

H. V. NIRMALA & ANR.

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v.

R. SHARMILA & ANR.

(Civil Appeal No. 881 of 2018)

JANUARY 25, 2018

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[R. K. AGRAWAL AND ABHAY MANOHAR SAPRE, JJ.]

Will:

Suit for partition by defendant No. 1 against defendant Nos. 2 and 3 – Based on a Will dated 20.5.1995 – Compromised – Present suit by plaintiff for declaration that the compromise decree was not binding on her and that she was the lawful owner of the suit schedule properties on the basis of Will dated 12.3.1980 – Trial Court dismissed the suit holding that the plaintiff failed to prove the Will dated 12.3.1980 – High Court decreed the suit – On appeal, held: On the facts of the case, plaintiff proved the Will dated 12.3.1980 in accordance with the requirement of s. 68 of Evidence Act – Since the plaintiff was not a party to the compromise decree, the same was not binding on her – Therefore, she is entitled to claim a declaration in her favour as she is owner of the properties bequeathed to her by the testator.

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Dismissing the appeal, the Court

HELD: 1. The plaintiff was able to prove the Will dated 12.03.1980 in accordance with law and there is no reason to hold otherwise. The Will dated 12.03.1980 was a registered Will. It was executed by none other than the father in favour of his minor daughter-plaintiff and minor Son-defendant No.1 born from first wife. When the father bequeathed his property to his minor children then there is nothing unnatural in it. It is natural bequeath out of love and affection. There is no question of minor daughter and son playing an active role in execution of the Will dated 12.03.1980 in their favour. It is for the simple reason that both were too young to indulge in any kind of illegal acts to grab the suit property. In other words, it was too much to expect from the minor children to play any active role in grabbing their father's property and create forged Will. [Para 17][351-D-F]

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A **2. It has come in the evidence that the original Will dated 12.03.1980 was not in possession of the plaintiff but it was in possession of defendant No.1. For this reason, the plaintiff filed its certified copy after obtaining from Registrar's office. This explanation was rightly accepted by the High Court. Since the original Will was not in plaintiff's possession, its existence and**
B **legality could be proved by the plaintiff by leading the secondary evidence. [Para 17][351-F-G]**

C **3. The plaintiff proved the Will dated 12.03.1980 in accordance with the requirement of Section 68 of the Evidence Act, 1872 by adducing her own evidence and by examining one**
D **attesting witness of the Will. Such evidence was sufficient to prove the Will. [Para 17][351-G-H]**

E **4. It is not in dispute that the later Will dated 20.05.1995 disclosed by the defendants did not find mention therein the fact of execution of first Will dated 12.03.1980 by the testator. The Will dated 20.05.1995 should have found reference of the earlier Will dated 12.03.1980 because Will dated 12.03.1980 was a registered Will and in order to prevail the last Will over the earlier one, the reference of revocation of the earlier Will dated 12.03.1980 was necessary in the later Will. It was not so. [Para 17][351-H; 352-A-B]**

F **5. Since the plaintiff was not a party to the compromise decree dated 25.01.1997 passed in OS No.7266 of 1996, it was not binding on her. Once the Will dated 12.03.1980 is held proved, in accordance with law, the the plaintiff becomes entitled to claim a declaration in her favour that she is the owner of the properties bequeathed to her by the testator as specified in the Will. [Para 17][352-B-C]**

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 881 of 2018.

G From the Judgment and Order dated 20.09.2011 of the High Court of Karnataka at Bangalore in RFA No. 1128/2008.

R. S. Hegde, Girish Anathamurthy, Mrs. Farhat Jahan Rehmani, Mrs. Vajjyanthi Girish, Advs. for the Appellants.

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H. N. Nagmohan Das, Sr. Adv., Shekhar G. Devasa, Manish A
Tiwari, Naveen Nagarjuna, M/s. Devasa & Co., S. Srinivasan, Advs.
for the Respondents.

