

KATK910015852023



**IN THE COURT OF SENIOR CIVIL JUDGE AND
J.M.F.C., AT TIPTUR.**

**Dated this the 24th day of November 2025
PRESENT**

SRI. MOHAMED ARIFULLA C.F.

B.Sc., LL.B.,

SENIOR CIVIL JUDGE AND J.M.F.C., TIPTUR.

R.A NO.43/2023

Appellant:

Vairamudi S/o Late Sri Cheluvaiah,
Aged about 45 year,
R/o.Kamagondanahalli Village,
Kibbanahalli Hobli, Tiptur Taluk.

(By Sri.T.N.N., Advocate)

/Vs/

Respondents:

1. Basavaraju S/o Late Cheluvaiah,
Aged about 60 years,
R/o.Kamagondanahalli Village,



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Kibbanahalli Hobli, Tiptur Taluk.

2. Vijayamma W/o Late Honnaiah,
Aged about 45 years,
3. Nagaraju S/o Late Honnaiah,
Aged about 24 years,

All are R/o.Biddarehallada Kaval,
Nittur Hobli, Gubbi Taluk.

4. Nataraju S/o Late Honnaiah,
Aged about 26 years,
5. Swamy S/o Late Honnaiah,
Aged about 24 years,

Both are R/o.Kamagondanahalli Village,
Kibbanahalli Hobli, Tiptur Taluk.

(R1 By Sri.S.S.,Advocate)
(R2 to 5-Absent)

Date of Institution of Regular appeal : 11.08.2023.

Nature of the suit : Partition &
Separate Possession

Date of commencement of
recording of evidence : -

Date on which the Judgment was
Pronounced : 24.11.2025



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Total Duration : Year/s Month/s Day/s
02 03 13

(MOHAMED ARIFULLA C.F.)
Senior Civil Judge & J.M.F.C.,
Tiptur.

J U D G M E N T

This is an Appeal filed by the Appellant/defendant No.1 U/Order 41 Rule 1 of C.P.C.

2. The Appellant/defendant No.1 has challenged the Judgment and decree passed in O.S. No.280/2013, dated 05.07.2023 by the Learned Addl. Civil Judge & JMFC., Tiptur. The said Court herein after referred to as Trial Court.

3. The present appeal is filed by the defendant No.1 of that suit. The rank of the parties is referred to as plaintiff and defendants in this appeal also for clarity, clear understanding and in order to avoid any confusion.



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4. It is the case of the plaintiff that the plaintiff and defendants are the brothers and they are sons of Cheluvaiah and Chikkamma. The suit properties are the ancestral and joint family properties of the plaintiff and defendants. The said properties were fallen to the share of the father Cheluvaiah and mother Chikkamma under the panchayath palupatti dated 06.05.1998 having taken place between the plaintiff, defendants, Cheluvaiah and Chikkamma. After the partition, revenue records have changed as per the palupatti and all were in possession and enjoyment of the shares so allotted. The plaintiff was in possession and enjoyment of the share allotted to his father as his father was old and could not cultivate his share of property. The defendant No.2 was in possession and enjoyment of the share allotted to Chikkamma. The rough sketch produced by plaintiff shows that the suit properties were fallen to the share of



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Cheluvaiah and Chikkamma which were cultivated by the plaintiff and the defendant No.2 without any interference from anybody in any manner.

5. The plaintiff and his family members were looking after the welfare of Cheluvaiah and defendant No.2 was looking after Chikkamma till their death. There was no understanding between Cheluvaiah and defendant No.1. The defendant No.1 was always quarreling with his father Cheluvaiah and also assaulted him many times. So Cheluvaiah was residing with the plaintiff. The defendant has assaulted Cheluvaiah and threatened him of death and Cheluvaiah had given many complaints against the defendant to the Kibbanahalli Police. The said defendant has apologized in writing before the Kibbanahalli Police. This plaintiff has performed the last rites of his father and mother. After the death of Cheluvaiah, the plaintiff



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continued to be in actual possession and enjoyment of the suit properties. The said Cheluvaiah and Smt.Chikkamma died intestate. The defendant No.1 interfered with the plaintiff's peaceful possession and enjoyment of the suit properties two months ago and the elders of village convened a panchayath wherein the defendant No.1 agreed that he would not interfere with the possession and enjoyment of the item No.1 of suit schedule property but, recently, the defendant tried to dispossess the plaintiff physically by claiming that the suit property belongs to him. But, the plaintiff managed to be in possession of the suit property with the help of the family members. The plaintiff after verification came to know that the defendant No.1 changed the revenue documents of the suit schedule property into his name by colluding with the revenue officials without any notice to the plaintiff on the pretext



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that Sri Cheluvaiah and Smt.Chikkamma have jointly executed an unregistered Will in favor of defendant No.1. The alleged Will is concocted and a forged one, created by the defendant No.1 with intention to knock off the suit property and to defeat the right of plaintiff. The plaintiff in turn demanded the defendant No.1 to allot his share in the suit schedule property but, he refused to do so. Hence, this suit.

