



NC: 2025:KHC:24420
MFA No. 3988 of 2025
C/W MFA No. 4004 of 2025
MFA No. 4118 of 2025

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 7TH DAY OF JULY, 2025

BEFORE

THE HON'BLE MR. JUSTICE RAMACHANDRA D. HUDDAR
MISCELLANEOUS FIRST APPEAL NO. 3988 OF 2025 (CPC)

C/W

MISCELLANEOUS FIRST APPEAL NO. 4004 OF 2025

MISCELLANEOUS FIRST APPEAL NO. 4118 OF 2025

R

MFA No.3988 OF 2025

BETWEEN:

SMT. M.D. DEVAMMA
W/O LATE K. VISHWANATHA
SINCE DEAD BY HER LR's

SRI. HARISH K.V
S/O LATE K.V. VISHWANATH
AGED ABOUT 39 YEARS
RESIDING AT NO.118, 12TH 'B' MAIN
HAL 2ND STAGE, INDIRANAGAR
OPP. NDX KALYANAMANTAPA
NEXT TO AMC COMPANY
BENGALURU-560 038

...APPELLANT

(BY SRI. M.R. RAJAGOPAL, SENIOR COUNSEL FOR
SRI. THILAKRAJ S.V, ADVOCATE)

AND:

1. SMT. K.V. KALAVATHI
D/O LATE K. VISHWANATHA
W/O THIPPESWAMY
AGED ABOUT 40 YEARS





RESIDING AT RANGANATHANAGARA
SIRA TOWN, SIRA TALUK
TUMAKURU DISTRICT-572 137

2. SMT.CHANDRALEELA K.V
D/O LATE K. VISHWANATHA
AGED ABOUT 44 YEARS
3. SMT. NIVEDITHA K.V
D/O LATE K. VISHWANATHA
AGED ABOUT 37 YEARS

RESPONDENTS NO.2 AND 3 ARE
RESIDING AT NO.118, 12TH 'B' MAIN
HAL 2ND STAGE, INDIRANAGAR
OPP. NDX KALYANAMANTAPA
NEXT TO AMC COMPANY
BENGALURU-560 038

4. SRI. CHETHAN CHAKRAVARTHI K.V
S/O LATE VISHWANATHA K
AGED ABOUT 35 YEARS
5. SMT. ARCHANA K.V
D/O LATE VISHWANATHA K
AGED ABOUT 34 YEARS
6. SMT. KUMUDALAKSHMI K.V
D/O LATE VISHWANATHA K
AGED ABOUT 29 YEARS

RESPONDENTS NO.4 TO 6 ARE
RESIDING AT RANGANATHANAGARA
SIRA TOWN
TUMAKURU DISTRICT-572 137

...RESPONDENTS

(BY SRI. KESHAV R. AGNIHOTRI, ADVOCATE FOR C/R1)

THIS MFA IS FILED U/O 43 RULE 1(r) OF CPC, AGAINST
THE ORDER DATED 08.04.2025 PASSED ON I.A.NO.3 IN
OS.NO.135/2021 ON THE FILE OF THE SENIOR CIVIL JUDGE



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AND J.M.F.C., SIRA, REJECTING THE I.A.NO.3 FILED UNDER
ORDER 39 RULE 1(a) R/W SECTION 151 OF CPC, 1908.

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BETWEEN:

SMT. M.D. DEVAMMA
W/O LATE K. VISHWANATHA
SINCE DEAD BY HER LR's

SRI. HARISH K.V
S/O LATE K.V. VISHWANATH
AGED ABOUT 39 YEARS
RESIDING AT NO.118, 12TH 'B' MAIN
HAL 2ND STAGE, INDIRANAGAR
OPP. NDX KALYANAMANTAPA
NEXT TO AMC COMPANY
BENGALURU-560 038

...APPELLANT

(BY SRI. M.R. RAJAGOPAL, SENIOR COUNSEL FOR
SRI. THILAKRAJ S.V, ADVOCATE)

AND:

1. SMT. K.V. KALAVATHI
D/O LATE K. VISHWANATHA
W/O THIPPESWAMY
AGED ABOUT 40 YEARS
RESIDING AT RANGANATHANAGARA
SIRA TOWN, SIRA TALUK
TUMAKURU DISTRICT-572 137
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D/O LATE K. VISHWANATHA
AGED ABOUT 44 YEARS



