

THIS CRC, HAVING BEEN HEARD AND RESERVED FOR ORDERS ON 08.03.2022, COMING ON FOR PRONOUNCEMENT OF ORDERS THIS DAY, **P.S.DINESh KUMAR J**, PRONOUNCED THE FOLLOWING:-

ORDER

The learned First Addl. District Judge, Kodagu, Madikeri has referred this case by passing following order:

"39) Under these circumstance, I pass the following:

:- ORDER :-

This case is referred to our Hon'ble High Court under Section 113 read with Order XLVI Rule 1 of the Code of Civil Procedure, 1908, to consider the following aspects:

- 1) To declare sub-sections (2) and (3) of Section 23-A of the Karnataka Civil Courts Act, 1964 [inserted vide Karnataka Civil Courts (Second Amendment) Act, 1978 (Karnataka Act No. 28/1978 with effect from 1/2/1979)], are ultra vires the Constitution of India.*
- 2) To consider if the Notification bearing No. GOB 460/78 issued by our Hon'ble High Court, published in the Gazette on 29-03-1979, clothes the powers of a District Judge under the Indian Succession Act, 1925, upon Senior Civil Judges or Civil Judges in the State of Karnataka, in respect of issuance of Probates and Letters of Administration, in view of the divergent views expressed in the decisions of co-ordinate benches of our Hon'ble High Court."*

2. Brief facts of the case are, one Smt.Boppanda Boji Kalappa executed her Will on May 3, 1995. First respondent filed an application in P & SC No.2/1996 on the file of learned Principal District Judge, Kodagu, Madikeri under Section 276 of the Indian Succession Act, 1995¹, for grant of Probate. Upon being contested, probate petition was converted as O.S. No.1/1997.

3. On December 11, 2003, the suit was transferred to the Court of Civil Judge, Senior Division, Kodagu on the ground of valuation and it was re-numbered as O.S. No.3/2004.

4. On February 28, 2006, as per the order passed by the learned District Judge, the case was again transferred to the Court of District Judge, Madikeri and re-numbered as O.S. No.7/2006.

¹ 'Indian Succession Act' for short

5. By order dated February 2, 2013, the suit was again transferred to the Court of Senior Civil Judge, Madikeri, in view of Notification No. GOB 460/78 issued by this Court under Section 23-A of the Karnataka Civil Courts Act, 1964² and the suit was re-numbered as O.S. No.33/2013.

6. On January 28, 2017, O.S. No. 33/2013 was decreed by the learned Senior Civil Judge, Madikeri holding that the Will was proved in favour of first respondent. Feeling aggrieved, the first defendant in the suit filed R.A. No.11/2017 in the Court of First Additional District Judge, Kodagu, Madikeri.

7. It was contended on behalf of the appellant before the learned District Judge that the Court of Senior Civil Judge did not have jurisdiction

² 'Civil Courts Act' for short

to issue the Probate of the Will because, as per Notification No.GOB 460/78, the Civil Judges and Senior Civil Judges had jurisdiction to adjudicate upon the cases relating to issuance of Succession Certificates. Therefore, in matters relating to issuance of Probate the jurisdiction vested with the learned District Judge.

8. It was contended on behalf of the first respondent that under Section 23-A of the Civil Courts Act, the High Court is empowered to invest all or any powers of the District Judge under the Indian Succession Act. The amendment incorporating Section 23-A in the Civil Courts Act had received the assent of the President on November 22, 1978. By the Notification No. GOB 560/1978, all Civil Judges and Senior Civil Judges were invested with the powers of the District Judge.

9. Before the learned District Judge, following authorities were cited:

- *B.R. Jayanthi Vs. Radhamma and others*³ wherein, the challenge to the jurisdiction of Civil Judge on a transferred Probate Petition was negatived;
- *B.R. Jayanthi Vs. Radhamma and others*⁴ wherein, this Court had relegated the appellants therein to file an appeal before the learned District Judge in view of Section 23-A of the Act and the Notification issued by this Court; and
- *S.N. Koushik Vs. M/s. Kanva Industries Pvt. Ltd., and others*⁵ wherein, the decision in ILR 2008 KAR 4612 was followed.

10. In view of the above, the learned District Judge framed following questions for his consideration:

- 1) *Whether sub-sections (2) and (3) of Section 23-A of the Karnataka Civil Courts Act, 1964 [inserted vide Karnataka Civil Courts {Second Amendment} Act, 1978 (Karnataka Act No.*

³ ILR 2008 KAR 4612

⁴ RFA No.1324/2012 decided on 13.12.2012.

⁵ W.P. No.39334/2015 decided on 23.09.2015

28/1978 with effect from 1/2/1979)], are ultra vires the Constitution of India?

2) Whether the Notification bearing No. GOB 460/78 issued by our Hon'ble High Court, published in the Gazette on 29-03-1979, clothes the powers of a District Judge under the Indian Succession Act, 1925, upon Senior Civil Judges or Civil Judges in the State of Karnataka, in respect of issuance of Probates and Letters of Administration?

and answered the first question in the affirmative and held that the second question requires consideration in view of divergent views expressed by this Court.

11. Shri. A.V. Gangadharappa, learned Advocate for the appellant submitted that under Section 276 of the Indian Succession Act, 1925, an application for Probate has to be filed before the learned District Judge and it was rightly filed by the first respondent at the first instance. However, in view of the Notification dated March 12, 1979, the suit was transferred to the Court of the learned

Senior Civil Judge, Madikeri and the same has been decreed. Placing reliance on *Mrs. Joyce Enet Ugare Vs. James I. P. Roche*⁶, he submitted that the power to invest jurisdiction in any inferior Courts in grade to the Court of District Judge is only in relation to proceedings for issue of Succession Certificate provided under Part-X of the Indian Succession Act. Therefore, the judgment and decree passed by the learned Senior Civil Judge is a nullity. Consequently, the appeal filed before the learned District Judge is not maintainable and this Court may direct the learned District Judge to conduct the proceedings *denova*.

