

RESERVED ON: 05.03.2026

PRONOUNCED ON: 18.03.2026

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 18TH DAY OF MARCH, 2026

PRESENT

THE HON'BLE MRS. JUSTICE ANU SIVARAMAN

AND

THE HON'BLE MR. JUSTICE T.M.NADAF

MISCELLANEOUS FIRST APPEAL NO. 2695 OF 2025 (ISA)

BETWEEN:

SMT MANJULAMMA N
W/O SRI ANANDAKUMAR A
AGED ABOUT 53 YEARS ,
798/1, SAROJAMMA COMPOUND,
NEAR COCONUT GARDEN,
T DASRAHALLI,
BANGALORE NORTH - 560 057.

...APPELLANT

(BY SRI.HIREMATH PRAVEENKUMAR APPAYYA., ADVOCATE)

AND:

NIL

...RESPONDENT

THIS MFA IS FILED UNDER SECTION 299 INDIAN SUCCESSION ACT, 1925 AGAINST THE ORDER DATED 14.02.2025 PASSED IN P & SC NO.15017/2023 ON THE FILE OF THE V ADDITIONAL DISTRICT AND SESSIONS JUDGE, BENGALURU RURAL (TO SIT AT DEVANAHALLI), REJECTING THE PETITION FILED UNDER SECTION 276 OF INDIAN SUCCESSION ACT.

THIS APPEAL HAVING BEEN HEARD AND RESERVED FOR JUDGMENT, COMING ON FOR PRONOUNCEMENT THIS DAY, JUDGMENT IS DELIVERED/ PRONOUNCED AS UNDER:

CORAM: HON'BLE MRS. JUSTICE ANU SIVARAMAN
and
HON'BLE MR. JUSTICE T.M.NADAF

CAV JUDGMENT

(PER: HON'BLE MR. JUSTICE T.M.NADAF)

The petitioner in Probate Application is before us in this appeal filed under Section 299 of the Indian Succession Act, 1925, calling in question the Judgment dated 14.02.2025 in P & SC No.15017/2023, passed by the V Addl. District Judge, Bengaluru Rural, sitting at Devanahalli (for short 'the Probate Court').

2. The Probate Court by the impugned Judgment, rejected the application filed under Section 276 of the Indian Succession Act.

3. The parties are referred to as per their rankings before the Probate Court.

4. The brief factual matrix is as under:

The petitioner claims that one Late Chikkaperumalappa had four sons namely Muniyappa, Narayanappa, Narasimhaiah and Venkatappa. He died and survived by his four sons. The second son Narayanappa died way back in the year 1985 leaving behind his wife Sarojamma. Smt.Sarojamma died on 09.03.2018. They died issueless. The third son Narasimhaiah died and is survived by his wife Lakshmamma and two children by name Manjulamma - the petitioner and Krishnamurthy. The other two children i.e., Muniyappa and Venkatappa, are alive. Sarojamma, during her lifetime, executed a Will in favour of the petitioner - Manjulamma bequeathing her 1/4th share in the family property.

5. It is further claimed by the petitioner that upon death of Chikkaperumalappa, his fourth son Venkatappa filed a suit in O.S.No.64/2007 on the file of Senior Civil Judge and JMFC, Devanahalli seeking the relief of partition and separate possession of his 1/4th share in respect of all the joint family properties. The suit came to be decreed on 19.03.2014 granting the relief claimed in the suit. In the

said suit, Smt.Sarojamma was shown as defendant No.2 as she is representing the branch of Narayanappa, being the sole legal representative upon his death.

6. The operative portion of the order passed in O.S.No.64/2017 is as under:

"ORDER

The suit of the plaintiff is decreed in part.

The suit schedule properties are divided into four fair and equal shares.

It is declared that the plaintiff, defendants No.1 and 2 each entitled 1/4th share in the suit schedule properties by metes and bounds.

The defendants No.3 to 5 together entitled 1/4th share in the suit schedule properties by metes and bounds.

The claim of defendants No.6 and 7 is hereby dismissed.

No order as to costs.

Draw up preliminary decree accordingly."

7. The petitioner further claims that after the preliminary decree, Sri.Venkatappa initiated Final Decree Proceedings in No.11/2014. In the meanwhile, Smt.Sarojamma during her lifetime, executed two Wills

dated 25.05.2015 and 02.11.2016. In the Will dated 25.05.2015 she has bequeathed her 1/4th share in the suit schedule property in favour of both Manjulamma as well as her brother. However, in the next Will dated 02.11.2016, she has restricted it only in favour of Manjulamma i.e., the petitioner. Smt.Sarojamma died on 09.03.2018.

