NC: 2024:KHC:19968
RFA No. 117 of 2015

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 7TH DAY OF JUNE, 2024

BEFORE

THE HON'BLE MR JUSTICE HANCHATE SANJEEVKUMAR

REGULAR FIRST APPEAL NO.117 OF 2015 (PAR)

BETWEEN:

1. SMT. CHANDRA PRABHA
D/O LATE M KRISHNAPPA @ KRISHNAMURTHY
W/O P. VARADARAJAN
AGED ABOUT 65 YEARS
RESIDING AT NO. 5D, THAI VEEDU
CHOODAMANI STREET,
DHARMAPURI, DHARMAPURI DISTRICT,
TAMILNADU – 636 702

2. SMT. S. PUSHPAVATHI
D/O LATE M. KRISHNAPPA,
W/O SUDARA RAJAN,
AGED 55 YEARS,
PRESENTLY RESIDING AT NO. 156/3M,
HULLIMAVU MAIN ROAD,
BANNERGHATTA ROAD,
BENGALURU- 560 076.

3. SMT. K. KOKILA,
D/O LATE M. KRISHNAPPA,
W/O R. KARUNANEEDHI,
AGED 52 YEARS,
RESIDING NO. 8/44, 2ND STREET,
WEAVERS COLONY, DHARMAPURI TOWN,
TAMILNADU STATE – 636 702.

4. SMT. ARUNAKUMARI
D/O LATE M. KRISHNAPPA,
W/O SRINIVASAN. S,
AGED 48 YEARS,

RESIDING AT NO. 90/12, 2ND CROSS,
NANJAPPA LAYOUT, ADUGODI,
BENGALURU – 560 030.

(VIDE ORDER DATED 15.09.2016 RESPONDENTS NO.7 TO 9 HAVE BEEN TRANSPOSED AS APPELLANTS NO.2 TO 4

…APPELLANTS

(BY SRI. GANGADHARAPPA A V., ADVOCATE
V/O DATED 15.09.2015 R7 TO R9 ARE
TRANSPOSED AS A2 – A4)

AND:

1. SMT. K. SAROJAMMAL
W/O LATE M.KRISHNAPPA @ KRISHNAMURTHY,
AGED ABOUT 85 YEARS
RESIDING AT NO. 5D, THAI VEEDU
CHOODAMANI STREET, DHARMAPURI
DHARMAPURI DISTRICT
TAMILNADU – 636 702.

2. SMT. KANAKA
W/O LATE MUNIRAJU,
AGED ABOUT 55 YEARS
RESIDING AT NO. 59/29
2ND CROSS, KALASIPALYA,
NEW EXTENSION,
BENGALURU – 560 002.

MUNIRATHNAM K @ PURUSHOTHAM
S/O LATE M KRISHNAPPA
SINCE DEAD BY LRS

3. SMT KALA @ KALAVATHI
W/O LATE MUNIRATHNAM K @ PURUSHOTHAM
AGED ABOUT 51 YEARS,

4. SMT. POORNIMA
D/O LATE MUNIRATHNAM .K @ PURUSHOTHAM,
AGED ABOUT 33 YEARS

5. SMT. SANGEETHA
D/O LATE MUNIRATHNAM K @ PURUSHOTHAM
AGED ABOUT 29 YEARS

6. SAVITHA
D/O LATE MUNIRATHNAM K @ PURUSHOTHAM
AGED ABOUT 23 YEARS

RESPONDENTS 3 TO 6 ARE RESIDING AT
NO.59/29,
2ND CROSS, KALASIPALYA,
NEW EXTENSION,
BENGALURU – 560 002

(V/O DATED 15.09.2016, R7 TO 9 HAVE BEEN TRANSPOSED AS APPELLANT NO.2 TO 4)

10. MUNIGOVINDARAJU
S/O LATE M KRISHNAPPA,
AGED ABOUT 60 YEARS
RESIDING AT NO. 6,
RAMALINGA CHOWDESHWARI NILAYA,
SAMPANGIRAMANAGARA
BENGALURU – 560 027.

11. MUNIGOPALA
S/O LATE M. KRISHNAPPA
AGED ABOUT 55 YEARS
RESIDING AT NO. 59/29,
2ND CROSS, KALASIPALYA
NEW EXTENSION,
BENGALURU – 560 002

12. SMT. MUNIRADHA @ RADHA
W/O GOVINDAN,
D/O M KRISHNAPPA
AGED ABOUT 52 YEARS
RESIDING AT NO. 199,
GANDHI ROAD, ARAKONAM
TAMILNADU – 631 001

13. SMT. G. LALITHA
W/O GUNASHEKHARAN
D/O M KRISHNAPPA
AGED BOUT 49 YEARS
RESIDING AT NO. 14,
MARKET STREET, AMMAPETTAI,
BEHIND POLICE STATION
SALEM TOWN, TAMILNADU STATE – 636 001

14 SMT. SUPRIYA
D/O LATE MUNIRAJU,
AGED ABOUT 40 YEARS,

15 SMT. SUNANDA
D/O LATE MUNIRAJU
AGED ABOUT 35 YEARS,

16 MISS POOJA
D/O LATE MUNIRAJU,
AGED ABOUT 28 YEARS,

RESPONDENTS NO. 14 TO 16 ARE CARE OF
SMT. KANAKA W/O LATE MUNIRAJU,
AGED ABOUT 60 YEARS,
RESIDING AT NO. 59/29,
2ND CROSS, KALASIPALYA,
NEW EXTENSION,
BENGALURU – 560002.

…RESPONDENTS

(BY SRI. A SUBRAMANYA PRASAD, ADVOCATE FOR R3 TO R6 AND R11,
SRI. CHITHAPPA ADVOCATE FOR R10
SRI. SHANMUKHAPPA ADVOCATE FOR R2
R1, R12, R13 ARE SERVED BUT UNREPRESENTED
(R7 TO R9 ARE TRANSPOSED ARE APPELLANTS)
V/O DATED 23.11.2023 R2 TO R6 ARE THE LRS OF DECEASED R1
V/O DATED 03.11.2022 PROPOSED IN PLEADING R16 IS HELD SUFFICIENT
R 14 AND R 15 ARE SERVED AND UNREPRESENTED)

THIS RFA IS FILED UNDER SEC.96 OF CPC., AGAINST THE JUDGMENT AND DECREE DATED 26.09.2014 PASSED IN O.S.NO.3086/2005 ON THE FILE OF THE XVIII ADDL. CITY CIVIL JUDGE, BENGALURU, DISMISSING THE SUIT FOR PARTITION.

