



IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 1ST DAY OF FEBRUARY, 2024

BEFORE

THE HON'BLE MR JUSTICE H.P.SANDESH

MISCELLANEOUS FIRST APPEAL NO. 4399 OF 2023 (ISA)

BETWEEN:

1. SRI. M.R. MOHAN KUMAR

2. SRI MANJUNATH R.,

3. SRI ANAND G.K.



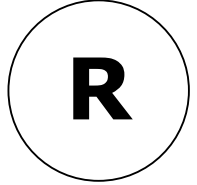
...APPELLANTS

(BY SRI. SUNIL S. RAO, ADVOCATE FOR
SRI G.PANDURANGA, ADVOCATE)

AND:

1. NIL

...RESPONDENT





THIS MFA IS FILED U/S 299 OF INDIAN SUCCESSION ACT AGAINST THE ORDER DATED 20.04.2023 PASSED IN P AND SC NO.25/2022 ON THE FILE OF THE C/C VII ADDITIONAL DISTRICT AND SESSIONS JUDGE, TUMAKURU, REJECTING THE PETITION FILED UNDER SECTION 276 OF INDIAN SUCCESSION ACT.

THIS APPEAL, COMING ON FOR FINAL HEARING THIS DAY, THE COURT DELIVERED THE FOLLOWING:

JUDGMENT

Heard the learned counsel for the appellants and perused the material on record.

2. This miscellaneous first appeal is filed assailing the order dated 20.04.2023 passed by the VI Additional District and Sessions Judge at Tumakuru in P & S.C.No.25/2022 dismissing the petition filed for issuance of probate.

3. The appellants have sought the probate stating that the petition schedule property belongs to one Sannarangappa and the same was granted to them vide RUC No.34/1978-79 dated 22.11.1978 and thereafter they were enjoying the same and cultivating the same as owners. The said Sannarangappa is unmarried. It is the contention of the appellants that during the life time of said Sannarangappa, the father of the petitioners and the petitioners were looking after him with love



and affection. The grand-father of petitioners Sannarangappa had executed a Will dated 14.02.2001 and the same is registered on 15.02.2001. The said Sannarangappa died on 29.06.2001. The petitioners have filed an application for transfer of khatha to the Tahsildar. The Tahsildar, instead of effecting khatha in the name of the petitioners on the strength of the registered Will, went on rejecting the same holding that necessary documents are not available for the purpose of transfer of khatha. There is no impediment under Section 276 or under any other provision of Indian Succession Act, 1925 or any Enactment for granting Probation Certificate and accordingly, prayed the Court to issue Probate/Succession Certificate in favour of the petitioners.

4. After filing the petition, citation was also issued in two daily newspapers i.e., Hosadigantha on 16.12.2022 and Indian Express on 04.03.2023 and none appeared and contested the matter. Hence, the respondent is nil. The petitioners have examined the first petitioner as P.W.1 and got marked the documents as Exs.P1 to P9 and also examined two witnesses as P.Ws.2 and 3, who are the attesting witnesses to the said Will. The Trial Court having considered both oral and



documentary evidence placed on record, formulated the point whether the petitioners are entitled for grant of probate.

5. The Trial Court, having considered the grounds urged in the petition as well as both oral and documentary evidence placed on record and also taking note of Section 227 of the Indian Succession Act, 1925 ('the Act' for short) and also the form of probate in Schedule-VI which is extracted therein, comes to the conclusion that unless the executor is appointed in the Will by the testator, the question of granting probate does not arise. The Trial Court also relied upon the judgment of the Delhi High Court in ***INDER CHAND NAYYAR VS. ARYA PRATINIDHI SABHA AND ANOTHER*** reported in ***AIR 1977 DELHI 34***, wherein it is held that probate cannot be granted to any person unless and until he has been named an executor in the Will.

6. The Trial Court also relied upon the judgment of the Apex Court in ***SUNIL GUPTA VS. KIRAN GIRHOTRA AND OTHERS*** reported in ***(2007) 8 SCC 506***, wherein it is held that probate can be granted only to executor appointed by the



Will and rejected the same by answering point No.1 as 'negative'.

7. Learned counsel for the appellants in his argument would vehemently contend the very approach of the Trial Court is erroneous and when the Will has been proved by the appellants by examining the beneficiary as P.W1 and two witnesses as P.Ws.2 and 3 under Section 68 of the Evidence Act and the very execution has been proved, the Trial Court has erred in coming to the conclusion that there is a critical difference between probate and letters of administration and even, in the absence of any nomination of an executor, the Court can consider grant of probate.

8. Learned counsel, in support of his argument, he relied upon the order passed by this Court in **M.F.A.No.3238/2019** dated **07.11.2019** and this Court, having considered the grounds urged in the said appeal, formulated the points whether the beneficiary could file a petition under Section 276 of the Act when there is no executor appointed and whether the Court can grant probate of a Will on a petition filed by a beneficiary. This Court having considered



the material on record, extracted Sections 222 (2), 231 and 234 of the Act and observed that on conjoint reading of the said Sections, it is clear that it is not only the executor named in the Will can seek for a probate, but depending on the circumstances whether other persons could also seek such probate. This Court, having considered the same, comes to the conclusion that in the said case, the appellant is the wife and heir of the deceased testator, as also she has been named as a legatee in the last Will and testament of the testator. On both these grounds, when no executor is named, she would be eligible to seek for probate and or letters of administration. Hence, allowed the petition and set aside the order passed by the Trial Court and remanded the matter to the Trial Court, since the Trial Court had not considered the matter on merits.