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AGED ABOUT 37 YEARS

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HAL 2ND STAGE, INDIRANAGAR
OPP. NDX KALYANAMANTAPA
NEXT TO AMC COMPANY
BENGALURU-560 038

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S/O LATE VISHWANATHA K
AGED ABOUT 35 YEARS

5. SMT. ARCHANA K.V
D/O LATE VISHWANATHA K
AGED ABOUT 34 YEARS

6. SMT. KUMUDALAKSHMI K.V
D/O LATE VISHWANATHA K
AGED ABOUT 29 YEARS

RESPONDENTS NO.4 TO 6 ARE
RESIDING AT RANGANATHANAGARA
SIRA TOWN
TUMAKURU DISTRICT-572 137

...RESPONDENTS

(BY SRI. KESHAV R. AGNIHOTRI, ADVOCATE FOR C/R1)

THIS MFA IS FILED U/O 43 RULE 1(r) OF CPC, AGAINST
THE ORDER DATED 08.04.2025 PASSED ON I.A.NO.4 IN
OS.NO.135/2021 ON THE FILE OF THE SENIOR CIVIL JUDGE
AND J.M.F.C., SIRA, ALLOWING THE I.A.NO.4 FILED UNDER
ORDER 39 RULE 1 AND 2 R/W SEC.151 OF CPC, 1908.



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NEXT TO AMC COMPANY
BENGALURU-560 038

...APPELLANT

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SRI. THILAKRAJ S.V, ADVOCATE)

AND:

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NEXT TO AMC COMPANY
BENGALURU-560 038

4. SRI. CHETHAN CHAKRAVARTHI K.V
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AGED ABOUT 35 YEARS
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RESPONDENTS NO.4 TO 6 ARE
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TUMAKURU DISTRICT-572 137

...RESPONDENTS
(BY SRI. KESHAV R. AGNIHOTRI, ADVOCATE FOR C/R1)

THIS MFA IS FILED U/O 43 RULE 1(r) OF CPC, AGAINST
THE ORDER DATED 08.04.2025 PASSED ON I.A.NO.5 IN
OS.NO. 135/2021 ON THE FILE OF THE SENIOR CIVIL JUDGE
AND J.M.F.C., SIRA, PARTLY ALLOWING THE I.A.NO.5 FILED
UNDER ORDER 39 RULE 1 AND 2 OF CPC.

THESE MFA'S HAVING BEEN RESERVED FOR JUDGMENT,
COMING ON FOR PRONOUNCEMENT THIS DAY, THE COURT,
DELIVERED/PRONOUNCED THE FOLLOWING:

CORAM: HON'BLE MR JUSTICE RAMACHANDRA D. HUDDAR



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CAV JUDGMENT

(PER: HON'BLE MR JUSTICE RAMACHANDRA D. HUDDAR)

These three Miscellaneous First Appeals are filed by defendant Nos. 1 and 2 in O.S.No. 135/2021 on the file of Senior Civil Judge and J.M.F.C, at Sira under Order XXXIX Rule 1 (A) of Code of Civil Procedure (for short, "CPC), being aggrieved by the common order dated 08.04.2025 passed by the said Court. These appeals concern three interlocutory applications - I.A.No.3 filed by the defendants, seeking to restrain the plaintiff from interfering with his fencing activity on the suit schedule property and I.A.Nos.4 and 5 are filed by the respondent/plaintiff seeking injunctive relief's against the appellants. By the impugned common order, the Trial Court dismissed the appellant's application and allowed those applications filed by the plaintiff, directing the parties to maintain status quo, while also granting liberty to the plaintiff to erect fencing.



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2. The parties to this appeal are referred to as per their rank before the Trial Court for convenience.

3. The facts so narrated by the appellant in brief are as under:

The plaintiff claims to be the daughter of one late Sri.K.Vishwanatha, allegedly born through his first wife Smt.Lakshmiddevamma. It is further claimed that, defendant Nos. 3 to 7 in the suit are her siblings, all are children of the said Vishwanatha and Lakshmiddevamma. According to the plaintiff, the suit schedule properties are the joint family ancestral properties and she is entitled to a share by birth therein. She asserts that, the properties remain undivided and are jointly possessed by the members of the family. Thus, she filed a suit against the defendants seeking the relief of properties and separate possession of the suit schedule properties by metes and bounds.