THIS APPEAL, COMING ON FOR FURTHER ARGUMENTS, THIS DAY, THE COURT DELIVERED THE FOLLOWING:

JUDGMENT

The appeal is filed by the plaintiff challenging the judgment and decree dated 26.09.2014 passed by XVIII Addl. City Civil Judge, Bengaluru City, in O.S.No.3086/2005 thereby suit filed by the plaintiff for declaration, partition and mesne profits is dismissed.

2. Ranking of the parties are referred to as per their rankings before the trial court.

3. Brief facts of the case are as follows:

Plaint:

It is stated by the plaintiff that defendant No.1 – K.Sarojammal and defendant No.7 - K.Kaveri @ Kannambal are the wives of late M.Krishnappa @ M.Krishnamurthy. The defendant Nos.2 and 3 are the

sons and defendant Nos.4 to 6 are the daughters of M.Krishnappa through his first wife - K. Sarojammal. Defendant Nos.8 and 9 are the sons and defendant Nos.10 and 11 are the daughters of M.Krishnappa through his second wife - Kaveri @ Kannambal. It is further case of the plaintiff that said M.Krishnappa had executed a Will dated 06.03.1996 and that is revoked subsequently by second Will dated 16.02.2001. In the first Will dated 06.03.1996 only the sons were bequeathed properties and after advent of amendment of the Hindu Succession Act, 1956, he has executed a second Will dated 16.02.2001 in favour of the sons and daughters of two wives. It is further contention of the plaintiff that he has cancelled the second Will dated 16.02.2001 and executed third Will dated 15.06.2001 bequeathing properties only to sons. Therefore, it is the case of the plaintiff that the third Will executed is contrary to the intention of the testator. Therefore, the third Will is a created one and prepared by defendant No.8, who is an Advocate and he has played a dominant role in preparing the same. It does not have

proof of intention of the testator M.Krishnappa but he managed to get execution of the disputed Will dated 15.06.2001 by duping the legitimate rights of daughters. Hence, the plaintiff has filed the suit for declaration to declare that Will dated 15.06.2001 is not binding on the plaintiff and claimed for 1/7th share in the suit schedule properties and to declare that the plaintiff is entitled to mesne profits.

Written Statement:

4. The defendant No.1 filed written statement denying all the averments made in the plaint except admitting the relationship. The defendant No.1 has stated in her written statement about the execution of three Wills by M.Krishnappa. Apart from the same, she has taken the contention that plaintiff has filed a false and frivolous suit and she has no share in the suit schedule properties. Therefore, she prays to dismiss the suit.

4.1 The defendant No.2, who is the wife of second son Muniraju had filed written statement denying all the

averments made in the plaint by the plaintiff and she also prays to dismiss the suit.

4.2 The defendant No.4 filed written statement admitting the plaint averments and prayed to decree the suit by granting 1/7th share in the suit schedule properties.

4.3 The defendant Nos.5 and 6 have adopted the written statement filed by the defendant No.4.

4.4 The defendant Nos.3, 7 and 9 have filed the written statement in the line of defendant No.1 and prays to dismiss the suit.

4.5 The defendant No.8 filed the written statement denying all the plaint averments and pleaded that Late M.Krishnappa had executed three Wills and the last Will is dated 15.06.2001, which was executed by M.Krishnappa and it is not having any suspicious circumstances. Hence, prays to dismiss the suit. He has further stated that by executing a third Will dated 15.06.2001, M.Krishnappa had bequeathed the suit properties in favour of his sons and

directed the beneficiary of the said Will to pay a sum of Rs.5,000/- p.a. for a period of 5 years to daughters. Therefore, the daughters are also beneficiary under the said Will including the plaintiff. Therefore, the third Will executed by the said M.Krishnappa is genuine and the valid one. Hence, he prays to dismiss the suit.

4.6 The defendant No.10 filed the written statement denying the plaint averments of the plaintiff and contended that herself, defendant Nos.1, 2, 7 and 9, widow and children of Muniraju are residing in the said suit property. After the death of M.Krishnappa, all the beneficiaries have occupied their portions of suit properties by virtue of Will executed by M.Krishnappa. Therefore, she prays to dismiss the suit.

5. Based on the pleadings, the trial court has framed the following issues:

> *"1. Whether the plaintiff proves that the WILL dated; 15.6.2001 is not binding on her?*

2. Whether the Valuation of the suit is proper and court fee paid is correct?

3. Whether the plaintiff is entitled for 1/7th share in the suit schedule property?

4. To what decree or order?"

6. The plaintiff got examined herself as PW.1 and two other witnesses as PWs.2 and 3 and got marked documents as Exs.P-1 to P-4. Defendant No.9 got examined himself as DW.1, defendant No.3(a) as DW.2 and defendant No.2 as DW.3 and got marked documents Exs.D-1 to D-25.

Trail Court Findings:

7. The trial Court, after considering the evidence on record and appreciating the same, has dismissed the suit filed by the plaintiff. The trial Court has assigned reasons that the plaintiff had admitted the execution of Will dated 15.06.2001. Further, the trial Court has observed and given finding that the plaintiff has failed to prove the Will dated 15.06.2001 was made by his father M.Krishnappa at the instance of the defendant No.8 and

testator had no good health both physically and mentally and conscious at the time of execution of Will. Further, the trial Court held that production of Ex.P-3, certified copy of the Will dated 15.06.2001 itself is sufficient to ensure that the plaintiff and other defendants have knowledge about the execution of same. Therefore execution of Will dated 15.06.2001 is proved. Therefore, it is further stated that the Will dated 15.06.2001 is acted upon and was within the knowledge of the plaintiff.

