

IN THE HIGH COURT OF KARNATAKA AT DHARWAD

DATED THIS THE 3RD DAY OF SEPTEMBER, 2026

BEFORE

THE HON'BLE MR. JUSTICE B. MURALIDHARA PAI

REGULAR SECOND APPEAL NO.100637 OF 2017 (DEC)

BETWEEN:

1. SMT. LALITAVVA,
W/O. PARASAPPA AGADI,
AGE: 30, OCC: HOUSEHOLD WORK,
R/O: AGADI, TQ: HAVERI,
DIST: HAVERI – 581 110.
2. NINGAPPA,
S/O. SHIVAPUTRAPPA ANGADI,
AGE ABOUT 28, OCC: MASON & BUSINESS,
R/O: DEVAGIRI-YALLAPUR,
TQ & DIST: HAVERI – 581 110.
3. SMT. NEELAVVA @ PRAMILAVVA,
W/O. SHIVAPPA ANGADI,
AGE: 58, OCC: HOUSEHOLD WORK,
R/O: DEVAGIRI-YALLAPUR,
TQ & DIST: HAVERI – 581 110.
4. SMT. GIRIJAVVA,
W/O. HANUMANTAGOUDA KAREGOUDRA,
AGE ABOUT 30, OCC: HOUSEHOLD WORK,
R/O: AT DEVAGIRI - YALLAPUR,
TQ & DIST: HAVERI – 581 110.
5. GUDDAPPA, S/O. SHIVAPPA ANGADI,
AGE ABOUT 28, OCC: COOLIE,
R/O: DEVAGIRI-YALLAPUR,
TQ & DIST: HAVERI – 581 110.

... APPELLANTS

(BY SRI N.P. VIVEKMEHTA, ADVOCATE)

AND:

1. NAGAPPA, S/O. ISHWARAPPA ANGADI,
AGE ABOUT 65,



OCC: COOLIE (MESON WORK),
R/O: DEVAGIRI-YALLAPUR,
TQ & DIST: HAVERI - 581 110.

SMT. SHANTAVVA
W/O. MAHADEVAPPA JAVALI,
SINCE DEAD BY LR'S.

2. IRAPPA, S/O. MAHADEVAPPA JAVALI,
AGE ABOUT 48, OCC: COOLIE,
R/O: SWAGIYAVARA ONI,
BYDAGI, DIST: HAVERI - 581 106.
3. SMT. SHARAVVA @ SHARDHAVVA,
W/O. GADIGEPPA MALAKANNANAVAR,
AGE ABOUT 38, OCC: HOUSEHOLD WORK,
R/O: SWAGIYAVARA ONI, BYADGI,
TQ: BYADGI, DIST: HAVERI - 581 106.

... RESPONDENTS

(BY SRI SHIVARAJ S. BALLOLI, ADVOCATE FOR R1)

(V/O DATED: 15.12.2025 APPEAL AS AGAINST R2 STANDS
ABATED) (R3 - SERVED)

THIS RSA IS FILED UNDER SECTION 100 OF CPC.,
PRAYING TO SET ASIDE THE JUDGMENT AND DECREE OF THE
TRIAL COURT OF PRINCIPAL SENIOR CIVIL JUDGE AND CJM.,
HAVERI, DATED 30.06.2017 PASSED IN R.A.NO.44/2013 AND
THE JUDGMENT AND DECREE OF THE COURT OF THE
ADDITIONAL CIVIL JUDGE HAVERI, DATED 09.04.2013 PASSED
IN O.S.NO.99/09. TO GRANT ANY OTHER RELIEF THE
HONORABLE COURT DEEMS FIT IN FACTS AND
CIRCUMSTANCES OF THE CASE INCLUDING COST THROUGH
OUT BY ALLOWING THIS APPEAL IN THE INTEREST OF JUSTICE
AND EQUITY.

THIS APPEAL COMING ON FOR FURTHER HEARING,
HAVING BEEN HEARD AND RESERVED FOR JUDGMENT ON
22.07.2026, THIS DAY, THE COURT PRONOUNCED THE
FOLLOWING:

CORAM: HON'BLE MR. JUSTICE B. MURALIDHARA PAI

CAV JUDGMENT

Defendant Nos.3 to 7 in O.S.No.99/2009 on the file of learned Additional Civil Judge, Haveri (hereinafter referred to as 'the trial court', for short) have maintained this regular second appeal.

