



IN THE HIGH COURT OF KARNATAKA, DHARWAD BENCH

DATED THIS THE 9TH DAY OF JANUARY, 2025

BEFORE

THE HON'BLE MR. JUSTICE SURAJ GOVINDARAJ

WRIT PETITION NO. 102067 OF 2024 (GM-CPC)

R

BETWEEN:

1. SMT. SAROJINI W/O. DURGAPPA BHANVI,
AGE: 58 YEARS, OCC: HOUSEHOLD WORK,
R/O. MADWAL-591101, TQ: GOKAK,
DIST: BELAGAVI.
2. KEMPANNA S/O. DURGAPPA BHANVI,
AGE: 34 YEARS, OCC: COOLIE WORK,
R/O. MADWAL-591101, TQ: GOKAK,
DIST: BELAGAVI.

...PETITIONERS

(BY SRI. SHRIHARSHA A. NEELOPANT, ADVOCATE)

AND:

YALLAPPA KEMPANNA BADIAGAWAD,
AGE: MAJOR, OCC: AGRICULTURE,
R/O. MADUWAL-591101, TQ: GOKAK,
DIST: BELAGAVI.

...RESPONDENT

(BY SRI. SANJAY S. KATAGERI, ADVOCATE)

THIS WRIT PETITION IS FILED UNDER ARTICLES 226 AND 227 OF THE CONSTITUTION OF INDIA PRAYING TO ISSUE A WRIT OR DIRECTION OR ORDER IN THE NATURE OF WRIT OF CERTIORARI TO QUASH THE IMPUGNED ORDER DATED 20.03.2024 PASSED BY THE PRINCIPAL CIVIL JUDGE AND J.M.F.C, GOKAK IN O.S. NO.342/2017 AS PER ANNEXURE-A AND DISMISS THE APPLICATION FILED UNDER SECTION XXII RULE 5 R/W. SECTION 151 OF CPC FILED BY THE RESPONDENT AND ETC.

THIS PETITION, COMING ON FOR ORDERS, ORDER WAS MADE THEREIN AS UNDER:



**ORAL ORDER**

(PER: THE HON'BLE MR. JUSTICE SURAJ GOVINDARAJ)

1. The petitioner is before this Court seeking the following reliefs:

- i. Issue a writ or direction or order in the nature of writ of certiorari to quash the impugned order dated 20.03.2024 passed by the Principal Civil Judge and J.M.F.C, Gokak in O.S. No.342/2017 as per ANNEXURE-A and dismiss the application filed under Section XXII Rule 5 R/w. Section 151 of CPC filed by the respondent.*
- ii. Grant any other relief as deems fit by this Hon'ble Court in the circumstances of case in the interest of justice and equity.*

2. One Smt.Tayawwa had filed a suit in O.S.No.342/2017, seeking for the following reliefs:

- "a) A decree be passed declaring that alleged Will dtd.2.11.2016 bearing document No.55 purported to have been executed by late Durgappa Basalingappa Bhanvi in the office of Sub-Registrar Gokak with respect to the suit properties in favour of the defendants is illegal, unlawful, null and void and not binding upon the plaintiff.*
- (ai) It be declared that the plaintiff is the legally Wedded wife of deceased Duragappa Basalingappa Bhavi @ Bhanvi and succeeded to the suit Properties as his class I legal heir.*
- b) A decree for permanent injunction be passed restraining the defendants, their agents, servants or anybody acting on their behalf from disturbing the peaceful possession, use and enjoyment of the suit properties by the plaintiff.*
- c) Any other relief deems fit and proper be granted*



- d) *Cost of the suit be awarded*
 - e) *Plaintiff be permitted to amend the plaint as and when necessary;"*
3. During the pendency of the said suit, the said Tayawwa expired. Thereafter, an application came to be filed by one Sri.Yallappa Kempanna Badiagawad, to come on record as the legal representative of the deceased Tayamma, claiming that a Will has been executed in his favour, bequeathing the properties that are the subject matter of the said suit.
4. The said application was opposed by the defendants in the said suit, who are the petitioners herein, contending that the Will has not been executed in a proper manner and that the Will would have to be proved before the application could be considered. Unless the Will satisfies the test of law, the application could not be considered. The Trial Court rejected the said objections and allowed the application vide the impugned order dated



20.03.2024, which is under challenge in these proceedings.

5. Sri.Shriharsha A. Neelopant, learned counsel for the petitioners, again reiterates the objections which has been filed and submits that the manner in which the Will has been executed is not beyond doubt. He contends that the petitioners had been looking after Tayawwa and there is no reason for Tayawwa to execute the Will in favour of the applicant. The applicant being the son of the brother of the Tayawwa, is not a legal heir of Tayawwa and he cannot therefore come on record as a legal representative.
6. The impleading applicant has not sought any relief to prove or declare the Will to be valid, and in the absence thereof, the application could not have been considered by the Trial Court.