Grounds raised in the Appeal:

8. Being aggrieved by the dismissal of the suit, the plaintiff has preferred the present appeal raising grounds that the burden is on the defendants, who are the propounders of the Will to prove the Will but not on the plaintiff. Therefore, shifting the burden on the plaintiff to prove the Will is not correct. Further raised the ground that the trial Court has not appreciated the evidence on record correctly and has not considered the pleadings made by the plaintiff and has not applied law on proof of Will. Therefore, it results into passing of the erroneous

judgment. Further raised the ground that just because of the production of the Certified Copy of the Will dated 15.06.2001 as per Ex.P-3, the reasoning of the trial Court is not correct. Therefore, the trial court has committed an error only relying on the certified copy of the Will dated 15.06.2001. Further raised the ground that the defendant No.8 has played a dominant role in getting execution of Will dated 15.06.2001 and the same is lost sight by the trial Court and the true intention of the M.Krishnappa is to give equal share to all the coparceners, but later on, under the guise of execution of third Will dated 15.06.2001 bequeathed the property only in favour of sons, which is contrary to the intention of M.Krishnappa. Therefore, when this being the fact, the trial Court has erroneously held that the plaintiff has admitted the Will and dismissed the suit. Therefore, the judgment and decree passed by the trial Court is not correct. Further, it is submitted that the burden casts on the propounders of the Will, who are the defendants herein to prove the same by examining attesting witnesses as per the legal requirement of Section

63 of the Indian Succession Act, 1956 and Section 68 of the Indian Evidence Act, 1872, but the defendants have not at all examined the attesting witnesses. Thus, the Will is not proved by the defendants. When the same has not been done, shifting the burden on the plaintiff to prove the Will is not correct. Further the trial court has unnecessarily relied on the Exs.D-1 to D-6 which are irrelevant to the facts in suit, but the trial Court has much harped upon these documents resulting into perverse approach of the trial Court. On these grounds, the plaintiff has filed the present appeal.

Submissions of counsel for Appellant- plaintiffs.

9. Learned counsel for the appellant argued that it is the burden casts on the defendants, who are propounders have to prove the Will in terms of the Section 63 of the Indian Succession Act, 1956 and Section 68 of the Indian Evidence Act, 1872, but none of the attesting witnesses have been examined by the propounders of the Will. Therefore, the Will is not proved as per law. But on the contrary, the trial court has erroneously held that the

plaintiff has admitted the Will, but the plaintiff in her pleadings has unequivocally pleaded that the execution of the Will dated 15.06.2001 is contrary to the intention of the testator M.Krishnappa. When this being the pleadings of the plaintiff in questioning the Will, the trial Court has erroneously held that the plaintiff has admitted the Will. Therefore, he prays to set aside the judgment and decree passed by the trial Court.

9.1 It is further argued that the reference to the observation and finding made by the trial Court in the judgment are perverse to the pleadings and evidence on record. Further submitted that the defendant No.8 being a legal practitioner has played dominant role in getting the execution of Will dated 15.06.2001 and there is suspicious circumstance about the Will dated 15.06.2001 and same has not been removed by the propounders of the Will. Thus, the Will dated 15.06.2001 is not proved by the defendants, but on the contrary the trial Court has put the burden on the plaintiff to prove the Will is not executed,

which is not correct. Further the defendants have not produced the original Will though they are beneficiaries of the said Will and the attesting witnesses have not been examined by the defendants as contemplated under Section 63 of the Indian Succession Act, 1956 and Section 68 of the Indian Evidence Act, 1872. When this being the facts and circumstances, the trial Court has erroneously dismissed the suit. Therefore prays to allow the appeal.

9.2 He places reliance on the following decisions:

i. ***H. VENKATACHALA IYENGAR APPELLANT Vs. B. N. THIMMAJAMMA AND OTHERS*** – ***AIR 1959 SUPREME COURT 443***

ii. ***JANKI NARAYAN BHOIR Vs. NARAYAN NAMDEO KADAM*** - ***(2003) 2 SUPREME COURT CASES 91***

iii. ***JAGDISH CHAND SHARMA Vs. NARAIN SINGH SAINI (DEAD) THROUGH LEGAL REPRESENTATIVES AND OTHERS*** - ***(2015) 8 SUPREME COURT CASES 615***

iv. ***YUMNAM ONGBI TAMPHA IBEMA DEVI Vs. YUMNAM JOYKUMAR SINGH AND OTHERS*** - ***(2009) 4 SUPREME COURT CASES 780***

v. ***S.R. SRINIVASA AND OTHERS Vs. S.PADMAVATHAMMA*** - ***2010 AIR SCW 3935***

vi. ***N.KAMALAM (DEAD) AND ANOTHER Vs. AYYASAMY AND ANOTHER*** - ***(2001) 7 SUPREME COURT CASES 503***.

Submissions of counsel for Respondents-defendants:

10. On the other hand, the learned counsels for the defendant Nos.1, 2, 3, 8, 9, 10 and 11 submitted that plaintiff herself has produced certified copy of the Will dated 15.06.2001, that itself is sufficient that the plaintiff had knowledge about the Will, which amounts to admission of the Will by the plaintiff. Therefore, there is no question of proof of Will by the defendants and it is rightly considered by the trial Court. Further submitted that in the pleadings and also in the cross examination of the plaintiff, she has admitted of execution of Will. Therefore, the trial court is correct in dismissing the suit. It is further submitted that there is no evidence by the plaintiff to prove that the defendant No.8 had played a dominant role in getting the execution of Will dated 15.06.2001. When the plaintiff has alleged that fraud is played in getting the execution of the Will dated

15.06.2001, then it is burden on the plaintiff to prove as to how the fraud is played, but without doing so, the plaintiff has failed to prove in what way the fraud is played. It is submitted that if she alleges the fraud is played, it is his/her burden to prove in what way fraud is played and in this case, the plaintiff has discharged this burden. Further, the learned counsels for respondents have taken the Court to the documentary evidence and the oral evidence of the DWs.1 and 3 and submitted that the testator, M.Krishnappa was in good state of health both physically and mentally and after revoking the second Will, he had executed the last and third Will and he has acted upon the same and in possession of the property. Therefore, the plaintiff is not entitled for any share in the suit schedule properties. Therefore the judgment and decree passed by the trial Court is justified. Hence, they pray to dismiss the appeal.

