

(2015) 07 KAR CK 0256

In the Karnataka High Court

Case No : Regular Second Appeal No. 579 of 2007

Y.R. Lakshminarayanappa and Others

APPELLANT

Vs

Y.R. Lakshmi Narasimaiah and Others

RESPONDENT

Date of Decision : 24-07-2015

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 22 Rule 3

Evidence Act, 1872 — Section 68, 69

Hindu Succession Act, 1956 — Section 15, 15(1)(b)

Citation : (2015) 07 KAR CK 0256

Hon'ble Judges : Rathnakala, J

Bench : Single Bench

Advocate : Vikram Phadke for N.G. Phadke, for the Appellant; K.H. Jagadeesh, Advocates for the Respondent

Final Decision : Allowed

Judgement

Rathnakala, J—This appeal assails the judgment and decree of the Fast Track Court-V, Chickballapur, dated 2.12.2006 in R.A. 25/2004 reversing the judgment and decree dated 24.6.2004 passed in O.S. No. 42/1992 on the file of the Civil Judge (Sr. Dn.) & J.M.F.C, Chickaballapur, thereby dismissing the suit of the plaintiff/appellant, which was filed seeking declaration, partition and possession of the suit property.

2. Parties will be referred to as per their ranking before the trial court.

3. The plaintiff/Y.R. Lakshminarayanappa, first defendant/Y.R. Lakshminarasimhiah and another Y.R. Venkatarathnam are the sons of Yernul Ramaiah. Y.R. Venkatarathnam expired in the year 1970 leaving behind his widow as his only legal representative. The suit property belonged to said Y.R. Venkatarathnam exclusively. On his death, his wife Jayamma succeeded to his estate. Said Jayamma expired on 29.4.1992. The plaintiff and the first defendant being the brothers of the husband of the deceased Jayamma are entitled to succeed to her estate by half share each. The plaintiff demanded the first

defendant to make partition of the suit properties during June 1992. Same was denied by stating that Jayamma has executed a Will bequeathing the property in favour of the first defendant on 25.4.1992. The Will is not genuine; it is a forged document. The first defendant had executed a sale deed in respect of suit item No. 1 property in favour of the second defendant; the said sale is not binding plaintiff. The third defendant is the tenant of the suit item No. 2 under deceased Jayamma. The suit properties are in joint possession of the parties. Accordingly, suit for partition and possession of divided half share of suit properties. The second defendant remained ex-parte.

4. The first defendant and third defendant contested the suit on common ground. Their defence was, plaintiff is not a member of the joint family nor successor of the property. Y.R. Venkatarathnam expired in the year 1982. The family properties inherited by the plaintiff and his two brothers were partitioned between father Yernul Ramaiah and his three sons under a registered partition deed dated 6.6.1949. On 18.12.1958, Y.R. Venkatarathnam executed a registered release deed in favour of the plaintiff and first defendant and he became the full owner of suit item No. 3 property and another property at Bagepalli. From the said date, he ceased to be the member of the joint family. He was employed in Railway Department. Subsequently he purchased suit item Nos. 1 and 2 from the first defendant. The plaintiff and the first defendant partitioned the properties on 14.2.1968 under the registered partition deed. The Will is genuine and well within the knowledge of the plaintiff and binding him; that is why he had not filed application to implead himself as legal heir of deceased Jayamma in H.R.C. No. 22/1984 pending in Munsiff Court, Chickballapur. The first defendant was the sole legal representative of said Jayamma in HRC petition. Deceased Jayamma was residing with him and she is the elder sister of Rangamma, wife of the first defendant. The first son of first defendant was looking after the affairs of Jayamma. Jayamma had executed a Power of Attorney in favour of the first son of first defendant to prosecute HRC case. The second defendant is not a necessary party to the case. The third defendant is in exclusive possession of suit item first property from the date of purchase. Khatha stands changed to his name. Suit item Nos. 2 and 3 properties are in physical possession and enjoyment of the first plaintiff and his son Y.L. Ramamurthy. The plaintiff is not in joint possession of any of the suit properties. Court fee paid is not proper.

5. After completion of the pleadings, issues were framed and after giving audience to both parties, learned Trial Judge decreed the suit as prayed. In appeal, the First Appellate Court has reversed the judgment of the trial court.

6. This Appeal is admitted to adjudicate the following substantial questions of law:

"1. Whether the lower appellate court has appropriately re-appreciated the evidence towards proof of the document at Ex. P1 namely; the will said to have been executed in favour of the defendants before the Trial Court?