2. The plaintiff namely Sri Nagappa maintained the suit in O.S.No.99/2009 for the relief of declaration that he is the owner of Schedule 'A' property, which is described with letters 'ABCDIHGFA' in the hand sketch map annexed to the plaint as Schedule 'C', by virtue of Will dated 13.01.1997 executed by his mother namely Smt. Shivakka and for possession of the portion shown with letters 'DEFGHID' in the hand sketch map from Defendant Nos.5 to 7.

3. The case of the plaintiff is that the government granted the suit property bearing VPC Nos. 102 and 102A, to his mother about 32 years ago and it was her absolute and separate property. He claims that his mother bequeathed the suit property to him under a Will, executed on 13.01.1997 with the consent of all her other

children. According to him, his sisters (Defendant Nos.1 and 2) and brothers namely Shivaputrappa (the father of Defendant Nos. 3 and 4) and Shivappa (the husband of Defendant No. 5 and father of Defendant Nos. 6 and 7) have signed the Will as witnesses. He stated that his mother expired on 17.09.1998, and thus he became the absolute owner of the suit property by virtue of the Will. He further stated that his mother executed the Will in his favour because Shivaputrappa and Shivappa had been granted separate sites by the government. The plaintiff contends that due to financial difficulties, Sri Shivappa could not construct a house on the site allotted to him; hence, he started residing in a portion of the Schedule 'A' property measuring 12 ft. x 25 ft. (demarcated by letters 'DEFGHID' in the hand-sketch map) with the mother's permission. It is stated that when the plaintiff requested Defendant Nos. 5 to 7 to vacate and hand over possession of the portion in their occupation, initially they requested more time claiming they would sell the property allotted to them and purchase a new house or take a house on rent. However, on 27.09.2008 when the plaintiff filed a *Varadi*

for the mutation of the *Khata* of the suit property into his name by virtue of the Will, Defendant No.7 filed his objection and then concocted a false *Varadi* in his own name as well as in the plaintiff's name, and succeeded in getting his name entered for the portion marked 'DEFGHID' in the hand sketch map as VPC No.102A. Under these circumstances, the plaintiff maintained the suit for declaration and possession.

4. On service of summons the defendants appeared before the trial court through their counsel.

5. Defendant Nos.1 and 2 filed their written statement admitting the entire averments of the plaint and stated that they have no objection to decree the suit as prayed for by the plaintiff.

6. Defendant No.7, in his written statement, specifically denied the execution of the Will by Smt. Shivakka in favour of the plaintiff bequeathing Schedule A property to him. He has also denied the sons and daughters of Smt. Shivakka having affixed their signatures to the alleged Will as the witnesses. Thus, Defendant No.7

denied plaintiff's title over the suit property by virtue of Will dated 13.01.1997. He contended that the suit property was granted in the name of Smt. Shivakka for the benefit of the family and that they were in joint possession of the said property. He claimed that Smt. Shivakka gave a portion of the property measuring 12 X 25 feet comprised of a dilapidated house to his father in an apsat oral vatni, and thereafter Defendant Nos.5 to 7 constructed a new house in the said property. He also contended that Defendant Nos.3 to 7 together have 2/5th share in the suit property and prayed for dismissal of the suit.

7. Defendant Nos.3 to 6 have adopted the written statement filed by Defendant No.7.

8. Based on the pleadings of the parties and the documents available on record, the trial court framed the following issues:

- i) *Whether the plaintiff proves that he is entitled for declaration as absolute owner of suit schedule property through Will executed by his mother dtd: 13.01.1997?*

- ii) Whether the plaintiff proves that the defendants are in permissive possession in VPC No.102/A of suit schedule property?*
- iii) Whether the plaintiff is entitled for possession of whole suit schedule property?*
- iv) What order/decreree?*

9. The trial court, after taking the oral and documentary evidence adduced by the parties, disposed of the suit on merits of the case vide its judgment dated 09.04.2013. The trial court held that the plaintiff has proved due execution of the Will by Smt. Shivakka in his favour and has acquired the ownership of the suit property by virtue of the said Will. The trial court further held that the plaintiff has proved that Defendant Nos.5 to 7 are in permissive possession of the portion of suit property, shown with letters 'DEFGHIG' in plaint 'C' Schedule hand sketch map. Accordingly, the trial court declared that the plaintiff is the absolute owner of the suit property and directed Defendant Nos.5 to 7 to vacate and handover vacant possession of the property bearing VPC No.102/A, described as 'DEFGHID' in Schedule 'C' hand sketch map, to the plaintiff within a period of three months.