10.1 He places reliance on the following decisions:

i. ***Savithri and Others Vs. Karthyayani Amma and Others –AIR 2008 SC 300***

ii. ***Daulat Ram and Others Vs. Sodha and Others - AIR 2005 SC 233***

11. Upon hearing the rival arguments by both the sides, the points that arise for consideration are as follows:

> *"(1) Whether, under the facts and circumstances of the present case, defendant Nos.1, 2, 3(a) to 3(d), 8, 9, 10 and 11 have proved the Will dated 15.06.2001 as per the legal requirement of Section 63 of the Indian Succession Act, 1925 and Section 68 of the Indian Evidence Act, 1872?*
>
> *(2) Whether, under the facts and circumstances of the case, the plaintiff proves that the suit property is joint family property of the plaintiff and defendants, if so, whether the plaintiff is entitled to share in the property and to what extent?"*

RE. POINT NOS.1 AND 2:

12. Both the above points are taken up together for common discussion on the facts of law in order to avoid repetition.

13. The relationship between the plaintiff and the defendants is not disputed. The original propositus is M.Krishnappa @ Krishnamurty, who had two wives namely, defendant No.1 - Sarojammal and defendant Nos.7 - K.Kaveri. The plaintiff, husband of defendant No.2, husband of defendant No.3 and defendant Nos.5 and 6 are the children of M.Krishnappa through his first wife. Defendant Nos.8, 9, 10 and 11 are the children of M.Krishnappa through second wife - K.Kaveri. These facts are not disputed. M.Krishnappa has acquired suit schedule properties by his hard earned money is also not disputed by the parties in the suit. It is not disputed fact that M.Krishnappa has executed first Will dated 06.03.1996 bequeathing the properties only in favour of his sons of both wives. Later on, M.Krishnappa had executed a second

Will dated 16.02.2001 by revoking the first Will thereby bequeathing properties to all the children including daughters and wives. But the plaintiff has questioned the third Will dated 15.06.2001 by stating that this third Will is contrary to the intention of testator M. Krishnappa, that means which is contrary to the second Will dated 16.02.2001.

14. It is the case of the plaintiff that defendant No.8 being an Advocate has played a dominant role in getting the execution of the Will dated 15.06.2001. In the plaint, the plaintiff has made pleadings at paras-7, 8, 9 and 10 that M.Krishnappa had executed third Will dated 15.06.2001 upon cancelling second Will dated 16.02.2001 thereby mentioning that the daughters have no rights is contrary to the intention of the testator i.e., father of the plaintiff. This way the plaintiff had questioned the Will dated 15.06.2001. The intention of the testator M.Krishnappa can be gathered upon chronological events of execution of three Wills. First Will is executed on

06.03.1996 thereby properties were bequeathed in favour of sons. Thereafter, with the advent of amendment of the Hindu Succession Act, revoking the first Will 06.03.1996, had executed the second Will dated 16.02.2001 by mentioning the amendment of the Act and bequeathed the suit schedule properties to all sons, daughters and two wives. But, the third Will dated 15.06.2001 is only to the sons excluding the daughters of the two wives of Krishnappa.

15. Therefore, in this context, the plaintiff has questioned the third Will dated 15.06.2001 that it is contrary to the intention of the testator. Further at para-8 in the plaint, the pleadings is made by the plaintiff that defendant No.8 had played a dominant role in cancelling the second Will and re-writing the last Will dated 15.06.2001. It is the pleadings of the plaintiffs that the defendant No.8, who is the son of the second wife had hatched a conspiracy in executing the Will. It is further pleaded that the Testator, M.Krishnappa was not having

good state of health physically and mentally and the defendant No.8 has managed to get execution of the Will dated 15.06.2001, thereby deprived the legitimate share of the plaintiff and other daughters.

16. When this being the facts, it is pleaded in the plaint that the trial Court, according to pleadings of both the sides, has wrongly observed and given finding that the Will dated 15.06.2001 is not in dispute and the observation made by the trial Court in para-12 is contrary to the pleadings made by the plaintiff.

17. Further the trial Court has observed that the plaintiff has produced the Will dated 15.06.2001 as per Ex.P.3 along with the suit itself is sufficient to infer that the plaintiff and other defendants had knowledge about the execution. Just because, the plaintiff has produced the certificate copy of the Will dated 15.06.2001, it does not amount to admitting execution of the Will. The Will- Ex.P.3 has to be proved as per the legal requirements under Section 63 of Indian Succession Act and Section 68 of the

Indian Evidence Act. But the trial Court has wrongly placed burden on the plaintiff to prove the Will dated 15.06.2001 is not binding on her. Just because, the plaintiff has produced the certified copy of Will dated 15.06.2001 cannot absolve the proof of execution of will by the defendants who are propounder of the Will. Those who are propounder of the Will shall have to discharge their burden in proving execution of Will as per Section 63 of the Indian Evidence Act and under section 68 of Indian Evidence Act and under Section 68 of the Indian Evidence Act and this principle of law is no longer *res integra*.

18. I place reliance on the judgment of the Hon'ble Supreme Court in the case of ***H.Venkatachala Iyengar (stated supra)*** at paragraph Nos.18, 19, 20 and 21 were pleased to lay down the law as follows:

> *"18. The party propounding a will or otherwise making a claim under a will is no doubt seeking to prove a document and, in deciding how it is to be proved, reference must inevitably be made to the statutory provisions which govern the proof of documents. Sections 67 and 68 of the Evidence Act are relevant for*

this purpose. Under Section 67, if a document is alleged to be signed by any person, the signature of the said person must be proved to be in his handwriting, and for proving such a handwriting under Sections 45 and 47 of the Act the opinions of experts and of persons acquainted with the handwriting of the person concerned are made relevant. Section 68 deals with the proof of the execution of the document required by law to be attested; and it provides that such a document shall not be used as evidence until one attesting witness at least has been called for the purpose of proving its execution. These provisions prescribe the requirements and the nature of proof which must be satisfied by the party who relies on a document in a court of law. Similarly, Sections 59 and 63 of the Indian Succession Act are also relevant. Thus the question as to whether the will set up by the propounder is proved to be the last will of the testator has to be decided in the light of these provision. It would prima facie be true to say that the will has to be proved like any other document except as to the special requirements of attestation prescribed by Section 63 of the Indian Succession Act, As in the case of proof of wills it would be idle to expect proof with mathematical certainty. The test to be applied would be the usual test of the satisfaction of the prudent mind in such matters.

19. However, there is one important feature which distinguishes wills from other documents. Unlike other documents the will speaks from the death of the testator, and so, when it is

propounded or produced before a court, the testator who has already departed the world cannot say whether it is his will or not; and this aspect naturally introduces an element of solemnity in the decision of the question as to whether the document propounded is proved to be the last will and testament of the departed testator. Even so, in dealing with the proof of wills the court will start on the same enquiry as in the case of the proof of documents. The propounder would be called upon to show by satisfactory evidence that the will was signed by the testator, that the testator at the relevant time was in a sound and disposing state of mind, that he understood the nature and effect of the dispositions and put his signature to the document of his own free will. Ordinarily when the evidence adduced in support of the will is disinterested, satisfactory and sufficient to prove the sound and disposing state of the testator's mind and his signature as required by law, courts would be justified in making a finding in favour of the propounder. In other words, the onus on the propounder can be taken to be discharged on proof of the essential facts just indicated.

