties were given to late Thimmakka only with limited right and defendants failed to prove Ex.B-2 and decreed the suit. The defendants carried the matter in appeal, A.S. No. 23 of 1991 in Sub-Court, Nandyal. After filing of the appeal, he filed LA. No. 47 of 1995 under Order 41, Rule 27 of CPC to receive Ex.B-4 sale deed as additional evidence by examining the attesor therein to prove the signature of the attesting witness of the Will i.e., Tirupal Reddy, The said application was allowed and thereafter D.W.3 Subbamalla Maduleti Reddy was examined to identify the signature of Tirupal Reddy, the attesting witness on the Will. The Appellate Court having appraised the evidence both oral and documentary held that the property given to late Thimmakka at the time of oral partition enlarged into an absolute estate and since the Will is proved as per law the disposition made by late Thimmakka have to be treated as legal, valid land binding on all the parties. Aggrieved by the said judgment and decree the plaintiffs filed the present appeal.

4. Sri Innayya Reddy appearing for the appellants in the Second Appeal contended that since the property was given to late Thimmakka after Hindu Succession Act came into force i.e., in the year 1969 u/s 14(2) of the Act, the property has to devolve as per the terms of the instrument. To put it aptly any property acquired by a Hindu family after the Hindu Succession Act came into force it Will not enlarge into an absolute estate but it Will devolve as per the terms of the instrument. Hence the Appellate Court erred in decreeing the suit. It is useful to extract Section 14(1) and (2) of the Hindu Succession Act, 1956 which reads as follows:

"14. Property of a female Hindu to be her absolute property :--(1) Any property possessed by a female Hindu, whether acquired before or after the commencement of this Act, shall be held by her as full owner thereof and not as a limited owner.

Explanation :--In this sub-section, "property" includes both movable and immovable property acquired by a female Hindu by inheritance or devise, or at a partition, or in lieu of arrears of maintenance, or by gift from any person, whether a relative or not, before, at or after her marriage, or by her own skill or exertion, or by purchase or by prescription, or in any other manner whatsoever, and also any such property held by her as stridhana immediately before the commencement of this Act.

(2) Nothing contained in Sub-section (1) shall apply to any property acquired by way of gift or under a Will or any other instrument or under a decree or order of a Civil Court or under an award where the terms of the gift, Will or other instrument or the decree, order or award prescribe a restricted estate in such property."

5. From the above it is seen that any property acquired or possessed by a female Hindu either by inheritance or devise, or at a partition, or in lieu of arrears of maintenance either before or after the Act the estate gets enlarged into an absolute estate and she holds the property not as a limited owner but a full owner. Though the Apex Court expressed conflicting opinions prior to 1977, the matter was put at rest in *Vaddeboyina Tulasamma v. Sesha Reddy* AIR 1977 SC 1944, by a Full Bench decision. Their Lordships of the Supreme Court having reviewed the case-law in relation to the property rights of the women prior to Hindu Women's Right to Property Act, 1937 held that under Shastric Hindu Law a Hindu woman is having right to maintenance though she cannot claim a share at the time of partition. It is useful to extract the conclusions of the Supreme Court mentioned in Para 27 which runs as follows:

"Thus on a careful consideration and detailed analysis of the authorities mentioned above and the Shastric Hindu Law on the subject, the following propositions emerge with respect to the incidence and characteristics of a Hindu woman's right to maintenance.

(1) that a Hindu woman's right to maintenance is a personal obligation so far as

the husband is concerned and it is his duty to maintain her even if he has no property. If the husband has property then the right of the widow to maintenance becomes an equitable charge on his property and any person who succeeds to the property carries with it the legal obligation to maintain the widow:

(2) though the widow's right to maintenance is not a right to property but it is undoubtedly a pre-existing right in property, i.e., it is a *jus in rem* not *jus in personam* and it can be enforced by the widow who can get a charge created for her maintenance on the property either by an agreement or by obtaining a decree from the Civil Court.

(3) that the right of maintenance is a matter of moment and is of such importance that even if the joint property is sold and the purchaser has notice of the widow's right to maintenance, the purchaser is legally bound to provide for her maintenance;

(4) that the right to maintenance is undoubtedly a pre-existing right which existed in the Hindu Law long before the passing of the Act of 1937 or the Act of 1946, and is, therefore, a pre-existing right.