12. In reply, Smt. Laksha Kalappa for the respondents submitted that the Notification issued in the year 1979 is under Section 23-A of the Civil Courts Act. By the said Notification, all powers of the District Judge have been conferred upon the

⁶ M.F.A. No.3618/2010 decided on 19.06.2012 (para 8)

Civil Judges. Therefore, the judgment and decree passed by the Senior Civil Judge is in accordance with law. Consequently, the appeal is maintainable before the learned District Judge.

13. We have carefully considered the Reference order, the submissions of learned Advocates on both sides and perused the records.

14. Section 388 of the Indian Succession Act reads as follows:

"388. Investiture of inferior courts with jurisdiction of District Court for purposes of this Act.— (1) The State Government may by notification in the Official Gazette, invest any court inferior in grade to a District Judge with power to exercise the functions of a District Judge under this Part. (2) Any inferior court so invested shall, within the local limits of its jurisdiction, have concurrent jurisdiction with the District Judge in the exercise of all the powers conferred by this Part upon the District Judge, and the provisions of this Part relating to the District Judge shall apply to such an inferior court as if it were a District Judge: Provided that an appeal from any such order of an inferior court as is mentioned in sub-section (1) of section 384 shall lie to the District Judge, and not to the High Court, and that the

District Judge may, if he thinks fit, by his order on the appeal, make any such declaration and direction as that sub-section authorises the High Court to make by its order on an appeal from an order of a District Judge. 94 (3) An order of a District Judge on an appeal from an order of an inferior Court under the last foregoing sub-section shall, subject to the provisions as to reference to and revision by the High Court and as to review of judgment of the Code of Civil Procedure, 1908 (5 of 1908), as applied by section 141 of that Code, be final. (4) The District Judge may withdraw any proceedings under this Part from an inferior court, and may either himself dispose of them or transfer them to another such court established within the local limits of the jurisdiction of the District Judge and having authority to dispose of the proceedings. (5) A notification under sub-section (1) may specify any inferior court specially or any class of such courts in any local area. (6) Any Civil Court which for any of the purposes of any enactment is subordinate to, or subject to the control of, a District Judge shall, for the purposes of this section, be deemed to be a court inferior in grade to a District Judge."

15. Section 23-A of the Karnataka Civil Courts Act, 1964 reads as follows:

"23-A. Investiture of subordinate Courts with jurisdiction of District Court under the Indian Succession Act, 1925.–

(1) The High Court may, by notification, invest any Senior Civil Judge or Civil Judge, within such local limits and subject to such pecuniary and other limitations as may be specified in such notification, with all or any of the powers of a District Judge under the Indian Succession Act, 1925 (Central Act 39 of 1925)

(2) Any Senior Civil Judge or Civil Judge invested with powers under sub-section (1) shall have concurrent jurisdiction with the District Judge in the exercise of the powers conferred by the said Act upon the District Judge, and the provisions of the said Act relating to the District Judge shall apply to such Senior Civil Judge or Civil Judge, as the case may be, as if he were the District Judge:

Provided that every order made by the Senior Civil Judge or the Civil Judge by virtue of the powers conferred upon him under sub-section (1) shall be subject to appeal. –

(i) to the District Court, when the amount or value of the subject matter is less than twenty thousand rupees;

(ii) To the High Court, in other cases.

(3) Every order of the District Judge passed on appeal under the proviso to sub-section (2) shall be subject to appeal to the High Court under the rules contained in the Code of Civil Procedure, 1908, applicable to appeals from appellate decrees."

16. Under Section 23-A of the Civil Courts Act, the investiture of power is regulated by the High Court. The reference made by the learned

District Judge has stemmed out of the divergent views noted above.

17. It is relevant to record that in Circular No. R(J)5/2020 dated January 20, 2020, it has been ordered that the Notification No. GOB 460/78 dated March 12, 1979 has limited scope and invests the power in Senior Civil Judges only for issuance of Succession Certificates under Part-X of the Indian Succession Act and not for Probate.

18. Thus, the conflict in the judicial pronouncements has been resolved by the Circular dated January 20, 2020.

19. Hence, both questions referred are answered in the negative.

20. Incidentally, it was also argued by Smt. Laksha Kalappa that the learned District Judge be directed to proceed further to hear the arguments

of the parties as evidence has been adduced and the same is on record.

21. Admittedly, the proceedings were initiated before the learned District Judge and it was submitted at the Bar that some evidence has been recorded in that Court. The evidence recorded in the proceedings before learned Senior Civil Judge is without jurisdiction. Therefore, the same cannot be looked into. In view of the Circular dated January 20, 2020, fresh proceedings will have to be conducted before the learned District Judge.

22. In view of the above, the following:

ORDER

(a) Questions No. 1 and 2 referred by the learned District Judge are answered in the negative;

(b) Judgment and decree passed in O.S. No.33/2013 on the file of the Senior Civil Judge is set-aside and the said suit shall stand transferred to

the Court of learned Principal District Judge, Madikeri, Kodagu;

(c) The learned Principal District Judge or the Additional District Judge to whom the file is made over, shall commence fresh proceedings from the stage of transfer of file from the Court of District Judge to the Court of Senior Civil Judge, Madikeri and complete the same as expeditiously as possible.

No costs.

**Sd/-
JUDGE**

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JUDGE**

SPS