



CNR: KAHC010487592019

NC: 2026:KHC:45666
W.P. No.51191/2019

IN THE HIGH COURT OF KARNATAKA AT BENGALURU
DATED THIS THE 25TH DAY OF AUGUST, 2026
BEFORE
THE HON'BLE MR. JUSTICE VIJAYKUMAR A. PATIL
WRIT PETITION NO.51191/2019 (GM-CPC)

BETWEEN:

1. DR. B.A. ANANTHRAM
S/O LATE B.C. ANANTHASAYANAN
AGED ABOUT 71 YEARS OLD
MANAGING TRUSTEE OF
M/S V S SUNDARAMURTHY
TRUST HAVING ITS OFFICE AT NO.55
ANNASWAMY, MUDALIAR ROAD
BANGALORE-560042.
2. SAI. KUMARI RAVEEN
W/O SHRI. K. RAVEEN
AGED ABOUT 70 YEARS
AT NO.55, ANNASWAMY MUDALIAR ROAD
BANGALORE-560042.

...PETITIONERS

(BY MR. ARUN KUMAR K, SR. COUNSEL FOR
MS. DEEPA SHRISHA AND
MRS. SHREYA RAJAT SRIVASTAVA, ADVS.,)

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by RUPA V
Location: HIGH
COURT OF
KARNATAKA

AND:

MR. SIDDARTH SHANKAR
S/O LATE SHRI. JAYAKUMAR
AGED ABOUT 39 YEARS
C/O SMT. ANDAL SHANKAR
AT NO.55, ANNASWAMY MUDALIAR ROAD
BANGALORE-560042.

...RESPONDENT

(BY SRI. ARJUN REGO, ADV.,)



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THIS WRIT PETITION IS FILED UNDER ARTICLE 227 OF THE CONSTITUTION OF INDIA, PRAYING TO SET ASIDE THE IMPUGNED ORDER DATED 19.09.2019 PASSED BY THE PRINCIPAL CITY CIVIL AND SESSIONS JUDGE, BANGALORE IN MISC.NO.320/2019 PRODUCED AS ANNEX-A. CONSEQUENTLY WITHDRAW O.S.NO.2299 OF 2004 PENDING ON THE FILE OF THE XXXIX ADDL. CITY CIVIL AND SESSIONS JUDGE, BENGALURU AND TRANSFER THE SAID SUIT TO THE FILE OF THE IV ADDL. CITY CIVIL JUDGE, MAYO HALL UNIT, AT BENGALURU WHERE O.S.NO.25127/2009 AND P AND SC NO.15027/2006 ARE PENDING & ETC.

THIS PETITION HAVING BEEN HEARD AND RESERVED ON 18.08.2026, COMING ON FOR PRONOUNCEMENT OF ORDER, THIS DAY, THE COURT MADE THE FOLLOWING:

CORAM: HON'BLE MR. JUSTICE VIJAYKUMAR A. PATIL

CAV ORDER

This writ petition is filed challenging the order dated 19.09.2019 passed on Misc.No.320/2019 by the Principal City Civil and Sessions Judge, Bengaluru (for short 'the Trial Court').

2. Sri.Arun Kumar.K, learned Senior counsel appearing for the petitioner submits that one Smt.S.Neelaveni stated to have executed a Will dated 13.10.1983 in favour of the respondent and the said Smt.S.Neelaveni also executed a Will in favour of the



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petitioner No.1 on 25.02.1999. It is submitted that without arraying the petitioners or any of the legal heirs of deceased Smt.S.Neelaveni, the respondent obtained the order of probate, which was assailed before this Court. It is further submitted that the petitioners also sought the probate based on the Will executed in the favour of petitioner No.1 and this Court, by two separate orders relegated the proceedings to the District Court to consider the revocation of the probate granted in favour of the respondent as well as seeking probate by the petitioners. The petition filed by the petitioners seeking revocation of probate is numbered as P & SC No.15027/2006 and the petition filed by the petitioners seeking for probate was numbered as P & SC No.15045/2006 and later the said petition was converted into a suit in O.S.No.25127/2019 and both the petitions are clubbed and are being tried by the same Court. It is also submitted that the respondent had filed O.S.No.2299/2004 seeking the relief of permanent injunction against the petitioners and the