6. This court has issued the suit summons to the defendants. After receipt of the suit summon, defendants appeared through their counsel.

7. The defendant No.1 filed the written statement by admitting the relationship between the parties to the suit and palupatti dated 06.05.1998 and further denied the case of the plaintiff by contending that the suit property originally belongs to the father of the plaintiff and



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defendants. The said property was fallen to the share of the father and mother of the plaintiff and defendants under the panchayath palupatti dated 06.05.1998. After the partition, revenue documents were changed in the name of the father and mother of the plaintiff and defendants. The defendant No.1 was in possession and enjoyment of the share allotted to his father and mother and they were old and could not cultivate their share. The suit properties cultivated by defendant No.1 without any interference from anybody in any manner. The defendant No.1 and his family members were looking after the welfare of Sri Cheluvaiah and Smt.Chikkamma till their death. Before the death of father and mother of the defendant No.1, they executed a Will on 15.12.2004 in favor of defendant No.1 in respect of suit properties. Thereafter, the katha and pahanis have been changed into the name of the defendant No.1. The defendant



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No.1 is the absolute owner and in possession and enjoyment of the suit property. The plaintiff has no manner of rights or share over the said properties. The plaintiff is not entitled for any of the relief against the defendants thereby, sought for dismissal of the suit.

8. In view of the above rival contentions, the following Issues were framed by the Trial Court;

1. Whether the plaintiff proves that he and the defendants constitute undivided Hindu joint family and the suit properties are ancestral properties which have fallen into the share of their father and mother under panchayath palupatti dated 06.05.1998 and from that date they are in peaceful possession and enjoyment of the shares?
2. Whether the plaintiff is entitled for 1/3rd share in the suit property?
3. Whether the court fee paid is sufficient?



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4. Whether the plaintiff is entitled for the relief claimed?

5. What order or decree?

9. To prove the case of the plaintiff, he has got examined himself as PW-1 and got marked as Ex.P1 to 19 and closed his side. By way of rebuttal, the defendant No.1 had got examined himself as DW-1 and one witness examined as DW-2 and got marked 14 documents at Ex.D1 to 14 and closed their side.

10. The Trial Court after hearing the arguments of both parties has decreed the suit of the plaintiffs in partly by giving findings to Issue No.1, 2 & 4 in the Affirmative and Issue No.3 Negative in the.

11. Aggrieved by the said Judgment and Decree of the Trial Court passed in O.S.No.280/2013, dated: 05.07.2023, the plaintiff has filed this appeal and prays to



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decree the suit by allowing the appeal on the following grounds;

12. The judgment and decree passed by the Hon'ble trial court is opposed to law and probabilities of the case. The Hon'ble trial Court erred in answering Issue No.1, 2 and 4 in the Affirmative, Issue No.3 in the Negative. While answering the issues, the reasons which are stated by the trial court is also against law and not proper.

13. The appellant has proved his case as per his oral and documentary evidence but, the Hon'ble trial court ignored the same and decreed the suit. Even otherwise, the judgment and decree passed by the Hon'ble trial court is perverse, capricious and not sustainable in law and hence, the same is liable to be set-aside as per law. Though the plaintiff has proved that he was minor at the time of the execution of the sale deed and the said contention of



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plaintiff has not been considered by the trial court. The judgment and decree passed by the Hon'ble trial court is against the principles of natural justice, hence the same is against law. Hence, the judgment and decree of the trial court is liable to be set-aside.

14. Respondents have appeared before this court in pursuant to court notices through their counsel. The TCR is secured by this Court.

15. Heard the arguments of learned counsel for Appellant and Respondents. Now the points that arise for my considerations are;

1. Whether the judgment and decree passed by the trial court in O.S. No.280/2013, dated 05.07.2023 is erroneous, illegal and opposed to law and calls the interference of this court?