(5) that the right to maintenance flows from the social and temporal relationship between the husband and the wife by virtue of which the wife becomes a sort of co-owner in the property of her husband, though her co-ownership is of a subordinate nature: and

(6) that where a Hindu widow is in possession of the property of her husband, she is entitled to retain the possession in lieu of her maintenance unless the person who succeeds to property or purchases the same is in a position to make due arrangements for her maintenance."

Their Lordships also resolved the conflicting opinion pre-existed on the interpretation of Section 14 of the Hindu Succession Act that if the husband died prior to the Hindu Women's Right to Property Act, 1937, hereinafter referred to as the Act, 1937 for sake of convenience, a Hindu female cannot claim a share towards her maintenance but her right of maintenance on the estate of her husband remained intact. If the husband of the family died after the Act, 1937 came into force, there can be no dispute that the Hindu female would get an absolute interest because she was entitled to have a share known as a limited estate under the provisions of the Act, 1937. Explaining the language in the explanation to Section 14(1) and Section 14(2) of the Hindu Succession Act the Court held that while explanation to Section 14(1) merely mentions that property includes both movable and immovable property acquired by a female Hindu by inheritance or devise, or at a partition or in lieu of arrears of maintenance. The explanation is inclusive of definition and Parliament intended that the explanation should be covered by Sub-section (2) of Section 14. It is specifically stated that nothing contained in Sub-section (1) shall apply to any property acquired by way of gift but not to preexisting right to maintenance out of that property. Section

14(2) does not apply to the property acquired by way of gift or Will or under any instrument or decree where the terms of the above mentioned prescribe a restricted estate in such property. Hence I do not find any merit in this contention and it is accordingly rejected.

6. Next, the learned Counsel contended that since the husband of Late Thimmakka relinquished properties in favour of his sons in 1935, and she cannot claim any share at the time of oral partition towards her maintenance. In Para 70 of the judgment their Lordships summarised the conclusions which are reached after exhaustive consideration of the authorities on the question of law involved in the field as to the interpretation of Section 14(1) and (2) of the Act, 1956. Para 70 is extracted below which runs as follows:

"70. We would now like to summarise the legal conclusions which we have reached after an exhaustive considerations of the authorities mentioned above on the question of law involved in this appeal as to the interpretation of Section 14(1) and (2) of the Act of 1956. These conclusions may be stated thus:

(1) The Hindu female's right to maintenance is not an empty formality or an illusory claim being conceded as a matter of grace and generosity, but is a tangible right against property which flows from the spiritual relationship between the husband and the wife and is recognised and enjoined by pure Shastric Hindu Law and has been strongly stressed even by the earlier Hindu jurists starting from Yajnavalkya to Manu. Such a right may not be a right to property but it is a right against property and the husband has a personal obligation to maintain his wife and if he or the family has property, the female has the legal right to be maintained therefrom. If a charge is created for the maintenance of a female, the said right becomes a legally enforceable one. At any rate even without a charge the claim for maintenance is doubtless a pre-existing right so that any transfer declaring or recognising such a right does not confer any new title but merely endorses or confirms the preexisting rights.

(2) Section 14(1) and the Explanation thereto have been couched in the widest possible terms and must be liberally construed in favour of the females so as to advance the object of the 1956 Act and promote the socio-economic ends sought to be achieved by this long needed legislation.

(3) Sub-section (2) of Section 14 is in the nature of a proviso and has a field of its own without interfering with the operation of Section 14(1) materially. The proviso should not be construed in a manner so as to destroy the effect of the main provision or the protection granted by Section 14(1) or in a way so as to become totally inconsistent with the main provision.

(4) Sub-section (2) of Section 14 applies to instruments, decrees, awards, gifts etc., which create independent and new titles in favour of the females for the first time and has no application where the instrument concerned merely seeks to confirm, endorse, declare or recognise pre-existing rights. In such cases a restricted estate in favour of a female is legally permissible and Section 14(1)

Will not operate in this sphere. Where, however, an instrument merely declares or recognises a pre-existing right, such as a claim to maintenance or partition or share to which the female is entitled, the sub-section has absolutely no application and the female's limited interest would automatically be enlarged into an absolute one by force of Section 14(1) and the restrictions placed if any, under the document would have to be ignored. Thus where a property is allotted or transferred to a female in lieu of maintenance or a share at partition, the instrument is taken out of the ambit of Sub-section (2) and would be governed by Section 14(1) despite any restrictions placed on the powers of the transferee.