The Judgment of the Court was delivered by

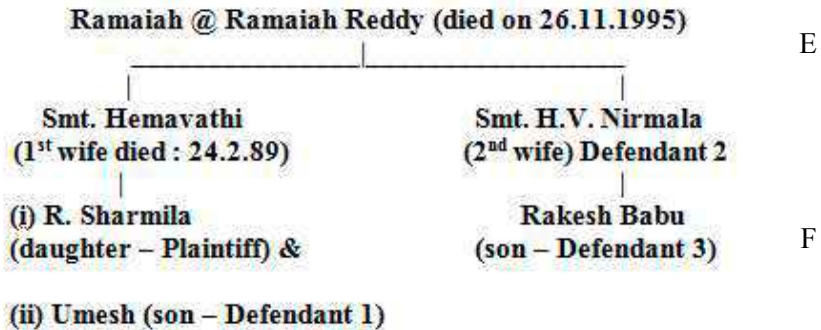
ABHAY MANOHAR SAPRE, J. 1. Leave granted. B

2. This appeal arises from the final judgment and order dated
20.09.2011 passed by the High Court of Karnataka at Bangalore in RFA
No.1128 of 2008 whereby the High Court set aside the judgment of the
Trial Court and decreed the suit filed by the plaintiff.

3. In order to appreciate the issues involved in the appeal, it is C
necessary to set out the relevant facts hereinbelow.

4. The appellants are defendant Nos. 2 and 3, whereas respondent
No.1 is the plaintiff and respondent No. 2 is defendant No. 1 in the civil
suit, out of which this appeal arises.

5. The dispute is essentially between the family members and it D
relates to certain immovable properties originally belonged to the Head
of the family known as - Ramaiah. The family tree would be useful to
appreciate the issues.



6. Ramaiah Reddy had two wives, first–Smt. Hemavathi and the
second–Smt Nirmala. Out of the wedlock with first wife–Smt. Hemavathi,
one daughter–Sharmila (plaintiff) and a son–Umesh (defendant No.1) G
were born, whereas out of the wedlock with second wife–Nirmala, one
son– Rakesh Babu (defendant No.3) was born. Hemavathi–the first
wife died on 24.02.1989 and Ramaiah died on 26.11.1995.

7. On 11.10.1995, Umesh (defendant No.1) filed a civil suit being
O.S. No.7266 of 1996 against Nirmala and Rakesh Babu. This suit was H

A filed for partition of the properties owned by late Ramaiah Reddy. It was based on the Will dated 20.05.1995 said to have been executed by Ramaiah in favour of three parties to the suit.

B 8. The parties compromised the suit and accordingly the compromise decree was passed on 25.01.1997 without any contest on merits.

C 9. On 04.11.2000, Sharmila - daughter from first wife filed a civil suit being OS No.7592 of 2000 in the Court of City Civil Judge, Bangalore against Nirmala, Umesh and Rakesh Babu, out of which the present appeal arises. This suit was for a declaration that the compromise decree dated 25.01.1997 passed in OS No.7266 of 1996 is not binding on her; that she is the lawful owner of the properties specified in the schedule on the basis of the Will dated 12.03.1980 executed by Ramaiah in her favour.

D 10. The three defendants filed the written statement. They denied the Will dated 12.03.1980 set up by the plaintiff and supported the compromise decree obtained by them on 25.01.1997 in O.S. No.7266 of 1996. The Trial Court framed the issues. Parties adduced their evidence. The Trial Court, by its judgment and order dated 28.08.2008, dismissed the suit. It was held that the plaintiff having failed to prove the original Will dated 12.03.1980, the suit must fail. In other words, the Trial Court was of the view that it is not possible to hold, in the absence of sufficient evidence adduced by the plaintiff, that the Will dated 12.03.1980 is proved in accordance with law.

E 11. The plaintiff, felt aggrieved by the dismissal of her suit, filed first appeal before the High Court of Karnataka, out of which this appeal arises.