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4. Before the Learned Trial Court, the appellant/defendant appeared and it is defendant No. 2 disputes the very relationship of the plaintiff with late Sri.K.Vishwanatha. According to the defendant, Smt.Lakshmiddevamma was never the legally wedded wife of Vishwanatha, but merely a caretaker. He contends that he is the only son and legal heir of Sri.Vishwanatha, born to his lawful wife, i.e., Smt.Devamma (now deceased). It is a specific case of the appellants that, the suit schedule properties are not ancestral in nature, but were originally self-acquired by one Sri.Kadurappa (father of K.Vishwanatha), who executed a registered Will dated 15.11.1982 in favour of his son. Later, on 02.05.2018 the said Vishwanatha is said to have executed a registered Will bequeathing all his properties in favour of the defendant. The said Will was presented for registration and it was registered posthumously on 15.02.2019, following the death of Vishwanatha on 16.07.2018.



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5. The records of this case do reveal that, a dispute arose regarding possession and enjoyment of the properties. During the pendency of the suit, as stated above, the defendant filed I.A.No.3 under Order XXXIX Rule 1(A) read with Section 151 of CPC, seeking temporary injunction against the plaintiff, praying that, she be restrained from obstructing the fencing of the schedule properties. The defendant contended that, when the fencing was necessary to prevent encroachment by third parties and was not intended to disturb possession or alter the character of the land.

6. Simultaneously, the plaintiff also filed I.A.Nos.4 and 5 under Order XXXIX Rule 1 and 2 of CPC seeking injunction against the present appellant/defendant No. 2 restraining him from interfering with her alleged joint possession and from obstructing her right to erect fencing around Item Nos. 1 to 3 of the suit schedule properties.



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7. In support of her application, the plaintiff produced the photographs, school certificates, ration cards, obsequies invitation cards and other documents to show her relationship with late. Vishwanatha and to establish a prima facie case for claiming the relief so claimed in her application.

8. The present appellant/defendant No.2 opposed these applications reiterating that, the plaintiff was not a member of his family and was attempting to gain entry into the property based on fabricated claims. He place reliance on the registered Will, Revenue Records and other documents to assert his lawful possession and exclusive entitlement to the property.

9. By the impugned common order dated 08.04.2025, the learned Trial Judge dismissed I.A.No.3 filed by the defendant and allowed I.A.No.4 filed by the plaintiff, while I.A.No.5 was partly allowed. The Court directed both the parties to maintain a status quo, but



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effectively granted liberty to the plaintiff to fence the property while denying similar relief to the appellant. The Trial Court expressed doubt regarding the genuineness of the Will produced by the appellant, primarily on the ground that it had been registered several months after the death of the testator.

10. Being aggrieved by the said common order, the defendant No.2 have preferred the present three Miscellaneous First Appeals under Order XLIII Rule 1 (r) of CPC challenging the rejection of his application and grant of reliefs to the plaintiff by asserting that the Trial Court has misconstrued the facts and wrongly denied the appellant's interim protection despite a valid claim of possession based on a testamentary document.

11. Heard the arguments of Sri. M.R.Rajagopal, learned Senior counsel for Sri. Thilakraj S.V., learned counsel for the appellant and Sri. Keshav R. Agnihotri,



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learned counsel for the respondents at length. Perused the records.

12. The learned counsel for the appellant with all vehemence submits that, under the provisions of the Indian Registration Act, there is no time limit to register the Will. Wrongly the Trial Court has interpreted Section 23 of the Registration Act, 1908, and has wrongly concluded that, the Will is not a genuine document at the time of deciding the interlocutory application, which is not permissible in law. He further submits that, the appellant being the owner of the schedule property by virtue of the so called Will executed by Sri. Vishwanatha, he is in possession of the schedule properties and now he wants to fence the schedule properties. For this the plaintiff on the guise of filing the suit is interfering into the possession and enjoyment of the schedule properties and restraining the appellant from putting the fencing of the schedule properties which is in his possession.



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13. On the other hand, the learned counsel for the respondents with all force supported the reasons being assigned by the Trial Court and submits that, the Trial Court is justified in discarding the said Will and submits that the reasons and observations made by the Trial Court are in accordance with law and based upon the facts of the case. Therefore, he justifies the dismissal of the application of the appellant and allowing of the applications filed by the plaintiff.