20. There may, however, be cases in which the execution of the will may be surrounded by suspicious circumstances. The alleged signature of the testator may be very shaky and doubtful and evidence in support of the propounder's case that the signature, in question is the signature of the testator may not remove the doubt created by the appearance of the signature; the

condition of the testator's mind may appear to be very feeble and debilitated; and evidence adduced may not succeed in removing the legitimate doubt as to the mental capacity of the testator; the dispositions made in the will may appear to be unnatural, improbable or unfair in the light of relevant circumstances; or, the will may otherwise indicate that the said dispositions may not be the result of the testator's free will and mind. In such cases the court would naturally expect that all legitimate suspicions should be completely removed before the document is accepted as the last will of the testator. The presence of such suspicious circumstances naturally tends to make the initial onus very heavy; and, unless it is satisfactorily discharged, courts would be reluctant to treat the document as the last will of the testator. It is true that, if a caveat is filed alleging the exercise of undue influence, fraud or coercion in respect of the execution of the will propounded, such pleas may have to be proved by the caveators; but, even without such pleas circumstances may raise a doubt as to whether the testator was acting of his own free will in executing the will, and in such circumstances, it would be a part of the initial onus to remove any such legitimate doubts in the matter.

21. Apart from the suspicious circumstances above referre to in some cases the wills propounded disclose another infirmity. Propounders themselves take a prominent part in the execution of the wills which confer on them substantial benefits. If it is shown that the propounder has taken a

> *prominent part in the execution of the will and has received substantial benefit under it, that itself is generally treated as a suspicious circumstance attending the execution of the will and the propounder is required to remove the said suspicion by clear and satisfactory evidence. It is in connection with wills that present such suspicious circumstances that decisions of English courts often mention the test of the satisfaction of judicial conscience. The test merely emphasizes that, in determining the question as to whether an instrument produced before the court is the last will of the testator, the court is deciding a solemn question and it must be fully satisfied that it had been validly executed by the testator who is no longer alive.*

19. Further if the Will is registered or unregistered one, it does not take away proof of Will by examining atleast one attesting witness. Therefore, it is always burden on the defendants who propounded the Will to prove the execution, but the trial Court has wrongly placed burden on the plaintiff. In this regard, I also place reliance on the judgment of the Hon'ble Supreme Court in the case of ***Jagdish Chand Sharma (stated supra)*** wherein at paragraph Nos.21 and 22 observed as follows:

"21. As would be evident from the contents of Section 63 of the Act that to execute the will as contemplated therein, the testator would have to sign or affix his mark to it or the same has to be signed by some other person in his presence and on his direction. Further, the signature or mark of the testator or the signature of the person signing for him has to be so placed that it would appear that it was intended thereby to give effect to the writing as will. The section further mandates that the will shall have to be attested by two or more witnesses each of whom has seen the testator sign or affix his mark to it or has seen some other persons sign it, in the presence and on the direction of the testator, or has received from the testator, personal acknowledgment of a signature or mark, or the signature of such other persons and that each of the witnesses has signed the will in the presence of the testator. It is, however, clarified that it would not be necessary that more than one witness be present at the same time and that no particular form of attestation would be necessary.

22. It cannot be gainsaid that the above legislatively prescribed essentials of a valid execution and attestation of a will under the Act are mandatory in nature, so much so that any failure or deficiency in adherence thereto would be at the pain of invalidation of such document/instrument of disposition of property.

22.1. In the evidentiary context Section 68 of the 1872 Act enjoins that if a document is required by law to be attested, it would not be used as evidence unless one attesting witness, at least, if alive, and is

subject to the process of the court and capable of giving evidence proves its execution. The proviso attached to this section relaxes this requirement in case of a document, not being a will, but has been registered in accordance with the provisions of the Registration Act, 1908 unless its execution by the person by whom it purports to have been executed, is specifically denied.

22.2. These statutory provisions, thus, make it incumbent for a document required by law to be attested to have its execution proved by at least one of the attesting witnesses, if alive, and is subject to the process of the court conducting the proceedings involved and is capable of giving evidence. This rigour is, however, eased in case of a document also required to be attested but not a will, if the same has been registered in accordance with the provisions of the Registration Act, 1908 unless the execution of this document by the person said to have executed it denies the same. In any view of the matter, however, the relaxation extended by the proviso is of no avail qua a will. The proof of a will to be admissible in evidence with probative potential, being a document required by law to be attested by two witnesses, would necessarily need proof of its execution through at least one of the attesting witnesses, if alive, and subject to the process of the court concerned and is capable of giving evidence."

20. Where it is the mandatory of law that, things to be done in a particular way and that must be done in that

way only otherwise not. For proving the Will, the legal requirement as per Section 68 of the Indian Evidence Act is, atleast one of the attesting witness shall have to be examined otherwise the Will cannot said to be proved one. But in the present case, the defendants have not at all examined any of the attesting witnesses. D.W.1 is defendant No.9, D.W.2 is defendant No.3 and D.W.3 is defendant No.2 are all the beneficiaries of the Will. But these defendants have not examined any of the single witness who has witnessed execution of the Will. Furthermore, the defendants have not produced the original Will stated to have been executed by late M.Krishnappa and the defendants have produced the documentary evidence i.e., wedding card, photographs, tax paid receipts, katha extract only. When these defendants are the beneficiaries and have propounded the Will by making defence that late M.Krishnappa executed the Will, then it is their burden to prove the Will, but not the plaintiff. In this regard, the trial Court has wrongly framed issues putting burden on the plaintiff.

21. Omission to frame proper issues does not absolve the burden to prove. According to the defendants, if proper issue is not framed, then the defendants cannot be silent if proper issues are not framed. Hence, omission to frame issues cannot take away the duty cast on the defendants to prove their facts and issues according to their respective assertions. When the plaintiff and defendants are putforthing two different facts and issues, then it is the burden on them to prove their facts and issues according to their respective assertions. Therefore, when the defendants have taken the defence that M.Krishnappa executed the Will, it is their burden to prove the execution of Will being propounders of the Will, but it is not the plaintiff as it is wrongly done by the Trial Court.

22. Though, fundamentally, it is the duty cast on the Court to frame proper issues and if proper issues are not framed, then every liberty is reserved for the parties to request for recasting issue, because the parties know their responsibility, burden and onus to prove their facts.