(5) The use of express terms like "property acquired by a female Hindu at a partition", or in lieu of maintenance" "or arrears of maintenance" etc., in the Explanation to Section 14(1) clearly makes Sub-section (2) is applicable to these categories which have been expressly excepted from the operation of Sub-section (2).

(6) The words "possessed by" used by the Legislature in Section 14(1) are of the widest possible amplitude and include the state of owning a property even though the owner is not in actual or physical possession of the same. Thus, where a widow gets a share in the property under a preliminary decree before or at the time when the 1956 Act had been passed but had not been given actual possession under a final decree, the property would be deemed to be possessed by her and by force of Section 14(1) she would get absolute interest in the property. It is equally well settled that the possession of the widow, however, must be under some vestige of a claim, right or title, because the section does not contemplate the possession of any rank trespasser without any right or title.

(7) That the words "restricted estate" used in Section 14(2) are wider than limited interest as indicated in Section 14(1) and they include not only limited interest, but also any other kind of limitation that may be placed on the transferee."

From the above it is seen that Section 14(2) is applicable only in case of acquisitions made by a Hindu female for the first time by any of the modes mentioned in Section 14(2) but not in lieu of pre-existing right or at partition. In such cases Section 14(1) alone attracts. This view was being followed consistently by the Apex Court all through. In *Nazar Singh and others Vs. Jagjit Kaur and others*, following the above judgment made the position very clear by stating where, however, the property is given to a female Hindu towards her maintenance after the commencement of the Act, she becomes the absolute owner thereof the moment she is placed in possession of the said property (unless, of course, she is already in possession) notwithstanding the limitations and restrictions contained in the instrument, grant or award whereunder the property is given to her. From this it is seen that even prior to 1937 Act, a Hindu female is having a right of maintenance only but she cannot claim a share at the time of partition towards her maintenance. That right was conferred for the first time by enacting Hindu Women's Right to Property Act, 1937. It is true that

Soma China Subba Reddy relinquished the properties in the year 1935 in favour of his sons. That does not mean that he died prior to 1937. Admittedly China Subba Reddy seemed to have died at a much later point of time with which we are not concerned. Under Shastric Law and Statute Law the children are also bound to maintain the mother. When once that position is admitted, as the partition is in the year 1969 she was having a pre-existing right to claim maintenance at the time of partition. The plaintiff in the witness box stated that the property was given to late Thimmakka in lieu of her maintenance. Hence even if the property was given after 1956, Act came into force as per the judgment of the Supreme Court in Nazar Singh case the moment that the property is given to a female Hindu and was put in possession of the property she becomes absolute owner notwithstanding the limitations or restrictions contained in the instrument, grant or award wherein the property was given to her. Admittedly the property was given to late Thimmakka at the time of partition and no limitations or restrictions were there since the property was given orally. Viewed from any angle, the property given to her at the time of oral partition in the year 1969 becomes her absolute property.

7. Nextly, Sri Innaya Reddy drew my attention to Section 20(3) of the Hindu Adoptions and Maintenance Act, 1956 and contended that an obligation is cast on children to maintain his or her aged or infirm parent which arises only when they are unable to maintain herself or himself out of his or her own earnings or other property. Since this Act was given overriding effect over all other Acts u/s 4 of the Act as no evidence is adduced to prove that late Thimmakka have no other property and that she is not in a position to maintain herself. So it cannot be presumed that there is an obligation on the part of her sons to maintain her. This issue was considered by Rajasthan High Court in Mst. Samu Bai and Another Vs. Shahji Magan Lal, In this case the Trial Judge held that right available to the mother for maintenance was no longer available to her because of the overriding nature and effect of Act 78 of 1956. Considering the above judgment their Lordships held as follows:

"It Will be at once seen that this right pertains to aged or infirm parents only, and again, the right of maintenance, which has been vouchsafed under this section, is to the extent that such parent is unable to maintain himself or herself out of his or her own earnings or other property. This right of the parent to maintenance is in essential respects not quite the same as was available to a parent under the pre-existing law, and by virtue of Section 4 of the Act of 1956, the law as laid down in Section 20, must prevail over the earlier law.

Be that as it may, we fail to find anything in this section or in any other part of the Act of 1956 whereunder the right of a mother to claim a share equal to that of the sons at an impending partition between the latter, has been taken away. In fact, there is no provision whatsoever in the Act of 1956 which would seem, in our opinion, to have any bearing on the particular right of the mother."