7. Sri. Sanjay Katageri, learned counsel for the respondent, submits that the said Tayawwa, during her lifetime, had filed an amendment application in O.S.No.342/2017 and by way of the said amendment, para 8(b) has been inserted in the plaint, wherein Tayawwa had categorically admitted the execution of the said Will in favour of the applicant. Since this statement is part of the pleadings filed by Tayawwa, there would be no requirement for any further proof of the Will. Such proof would be required only if they were to say there is no categorical admission by the testator as regards the execution of the Will.

8. The Will having been executed by the testator, the said Will was registered with the office of the sub-registrar, and a copy of the Will having been produced along with the amendment application, forming part of the records of the suit, there was no



requirement for any detailed enquiry so long as the testator had admitted the execution of the Will.

9. No objection could be raised by the defendants in the suit, who are the petitioners herein.
10. Heard learned counsel for the petitioners and respondent, perused papers.
11. The short question that would arise for consideration in the present matter is,

(i) Whether a legatee under a Will is required to prove the Will, if the Testator has already admitted the execution of the Will in proceedings before the Court?

12. It is the contention of learned counsel Sri Shriharsh A. Neelopant appearing for the petitioners that whenever anyone propounds a Will, the said Will has to be established in the manner known to law satisfying the requirement of Sections 67, 68 and 70 of the Bharatiya Sakshya Adhiniyam, 2023 (for short, 'the BSA, 2023'). He submits that unless the said Will



stands test of law and is so established and necessary relief in regard thereto is sought for the Will could not have been accepted by the trial Court and the applicant could not have been treated as a Legatee and be permitted to come on record.

13. In my considered opinion this contention would have been true, if there is a dispute between any person/s claiming under the Will and the right of any party who is affected by the Will.
14. The suit had been filed by late Smt.Tayavva w/o.Duragappa Bhavi @ Bhanvi seeking for a declaration that another Will executed by one Sri Durgappa S/o.Basalingappa Bhanvi in respect of the suit properties in favour of the defendants therein was illegal, unlawful, null and void and further declaration that the said Smt.Tayavva is the legally wedded wife of late Sri Durgappa Basalingappa Bhanvi and as such she is the Class I heir.



15. Before the said suit could have reached its logical end Smt.Tayavva expired. The applicant sought to come on record as a Legatee of Smt.Tayavva in pursuance of the Will dated 12.09.2017 registered with the office of the Sub-Register, Gokak. The said Smt.Tayavva apparently by way of abundant caution apprehending that there could be a dispute raised as regards the Will in future which has been executed in favour of the son of her brother had filed an amendment application in the said suit and got inserted para No.8(B) in the plaint. The said para No.8(B) reads as under :

“Para No.8(B): It is submitted that the plaintiff has executed Will in respect of suit properties bearing R.S.No.29/5 of Madawal village and 1268 of Akkatangerahal village, Taluk-Gokak by bequeathing of the suit properties in favour of Shri Yallappa S/o.Kempanna Badigawad of Madawal village out of plaintiff’s love and affection. The said Will has been executed by plaintiff with her sound disposing of sound mind and also plaintiff’s free Will and wishes. The said Will is executed by plaintiff in presence of witnesses where in plaintiff has dictated, the said Will by plaintiff on 12.09.2017 and it was registered before the Sub-Registrar, Gokak on 16.09.2017.”



16. A perusal of the aforesaid paragraph would indicate that she has categorically made a submission that she has executed a Will in respect of the suit properties bequeathing the suit properties in favour of the applicant Shri Yallappa S/o.Kempanna Badigwad of Madawal village out of love and affection while she had sound dispossession of her own free will and wishes. Such a pleadings which has been made in the said suit by producing the Will would indicate a categorical admission made by the Testator of the execution of the Will.

17. Once a Testator has admitted the execution of a Will in a proceedings before the Court and pleadings are filed, I am of the considered opinion that there would be no requirement to further establish the authenticity of the Will in terms of Sections 67, 68 and 70 of the BSA, 2023. Since the Testator herself has categorically admitted the execution, veracity



and the contents of the Will and has herself produced the Will in the said suit.

18. Thus I answer to point No.(i) raised by holding that if a Testator were to admit the execution and the contents of a Will in a Court proceedings, there would be no requirement to further prove the execution and veracity of the Will in terms of Sections 67, 68 and 70 of the BSA, 2023.
19. It is needless to say that insofar as reliefs as claimed by Smt. Tayavva in O.S.No.342/2017, the same would have to be established in accordance with law by the person, who has now come on record as a Legatee/Legal Representative of the deceased-Smt.Tayavva. All contentions relating thereto are kept open.
20. In that view of the matter, the contentions of the learned counsel for the petitioners are rejected. No



grounds are made out. Hence, the petition stands **dismissed.**

21. In view of disposal of petition, pending I.A.No.1/2024 does not survive for consideration; hence same is also disposed of.

**Sd/-
(SURAJ GOVINDARAJ)
JUDGE**