Therefore, just because, proper issues according to the parties are not framed, then the parties cannot keep silence for not framing proper issues. Therefore, it is also duty cast on the party in the suit requesting the Court to frame proper issues enabling the Court to come to a right conclusion. The burden of proof on the facts and issues cannot be taken away, just because, there is omission to frame proper issues. Therefore, it is the duty of both, the courts and parties/advocates as per Order XIV Rule 3 of CPC ensuring to frame proper issues.

23. Order XIV of Code of Civil Procedure deals with settlement of issues and determination of suit on issues of law or on issues agreed upon. Rule 1 of Order XIV stipulates framing of issues. Issues are of two kinds:

i. Issues of facts
ii. Issues of law

24. Each material proposition affirmed by one party and denied by other shall form the subject of a distinct

issue. Clause 5 of Rule 1 of Order XIV of CPC stipulates as follows:

> *"(5) At the first hearing of the suit the Court shall, after reading the plaint and the written statements, if any, and after examination under rule 2 of Order X and after hearing the parties are at variance, and shall thereupon proceed to frame and record the issues on which the right decision of the case appears to depend."*

25. Rule 4 of Order XIV of CPC states that Court may examine witnesses or documents before framing issues and Rule 5 of Order XIV of CPC states that Power to amend and strike out issues. Upon combined reading of these two rules, the Court shall have to hear the advocates/parties and after reading the written statement the Court shall ascertain upon what material propositions of fact or of law the parties are at variance and so then shall proceed to frame and record the issue on which the right position of the case appears to depend. Therefore, if necessity arises, the Court may hear the parties/advocates before framing issues. It is not only prerogative duty cast on the Court to frame issues, but also advocates/parties

shall assist the Court to frame proper issues. The advocates/parties shall not be mute spectators, just leaving the Court to frame issues without taking any responsibility for framing issues. If the Court does not frame proper issues or any omission is occurred ignoring the material proposition while framing issues, then the advocates/parties shall at every liberty to request the Court to recast issues. The object of framing issues is to enable the parties to fix the burden of proof on them to prove their facts in issue by placing evidence to discharge their burden of proof of facts in issue. Therefore, based on these issues, the parties know what would be their burden/onus in proving their facts in issue. The advocates/parties know very well about their case and the burden that is likely to be put on them to prove the facts in issue. If either plaintiff or defendant makes material propositions and denial by other parties, then it is burden on the parties to prove their case by discharging their burden. Therefore, if either party asserts and denies, then the parties/advocates know very well about what they are

going to prove or in such an event, if any omission is made while framing issue that can be brought to the notice of the Court for amending or striking out the issues. The advocates/parties know very well about their case and what they are going to prove. Under these circumstances, if proper issues are not framed then the parties/advocates knowing their case shall have to show their accountability in framing issues, shall request the Court to frame proper issues with putting burden on whom it lies. Therefore, the advocates/parties have very important role at the initial stage itself in assisting the Court for framing the proper issues putting burden on whose party the facts in issue are to be proved.

26. The Hon'ble Supreme Court in the judgment of ***MAKHAN LAL BANGAL vs. MANAS BHUNIA AND OTHERS*** reported in ***(2001) 2 SCC 652*** at Para 19 held as follows:

> *"(19)……...The stage of framing the issues is an important one inasmuch as on that day the scope of the trial is determined by laying the path on which the trial*

shall proceed excluding diversions and departures therefrom. The date fixed for settlement of issues is, therefore, a date fixed for hearing. The real dispute between the parties is determined, the area of conflict is narrowed and the concave mirror held by the court reflecting the pleadings of the parties pinpoints into issues, the disputes on which the two sides differ. The correct decision of civil lis largely depends on correct framing of issues, correctly determining the real points in controversy which need to be decided. The scheme of order XIV of the Code of Civil Procedure dealing with settlement of issues shows that an issue arises when a material proposition of fact or law is affirmed by one party and denied by the other. Each material proposition affirmed by one party and denied by other should form the subject of distinct issue. An obligation is cast on the court to read the plaint/petition and the written statement/counter, if any, and then determine with the assistance of the learned counsel for the parties, the material propositions of fact or of law on which the parties are at variance. The issues shall be framed and recorded on which the decision of the case shall depend. ***The parties and their counsel are bound to assist the court in the process of framing of issues.*** *Duty of the counsel does not belittle the primary obligation cast on the court. It is for the Presiding Judge to exert himself so as to frame sufficiently expressive issues. An omission to frame proper issues may be a ground for remanding the case for retrial subject to prejudice having been shown to have resulted by the omission. The petition may be disposed of at the first hearing if it appears that the parties are not at issue on any material question of law or of fact and the court may at once pronounce the judgment. If the parties are at issue on*

> *some questions of law or of fact, the suit or petition shall be fixed for trial calling upon the parties to adduce evidence on issues of fact. The evidence shall be confined to issues and the pleadings. No evidence on controversies not covered by issues and the pleadings, shall normally be admitted, for each party leads evidence in support of issues the burden of proving which lies on him.* ***The object of an issue is to tie down the evidence and arguments and decision to a particular question so that there may be no doubt on what the dispute is.*** *The judgment, then proceeding issue-wise would be able to tell precisely how the dispute was decided."*
>
> *(emphasis supplied by me)*

27. Therefore, the counsels do not become silent while at the stage of framing issues, though it is the primary duty of the Court to frame issues, but soon after framing issues or in the process of framing issues, the counsels shall assist the Court for framing proper issues. The counsels may file a memo in this regard requesting the Court to frame proper issues as above discussed. Since the parties/advocates know what facts are going to be proved and it is their burden, and the same shall be stated correctly while framing the issues. If issues are not framed properly or omitted to frame issues, then the

parties/advocates cannot take advantage of it under the impression that issue is not framed of putting burden of proof on them. Though the Court omits to frame proper issue regarding burden of proof of facts in issue then the parties/advocates are not to be mute spectators; otherwise, the parties/advocates deprived of getting an opportunity to discharge their burden. Therefore, the parties and their advocates are bound to assist the Court in the process of framing of issues. The object of an issue is to tie down the evidence, arguments and decision to a particular question so that there may be no doubt of what the dispute is. It ensures speedy trial in civil cases so that the Court can focus on the controversies involved in the suits are making roving walk.