14. On perusal of the reasons being assigned by the Trial Court while disposing the aforesaid interim applications, in its reasoning, the Trial Court mainly relied upon the provisions of Section 23 of the Registration Act, 1908, which provides that, documents other than Wills must be presented for registration within four months from the date of execution. The learned Judge, interpreting this provision in isolation and without reference to the exceptions carried out in the statute, held that, the Will was "suspicious" and appeared to be a



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"concocted" document solely because, it was registered on 15.02.2019, 6 months after the death of the testator, who is said to have died on 16.07.2018. This line of reasoning not only reflects a misunderstanding of statutory provisions but also overlooks long settled principles of testamentary law.

15. A significant issue which arises for consideration in the present appeals relates to the validity and evidentiary weight of a Will that was registered after the death of the testator. The appellant's claim of title and possession over the suit schedule properties rests, upon a alleged Will dated 02.05.2018, said to have been executed by his father, late. Sri. K. Vishwanatha. The said Will was admittedly registered on 15.02.2019, after the death of the testator on 16.07.2018, the learned Trial Court while disposing of the interlocutory applications, doubted the genuineness of the Will, primarily on the ground that, the document was not registered during the lifetime of the testator and was presented for registration several months



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after his demise. Referring to Section 23 of the Registration Act, 1908, which prescribes a four month period from the date of execution within which documents must be presented for registration. The Trial Court concluded that the delay rendered the Will suspicious and caused serious doubt on its authenticity.

16. In view of such a finding of the learned Trial Court, this Court is of the considered opinion that, such a finding reflects a fundamental misinterpretation of the provisions of the Registration Act, 1908, and is contrary to the established legal position concerning the registration of the Wills. Section 23 of the Registration Act, 1908, defines as "*subject to the provisions contained in Sections 24, 25 and 26, no document other than a Wil, shall be accepted for the registration unless presented for that purpose to the proper officer within four months from the date of its execution*".



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17. The expression "no document other than a Will" is central to understanding the legislative intent. By expressly excluding Wills from the limitation period stipulated under this provision, the legislature has called out a specific exception recognizing the unique nature of testamentary instruments. Further, Section 27 of the Registration Act deals with the time for registration when a document affects immovable property contains a proviso, that reinforces this position; "provided that a Will may be presented at any time".

18. The combined reading of Sections 23 and 27 of the Registration Act, 1908, clearly do establishes that, Wills are not subject to the four months limitation period applicable to other documents, and may be registered either before or after the death of the testator. The statute, thus, acknowledges the optional and non-compulsory nature of a Will registration and permits its registration at any point in time, without prejudice to its validity.



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19. In the instant case, the Will was registered after the death of the testator as permitted under the above provisions. There is no statutory requirement that a Will must be registered within the lifetime of the testator. In fact, the registration of a Will is not even mandatory under Indian law.

20. Section 18(e) of the Registration Act, 1908, clearly categorizes Wills as optional documents for the purpose of registration. What is material for a Will is its valid execution and attestation, as prescribed under the provisions of Section 63 of the Indian Succession Act, 1925, and not the timing of its registration.

21. The Learned Trial Court, however, while exercising jurisdiction Under Order XXXIX Rule 1 and 2 of CPC, prematurely ventured into the question of genuineness of the Will, treating the date of registration as a conclusive evidence of forgery or manipulation. This is impermissible at the stage of deciding the interlocutory



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applications, in which the interlocutory reliefs are claimed. It is well settled that, the veracity of the Will, especially a registered one, must be tested through evidence and cross-examination during trial, and cannot be prejudged solely on the ground of the date of registration.

22. In the present case, the Will bears the signature of the testator and is a registered document. The fact of a posthumous registration is legally valid, and does not, in itself, render the Will suspicious. The findings of the Trial Court that, the Will is "dubious" for having been registered after the death, demonstrate a flawed understanding of statutory provisions and run counter to the established principles of testamentary law.

23. The learned judge overlooked the statutory presumption that, a registered Will carries evidentiary value and that its validity can only be rebutted by concrete evidence during the course of trial, not by surmise at the interlocutory stage.