2. Whether the manner of appreciation of evidence on this aspect admits perversity?"

7. Sri. Vikram Phadke, learned Counsel appearing for the plaintiff submits that, the defendants failed to prove the Will and the genesis of the Will. For a naked eye itself, it is evident that the Will was fabricated. The first defendant himself was the Counsel for the testatrix in a HRC case. It is highly probable that during the course of the proceedings, he had obtained the signature of the testatrix on the blank paper and after her death made use of the same to create a Will. The court below has not properly taken note of the discrepancy appearing on the face of the document; the Advocate of the testatrix himself was the beneficiary under the Will, it is not under the course of normal circumstances. On the showing of the defendant himself during his evidence, the testatrix was suffering from vomiting and other problems for 5 days prior to admitting her to the hospital. She is alleged to have executed the Will on 25.4.1992 and admitted to the hospital on 26.4.1992 and died on 29.4.1992. That itself is sufficient to infer that she was not in a sound and disposing state of mind and could not have executed the Will. The lower appellate court without performing its obligation to examine the decision of the trial court and find out where exactly the mistake was committed by the trial court in rejecting the Will, has allowed the appeal. The manipulation forthcoming on the face of the record, is not observed by the lower appellate court. The first defendant being the Counsel of the testatrix was in a dominating position to exercise his influence on her thereby misused his position. The evidence of the scribe of the Will/DW-5 itself is sufficient to establish that the Will is bad. Though he claims to have typed the Will, he has not subscribed his signature. On his own showing, he typed the document on the basis of some format. That is why it is not true disposition of Jayamma.

8. Learned Counsel taking the court through the precedents on the subject matter submits, as per the judgment of the Apex Court in Rani Purnima Devi and Another Vs. Kumar Khagendra Narayan Dev and Another, AIR 1962 SC 567 : (1962) 3 SCR 195 , if the evidence about the registration of the disputed Will shows that it is done in perfunctory manner, the registration of the Will, will be of no value. The suspicious circumstance regarding the execution of the Will and the attestation of the Will are manifest in the evidence of the propounder of the Will. The very fact that the Will was produced for registration after a time gap of 15 days from the date of the execution of the Will is sufficient to doubt its veracity as per the judgment of the Apex Court in the case of Kalyan Singh Vs. Smt. Chhoti and Others, AIR 1990 SC 396 : (1989) 4 JT 439 : (1989) 2 SCALE 1238 : (1990) 1 SCC 266 : (1989) 2 SCR 356 Supp . The mental state of the testatrix at the time of the execution of the Will is a substantial question of fact, which has been properly addressed by the trial court in the light of the judgment of the Apex Court in Madan Lal Vs. Mst. Gopi and Another, AIR 1980 SC 1754 : (1980) 4 SCC 255 : (1981) 1 SCR 594 . As held by the Supreme Court in Jagdish Singh Vs. Natthu Singh, AIR 1992 SC 1604 : (1991) 5 JT 400 : (1991) 2 SCALE 1363 : (1992) 1 SCC 647 : (1991) 2 SCR 567 Supp : (1992) 1 UJ 483 if the

lower appellate court has recorded its finding of facts without consideration of the relevant evidence and by erroneous approach, this Court is sure to interfere. In the absence of the proof of Will, plaintiff being the Class-II legal heir of deceased Venkatarathnam is entitled for half share in the suit property along with first defendant. The trial court on proper assessment of the evidence placed on record in accordance with the position of law has rightly negated the disputed Will and has decreed the suit for half share. Hence, the judgment passed by the lower appellate court deserves to be set aside and the judgment and decree of the trial court may be confirmed.