10. Defendant Nos.3 to 7 challenged the judgment and decree of the trial court by preferring the appeal in R.A.No.44/2013. The first appellate court, after re-appreciating the materials on record, concurred with the findings of the trial court and held that the decree passed by the trial court does not suffer from any legal infirmity and dismissed the appeal.

11. Feeling aggrieved, Defendant Nos.3 to 7 have preferred this regular second appeal. On 21.03.2025 this Court admitted the appeal to consider the following substantial question of law:

Whether the finding recorded by both the Courts below that the plaintiff has removed the suspicious circumstances on the alleged Will dated 13.01.1997 (Ex.P.5) is just and proper?

12. Indisputably, the government granted Schedule 'A' property to Smt. Shivakka about 32 years ago. She died on 17.09.1998 leaving behind two daughters namely Shantavva (Defendant No.1) and Sharadavva (Defendant No.2) and three sons namely Shivaputrappa (father of Defendant Nos.3 and 4), Shivappa (husband of Defendant

No.5 and father of Defendant Nos.6 & 7) and the plaintiff, who is the youngest amongst her children.

13. The case of the plaintiff is that Schedule 'A' property was the absolute and self-acquired property of Smt. Shivakka. Whereas, Defendant No.7 contends that the government granted Schedule 'A' property in the name of Smt. Shivakka for the benefit of the family. However, Defendant No.7 did not adduce any evidence on record to substantiate his contention. In the said circumstances, the courts below considering the materials on record such as the admissions regarding grant of the suit property to Smt. Shivakka, grant of separate sites to Shivaputrappa and Shivappa, issuance of hakku patra of suit property in the name of Smt. Shivakka as per Ex.P6, held that suit property was her exclusive and self acquired property.

14. It is the specific case of the plaintiff that Smt. Shivakka bequeathed the Schedule 'A' property in his favour by executing a Will on 13.01.1997 with the consent of all her other children, and that Defendant Nos.1 and 2, Shivaputrappa and Shivappa have signed the Will as

witnesses. Defendant No.7, however, has not only denied the execution of the Will by Smt. Shivakka in favour of the plaintiff but also denied that the sons and daughters of Smt. Shivakka affixed their signatures to the Will as witnesses.

15. The trial court held that the plaintiff has proved the execution of the Will on the ground that the plaintiff during his evidence as PW-1 has identified the thumb impressions of his mother, his sisters i.e., Defendant Nos.1 and 2 and of his brother namely Shivaputrappa and the signatures of his another brother namely Shivappa and the scribe in the original Will produced at Ex.P5. The trial court further held that the plaintiff examined Defendant No.1 as PW-2 to prove the Will. PW-2 deposed to the execution of the Will by her mother and that she and her other siblings affixed their signatures to the document as witnesses. The trial court further observed that Defendant No.7 during his evidence as DW-1 expressed his ignorance about his grandmother executing the Will at Ex.P5 and did not deny its execution. The trial court opined that if at all

Defendant No.7 were to strongly dispute the Will, nothing prevented him from enquiring Defendant Nos.1 and 2 about the document, who have affixed their signatures as the attesting witnesses. The trial court went on to hold that apart from denying the execution of the Will Defendant Nos.3 to 7 failed to raise any specific contention about suspicious circumstances surrounding its execution. Accordingly, the trial court proceeded to hold that the plaintiff has proved the Will.

16. The first appellate court, on re-appreciating the evidence on record held that the document produced at Ex.P5 reveals that Smt. Shivakka has bequeathed the suit property to her son i.e., PW-1 and its execution and attestation is proved by the plaintiff by examining one of the attesting witnesses. The first appellate court further held that Defendant Nos.1 and 2 have specifically admitted execution of the Will by their mother and there were no suspicious circumstances surrounding its due execution. Consequently, the first appellate court held that the

plaintiff has proved the Will produced at Ex.P5 and acquired title to the suit property.