F 12. By the impugned judgment/decree, the High Court allowed the appeal, set aside the judgment/decree of the Trial Court and decreed the plaintiff's suit. The High Court held that the plaintiff was able to prove the Will dated 12.03.1980 in accordance with law with the evidence adduced by her and hence she was entitled for a declaration as claimed by her in the suit relating to the suit properties. Defendant Nos. 2 and 3 felt aggrieved by the impugned judgment of the High Court and filed this appeal by special leave in this Court.

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13. Having heard the learned counsel for the parties and on perusal of the record of the case, we find no merit in the appeal. In our view, the High Court appears to be right in its reasoning and the conclusion. A

14. The fate of this appeal depends upon one question, namely, whether the Plaintiff (Respondent No.1 herein) was able to prove the Will dated 12.03.1980 in accordance with law. B

15. As mentioned above, the Trial Court decided the question against the plaintiff whereas the first Appellate Court decided the question in plaintiff's favour.

16. Having examined, we are inclined to concur with the reasoning of the High Court and accordingly answer the question in favour of respondent No.1, i.e., the plaintiff and against the appellants (defendant Nos. 2 and 3). In other words, we hold that the plaintiff was able to prove the Will dated 12.03.1980 in accordance with law and there is no reason to hold otherwise. This we say for the following reasons. C

17. First, the Will dated 12.03.1980 is a registered Will. Second, it was executed by none other than the father-Ramaiah in favour of his minor daughter-Sharmila and minor Son-Umesh born from first wife. Third, when Ramaiah-the father bequeathed his property to his minor children then we find nothing unnatural in it. In our opinion, it is a natural bequeath out of love and affection. Fourth, there is no question of minor daughter and son playing an active role in execution of the Will dated 12.03.1980 in their favour. It is for the simple reason that both were too young to indulge in any kind of illegal acts to grab the suit property. In other words, it was too much to expect from the minor children to play any active role in grabbing their father's property and create forged Will. Fifth, it has come in the evidence that the original Will dated 12.03.1980 was not in possession of the plaintiff but it was in possession of defendant No.1. For this reason, the plaintiff filed its certified copy after obtaining from Registrar's office. Sixth, this explanation was accepted by the High Court and, in our opinion, rightly. Seventh, since the original Will was not in plaintiff's possession, its existence and legality could be proved by the plaintiff by leading the secondary evidence. Eighth, the plaintiff proved the Will dated 12.03.1980 in accordance with the requirement of Section 68 of the Evidence Act, 1872 by adducing her own evidence and by examining one attesting witness of the Will. In our view, such evidence was sufficient to prove the Will. Ninth, it is not in dispute that the later Will dated 20.05.1995 D
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- A disclosed by the defendants did not find mention therein the fact of execution of first Will dated 12.03.1980 by the testator. In our view, the Will dated 20.05.1995 should have found reference of the earlier Will dated 12.03.1980 because Will dated 12.03.1980 was a registered Will and in order to prevail the last Will over the earlier one, the reference of revocation of the earlier Will dated 12.03.1980 was necessary in the
- B later Will. It was not so. Tenth, since the plaintiff was not a party to the compromise decree dated 25.01.1997 passed in OS No.7266 of 1996, it was not binding on her. Lastly, once the Will dated 12.03.1980 is held proved, in accordance with law, the plaintiff becomes entitled to claim a
- C declaration in her favour that she is the owner of the properties bequeathed to her by the testator as specified in the Will.

18. In the light of the foregoing discussion, we hold that the High Court was right in holding that the plaintiff was able to prove the Will dated 12.03.1980 and that the Will dated 20.05.1995 and the decree dated 25.01.1997 passed in O.S. No.7266 of 1996 are not binding on the

D plaintiff.

19. As a consequence thereof, we find no merit in this appeal, which fails and is accordingly dismissed.