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24. Accordingly, this Court holds that, the reasoning adopted by the Trial Court is unsustainable in law and proceeds on incorrect interpretation of the Registration Act, 1908. The registration of the Will dated 02.05.2018 after the death of Sri. K. Vishwanatha is permissible under Sections 23 and 27 of the Act, and in no way diminishes its probative value or authenticity unless otherwise disproved in trial by cogent evidence. In the present case, the Will dated 02.05.2018 is a registered document and the fact that it was registered after the death of the testator does not, in and of itself, render it invalid or suspicious.

25. The Trial Court, by relying exclusively on the delay in registration, elevated a procedural aspect into a substantive defect, thereby misapplying the Registration Act and casting unwarranted doubt on the Will without examining its execution, attestation or surrounding circumstances. Moreover, the Trial Court ignored the fact that, a registered Will carries a presumption of



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genuineness and the burden of disproving it lies on the party alleging its validity. This presumption is rebuttable but cannot be discarded on the basis of delay alone, especially when there is no statutory bar or limitation period governing the registration of the Wills. This misapplication of law has serious consequences, as it formed the primary ground on which the Trial Court rejected the appellant's application for injunction (I.A.No.3) and allowed the plaintiff's application (I.A.Nos.4 and 5). By declaring the Will "dubious" at the interlocutory stage, the Trial Court ventured into the midst of the document, effectively prejudging an issue that ought to be tried in full evidence. This amounts to a jurisdictional error, as Courts dealing with interlocutory reliefs must confine themselves to assessing

- i. Prima facie case.
- ii. Balance of convenience and
- iii. Irreparable loss.



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26. Final adjudication on title, genuineness of a Will, or legitimacy of heirs cannot be made at this stage, particularly in a suit for partition.

27. Further, the appellant's prayer was narrowly tailored. He did not seek to exclude the plaintiff from possession or enjoyment of the property. He merely sought to erect fencing to protect the vacant lands from third party encroachments. This precautionary measure, far from being an act of aggression, was consistent with the duties of a co-owner or legal heir in preserving property pending final determination. However, this intent was misconstrued by the Trial Court as a hostile claim, while simultaneously granting the plaintiff a broader injunction to erect a fence, despite the plaintiff herself claiming joint possession and alleging that the property was undivided.

28. The Trial Court's approach is internally inconsistent. While acknowledging that the suit properties



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are subject to a partition claim and that both the parties are allegedly in joint possession, it proceeded to grant exclusive interlocutory to one party, thereby creating an imbalance in the status quo. The settled position of law is that an injunction should not be granted against a co-sharer, except in exceptional cases, and certainly not when the issue of relationship and legitimacy itself is partly contested between the parties.

29. In conclusion, this Court finds that the common order dated 08.04.2025 for the reason stated supra suffers from legal infirmities and proceeds from a flawed appreciation of the law relating to registration of Wills.

30. The learned Trial Court erred in treating the posthumous registration of the Will as indicative of fraud, when infact the Registration Act permits such registration and does not prescribe any outer limit for it. The Will ought to be tested in trial based on evidence, not



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presumed to be false at the stage of deciding the interlocutory applications. In view of the facts and circumstances and also the material produced by both the parties, this Court is satisfied that, the rejection of I.A.No.3 and the grant of reliefs in I.A.Nos.4 and 5 are untenable. The common order passed by the learned Senior Civil Judge and J.M.F.C. at Sira in O.S. No.135/2021 is liable to be set aside and accordingly it is set aside. I.A.No.3 filed by the appellant is allowed, subject to the condition that the fencing shall be for the limited purpose of preventing third party encroachment and shall not interfere with any existing possession or disturb the character of the land. I.A.Nos.4 and 5 filed by the plaintiff stand dismissed. To safeguard the interest of both the parties, it is directed that both the sides shall maintain status quo in respect of possession, use and enjoyment of the suit schedule property until the disposal of the suit.



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31. It is clarified that, the observations made in the course of this Judgment are only for the purpose of deciding these appeals under Order XLIII Rule 1 (r) of CPC and shall not influence the Trial Court in its final adjudication of the suit on merits. The Trial Court is directed to proceed with the suit and dispose off it expeditiously with all its promptitude in accordance with law.

Accordingly, these appeals are ***allowed***.

Under the circumstances, there shall be no order as to costs.

Sd/-
(RAMACHANDRA D. HUDDAR)
JUDGE

AM
List No.: 1 Sl No.: 41