Their Lordships further held as follows:

"The Hindu Succession Act came into force on 17-6-1956, while the Act 78/56 came into force later on 21-12-1956 and we find it impossible to accept that the right, which a Hindu mother enjoyed under the old Hindu Law, and which generally speaking, has been greatly bettered under the Hindu Succession Act of 1956, was adversely affected in the matter of her right to claim a partition by anything contained in the Act of 1956, which as we have already discussed above, contains no provision whatever affecting that right of her."

8. To the same effect is the judgment delivered by Jammu and Kashmir High Court reported in Smt. Kailash Kumari v. Manmohan Kapoor. Following the judgment of Rajasthan High Court it was held that the provisions of Act 78 of 1956 do not adversely affect in any way the provisions of Hindu Succession Act, 1956 since no provision whatsoever affecting the right of the mother to claim maintenance was there in this Act, I am in respectful agreement of the view taken by Rajasthan and Jammu and Kashmir High Courts. As far as the case on hand is concerned, it is seen that u/s 20 of the Act 78 of 1956 the duty of maintaining aged or infirm parents is there on the children if they are not able to maintain themselves within their own earnings or no property was held by them. No evidence was let in to show that late Thimmakka was having any other earnings or deriving income from any other property and that she is able to maintain herself. Even if this section is applicable to the facts of the case it cannot be held that the mother is having any property to maintain herself. Hence the obligations of the sons to maintain mother is intact and since 1937 Act gives a right to claim a share in lieu of maintenance, the action of the sons of late Thimmakka in giving property at the time of oral partition on 12-3-1969 cannot be found fault. When once the property is given to the mother even after the Act came into force it becomes an absolute estate and the question of continuing the limited estate does not arise,

9. Lastly, Sri Innaya Reddy contended that, the Will Ex.B-2 dated 21-1-1974 was not proved as per law. Hence the Appellate Court erred in reversing the well considered judgment of the Trial Court. Usually, the attesor has to see the testator to sign or affix thumb impression in his presence and the testator shall see the attestors sign. When the plaintiffs gave a legal notice seeking partition of the properties the respondent herein sent a reply notice stating that late Thimmakka bequeathed the property to him under registered Will dated 21-1-1974. Even after the suit was filed admittedly the Will was executed in January, 1974 and Thimmakka died in August, 1974. The plaintiffs first claimed partition through legal notice Ex.A.2 dated 27-11-1985 for which the respondent herein sent a reply wherein he categorically stated that under registered Will dated 21-1-1974 executed by late Thimmakka the property was bequeathed in his favour. Even then the plaintiffs the appellants herein did not assail the execution of the Will in the pleadings. In fact there was no issue on this aspect whether the Will executed is a genuine or forged one. The respondent in his evidence stated that both the attesting witnesses and the scribe died and he examined D.W.2 to identify the signature of Thirupal Reddy, one of the attesor

to the Will. But at the same time he has not taken any steps to prove the signature of Thirupal Reddy with reference to some other documents with admitted signature of other attestors. In these circumstances, the Trial Court held that the Will was not proved as per law. Hence in the appeal the respondent filed I.A. No. 47 of 1995 under Order 41 Rule 27 CPC to receive additional evidence by examining D.W.3 Madhuleti Reddy, the attesting witness on the sale deed Ex.B4 executed by Tirupal Reddy in favour of Ogu Subbarayudu, That application was allowed and D.W.3 proved the signature of Thirupal Reddy on the registered Will with reference to the signature of Thirupal Reddy on Ex.B-4. Section 69 of the Indian Evidence Act deals with the proving of the execution of a document where no attesor was living. Considering Section 69 of the Evidence Act, a Division Bench of this Court in Gondrala Sithamahalakshmi and Another Vs. Pulipati Rajarao and Others, , held that the first requirement of proving the Will can be complied with by producing the signature of attesting witness on some admissible document and make both the signatures available for comparison by the Court to find out whether the person acted as real witness or not. In this case when the Trial Court held that the Will was not proved as per law the respondent made the gap filled by examining D.W.3 and by marking Ex.B,4. Hence I have no manner of doubt in holding that Ex.B-2 the Will dated 21-1-1974 is proved in accordance with law.