9. In reply, Sri. K.H. Jagadeesh, learned Counsel appearing for the legal heirs of the deceased first defendant Y.R. Lakshminarasimhiah submits, in fact the first defendant came on record as an Advocate of testatrix Jayamma in the middle of the proceedings. The observation of the trial court that Y.R. Lakshminarasimhiah being her Advocate possibly misused his position is without any basis. Except the fact that Jayamma was living in the first floor of the house of the first defendant, there was no scope for the first defendant to exercise his influence on her. He has proved the Will in accordance with the requirement of Sections 68 and 69 of the Evidence Act, by examining both attesting witnesses and also the scribe of the document. The relationship between Jayamma and first defendant was not just of Advocate and client. The scribe of the Will was not a Professional Deed Writer; he was a Job Typist not well versed with preparing deeds. He was introduced to Jayamma by Advocate T.P. Ramamurthy, who is one of the attestors of the Will. It was not necessary for him to sign the draft. The appellant has taken exception for using green sheet for the Will, but there is no such law which prohibits using a green paper; much is made in respect of leaving space in between the lines haphazardly, schedules are typed on the latter portion of the Will since space is left for each item of property. If such space was not left, then the Will would have become suspicious. Both attesting witnesses have supported the case of the defence. There is no evidence to show that first defendant had obtained the signature of Jayamma on blank paper in HRC case and misused the same. From the Hospital records, it is made out that she had thyroid problem for more than 20 years and it was not problematic. She had voluntarily given the history to the Doctor on her admission to the Hospital, that itself shows that she was conscious. The contention of the plaintiff that she had vomiting and diarrhea for five days before admission to the hospital is incorrect, Ex. C.1/hospital card is manipulated. The attesting witnesses had deposed before the court that they have signed before the testatrix; that removes the doubts, if any, about execution of the Will. The plaintiff was not close to Jayamma to mention his name in the Will. The first defendant being her brother-in-law/sister's husband, she has chosen him as the beneficiary under the Will. Of course, the first defendant had divorced his first wife/sister of Jayamma since she did not beget children, however, still he continued his relationship with her. The divorce was only nominal to overcome legal hurdle. The execution of the Will cannot be said to be unnatural or surrounded by any suspicious circumstance; disinheritance of

the plaintiff was for reasons. The judgment of the first appellate court is judicious and on proper re-evaluation of the evidence in the light of the following judicial pronouncements of the Apex Court and other High Courts and same deserves to be upheld.

"1) In Seth Beni Chand (Since Dead) Now by L.Rs. Vs. Smt. Kamla Kunwar and Others, AIR 1977 SC 63 : (1976) 4 SCC 554 : (1977) 1 SCR 578

2) Crystal Developers Vs. Smt. Asha Lata Ghosh (Dead) through LR. and Others, AIR 2004 SC 4980 : (2004) 5 CTC 121 : (2004) 9 JT 64 : (2004) 8 SCALE 390 : (2005) 9 SCC 375 : (2004) AIRSCW 5704

3) Meenakshiammal (Dead) through LR. and Others Vs. Chandrasekaran and Another, AIR 2005 SC 52 : (2004) 9 JT 371 : (2004) 9 SCALE 256 : (2005) 1 SCC 280 : (2004) AIRSCW 6254 .

4) Surendra Pal and Others Vs. Dr. (Mrs.) Saraswati Arora and Another, AIR 1974 SC 1999 : (1974) 2 SCC 600 : (1975) 1 SCR 687

5) Kishan Singh Vs. Nichhattar Singh and Others, AIR 1983 P&H 373 ."

10. The facts not in dispute between the parties is, testatrix Smt. Jayamma is the wife of brother of plaintiff and first defendant and had succeeded to the estate of her husband and died issueless. It is also shown that said Jayamma was residing in the first floor of the house of first defendant. She had engaged the first defendant to prosecute an eviction petition filed by her.

11. The Will is said to have been executed on 25.4.1992 and said Jayamma was admitted to the hospital on 26.5.1992 and she expired on 29.4.1992. The Will was presented for registration on 19.5.1992. On behalf of the defendants, six witnesses were examined. The first witness/DW-1 was the first defendant Y.R. Lakshmmarasimhaiah. The second witness/DW-2 was the Advocate T.R. Ramamurthy, a family friend of first defendant, who introduced the Typist to the testatrix and is also an attester to the Will, D.W.-3/R. Sathyanarayana is the brother-in-law of D.W.-1 and attester to the Will. D.W.-4/Dr. Mallikarjuna of St. Martha's Hospital, who produced the case records of the hospital pertaining to admission and treatment of late Jayamma. He is not the doctor who treated Smt. Jayamma.; he has given evidence on the basis of the documents. D.W.-5 is N. Manjunatha Rao/Typist, the scribe of the Will. D.W.-6/Y.L. Ramamurthy, is the son of first defendant. It is a fact that on the death of Jayamma, the plaintiff filed an application under Order XXII Rule 3 of CPC to come on record as legal heir of deceased Jayamma in the H.R.C. No. 22/1984 on the file of the Additional Civil Judge (Jr. Dn.) & JMFC, Chickballapur. By that time first defendant was already on record as the legal heir of deceased M Jayamma, the application was opposed by the defendant No. 1. The question was taken upto High Court and on the direction of this Court, enquiry was held. During the enquiry, the disputed Will and Hospital records, which are under scrutiny in this case, were subject matter of dispute. However, the veracity of Will was disbelieved by the Court, and the

application of the plaintiff was allowed; he was permitted to come on record as the legal heir of Jayamma along with Y.R. Lakshminarasimhaiah/first defendant. The said order passed on I.A. No. 29 in H.R.C. No. 22/1984 was before the court as Ex. P10.