17. Sri N. P. Vivek Mehta, learned Counsel for Defendant Nos.3 to 7 vehemently submitted that the courts below have erred in holding that the plaintiff has proved due execution of the Will by Smt. Shivakka, ignoring the failure on the part of the plaintiff to prove the signatures of the testator and the attesting witnesses on the alleged Will. He submitted that the courts below have even ignored the suspicious circumstance surrounding the alleged Will. He strenuously submitted that the alleged Will dated 13.01.1997 came to light on 27.09.2008 when the plaintiff gave a *vardi* for mutation in his name based on the Will and there is no explanation for keeping it under cover for about 10 years though Smt. Shivakka died on 17.09.1998. He submitted that the plaintiff did not make any effort to assert rights under the Will during the life time of his brothers namely Shivappa and Shivaputrappa, who were said to be the witnesses to the alleged Will. Thus, he contended that the courts below erred in holding

that the plaintiff has acquired title to the schedule property by virtue of the Will dated 13.01.1997.

18. Per contra, Sri Shivaraj S. Balloli, learned Counsel for the Plaintiff vigorously submitted that the plaintiff proved the Will in question by complying with Sections 63 and 68 of the Evidence Act. He submitted that there was no dispute regarding the Will till 2008 and no suit was filed claiming a share in the suit property. He further submitted that the delay in propounding the Will was not questioned or raised during the trial of the case. He submitted that the sisters supported the case of the plaintiff. As such, he contended that there is no substance in the contentions raised by Defendant Nos.3 to 7 alleging suspicious circumstances surrounding the execution of the Will and prayed for the dismissal of the appeal.

19. The legal principles in regard to the proof of a Will are no longer res integra. The proof of Will is not confined to proving of the signature of the testator on the Will and its attestation in terms of Section 63(c) of the Succession Act. Rather it is an exercise to satisfy the

Court's conscience that the testator had signed the Will with free will, being aware of its contents and after understanding the nature and effect of the dispositions in the Will. In a case where the Will is surrounded by suspicious circumstances, the propounder must explain those circumstances and dispel all reasonable doubts regarding its due execution.

20. In ***Shivakumar and Others Vs Sharanabasappa and Others***, reported in **(2021) 11 SCC 277**, Hon'ble Apex Court has broadly summarized the relevant principles governing the adjudicatory process concerning proof of a Will, as follows:

"12.1. Ordinarily, a will has to be proved like any other document; the test to be applied being the usual test of the satisfaction of the prudent mind. Alike the principles governing the proof of other documents, in the case of will too, the proof with mathematical accuracy is not to be insisted upon.

12.2. Since as per Section 63 of the Succession Act, a will is required to be attested, it cannot be used as evidence until at least one attesting witness has been called for the purpose of proving its execution, if there be an attesting witness alive and capable of giving evidence.

12.3. The unique feature of a will is that it speaks from the death of the testator and, therefore, the

maker thereof is not available for deposing about the circumstances in which the same was executed. This introduces an element of solemnity in the decision of the question as to whether the document propounded is the last will of the testator. The initial onus, naturally, lies on the propounder but the same can be taken to have been primarily discharged on proof of the essential facts which go into the making of a will.

12.4. The case in which the execution of the will is surrounded by suspicious circumstances stands on a different footing. The presence of suspicious circumstances makes the onus heavier on the propounder and, therefore, in cases where the circumstances attendant upon the execution of the document give rise to suspicion, the propounder must remove all legitimate suspicions before the document can be accepted as the last will of the testator.

12.5. If a person challenging the will alleges fabrication or alleges fraud, undue influence, coercion et cetera in regard to the execution of the will, such pleas have to be proved by him, but even in the absence of such pleas, the very circumstances surrounding the execution of the will may give rise to the doubt or as to whether the will had indeed been executed by the testator and/or as to whether the testator was acting of his own free will. In such eventuality, it is again a part of the initial onus of the propounder to remove all reasonable doubts in the matter.

12.6. A circumstance is "suspicious" when it is not normal or is "not normally expected in a normal situation or is not expected of a normal person". As put by this Court, the suspicious features must be "real, germane and valid" and not merely the "fantasy of the doubting mind".

12.7. As to whether any particular feature or a set of features qualify as "suspicious" would depend on the facts and circumstances of each case. A shaky or doubtful signature; a feeble or uncertain mind of the testator; an unfair disposition of property; an unjust exclusion of the legal heirs and particularly the dependants; an active or leading part in making of the will by the beneficiary thereunder et cetera are some of the circumstances which may give rise to suspicion. The circumstances above noted are only illustrative and by no means exhaustive because there could be any circumstance or set of circumstances which may give rise to legitimate suspicion about the execution of the will. On the other hand, any of the circumstances qualifying as being suspicious could be legitimately explained by the propounder. However, such suspicion or suspicions cannot be removed by mere proof of sound and disposing state of mind of the testator and his signature coupled with the proof of attestation.