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2. Whether the defendant No.1 proves that his father Cheluvaiah and his mother Chikkamma executed an unregistered Will on 15-12-2004 and bequeathed suit schedule properties in his favour.

3. What Order?

16. My findings on the above points are;

Point No.1 & 2 : In the Negative

Point No.3: As per Final Order

for the following;

REASONS

17. **Point No.1 & 2:** According to the plaintiff, he and defendants are brothers and they are the sons of Cheluvaiah and Chikkamma. The suit schedule properties are ancestral and joint family properties of plaintiff and defendants. The suit properties were fallen to the share of Cheluvaiah and Chikkamma, who are the father and mother of the plaintiff and defendants under a panchayath palupatti dated 06.05.1998 held among the plaintiff and defendants and



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their parents. The revenue records were changed as per the palupatti and they are in possession and enjoyment of the shares allotted them. The plaintiff was in possession and enjoyment of the share allotted to his father, as his father was old and he was not able to cultivate the property allotted to his share. The defendant No.2 was in possession and enjoyment of share allotted his mother Chikkamma. The plaintiff was looking after the welfare his father Cheluvaiah and defendant No.2 was looking after the welfare of his mother Chikkamma till their death. The defendant No.1 tried to interfere with the possession of the plaintiff in the suit item No.1 property and after intervention elders of the village, he agreed that he would not interfere with the possession and enjoyment of the suit item No.1 property. After verification of revenue records, the plaintiff came to know that the defendant No.1 got changed the



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revenue documents of suit properties into his name colluding with revenue officials without any notice to the plaintiff on the pretext that the said Cheluvaiah and Chikkamma jointly executed an unregistered Will in his favor. The alleged Will is concocted and a forged and created by the defendant No.1 with an intention to knock of the property and to defeat the right of the plaintiff. The plaintiff in turn asked the defendant No.1 to allot his share in the suit schedule property but, he refused to do so.

18. The defendant No.1 has not denied relationship between the parties and also he has not denied that the suit properties were fallen to the share of father and mother of the plaintiff and defendants under the said panchayathi palupatti dated 06.05.1998. However, the defendant No.1 has taken a defense that he was in possession and enjoyment of the share allotted his father and mother, as



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they were old and could not cultivate their share. The defendant No.1 and his family member was looking after the welfare of the parents. Further he has taken a defense that before the death of father and mother of defendant No.1, they executed a Will on 15.12.2004 in his favor in respect of suit properties and thereafter, the revenue records have been mutated into his name and after the death of his parents, he became the absolute owner of the suit properties and the plaintiff has no manner of right, title or interest over the properties.

19. As already discussed, the parties have not disputed the relationship between them and also they have not disputed that the suit schedule properties were the ancestral and joint family properties and they were fallen to the share of father and mother of plaintiff and defendants under EX.P-19 Panchayathi Palupatti dated 06.05.1998.



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However, the plaintiff has claimed that he was looking after his father and therefore, he was possession and enjoyment of the suit item No.1 property and the defendant No.2 is looking after the mother and therefore, he is in possession and enjoyment of suit item No.2 property and whereas, the defendant No.1 has claimed that he was looking after both the mother and father and he is in possession and enjoyment of both the suit properties and therefore, the mother and father have executed unregistered EX.D-7 Will in his favor on 15.12.2004 in respect of the suit property.

20. The crux of the matter is the EX.D-7 unregistered Will, which is alleged to have executed by both the father and mother of the plaintiff and defendants in favour of defendant No.1. The defendant No.1 has produced Will as per Ex.D7. On perusal of Ex.D7 Will, the recitals shows that the deceased Cheluvaiah had bequeathed the suit properties



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along with his wife Chikkamma whereas, the said Chikkamma i.e., the mother of the defendant No.1 had not made declaration personally to bequeath her share. It shows that the deceased Cheluvaiah had made unilateral decision to bequeath the suit properties on his behalf and on behalf of his wife and however, his wife had not made any such declaration or decision personally though she had alleged to have put her thumb impression in the Ex.D7 Will. Further the DW-2 has been examined by the defendant No.1 who is alleged to have attested the Ex.D7 Will. On perusal of the Ex.D7 Will, the addresses of attestors have not been shown and even the name of the fathers of the attestors have also not been shown or written in the Ex.D7 Will and such being the case, it creates suspicion about the presence of the attestors at the time of the execution of the Will. Though the DW-2 has stated that he was present at the time of the