12. With regard to the client-advocate relationship between Jayamma and first defendant, the Appellate Judge was of the view that the first defendant came to the scene at a later point of time since Jayamma had engaged another Advocate to conduct her case. The suspicion of the trial court was, first defendant being the Advocate, he might have misused his position and fiduciary relationship with the testatrix and dominated over her. But the view of the lower appellate court was, "the first defendant was not obliged to disprove the allegation since the transaction did not appear on the face of it as an undue influence over the testatrix. She was a literate lady. It was not only the relationship of Advocate and client but as the brother-in-law of the deceased, was taking care of her. The orders passed by the HRC Court ended up in allowing the petition. Hence, the finding given by the Civil Judge on the genuineness of the Will is of no avail to the plaintiff.

13. The Hospital Card/Ex. C.1 dated 26.04.1992 depicted that Jayamma had vomiting 1 day x 5 and diarrhea 1 day x 5. But on the backside of the same document, it reads "vomiting x 5 days, diarrhea (illegible) x 5 days". The lower appellate Court took strong view of the fact that the writing in the back side of the card was with different ink and different handwriting. The plaintiff himself must be responsible for manipulation of the hospital records (but there was no defence evidence to that effect). According to the learned Judge, there was nothing unusual in variance of the space between lines in the Will/Ex. P1, and using the green sheet to type the Will since the Typist was not an experienced document writer. There was no evidence to hold that the propounder of the Will/first defendant was present at the time when the Will was typed. Though there was admission from first defendant during his cross examination that he had taken the signatures of Jayamma in respect of the HRC case, according to the learned Judge, it did not mean that he had taken the signatures on blank papers. The evidence adduced by two attesting witnesses that they signed the Will at the instruction of the testatrix was held sufficient evidence in proof of the Will.

14. Having regard to the proximity of relation to the first defendant, through her sister, it was held that he was selected to that of the plaintiff. From the Hospital records, the learned Judge was of the opinion that Jayamma was sick only for one day and there was nothing unusual for her to go on the previous day to the hospital all alone to meet the Advocate, get the Will typed, return home and execute the Will. By holding that Ex. C1 is manipulated, the learned Judge was of the opinion that the plaintiff could not prove that the testatrix had vomiting and diarrhea for five days and her condition could not be as serious as testified by the Doctor who was deposing on the basis of the records. Relying on the precedents the learned Appellate Court was of the opinion that illness of the

testatrix which was brought on record was not a sufficient ground to disbelieve that she was not in sound state of mind to execute the Will; and it was not at all a case to suspect the Will which the propounder was to remove. That is how the Appellate Court reversed the judgment of the trial court.

15. The Will is tendered for registration subsequent to the death of testatrix. What necessitated for its registration is not explained. It is typed on a green sheet which is normally used by Advocates in the Courts. No margin was left on either side, on the top and at the foot of the Will. At the first para, single space was left between lines, thereafter the description of the properties was mentioned at Sl. Nos. 1 to 5. Though the property number was mentioned, boundary was not mentioned. More gap was given between serial numbers 3, 4 and 5 and again at the next para, wider gap was left. The variance in the space in between lines is admitted by the scribe D.W.-5 himself. During his cross examination, he had categorically stated that unless otherwise directed, he will leave margin on both sides of the paper. In all probability for adjustment of the space upto the point where signature of Jayamma was appearing, the typist deviated from normal rule of typing. The scribe had not affixed his signature though he was a professional Typist. As per his admission, he did not know the art of preparing a Will. That was one of the unusuality noticed by the Trial Court in preparing the Will. First defendant/DW-1 though claims that he was in Bangalore on that day, states that Jayamma informed him about the execution of the Will on 25.4.1982 at 8 p.m. In the Power of Attorney executed by Jayamma during November 1999 in favour of Y.L. Ramamurthy, the son of first defendant, she had averred that due to her illness and old age, she executed the Power of Attorney. As per the evidence of D.W.-6/son of first defendant, Jaymma had vomiting and loose motion for 2-3 days prior to her admission to the Hospital. She was admitted to the Hospital on 26.4.1992; the Will is alleged to have been executed on 25.04.1992. But first defendant in his sworn testimony, by suppressing these facts claims that Jayamma was in good health at the time of execution of the Will.