12.8. The test of satisfaction of the judicial conscience comes into operation when a document propounded as the will of the testator is surrounded by suspicious circumstance(s). While applying such test, the court would address itself to the solemn questions as to whether the testator had signed the will while being aware of its contents and after understanding the nature and effect of the dispositions in the will?

12.9. In the ultimate analysis, where the execution of a will is shrouded in suspicion, it is a matter essentially of the judicial conscience of the court and the party which sets up the will has to offer cogent and convincing explanation of the suspicious circumstances surrounding the will."

21. Consequently, the Court must evaluate three key elements to establish the valid execution of a Will: (a) adherence to the formalities under Section 63 of the Succession Act; (b) compliance with Section 68 of the Evidence Act by examining at least one available attesting witness; and (c) the dispelling of any suspicious circumstances by the propounder through a convincing explanation. Apart from this, the Court must be satisfied that the testator signed the Will of his own free will, fully aware of its nature and effect.

22. Turning to the case at hand, a careful perusal of the materials on record make it evident that the courts below have not properly appreciated the evidence on record before concluding that the plaintiff has proved the due execution of the Will in question. The courts below have not discussed the evidence on record to satisfy themselves regarding the compliance with Section 63(c) of the Succession Act and the reliability of the testimony of PW-2 in support of plaintiff's case. Further, the courts below have not bestowed their attention on the suspicious

circumstances surrounding the execution of the Will to find out whether the propounder has discharged the burden of dispelling such doubts with a proper explanation.

23. First of all, the plaintiff does not have sufficient evidence to prove that the thumb impressions and the signatures found in Ex.P5 belong to the testator, the attesting witnesses or the scribe. The trial court relied on the testimony of PW-1 to hold that he identified the thumb impressions and the signatures of the testator and others found in Ex.P5. No doubt, PW-1, during his examination-in-chief, got marked the thumb impressions of the testator, Defendant Nos.1 and 2 and Shivaputrappa as well as the signatures of Shivappa and the scribe in Ex.P5, by asserting that he could identify their respective thumb impressions and the signatures. However, it is to be noted that the marking of the thumb impressions and the signatures was done subject to an objection. Further, during his cross-examination conducted on 08.03.2011, PW-1 has unequivocally stated that he had seen the signatures of the concerned persons for the first time in

the Will and that he had not seen them prior to that. At that time, PW-1 also categorically stated that he could not say whether the signatures therein belonged to concerned persons.

24. The other witness examined on the side of the plaintiff is PW-2, who is said to be the attesting witness to the Will. The deposition of PW-2 indicates that she is illiterate. During her cross-examination, PW-2 emphatically stated that she cannot identify the thumb impressions or the signatures found in Ex.P5. In addition, the plaintiff has chosen neither to examine the scribe of the document nor to get an expert opinion to prove that the thumb impressions and the signatures found in Ex.P5 are those of the testator and the attesting witnesses named therein. Consequently, it is clear that the courts below held that the plaintiff proved the Will without first satisfying themselves as to the genuineness of the thumb impressions and the signatures found in Ex.P5.

25. The materials on record indicate that the courts below failed to consider the contradictions in the testimony

of PW-2 regarding the place of execution of the Will in question. In her examination-in-chief, PW-2 stated as follows:

“ ಆ ಪ್ರಕಾರ ನನ್ನ ತಾಯಿಯು ತನ್ನ ಮಾಲ್ಟೆಯ ಸ್ವಯಾರ್ಜಿತವಾದ ಆಸ್ತಿಯನ್ನು ತನ್ನನ್ನು ಮೋದಲಿನಿಂದಲೂ ಸಾಕಿ ಸಲುಹುತ್ತಿರುವ ನಾಗಪ್ಪನಿಗೆ ತನ್ನ ಮರಣಾನಂತರ ಮಾಲೀಕನನ್ನಾಗಿ ಮಾಡುವ ಬಗ್ಗೆ ಒಂದು ಮೃತ್ಯುಪತ್ರವನ್ನು ಬರಿಯಿಸಿಡುವುದಾಗಿ ನಮಗೆಲ್ಲಾ ಹೇಳಿದ್ದರಿಂದ ನನ್ನ ಸಹೋದರರು ನಮ್ಮೂರ ಬಳಿ ಇರುವ ದೇವಗೇರಿ ಗ್ರಾಮದ ಶ್ರೀ ಬಸಪ್ಪ ಮಾವಿನಮನಿ@ಕ್ಷ-ವರದ ಈತನು ಕಾಗದ ಪತ್ರ ಬರೆಯುತ್ತನೆಂತಾ ನಮ್ಮ ತಾಯಿಗೆ ಹೇಳಿ ಆತನ್ನು ಕರೆದುಕೊಂಡು ಬರುವುದಾಗಿ ನಮ್ಮ ತಾಯಿಗೆ ತಿಳಿಸಿದ್ದರಿಂದ ನಮ್ಮ ತಾಯಿಯು ನನ್ನ ಸಹೋದರರಿಗೆ ಸದರಿ ಬಸಪ್ಪ ಮಾವಿನಮನಿ@ಕ್ಷ-ವರದ ಸಾ|| ದೇವಗೇರಿ ಇವರನ್ನು ಮೃತ್ಯುಪತ್ರ ಬರೆಯಲಕ್ಕೆ ಕರೆದುಕೊಂಡು ಬರುವಂತೆ ತಿಳಿಸಿದರು. ಆ ಪ್ರಕಾರ ನಮ್ಮ ಸಹೋದರರು ದೇವಗೇರಿಯಿಂದ ಬಸಪ್ಪ ಮಾವಿನಮನಿ@ಕ್ಷ-ವರದ ಈತನನ್ನು ನಮ್ಮ ತಾಯಿಯ ಬಳಿ ಕರೆದುಕೊಂಡು ಬಂದಿದ್ದರು.”

Whereas, during her cross-examination, PW-2 stated as under:

“ ನನ್ನ ತಾಯಿ ತನ್ನ ಮೃತ್ಯು ಪತ್ರವನ್ನು ದೇವಗಿರಿ ಗ್ರಾಮದಲ್ಲ ಬರೆಸಿದ್ದಾಳೆ..... ನಾವು ಬರೆಯುವ ವ್ಯಕ್ತಿಗೆ ಕರೆದುಕೊಂಡು ಬಂದಿಲ್ಲ ನಾವು ಅಲ್ಲೇ ಬರೆಸಿದ್ದೇವೆ. ನಾವು ಮೃತ್ಯು ಪತ್ರವನ್ನು ದೇವಗಿರಿ ಗ್ರಾಮಕ್ಕೆ ಹೋಗಿ ಅಲ್ಲ ಬರೆಸಿದ್ದೇವೆ. ಸದರಿ ವಿಷಯ ನಿಜ...”

26. PW-2 gave conflicting version even regarding the persons present during the execution of the Will in question. In her examination-in-chief, PW-2 stated that her mother executed the Will in the presence of her four children and asked them to sign the document as the witnesses. Pursuant to this request she, her younger sister and the brothers namely Shivaputrappa and Shivappa signed the document. Further, during her cross-

examination conducted on 14.06.2011, PW-2 categorically stated that there were no persons present other than the ones stated by her and that she could not say where the plaintiff was at the relevant time. However, during her further cross-examination conducted on 26.07.2011, PW-2 stated that all the five children including the plaintiff Nagappa were present at the time of the execution of the Will.

27. Indisputably, Smt. Shivakka left behind three sons and two daughters. As per Ex.P5 the schedule property was bequeathed exclusively in favour of the sole beneficiary, namely the plaintiff. It is the case of the plaintiff that because he took care of Smt. Shivakka with love and affection and because she had greater affection towards her youngest son, she bequeathed the schedule property to him. Further, it is contended that because the government had granted separate sites to Shivaputrappa and Shivappa, the mother chose to bequeath the schedule property to him. No doubt the materials on record indicate that the government had granted separate sites to

Shivaputrappa and Shivappa and that Shivaputrappa was living in the house constructed on the site allotted to him. However, the plaintiff has not offered any explanation as to why the mother chose to exclude her two daughters while making the bequest in his favour.

28. A perusal of the document produced as Ex.P5 indicates that it is an unregistered Will, prepared on plain white paper. The document runs into two pages. However, the alleged thumb impression of the testator is found only on the last page of the document. Strangely, the signature of the scribe is found immediately at the end of the recitals of the document, while the alleged thumb impression of the testator is found after the signature of the scribe. Neither the plaintiff nor PW-2 has chosen to explain the circumstances in which the scribe had to affix his signature to the document before the testator affixed her thumb impression to the document.