8. The F.D.P filed in No.11/2014 was allowed by order dated 18.06.2022, wherein upon demarcation of the property by appointing the Commissioner, property in Block No.3 has been allotted to the share of late Smt.Sarojamma W/o Narayanappa. After the closure of the FDP proceedings, allotting the share with boundaries with respect of 1/4th share in favour of Sarojamma, the petitioner instituted the petition in P & SC No.15017/2023 under Section 276 of Indian Succession Act for issuance of Probate of registered Will dated 02.11.2016. Since none were made as parties, the Probate Court, after institution issued citation which was published in Hosa Digantha, Kannada daily dated on 27.06.2023 calling upon the interested parties to file their objections in respect of the

probate sought in the petition. However, none appeared to claim any interest and participated in the proceedings.

9. The petitioner, in order to prove her case, examined herself as PW.1 and two witnesses viz., PW.2, the Scribe and PW.3, son of one of the attesting witnesses, as the attesting witness has died, and produced 14 documents marked as Ex.P1 to P14.

10. Though all the requirements as envisaged for issuance of Probate in terms of law have been complied as contemplated under Section 276 and Section 63 of the Indian Succession Act, the Probate Court proceeded to hold that the other parties in Final Decree Proceedings may come and challenge the order if the probate is issued and on the said premise, rejected the petition, reserving a liberty for the petitioner to appear before the FDP Court in execution proceedings and produce the Will Deed which enables the other parties of the said proceeding to contest the matter. It is this judgment passed by the Probate Court is called in question in this appeal.

11. Heard Sri.Hemanth Praveenkumar Appayya., learned counsel appearing for the appellant and perused the petition papers.

12. Since there are no respondents and also in view of the fact that a citation was issued during the Probate proceedings and none appeared and contested the matter, we have proceeded to consider the case of the appellant on merits.

13. It is trite law that once the requirements of Section 276 and 63 of Indian Succession Act have been complied by examining the Scribe, Witness and producing relevant documents, nothing survives further to consider in the absence of any contentions by any other party. The Probate Court only on the premise that in FDP proceedings the petitioner was not a party and she has also not filed any application to come on record in the said proceeding as legal representative of the deceased, further, since the parties of FDP were not made as party to enable the Court to dispose of the petition on merits and also on the premise that if the probate is issued, the parties of FDP

may come and challenge the order, rejected the probate petition. This finding of the Probate Court is erroneous and against the well-settled proposition of law. What is bequeathed in the Will is the 1/4th share of Sarojamma, which is not in dispute. The share has already been declared in favour of said Sarojamma during her lifetime in the suit filed by Venkatappa and in the FDP proceedings, the very same properties have been allotted to her share with boundaries, being the 1/4th share of the properties. In these circumstances, the Probate Court could not have expanded scope of the Probate as once the valid ingredients of Section 276 and Section 63 having been complied, more so in the absence of any contentions raised by any person consequent to publication of notice in terms of the order passed by the Probate Court.

14. Furthermore, since there is no dispute between the parties *inter se* with regard to 1/4th share, in view of preliminary decree as well as disposal of Final Decree by appointing Court Commissioner and demarcating the properties, on this count also, the Probate Court erred in

holding that if the probate is granted, the parties in FDP may come and challenge the order. In these circumstances, the entire finding of the Probate Court is erroneous.

15. The coordinate bench of this Court in MFA No.4477/2023 in the case of **SMT.RENUKA** decided on 17.02.2025, in Paragraph No.15 has held as under:

"15. In the instant case, the application under Section 276 of the Indian Succession Act was duly filed by the sole legatee. Notice was taken out through paper publication. There were no objections. The Will was duly proved. In the circumstances, we are of the opinion that the rejection of probate was wholly unjustified."

16. In these circumstances, we hold that the order of rejection to grant probate is wholly erroneous and unjustified and required to be set-aside and accordingly, it is set-aside and we proceed to pass the following:

ORDER

I. The appeal is ***allowed***.

- II. The judgment dated 14.02.2025 in P & SC No.15017/2023 passed by the V Addl. District Judge, Bengaluru Rural, sitting at Devanahalli is hereby set aside. The probate application filed by the petitioner is allowed.
- III. The Probate Court shall issue Probate of Will of Smt.Sarojamma dated 02.11.2016 in due form to the appellant, forthwith.

**Sd/-
(ANU SIVARAMAN)
JUDGE**

**Sd/-
(T.M.NADAF)
JUDGE**

TKN