16. The evidence of D.W.-2/Advocate Ramamurthy was also, as if Jaymma was in perfect health on the day of executing the Will. During cross-examination of D.W.-4/the Doctor, it is surfaced that "Jayamma had burn injuries on her right forearm of seven days old prior to her admission. The duty Doctor in the ward had mentioned at Ex. C1 that Jayamma had vomit and loose motion for last five days. In her history sheet, it is shown that she was unconscious, pneumonia and her blood pressure was 60 : 140. No effort was made for the defendant, while he was in the witness box to contradict above fact. As per the evidence of D.W.-6/son of first defendant, she was quite healthy. But for 2-3 days prior to 26.4.1992, she had loose motion and was taking tablets. In the light of the above, the Trial court was well within its propriety in drawing inference that, testatrix could not have gone all alone without anyone's help to the Advocates' Association, City Civil Court Complex, to execute the Will and by obtaining her signature on some other occasion on blank sheet, later it is converted to Will.

17. Though all the defence witnesses synchronously asserted that Jayamma was in good health and sound state of mind on 25.04.1992, the cross-examination of Ramamurthy/DW-6 and evidence of Doctor/DW-4 and documentary evidence Ex. C.1, it is established that Jayamma was suffering from vomit and Diarrhea on that day. It is not in the natural course that the testatrix in such condition would go to the Bar Association unaccompanied to meet D.W.-2 during his busy hours. D.W.-2, who knows the procedure of execution of a Will would not have asked the old lady to come and meet him during his busy hours in the court premises. Even if that had happened he would not have left her at the disposal of a Typist, who is stating on oath that he had no knowledge to draft a Will and he typed the Will in question on the basis of an old draft. Much is argued for the defendant and appreciated by the Appellate Court about the quality of paper used for the Will. The Will being a valuable document, the Advocate if really had taken the lady to the Job Typist would not have excused himself without giving necessary instructions to draft a Will. If the Will was executed at the residence of the testatrix, there was every reason for her to use a blank paper which was available in the house, but here in this case, having approached the Job Typist in the Bar Association, it is not palatable that the Will is typed on a green paper, which is used usually by the Advocates in the course of Court proceedings. When the Will is supposed to be the final disposition of testatrix's intention to bequeath her properties, in all probability they would have used a stamp paper, which was very much available in the court premises. Further, the things get more worsen since the contents of the document is typed without leaving sufficient margins on four sides. He was not an inexperienced Typist. On his own showing, he had 17 years of service as a job typist. Though he could have used both sides of the paper for drafting the Will, he has effort fully filled the entire contents on one side of the paper with uneven space between lines. He himself admits in his cross-examination about uneven spacing. Not only he has not endorsed on the document but also not put his small signature with date as a token of his drafting. The witnesses' signature is also found in a constricted space; the signature of the testatrix is not immediately after the last word in the Will. These are not the minor discrepancies to ignore but genuine, which the propounder was required to remove but has left unattended.

18. Section 15 of the Hindu Succession Act, 1956 is the statutory provision applicable in the case of death of a female Hindu dying intestate. The testatrix herein having died issueless in the natural course, her estate shall devolve upon the heirs of her husband. The plaintiff and the first defendant being her in-laws, fall under the category of Class II heirs as per Section 15(1)(b) of the Hindu Succession Act, 1956. If the question of Will was not there, the plaintiff and first defendant both would have inherited to her estate in equal share. The Apex Court in Uma Devi Nambiar and Others Vs. T.C. Sidhan (Dead), AIR 2004 SC 1772 : (2004) 2 CTC 287 : (2003) 10 JT 470 : (2003) 10 SCALE 624 : (2004) 2 SCC 321 : (2003) 6 SCR 637 Supp enumerated the principles so far established by its own pronouncements. The law relating to manner and onus of proof and

also duty cast upon the Court and based upon the Will. In the light of the judgments in H. Venkatachala Iyengar Vs. B.N. Thimmajamma and Others, AIR 1959 SC 443 : (1959) 1 SCR 426 Supp ; Rani Purnima Devi and Another Vs. Kumar Khagendra Narayan Dev and Another, AIR 1962 SC 567 : (1962) 3 SCR 195 and Shashi Kumar Banerjee and Others Vs. Subodh Kumar Banerjee since deceased and after him his legal representatives and Others, AIR 1964 SC 529 it was observed that "... it is the duty of the propounder of the Will to remove all the suspected features, but there must be real, germane and valid suspicious features and not fantasy of the doubting mind. It has been held that if the propounder succeeds in removing the suspicious circumstance, the court has to give effect to the Will, even if the Will might be unnatural in the sense that it has cut off wholly or in part near relations. (See Pushpavathi and Others Vs. Chandraraja Kadamba and Others, AIR 1972 SC 2492 : (1973) 3 SCC 291 . The lower appellate Court brushes aside all the discrepancies appearing on the very face of the Will though the typist himself had admitted uneven spacing