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injunction suit is based on the title i.e. the Will dated 13.10.1983 stated to have been executed by Smt.S.Neelaveni. It is contended that the petitioners filed an application under Section 24 of Code of Civil Procedure, 1908 (for short 'the CPC') to transfer O.S.No.2299/2004 to be tried with O.S.No.25127/2009 and also P & Sc No.15027/2006. However, the Trial Court rejected the said application under the impugned order. It is further contended that there cannot be any divergent views by two Courts where the petitioners are seeking for revocation of probate granted in favour of the respondent and also seeking for grant of probate in their favour and the suit for injunction filed by the respondent is based on the Will on which probate is granted and revocation is sought. It is also contended that the scope of enquiry in both the proceedings may be different, however, there is a direct impact on both the proceedings if they are tried differently. In support of his contentions, he placed reliance on the following decisions:



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- a) NIRMALA DEVI Vs. ARUN KUMAR GUPTA AND OTHERS¹**
b) H.P.SHOBHA Vs. K.G.HANUMANTHA RAJU AND OTHERS²

Hence, he seeks to allow the petition.

3. *Per contra*, Sri.Arjun Rego, learned counsel for the respondent supports the impugned order of the Trial Court and submits that the scope of enquiry in the grant of probate is limited to the extent of ascertaining the genuineness of the Will and the Court cannot look into the title of the executant or any other aspect. Hence, the proceedings pending for probate have nothing to do with the suit filed by the respondent for bare injunction. It is submitted that in a suit for injunction, the plaintiff is required to prove his possession and the correctness of the Will cannot be gone into. Hence, the proceedings in the suit for injunction cannot be transferred to the Court where the proceedings for probate are pending. It is

¹ (2005) 12 SCC 505

² 2020 SCC Online Kar 4592



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further submitted that the scope of enquiry in the two proceedings is distinct and cannot be tried by clubbing the same. The Trial Court has rightly appreciated the said aspects which do not call for any interference. In support of his contentions, he placed reliance on the following decisions:

a) CHIRANJILAL SHRILAL GOENKA Vs. JASJIT SINGH AND OTHERS³

b) KULWINDER KAUR ALIAS KULWINDER GURUCHARAN SINGH Vs. KANDI FRIENDS EDUCATION TRUST AND OTHERS⁴

Hence, he seeks to dismiss the petition.

4. I have heard the arguments of the learned Senior Counsel for the petitioners, the learned counsel for the respondent, meticulously perused the material available on record and given my anxious consideration to the submissions advanced on both the sides.

³ (1993) 2 SCC 507

⁴ (2008) 3 SCC 659



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5. The petitioners filed Misc.No.320/2019 under Section 24 of CPC seeking to withdraw O.S.No.2299/2004 pending on the file of XXXIX Additional City Civil and Sessions Judge, Bengaluru, and to transfer the said suit to the file of IV Additional City Civil and Sessions Judge, Bengaluru, where O.S.No.25127/2009 and P & SC No.15027/2006 are pending. The Trial Court, under the impugned order dismissed the said application, mainly on the ground that the scope of enquiry in the proceedings is different.

6. The material on record indicates that the respondent had obtained a probate on a Will dated 13.10.1983, alleged to have been executed by Smt.S.Neelaveni, in his favour. The petitioners have contended that Smt.S.Neelaveni had executed a Will dated 25.02.1999 in their favour. The petitioners filed P & SC No.15045/2006 seeking to grant probate based on the Will dated 25.02.1999. The petitioners also filed Prob.C.P.



No.12/2005 before this Court seeking revocation of probate issued in favour of the respondent by the District Court in P & SC No.15069/2001 dated 23.07.2002. This Court, vide order dated 21.04.2006 held that the petition is not maintainable before this Court and the papers were ordered to be returned to the petitioners for presentation before the appropriate Court, which has granted the probate. This Court permitted the petitioners to present the petition and seek revocation of the probate granted in the favour of the respondent before the same Court.

7. It is to be noticed that P & SC No.15045/2006 filed by the petitioners seeking probate is now converted into a suit in O.S.No.25127/2009 and P & SC No.15027/2006 seeking revocation of probate granted in favour of other respondent both are pending in the same Court and clubbed.

8. The respondent had filed a suit in O.S.No.2299/2004 seeking judgment and decree of



perpetual injunction against the petitioners from interfering with the possession and enjoyment of the suit schedule property. The respondent in the said suit at paragraph 4 of the plaint had made a reference with regard to the execution of the Will by Smt.S.Neelaveni dated 13.10.1983 in his favour. The suit for injunction is based on the title i.e. the Will dated 13.10.1983.