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execution of the Will but, his name, father name and address etc., is not mentioned in the Ex.D7 Will and therefore, it creates suspicion over his presence at the time of the execution of the alleged Will. The DW-2 has stated that the Ex.D7 Will was executed within the boundaries of the Sub-Registrar office at Chikkanayakanahalli and he has stated that the office of Sub-Registrar was existing within the radius of 20 feet from the place of execution of the Will but, the defendant No.1 and his witness have not explained why the said Will was not registered in the office of the Sub-Registrar though it was alleged to have executed very near to the office. This fact also creates suspicion over the execution of the Will.

21. The plaintiff has stated that the father and mother of the plaintiff were separated due to some matrimonial dispute between them and his father took



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Deeksha and he was not residing with the mother of the plaintiff. The DW-2 has admitted that the father of the plaintiff took Deeksha and however, the defendants No.1 has also admitted that their father took diksha and he was doing Bhajan in the temple but, he has stated that he was not aware that there were any differences between his father and mother and so that his father took Deeksha. This fact clearly discloses that the father of the plaintiff and defendants took Deeksha and he used to sing Bhajans in the temple and though the defendant No.1 has shown his unawares about the difference between his mother and father but, the evidence of both parties to the suit shows that their were differences between their mother and father and it also creates suspicion over the joint bequeathing of suit properties in favour of the defendant No.1 by jointly executing the alleged Will. Moreover, the entire share of the



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deceased Cheluvaiah and his wife has been given to the defendant No.1 by excluding other members of the family without proper reason and this fact also create suspicion over the execution of the Will by the deceased Cheluvaiah and his wife, as the defendant No.1 himself has admitted that both the father and mother were having equal affection towards his three sons and such being the case, they could not have excluded the plaintiff and defendant No.2.

22. The learned counsel for the defendant No.1 has canvassed the judgment of the **Hon'ble Supreme Court** reported in **2021(5) KCCR 107 (SC) between V.Prabhakara V/s Basavaraj.K(dead) by LRs and Another;**

C. SUCCESSION ACT, 1925-Section 63-Execution of Will Proof-Suspicious circumstances-Mere exclusion of a brother or sister-Would not give raise to suspicion.



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23. The defendant No.1 himself has admitted that both the father and mother had equal love and affection towards all sons and such being the case, they could have given reason for exclusion of the other two sons and no such reason has been shown in the Will. Moreover, the plaintiff has alleged that the defendant No.1 was not having cordial relationship with his father and he used to assault him and therefore, his father had lodged several complaints before the police against the defendant No.1 but, the defendant No.1 has stated in the cross examination that the plaintiff was filing false complaints against him by forging the signatures of his father. If the plaintiff was lodging false complaints against him byu forging signatures of his father and why the defendant No.1 kept quite without taking any action against the plaintiff and it is not explained by the defendant NO,1. This fact also creates suspicion over the



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execution of will by them in his favour by excluding the other sons. Moreover, there are several other clouds mounted on the execution of the alleged will and as such, the defendant No.1 can not take shelter of the proposition of law laid down in the above reported judgment.

24. The plaintiff has filed an application for the scientific investigation of Ex.D7 Will and expert opinion and the trial court has allowed the application and sent for the scientific examination of signature of father of plaintiff and defendants in the said Will to an expert. The expert has submitted his opinion by stating that the signature made in the Ex.D7 Will is not tallying with that of the signature in the admitted document Ex.P19 and the expert has given opinion that the signature in the Will and the signature in the Ex.P19 unregistered partition deed were not written by one and the same person and further opined that the



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questioned signature, which is marked as Ex.P7(a) in comparison with specimen signatures and writings marked as S1 to S6 since do not afford sufficient identifying data. The said report has been accepted by the trial court with a liberty to the aggrieved parties to file an application for cross examination of court commissioner on commissioner report but, the defendant No.1 has not sought for the presence of the court commissioner for the cross examination. This fact clearly discloses that the defendant No.1 was not interested to examine the court commissioner and therefore, it is deemed that the defendant No.1 has acceted the opinion of the court commissioner i.e., expert. As he has not cross examined by challenging the opinion of the expert and therefore, the opinion of the expert remained unchallenged and undisputed.