19. The typist claims that he did not know about Advocate Ramamurthy and the propounder Lakshmmarasaiah, but his statement does not appear to be the true, otherwise why would Advocate Ramamurthy selects him only to type the Will among other Deed writers available in the campus. It is the testatrix met him in the court premises; prior to that, as per his own statement, she had gone to his office twice requesting his assistance to prepare a Will. If that had really happened, he would have not have taken the matter so casually to leave the old lady unattended with an unskilled job typist. Being an Advocate, he must be knowing the importance of a Will and the probability of future litigations. Of course, there is no rule as to what kind of paper shall be used for preparing a Will. Still whenever valuable deeds are prepared, it is natural for the parties to use a stamp paper which can be preserved for a long time, having regard to its thickness and colour.

20. Another factor which catches my eye is, if the testatrix had intended to exclude the plaintiff from inhering her estate, she would have exposed her intention while giving instructions to the typist. The lower appellate Court is harping for a positive evidence about using the signature of testatrix on blank paper. But such manipulations whenever done, will not be done under the broad daylight in the presence of a witness. Except the propounder himself, no one can have the knowledge how and under what circumstance the signatures of the testatrix were obtained on a blank paper. The crucial witnesses/attesting witnesses are not speaking out the complete truth; while D.W.-3/R. Sathyanarayana suppresses his relationship with the propounder of the Will; D.W.-6 admits that he is the brother-in-law of the first defendant. The second defendant/T.R. Ramamurthy is closely associated to the family of the first defendant and his conduct in not assisting the testatrix when she met him in the court premises even though she had prior intimation of her visit is not in the natural course. There is another reason for me to disbelieve the version of defence witness. As per medical records, Jayamma had burn injuries of one week

age. If attesting witnesses really watched her signing the Will, why and how this fact slipped out of their sight? Neither the first defendant nor his son D.W.-6 utter a word about the burns, while deposing that she was in perfect health.

21. It appears, the witnesses are modulating their evidence to fit into the established procedure contemplated for proving a Will. If Jayamma was of the intention to bequeath her estate in favour of the propounder of the Will, there was no inhibition for her to disclose her mind at the least to the son of the propounder in favour of whom she had executed a General Power of Attorney to conduct a case. On his own showing, the first defendant was at Bangalore on both dates i.e., 25.04.1992 and 26.04.1992, but he has not accompanied her to the Court premises and hospital and testifies that it is only at 8.00 p.m. on 25.4.1992, he was informed by Jayamma about execution of the Will. The lower Appellate Court while reversing the finding of fact of the trial court must come to close quarters with the reasoning assigned by the trial court and then assign its own reason for arriving at a different finding so that the court hearing the further appeal would satisfy that the First Appellate court has discharged its duty expected of it (as per the decision in Santosh Hazari Vs. Purushottam Tiwai (Dead) by Lrs., (2001) 251 ITR 84 : (2001) 2 JT 407 : (2001) 1 SCALE 712 : (2001) 3 SCC 179 : (2001) 1 SCR 948 : (2001) AIRSCW 723 : (2001) 1 Supreme 642 . But the lower appellate Court while resting its conclusion on the disputed Will has not shown how the conclusion arrived by the trial court was faulty. The impugned judgment is one sided without considering the genuine suspicions springing from a bare perusal of the Will itself As far as the judgment of the Trial Court is concerned, it has touched upon all the attending circumstances to reject the Will with sound reasoning while deciding the entitlement of the plaintiff for half share in the suit property. In the light of the discussion supra, the substantial questions of law are answered against the respondents.

In the result, the appeal is allowed.

The impugned judgment and decree of the Fast Track Court-V, Chickballapur, dated 2.12.2006 in R.A. No. 25/2004, is hereby set aside, confirming the judgment and decree dated 24.6.2004 passed in O.S. No. 42/1992 on the file of the Civil Judge (Sr. Dn.) & J.M.F.C, Chickaballapur.

Parties to bear their own costs.