28. Though, in the present case, the trial Court has not framed issues putting burden on the defendants to prove execution of Will, but it is the duty cast on the defendants requesting the trial Court to recast issues, but did not do so. Therefore, just because, proper issues are

not framed, that cannot take away the burden of proof which is inherently on the parties as per their pleadings adduced either in the plaint or in written statement. Furthermore, on the facts that the defendants have not examined any of the attesting witnesses to prove the Will and what would be the consequences regarding proof of Will, I place reliance on the judgment of the Hon'ble Supreme Court in the case of ***Yumnam Ongbi Tampha ibema Devi (stated supra),*** wherein the Hon'ble Supreme Court has laid down the law regarding the due execution of Will and at paragraph Nos.11, 12 and 13, it is held as follows:

> *"11. As per provisions of Section 63 of the Succession Act, for the due execution of a will:*
>
> *(1) the testator should sign or affix his mark to the will;*
>
> *(2) the signature or the mark of the testator should be so placed that it should appear that it was intended thereby to give effect to the writing as a will;*
>
> *(3) the will should be attested by two or more witnesses, and*

> *(4) each of the said witnesses must have seen the testator signing or affixing his mark to the will and each of them should sign the will in the presence of the testator.*
>
> *12. The attestation of the will in the manner stated above is not an empty formality. It means signing a document for the purpose of testifying of the signatures of the executant. The attested (sic attesting) witness should put his signature on the will animo attestandi. It is not necessary that more than one witness be present at the same time and no particular form of attestation is necessary. Since a will is required by law to be attested, its execution has to be proved in the manner laid down in the section and the Evidence Act which requires that at least one attesting witness has to be examined for the purpose of proving the execution of such a document.*
>
> *13. Therefore, having regard to the provisions of Section 68 of the Evidence Act and Section 63 of the Succession Act, a will to be valid should be attested by two or more witnesses in the manner provided therein and the propounder thereof should examine one attesting witness to prove the will. The attesting witness should speak not only about the testator's signature or affixing his mark to the will but also that each of the witnesses had signed the will in the presence of the testator."*

29. Further the Hon'ble Supreme Court in the case of ***S.R.Srinivasa (stated supra),*** wherein at paragraph Nos.2 and 3 held as follows:

"2. Briefly stated the facts of the case are that the plaintiffs claimed that Puttathayamma was the wife of Sivaramaiah who predeceased her in 1950. Puttathayamma died on 15-11-1979. She had four children. Lalithamma (daughter) who died in 1990, was the original plaintiff. Subbaramaiah (son) who died issueless in 1973 and Smt Kamalamma (daughter) also died issueless in 1998. She was impleaded as Defendant 4 in this suit. Smt Indiramma was the fourth child. She also died issueless on 24-10-1985. It is claimed that upon the death of Subbaramaiah, Puttathayamma inherited the suit property and became the absolute owner being Class 1 heir of Subbaramaiah. Upon the death of Puttathayamma, the deceased plaintiff, Defendant 4 Kamalamma and Indiramma inherited her property. During her lifetime, Puttathayamma was living with Indiramma. Upon her death, Indiramma continued to be in possession of the property. The dispute about the property arose soon after the death of Indiramma.

3. Since the original plaintiff Lalithamma and Defendant 4 were residing outside, they did not come to know about the death of their sister, Indiramma. Defendant 1 claiming to be a close relative of deceased Indiramma organised and performed her cremation ceremony. The house in which Indiramma was residing i.e. the schedule property contained a lot of movable properties such as gold and silver jewellery and other articles which were of considerable value. He took charge of the house as well as the movable properties by putting it under lock and key. On learning about the death of their sister, the appellants and Defendant 4 came to Mysore. They demanded that

Defendant 1 should hand over the possession of the house and movable properties. He, however, refused to do so asserting that he was the absolute owner of the entire property. Not only this, it is stated that Defendant 1 had taken away several lakhs of rupees which had been kept by Indiramma in various fixed deposits. Defendant 1 had declined to hand over the title deeds of the schedule property as well as the bank deposit receipts."

30. Further the Hon'ble Supreme Court in the case of ***N.Kamalam (stated supra)*** wherein at paragraph Nos.1 and 3 held as follows:

"1. The Latin expressions onus probandi and animo attestandi are the two basic features in the matter of the civil court's exercise of testamentary jurisdiction. Whereas onus probandi lies in every case upon the party propounding a will, the expression animo attestandi means and implies animus to attest: to put it differently and in common parlance, it means intent to attest. As regards the latter maxim, the attesting witness must subscribe with the intent that the subscription of the signature made stands by way of a complete attestation of the will and the evidence is admissible to show whether such was the intention or not (see in this context Theobald on Wills, 12th Edn., p. 129). This Court in the case of Girja Datt Singh v. Gangotri Datt Singh [AIR 1955 SC 346] held that two persons who had identified the testator at the time of registration of the will and had appended

their signatures at the foot of the endorsement by the Sub-Registrar, were not attesting witnesses as their signatures were not put animo attestandi. In an earlier decision of the Calcutta High Court in Abinash Chandra Bidyanidhi Bhattacharya v. Dasarath Malo [ILR (1929) 56 Cal 598 : AIR 1929 Cal 123] it was held that a person who had put his name under the word "scribe" was not an attesting witness as he had put his signature only for the purpose of authenticating that he was a "scribe". In a similar vein, the Privy Council in Shiam Sundar Singh v. Jagannath Singh [54 MLJ 43 : AIR 1927 PC 248] held that the legatees who had put their signatures on the will in token of their consent to its execution were not attesting witnesses and were not disqualified from taking as legatees. In this context, reference may be made to the decision of this Court in M.L. Abdul Jabbar Sahib v. M.V. Venkata Sastri & Sons [(1969) 1 SCC 573 : (1969) 3 SCR 513] wherein this Court upon reference to Section 3 of the Transfer of Property Act has the following to state: (AIR p. 1151, para 8)

"It is to be noticed that the word 'attested', the thing to be defined, occurs as part of the definition itself. To attest is to bear witness to a fact. Briefly put, the essential conditions of a valid attestation under Section 3 are: (1) two or more witnesses have seen the executant sign the instrument or have received from him a personal acknowledgement of his signature; (2) with a view to attest or to bear witness to this fact each of them has signed the instrument in the presence of the executant. It is essential that the witness

should have put his signature animo attestandi, that is, for the purpose of attesting that he has seen the executant sign or has received from him a personal acknowledgement of his signature. If a person puts his signature on the document for some other purpose, e.g., to certify that he is a scribe or an identifier or a registering officer, he is not an attesting witness."