29. Apart from the above, the courts below failed to consider the suspicious circumstances surrounding the execution of the Will in question. The trial court declined

to examine this aspect on the ground that Defendant Nos.3 to 7 did not raise any specific contention regarding the suspicious circumstances surrounding the due execution of the Will. Thus, the trial court failed to take note of the suspicious circumstances naturally arising out of the facts of the case.

30. It is the specific case of the plaintiff that his mother executed the Will on 13.01.1997, and handed it over to him about seven to eight days prior to her death. The mother of the plaintiff died on 17.09.1998. The Will was brought to light for the first time on 27.09.2008 when the plaintiff gave a vardi for mutation of khata into his name based on the Will. Thus, it becomes clear that the plaintiff did not disclose the existence of the Will for more than ten years from the date of death of his mother.

31. If indeed the mother had executed the Will in the presence of all her children as claimed by PW-2, there was no need for the plaintiff to wait for more than ten years to seek mutation of khata based on the Will. During his cross-examination the plaintiff claimed that in the year

1998 itself he had submitted an application to the panchayat for mutation of khata of the schedule property into his name. However, the plaintiff did not produce any document before the court to substantiate this contention. On the other hand, the plaintiff stated that there was a problem in producing a copy of the Will before the panchayat during the year 1998, but he did not choose to clarify what that problem was. It is also relevant to note that the brothers of the plaintiff namely Shivaputrappa and Shivappa were alive until the year 2005 and 2008 respectively. The plaintiff did not assert his right to the suit property based on the alleged Will during their lifetimes even though he contended that they were present at the time of the execution of the Will and had attested it as a mark of their consent.

32. Apparently, the courts below were swayed by the fact that Defendant No.1 supported the case of the plaintiff by stepping into witness box as PW-2, despite her being disinherited under the Will in question. However, the courts below failed to take note of her admission that

she was living with the plaintiff at the relevant time, which indicates that she was under some sort of obligation to the plaintiff. Further, Defendant Nos.1 and 2 filed a common written statement in the case admitting the claims of the plaintiff. In addition to this, the plaintiff is married to the daughter of Defendant No.2. Hence, this Court does not find any justification in the approach of the courts below in placing the testimony of PW-2 on a higher pedestal and relying on it to hold that the plaintiff proved the Will in question.

33. Learned Counsel for the Plaintiff relied on the decision in ***Raja Shah and Others Vs Kowshik Show and Others*** reported in **2026 SCC Online Cal. 1122** and fervently submitted that although the delay in bringing the Will to light may arouse the suspicion of the court and may raise an adverse presumption, the same is rebuttable. He contended that once the execution and attestation of the Will are proved, and the delay is satisfactorily explained, any lingering suspicion on the ground of delay becomes unwarranted.

34. In ***Shivakumar's*** case referred to supra, Hon'ble Apex Court made it clear that the suspicion cannot be removed by mere proof of sound and disposing state of mind of the testator and his signature coupled with the proof of attestation. It can only be dispelled by the propounder offering a valid and acceptable explanation. In this case, the plaintiff has not offered any explanation for the delay in asserting his right to the property based on the Will in question especially during the life times of his brothers, namely Shivaputrappa and Shivappa.

35. In the ultimate analysis, this Court is of the considered view that the Will in question is non-compliant with the requirements of clause (b) of Section 63 of the Succession Act. Furthermore, the propounder of the Will, namely the plaintiff has failed to dispel the suspicious circumstances surrounding its execution. The findings recorded and the conclusions arrived at by the courts below disregard the evidence on record and violate the settled legal principles governing the proof of a Will. For

the foregoing reasons, the substantial question of law framed in the case is answered in the negative.

36. In the result, this Court proceeds to pass the following:

ORDER

- i) The regular second appeal is **allowed**.
- ii) The judgment and decree dated 30.06.2017 passed in R.A. No.44/2013 passed by the Court of learned Principal Senior Civil Judge and CJM, Haveri and the judgment and decree dated 09.04.2013 in O.S. No.99/2009 passed by the learned Additional Civil Judge, Haveri are set aside.
- iii) Consequently, the suit in O.S. No.99/2009 is dismissed.
- iv) The parties are directed to bear their respective cost.
- v) Draw a decree accordingly.

**Sd/-
(B. MURALIDHARA PAI)
JUDGE**

KMS, RH, ASN
CT-ASC