10. But Sri Innaya Reddy relied on the judgments of the Supreme Court in Shashi Kumar Banerjee and Others Vs. Subodh Kumar Banerjee since deceased and after him his legal representatives and Others, , Pingili Narasimha Reddy Vs. Municipal Corporation, Warangal, and Madhukar D. Shende Vs. Tarabai Aba Shedage, , and contended that the propounder of the Will has to prove to the satisfaction of the Court, before the Court the existence of the Will as genuine by explaining the suspicious circumstances may be as to the genuineness of the signature of the testator, the condition of the testator's mind, the dispositions made in the Will being unnatural improbable or unfair in the light of relevant circumstances or there might be other indications in the Will to show that the testator's mind was not free. If the propounder himself takes part in the execution of the Will which confers a substantial benefit on him, that is also a circumstance to be taken into account and the propounder is required to remove the doubts by clear and satisfactory evidence. The Supreme Court in the first case in Para 4 held as follows:

"The mode of proving a Will does not ordinarily differ from that of proving any other document except as to the special requirement of attestation prescribed in the case of a Will by Section 63 Succession Act. The onus of proving the Will is on the propounder and in the absence of suspicious circumstances surrounding the execution of the Will, proof of testamentary capacity and the signature of the testator as required by law is sufficient to discharge the onus. Where however, there are suspicious circumstances, the onus is on the propounder to explain them to the satisfaction of the Court before the Court accepts the Will as genuine. Where the caveator alleges under influence, fraud and coercion, the

onus is on him to prove the same. Even where there are no such pleas but the circumstances give rise to doubts, it is for the propounder to satisfy the conscience of the Court. The suspicious circumstances maybe as to the genuineness of the signature of the testator, the condition of the testator's mind, the dispositions made in the Will being unnatural improbable or unfair in the light of relevant circumstances or there might be other indications in the Will to show that the testator's mind, the dispositions made in the Will being unnatural improbable or unfair in the light of relevant circumstances or there might be other indications in the Will to show that the testator's mind was not free. In such a case the Court would naturally expect that all legitimate suspicion should be completely removed before the document is accepted as the last Will of the testator. If the propounder himself takes part in the execution of the Will which confers a substantial benefit on him that is also a circumstance to be taken into account, and the propounder is required to remove the doubts by clear and satisfactory evidence. If the propounder succeeds in removing the suspicious circumstances the Court would grant probate, even if the Will might be unnatural and might cut off wholly or in part near relations."

To the repeated queries made by the Court what are the suspicious circumstances in this case, the Counsel has no satisfactory answer except stating that the dispositions made in the Will by the executant is unnatural bequeathing the entire property to one son ignoring other two sons. When such a disposition being unnatural it must be presumed that the Will was brought into existence by coercion or in a fraudulent manner. It is also his case that the testator was on the sick bed for a long time and just before death, she executed the Will. P.W. 1 in the witness box stated that late Thimmakka was living with the respondent for a longtime and she was also bed ridden for some- time. Admittedly, this registered Will was executed in the office of the Registrar. Hence the condition of the testator's mind or the evidence with regard to the testator's mind cannot be doubted. Likewise there is no proof to say that the respondent was by the side of the testator at the time of execution of the Will to show that due to undue influence exerted by him she executed that Will. Coming to the disposition of the property, the property was bequeathed to the respondent herein was only 68 cents of land. Only legal heirs of eldest son Somala Chinna Subba Reddy filed suit by making the third son as well as the second son's wife as defendants. Second son's wife remained ex parte. Admittedly China Subba Reddy died after execution of the Will. According to the plaintiffs, Rama Subba Reddy died ten years back as the suit was filed in the year 1985. There is no clear proof with regard to the death of Rama Subba Reddy whether he died prior to the execution of the Will or after execution of the Will. Likewise daughter in law of late Thimmakka did not give reasons for stay of her mother-in-law with the first respondent. As she might have ill-treated her, the mother-in-law might have gone to the third respondent and lived there for the rest of her life. It is also to be borne in mind the duty kept in mind that this respondent was born to late Thimmakka after she cut off her relations with her husband because of bad

habits. Hence she might have some more affection towards the respondent. At any rate, it is not uncommon in Hindu Society that testators giving the property held by them to any one or to all the legal heirs. At any rate in the absence of any evidence that due to undue influence or coercion exerted by the respondent, Thimmakka executed Will. Hence it has to be held that Thimmakka executed the Will in sound state of mind and knowing fully well that she is bequeathing the property to her last son. Accordingly this contention was also rejected.

11. In the light of the foregoing discussion, I hold that there are no merits in the second appeal and it has to fail.

12. In the result the second appeal is dismissed confirming the judgment and decree of the lower Appellate Court passed in AS No. 23 of 1991 dated 30-1-1996. In the circumstances of the case, there shall be no order as to costs.