9. The Hon'ble Supreme Court in the case of **CHIRANJILAL SHRILAL GOENKA** referred *supra* at paragraphs 15 and 16 held that the Court of probate is only concerned with the question as to whether the document put forward as the last Will and testimony of the deceased person was duly executed and attested in accordance with law and whether at the time of such execution, the testator had a sound disposing mind. Therefore, the only issue in a probate proceeding relates to the genuineness and due execution of the Will and the Court itself is under duty to determine it and preserve the



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original Will in its custody. The Hon'ble Supreme Court in the decision of **KULWINDER KAUR ALIAS KULWINDER GURUCHARAN SINGH** referred *supra* has held that the factors to be taken into account for transfer of cases are **Firstly**, the balance of convenience to the parties or the witness, **Secondly**, convenience or inconvenience of place of trial having regard to the nature of evidence on the point involved in the suit, **Thirdly**, issues raised by the parties, **Fourthly**, reasonable apprehension in the mind of the litigant that he might not get justice in the Court, where the suit is pending, **Fifthly**, important question of law involved and considerable issue of public interest and **Sixthly**, interest of justice demanding for transfer of case, are some of the instances. The Hon'ble Supreme Court has held that the aforesaid instances are illustrative and not exhaustive.

10. The Hon'ble Supreme Court in the case of **NIRMALA DEVI** referred *supra*, at paragraph 4 held that



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the decision in the probate proceeding on the question of proof of the 'Will' will have a direct impact on the suit, hence, ordered to transfer the proceeding. This Court in the case of ***H.P.SHOBHA*** referred *supra* by considering the fact that the suit for partition is pending between the parties and the respondents have initiated proceedings for grant of probate/letter of administration based on the Will, held that if due execution of these documents are proved, the same will have a great and direct impact on a suit for partition, in as much as, intestate succession may be interdicted. The said opinion of this Court is based on the decision of the Hon'ble Supreme Court in the case of ***NIRMALA DEVI*** referred *supra*.

11. Considering the aforesaid facts and the decisions, it is required to be noticed that the respondent had obtained probate based on the Will dated 13.10.1983 and the petitioners seeking to revoke the said probate granted in favour of the respondent and is also seeking to



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grant the probate in their favour based on the Will dated 25.02.1999 and both the cases are clubbed together and are being tried before the same Court. The respondent had filed a suit in O.S.No.2299/2004 seeking the relief of permanent injunction against the petitioners herein. The respondent also traces the title based on the Will dated 13.10.1983 stated to have been executed by Smt.S.Neelaveni and the probate granted in favour of the respondent is questioned and is pending before the Court. The contention of the learned Senior counsel for the petitioners is that the respondent by virtue of the grant of temporary injunction in a suit filed by him, entered into the possession of the property and his suit for injunction is based on title and the said title is seriously disputed by them. In my considered view, the said contention is required to be considered by the Trial Court, while deciding the cases pending between the parties and it would not be appropriate to record any finding on the correctness of the Will and the title of the parties, when



the same is pending adjudication before the Trial Court. The suit filed by the respondent is proceeded and the decree is passed. The finding recorded in the said suit, may come in the way of the petitioners seeking the relief in two proceedings pending before the Trial Court with regard to the revocation of the probate granted in favour of the respondent and seeking the relief for grant of probate in their favour. There is no doubt that the scope of enquiry in the probate proceedings is altogether different from the enquiry in a suit for injunction. However, in order to avoid any conflicting views, with regard to the contentions urged by the parties in the aforesaid proceedings and for the complete adjudication of the dispute between the parties, it would be appropriate to club all the proceedings and be tried by one Court to meet the ends of justice. It is needless to observe that the correctness of the Will executed by Smt.S.Neelaveni has a direct bearing on the suit filed by the respondent for injunction as the suit is based on the title.



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12. It is further required to be noticed that it would be convenient to the parties to conduct the trial in one Court, though the scope of enquiry may differ. The interest of justice demands transfer of case as sought in the application.

13. For the aforementioned reasons, I proceed to pass the following:

ORDER

- i. The writ petition is ***allowed***.
- ii. The impugned order dated 19.09.2019 passed in Misc.No.320/2019 by the Principal City Civil and Sessions Judge, Bengaluru, is set aside. Consequently, the application filed by the petitioners under Section 24 of the CPC, is allowed.
- iii. The suit in O.S.No.2299/2004 pending on the file of the XXXIX Additional City Civil and Sessions Judge, Bengaluru, is withdrawn from



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the said Court and is transferred to the file of the IV Additional City Civil and Sessions Judge, Bengaluru, where O.S.No.25127/2009 and P & SC No.15027/2006 are pending. The transferee Court shall club all the three cases and try them together.

iv. It is made clear that this Court has not expressed any opinion on the merits of the case.

No order as to costs.

Sd/-
(VIJAYKUMAR A. PATIL)
JUDGE

RV
List No.: 1 Sl No.: 1