3. Turning on to the former expression onus probandi, it is now a fairly well-settled principle that the same lies in every case upon the party propounding the will and may satisfy the court's conscience that the instrument as propounded is the last will of a free and capable testator, meaning thereby obviously, that the testator at the time when he subscribed his signature on to the will had a sound and disposing state of mind and memory and ordinarily, however, the onus is discharged as regards the due execution of the will if the propounder leads evidence to show that the will bears the signature and mark of the testator and that the will is duly attested. This attestation however, shall have to be in accordance with Section 68 of the Evidence Act which requires that if a document is required by law to be attested, it shall not be used as evidence until at least one attesting witness has been called for the purpose of proving its execution and the same is so however, in the event of there being an attesting witness alive and capable of giving the evidence. The law is also equally well settled that in the event of there being circumstances surrounding the execution of the will shrouded in suspicion, it is the duty paramount on the part of the

propounder to remove that suspicion by leading satisfactory evidence."

31. Upon appreciating the evidence on record, admittedly, the defendants have not examined any of the attesting witnesses to prove the Will. Mere production of Will dated 15.06.2001 cannot prove execution of the said Will. Where the defendants being propounder has contended that M.Krishnappa has revoked the second Will and executed the third Will dated 15.06.2001 it is the burden cast on the defendants to prove the Will as contemplated under Section 68 of the Indian Evidence Act and under Section 63 of Indian Succession Act otherwise, it cannot be said that the execution of Will is proved.

32. Upon considering both the second and third Wills dated 16.02.2001 and 15.06.2001 respectively, in the second Will, the testator M.Krishnappa has assigned the reason as to why he has bequeathed all the properties to all coparceners including daughters and wife, but in the third Will dated 15.06.2001 only sons have been

bequeathed, which is contrary to the intension appearing of the testator in the second Will. Therefore, there should have been the reasoning as to why the daughters were excluded when the daughters are also co-parceners in the bequeathed property in the second Will. But there is no reasoning in the third Will for such exclusion.

33. Further it is the allegation of plaintiff that defendant No.8 played dominant role in getting execution of third Will. The plaintiff has not pleaded how fraud is played by defendant No.8. Therefore, there is no proof of fraud by defendant No.8. In this regard, if the plaintiff had contended the play of fraud by defendant No.8, then it is the burden on the plaintiff to prove the same as per the dictum of the Hon'ble Supreme Court in the cases of ***Daulat Ram and Others (stated supra)*** and ***Savithri and Others (stated supra),*** relied on by the counsel for the respondents/defendants. Therefore, the trial Court without considering the legal provisions in this regard has

erroneously delivered the judgment and decree by dismissing the suit.

34. The role of attesting witness is that the attesting witness has to depose that he has witnessed the fact that the testator executed the Will and he has put signature on the Will. Therefore, the importance of examining of attesting witness is to prove the due execution of Will by the testator.

35. The testator cannot be summoned from the graveyard. Therefore, the Will is such type of document is to be proved as per the legal requirements as above stated. Therefore, the role of attesting witness is to prove the due execution of Will. Also it is the burden on the propounders of the Will to prove that why testator had bequeathed the property in favour of sons only excluding others by stating the reasons, but here when analyzing second and third Wills dated 16.02.2001 and 15.06.2001 respectively, in the second Will, the testator late M.Krishnappa has bequeathed the property to all the

coparceners, but in the third Will, only sons were bequeathed property and why giving amount of Rs.5,000/- only to the daughters for a period of five years is not forthcoming in the Will.

36. Therefore, upon considering and appreciating the evidence on record, in this regard, a suspicious circumstances are raised regarding execution of third Will dated 15.06.2001. Further the trial Court had observed that the plaintiff has knowledge about the execution of Will and accordingly, has produced the said Will which is marked as Ex.P.3. Just because, the plaintiff had knowledge regarding the Will and has produced the Will that cannot absolve the burden of proof on the defendants to prove the due execution of Will when the said will is questioned. In this regard, the trial Court has committed error in holding that the legal requirement need not be followed in execution of Will. Therefore, the judgment and decree passed by the trial Court is liable to be set aside.

37. Furthermore, though, the plaintiff has taken the contention that M.Krishnappa did not have good health to execute the Will, but for this, from either side there is no evidence, but as discussed above, the Will is not proved as per the legal requirements. Therefore, whether the testator had good health or not, cannot be gone into aspect. Upon considering the cross-examination of the plaintiff-P.W.1, the major contribution is done regarding knowledge of plaintiff towards the Will. As discussed above, just because, the plaintiff has knowledge regarding the Will that cannot absolve the burden of proof on the defendants, when the Will itself is questioned.

38. Therefore, while appreciating the evidence on record as discussed above and applying the principle of law laid down by the Hon'ble Supreme Court and mandatory requirements to prove the execution of Will is considered, the defendants have failed to prove the due execution of Will dated 15.06.2001 as per law. In this regard, the trial Court has committed serious error in

considering the case in true and correct perspective manner as per the pleadings adduced by the parties. Therefore, the judgment and decree passed by the trial Court is liable to be set aside. Thus, the appeal is liable to be allowed.

39. Thus, in view of which, the plaintiff is entitled to share in the property as there is no dispute regarding the suit schedule property is joint family and ancestral property and also the relationship between the parties are not disputed. The plaintiff is the daughter of M.Krishnappa and K. Sarojammal and defendant Nos.2, 3, 4 and 5 are the sons and daughters through his first wife and defendant No.8, 9, 10 and 11 are the sons and daughters through his second wife. Therefore, the plaintiff is entitled to $1/10^{th}$ share in the suit schedule property. The prayer for decreeing mesne profit is rejected. Hence, I answer point Nos.1 in ***negative*** and point No.2 in ***affirmative***.

40. Accordingly, I proceed to pass the following:

ORDER

i. The appeal is ***allowed***.

ii. The impugned judgment and decree dated 26.09.2014 passed in O.S.No.3086/2005 on the file of XVIII Addl. City Civil Judge, Bengaluru, is hereby set aside.

iii. The suit of plaintiff is partly decreed.

iv. The plaintiff and other daughters and sons are entitled to 1/10th share each in the suit schedule property. The prayer sought for mesne profit is hereby rejected.

v. Draw decree accordingly.

vi. No order as to costs.

vii. Registry is directed to transmit the TCR to the concerned Court forthwith.

Sd/-
JUDGE

DR: Para 1 to 16
PB: Para 17 to 22 & 28 to end.
SRA: Para 23 to 27
List No.: 2 Sl No.: 65