9. Learned counsel also relied upon the order passed in ***M.F.A.No.4300/2020*** dated ***26.09.2022***, wherein also this Court having considered the material on record, formulated the point whether the learned Trial Judge is justified in rejecting the petition. This Court, having considered the material on record, comes to the conclusion that the learned Judge failed to



have regard to relevant considerations and disregarded relevant matters and allowed the appeal.

10. Learned counsel for the appellants also brought to notice of this Court the very proviso of Sections 217, 218, 220, 222, 223, 224, 227, 229, 231, 232, 234 and 276 of the Act and also relied upon the judgment of the Delhi High Court in ***INDER CHAND NAYYAR VS. SARVADESHIK ARYA PRATINIDHI SABHA AND OTHER*** reported in ***AIR 1977 DELHI 34*** and also the judgment of the Apex Court in ***SUNIL GUPTHA VS. KIRAN GIRIHOTRA AND OTHERS*** reported in ***(2007) 8 SCC 506*** which have been referred by the Trial Court. The counsel referring these two judgments of Delhi High Court and the Apex Court contend that these two judgments are out of place with regard to the factual aspects of the case on hand.

11. Having heard the learned counsel for the appellants and also considering the material on record, the point that would arise for consideration of this Court is:

- (1) Whether the Trial Court committed an error in dismissing the petition, in coming to the conclusion that without naming the executor



in the Will, probate cannot be granted and whether it requires interference of this Court?

Point No.(1)

12. Having heard the learned counsel for the appellants and on perusal of the material on record, it is the case of the appellants before the Trial Court that property was granted in favour of one Sannarangappa vide RUC No.34/1978-79 dated 22.11.1978. It is also their case that grantee was in occupation and enjoying the same by cultivating the land. It is also their pleading that said Sannarangappa was unmarried and during the life time of said Sannarangappa, the father of the petitioners and the petitioners were looking after him with love and affection. It is also contended that said Sannarangappa executed Will dated 14.02.2001 which was registered on 15.02.2001 and the said Sannarangappa died on 29.06.2001. It is also pleaded that based on the said Will, an attempt was made to transfer the khatha and the same was rejected by revenue authorities. Hence, they approached the Court seeking the relief of probate. The Trial Court, no doubt, taken note of issue of notice in two daily newspapers and none claimed any interest in respect of the property which is the subject matter



of the Will, however proceeded to pass an order of rejection referring the proviso of Section 222 of the Act and also considered the judgments of the Delhi High Court and the Apex Court.

13. Having perused the judgment of the Apex Court, the principles laid down in the said judgment is with regard to the probate proceedings and if a probate proceedings is initiated, the transferee would be deemed to have notice thereof and the same is not on the issue involved between the parties with regard to the appointment of executor. No doubt, the Delhi High Court comes to the conclusion that probate cannot be granted to any person until and unless his name is executor in the Will, this judgment is of the year 1977 and the very similar issue is considered in **M.F.A.No.3238/2019** dated **07.11.2019** by this Court and the point for consideration framed by this Court having considered the factual aspects of the case directly touch upon the issue involved in the case on hand. The point for consideration framed by this Court is whether the beneficiary could file a petition under Section 276 of the Act when there is no executor appointed and whether the



Court can grant probate of a Will on a petition filed by a beneficiary.

14. Having considered the point for consideration and also the very proviso of Sections 222(2), 231 and 243 of the Act, in detail discussed with regard to factual aspect of the said case and comes to the conclusion that no doubt, Section 234 of the Act states that when there is no executor, then the person or persons who would be entitled to the administration of the estate of the deceased, if he had died intestate or any other legatee having a beneficial interest, or a creditor, may be admitted to prove the Will, and letters of administration may be granted to him or them accordingly. Thus, from conjoint reading of Section 222(2) and Section 234 of the Act, it is clear that it is not only the executor named in the Will can seek for a probate, but depending on the circumstances whether other persons could also seek such probate.

15. Having considered the principles laid down in the judgment of this Court and also considering the factual aspects of the case on hand, none claimed interest in respect of the subject matter of the Will. It is important to note that notice is



also issued in Hosadigantha and Indian Express newspapers on different dates viz., 16.12.2022 and 04.03.2023 and none appeared and claimed any interest. It is also important to note that when the Will was executed in favour of the beneficiary, admittedly, no executor has been appointed and mere non-appointment of an executor cannot be a ground to reject grant of probate. This Court has already decided the similar issue in the appeal referred (supra) and the request of the wife was turned down, who claimed right based on the Will and the present appellants have also approached the concerned department for transfer of khatha has been rejected. Under such circumstance, sought for the relief of Probate/Succession Certificate. When such claim is made in the instant case as well and the appellants have proved the Will by examining two witnesses i.e., P.Ws.2 and 3, who are the attestors, the Trial Court ought not to have rejected the same, in coming to the conclusion that probate cannot be granted, if no executor is named in the Will. The very approach of the Trial Court is erroneous and failed to take note of the factual aspects of the case and failed to consider the fact that registered Will is executed in favour of the appellants and the same has been



proved by complying Sections 63 and 68 of the Evidence Act as well as the Indian Succession Act, 1925. When such being the case, the Trial Court ought not to have come to such a conclusion and the very approach of the Trial Court is erroneous and it requires interference of this Court. Hence, I answer point No.(1) as 'affirmative'.

16. In view of the discussion made above, I pass the following:

ORDER

- (i) The appeal is allowed.
- (ii) The impugned order dated 20.04.2023 passed in P & SC No.25/2022 on the file of the VI Additional District & Sessions Judge at Tumakuru, is hereby set aside. Consequently, Probate/Succession Certificate is granted in favour of the appellants herein as sought.

Sd/-
JUDGE

ST
List No.: 1 Sl No.: 65