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25. The learned counsel for the defendant No.1 has canvassed the judgment of the **Hon'ble High Court of Karnataka** reported in **ILR 1995 KAR 1123 between Alex D'Souza V/s Dinoysius Mohan Pinto;**

CIVIL PROCEDURE CODE, 1908 (Central Act No.5 of 1908) – Order 26 Rule 10 – Report of Commissioner only piece of evidence, the court to ascertain reliability thereof keeping in view other evidence in case – Assessment of evidence on totality of circumstances & materials on record not status of Commissioner.

26. In the above reported judgment the Hon'ble High Court of Karnataka has made a proposition of law that the report of Commissioner is only a piece of evidence, the court is to ascertain reliability thereof keeping in view of other evidence in case. In the present case on hand, the expert has clearly stated that the signature of deceased Cheluvaiah in the Ex.D7 Will is not tallying with the signature in the Ex.P19 unregistered partition deed. On perusal of the signature of deceased Cheluvaiah in the Ex.D7 and



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signature in the Ex.P19, it appears from the face of the record that there is a lot of variation in both the signatures and not tallying with each other. This fact clearly shows that the person who signed the EX.P-19 and the Ex.D7 Will is not one and the same, as opined by the expert. Moreover, the age of the deceased Cheluvaiah and his wife was also not mentioned in the Will and the reason for not registering the Will before the Sub-register is also not mentioned in the Will and this fact also creates suspicion over the execution of the Will.

27. He has also canvassed the judgment of the **Hon'ble High Court of Karnataka** reported in **ILR 1998 KAR 1730** between **Puttegowda V/s Thimmajamma and Others:**

INDIAN SUCCESSION ACT 1925 (Central Act.39 of 1925) - SECTION 63 - Burden of proving the will - Initially on the propounder - Once the initial burden is discharged it is for the person challenging the will to



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prove the circumstances which according to him invalidate the will.

In the present case on hand, there are several suspicions over the execution of the EX.D-7 will and the defendant No.1 has not discharged from the burden of proving the execution of the Will and therefore, the question of shifting of burden on the person who challenges the will does not arise at all. The defendant cannot take shelter of the proposition of law laid down in the above reported judgment.

28. The learned counsel for the defendant No.1 has argued that the defendant No.1 has claimed in his written statement that his father and mother jointly executed will in his favor and the plaintiff has not filed rejoinder to that effect and therefore, prays to take adverse inference against the plaintiff. On perusal of the plaint, it shows that the



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plaintiff has disputed the execution of the Will by averring that it is a created and concocted document and such being the case, the question of filing rejoinder does not arise at all and it is also not necessary as, such a contention is already taken in the plaint. The defendant No.1 has shown his unawareness when it is suggested to him that his parents were not in cordial relationship and if the parents were staying with the defendant No.1 definitely he would have denied the suggestion and his ignorance and unawareness itself clearly discloses that the mother and father were not residing with him. The trial court has rightly come to the conclusion that the defendant No.1 has failed to prove that the deceased Cheluvaiah and his wife executed Ex.D7 Will jointly and bequeathed the suit schedule properties in his favour. Further the trial court has rightly come to the conclusion that the plaintiff and defendants are having



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equal share in the suit schedule properties. After considering all these facts and circumstances of the case, I have come to the conclusion that the trial court has not committed any error while decreeing the suit and interference of this court is not warranted and therefore, the judgment and decree passed by the trial court in O.S.No.280/2013, dated 05.07.2023 is hereby confirmed and **accordingly, I have answered the point No.1 and 2 in the Negative.**

29. **Point No.3:** For the above discussed reasons, I proceed to pass the following;

ORDER

The Appeal filed U/order 41 rule 1 of CPC by the Appellant/defendant No.1 is hereby dismissed.



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The Judgment and decree passed by the
Addl. Civil Judge & JMFC., Court Tiptur in
O.S.No.280/2013 dated 05.07.2023 is
hereby confirmed.

No order as to costs.

Draw decree accordingly.

Send copy of Judgment and Decree
with LCR to the Trial Court forthwith for its
reference.

(Dictated to the Stenographer, transcribed,
computerized and printout taken by him, then corrected
and pronounced by me in the open court on 24.11.2025)

Sd/-
(MOHAMED ARIFULLA C.F.)
Senior Civil Judge & J.M.F.C.,
Tiptur.

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Judgment pronounced in open Court
(vide separate Order)

ORDER

(Mohamed Arifulla C.F)
Senior Civil Judge & J.M.F.C.,
Tiptur.

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