

Celestine Kunder vs Vathsala Ammanna

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Court : Karnataka

Decided On : Nov-11-2025

Judge : H.P.Sandesh

Appeal No. : RSA/2189/2023

Appellant : Celestine Kunder

Respondent : Vathsala Ammanna

Judgement :

-1-

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 11TH DAY OF NOVEMBER, 2025 BEFORE THE HON'BLE MR. JUSTICE H.P.SANDESH REGULAR SECOND APPEAL NO. 2189 OF 2023 (PAR/POS) BETWEEN: CELESTINE KUNDER AGED ABOUT 81 YEARS W/O LATE AUGUSTINE KUNDER R/AT MISSION COMPOUND MOOLUR VILLAGE, UCHILA POST KAPU TALUK, UDUPI DISTRICT-574 117. APPELLANT (BY SRI. PRASANNA V.R., ADVOCATE) AND:

1. VATHSALA AMMANNA

AGED ABOUT 56 YEARS D/O SUNDARI AMMANNA Digitally signed 2. VINIL GRINIZ KUNDER by DEVIKA M AGED ABOUT 26 YEARS Location: HIGH S/O SUNDARI AMMANNA COURT OF KARNATAKA BOTH ARE R/AT BETHANYA MISSION CHURCH ROAD MUDARANGADI SANTHOOR VILLAGE PILAR POST, KAPU TALUK UDUPI DISTRICT-574 113. RESPONDENTS (BY SRI. SUDESH KUMAR ACHARYA U., ADVOCATE) -2- THIS RSA IS FILED UNDER SECTION 100 OF CPC., 1908 AGAINST THE JUDGMENT AND DECREE DATED 03.08.2023 PASSED IN RA NO.41/2022 ON THE FILE OF PRINCIPAL SENIOR CIVIL JUDGE AND CJM, UDUPI, DISMISSING THE APPEAL AND CONFIRMING THE JUDGMENT AND DECREE DATED 12.09.2022 PASSED IN OS NO.119/2020 ON THE FILE OF III ADDITIONAL CIVIL JUDGE AND JMFC, UDUPI. THIS APPEAL, COMING ON FOR ADMISSION, THIS DAY,

JUDGMENT WAS DELIVERED THEREIN AS UNDER:

CORAM: HON'BLE MR. JUSTICE H.P.SANDESH

ORAL JUDGMENT

1. Heard the learned counsel for the appellant and also the learned counsel for the respondents.

2. The present second appeal is filed against the

concurrent finding. The Trial Court when the suit was filed by the mother against the widow of the deceased son and lineal descendants seeking half share. Based on the pleadings, the Trial Court framed five issues and out of five issues, issue No.3 is a preliminary issue whether the defendants prove that the suit is not maintainable in view of Section.33 of Indian Succession Act, 1925. The Trial Court having considered the issue involved between the parties, when the claim was made to the extent of half

share, extracted Section 33 of the Indian Succession Act, 1925 in paragraph Nos.14 and 15 of the judgment and comes to the conclusion that as per Section 33 of the Succession Act, the mother is not given any share in the property of her son when he has left lineal descendant. Under such circumstances, the plaintiff being the mother of the deceased Christajeevan Kunder is having no right to claim partition in respect of the suit schedule property in the lifetime of lineal descendant and hence answered the preliminary issue and dismissed the suit.

3. Being aggrieved by the said order, an appeal is filed in R.A.No.41/2022 and Appellate Court also having

considered the material on record, particularly the reasoning of the Trial Court even extracted Section 33 and discussed in detail and comes to the conclusion that Trial Court has not committed any error in coming to such a

conclusion and dismissed the appeal.

4. Being aggrieved by the said concurrent finding, the present second appeal is filed. The main contention of -4-

the counsel appearing for the appellant is that there is no dispute with regard to the relationship between the parties are concerned and only Trial Court has erred in dismissing the suit of the plaintiff holding that the same is barred under Section 33 of the Indian Succession Act by considering Issue No.3 and the said approach is erroneous. The Appellate Court also committed an error in confirming the same and hence it requires interference. Hence this Court has to frame substantive question of law.

5. Per Contra, the counsel appearing for the

respondents brought to notice of this Court, order passed by High Court of Madras in a case of Agnes and Karpaga Devi V/s Pauline wherein also Section 33 and 33A was discussed and brought to notice of this Court paragraph Nos.8 and 10 particularly in respect of the mother is concerned, held that the mother of an intestate does not become the heir unless there is a failure on other heirs namely, widow, the lineal descendant, kindred or Father.

6. Having heard the appellants counsel and also

the counsel appearing for the respondents and also considering the very proviso of Section 33 which has been extracted in paragraph No.14 of the judgment of the Trial Court and also the reasoning given in paragraph No.15 wherein specific finding is given that as per Section 33 of the Indian Succession Act, the mother is not given any share in the property of her son when he has left lineal descendant. The Appellate Court also taken note of the very same proviso in paragraph No.13 and extracted the same and in paragraph No.14 also discussed the same. Apart from that the judgment of the Madras High Court relied upon by the counsel for respondents also applicable to the factual aspects of the case on hand wherein also finding is given that mother of an intestate does not become the heir unless there is a failure on other heirs namely widow, a lineal descendant, kindred or father and also discussed Section 33. When such being the case, I do not find any ground to admit and frame substantive

-6- question of law since the very proviso under Section 33 of Indian Succession Act is very clear. Hence, no ground is made out to admit and frame substantive question of law.

7. In view of the discussions made above, I pass the following:

ORDER

i) Second appeal is dismissed. ii) In view of dismissal of the appeal, I.As., if any do not survive for consideration, the same stands disposed of. Sd/- (H.P.SANDESH)
JUDGE RHS List No.: 1 SI No.: 36

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