



CNR: KAHC010572282026

NC: 2026:KHC:45737
MFA No. 6117 of 2026

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 25TH DAY OF AUGUST, 2026

BEFORE

THE HON'BLE MR. JUSTICE PRADEEP SINGH YERUR

MISCELLANEOUS FIRST APPEAL NO. 6117 OF 2026 (ISA)

BETWEEN:

1. RAMESHA
S/O, LATE NARASIMHEGOWDA,
AGED ABOUT 67 YEARS,
R/O, MOODALAHIPPE VILLAGE,
KASABA HOBLI,
HOLENARSIPURA TALUK,
HASSAN DISTRICT-573211,

...APPELLANT

(BY SRI. MADHU M T.,ADVOCATE)

AND:

1. ASHOKA
S/O, LATE NARASIMHEGOWDA,
AGED ABOUT 60 YEARS,
R/O, MOODALAHIPPE VILLAGE,
KASABA HOBLI,
HOLENARSIPURA TALUK,
HASSAN DISTRICT-573211

...RESPONDENT


Digitally signed
by
GAVRIBIDANUR
SUBRAMANYA
GUPTA
SREENATH
Location: HIGH
COURT OF
KARNATAKA



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THIS MFA IS FILED UNDER SECTION 299 INDIAN SUCCESSION ACT, 1925 AGAINST THE ORDER DATED 01-04-2026 PASSED IN P AND S.C.NO. 148/2025 ON THE FILE OF THE IV ADDITIONAL DISTRICT AND SESSIONS JUDGE, HASSAN ALLOWING THE PETITION FILED UNDER SECTION 276 OF INDIAN SUCCESSION ACT.

THIS APPEAL, COMING ON FOR ORDERS, THIS DAY, JUDGMENT WAS DELIVERED THEREIN AS UNDER:

CORAM: HON'BLE MR. JUSTICE PRADEEP SINGH YERUR

ORAL JUDGMENT

This appeal is preferred by the appellant, who was not a party in the proceedings in P & SC No.148/2025, which was filed by the respondent herein seeking grant of probate of a Will executed by one Boramma wife of Late.Narasimhegowda dated 16.05.2018. In the said probate petition filed by the respondent herein, they did not make any party as opponent and it was shown as 'NIL'. The said probate petition was allowed in P & SC No.148/2025 vide order dated 01.04.2026 and the office was directed to issue probate in favour of petitioner



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therein as per the registered Will dated 16.05.2018. The present appeal is filed under Section 299 of the Indian Succession Act, 1925 ('**the Act**' for short) seeking to set aside the impugned order dated 01.04.2026.

2. I have heard learned counsel for the appellant as well as learned counsel for the respondent.

3. It is the contention of learned counsel for appellant that the Boramma W/o Late Narasimhegowda, who is the mother of the respondent, was the absolute owner of the properties listed in the petition and enjoyed them as an absolute owner by paying land revenue to the government. During her lifetime, when she was hale and healthy, out of love and affection towards the respondent, she executed a will in favour of the respondent on 16.05.2018. It is contended that the said Boramma died on 04.02.2021, hence the respondent herein filed the petition for issuance of the probate before the District Court. Learned District Court has allowed the petition and



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directed the office to issue probate certificate. It is contended that the respondent, after getting the probate certificate had gifted the properties to his son, and now both the respondent and his son are disturbing the appellant's possession and interfering with the properties.

3.2 It is also contended by learned counsel for the appellant that the impugned order passed in the probate petition is illegal, perverse and contrary to law and the same is liable to be set aside as proper and necessary parties are not made in the said probate petition, moreso the respondent has suppressed the facts in the petition for probate before the trial court. It is contended that the said will for which the probate certificate was issued was cancelled by Boramma itself vide registered Cancellation deed dated 16.11.2018 before the Holenarasipura Sub Registrar Office. On these grounds, learned counsel contends that the impugned order deserves to be set aside.



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4. Per contra, learned counsel appearing for the respondent sustains the impugned order, contending that there is no illegality or perversity in the impugned order.

5. Apparently, it is seen the prayer sought in the present appeal is to set aside the order dated 01.04.2026 passed in the probate petition in P & SC No.148/2025 granting probate of the registered will dated 16.05.2018. Therefore, the appellant is seeking to set aside the probate and revoke it on the ground that he was not made a party in the probate petition deliberately with a *malafide* intention by the respondent and so also the said petition was defective procedurally.

6. At this stage, it would be necessary to extract the provisions of Section 299 of the Act, which reads as under:

"Section-299. Appeals from orders of District Judge.—

Every order made by a District Judge by virtue of the powers hereby conferred upon him shall be subject to appeal to the High Court in accordance with the



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provisions of the Code of Civil Procedure, 1908 (5 of 1908), applicable to appeals."

7. It would also be relevant to extract the provisions of Section 263 of the Act, which reads as under:

"Sec. 263. Revocation or annulment for just cause.—*The grant of probate or letters of administration may be revoked or annulled for just cause.*

Explanation.—*Just cause shall be deemed to exist where—*

(a) the proceedings to obtain the grant were defective in substance; or

(b) the grant was obtained fraudulently by making a false suggestion, or by concealing from the Court something material to the case; or

(c) the grant was obtained by means of an untrue allegation of a fact essential in point of law to justify the grant, though such allegation was made in ignorance or inadvertently; or

(d) the grant has become useless and inoperative through circumstances; or

(e) the person to whom the grant was made has wilfully and without reasonable cause omitted to exhibit an inventory or account in accordance with the provisions of Chapter VII of this Part, or has exhibited under that



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Chapter an inventory or account which is untrue in a material respect".

8. On going through the provisions of Sections 263 and 299 of the Act, no doubt an appeal will lie under the provisions of Section 299 on the orders of the learned District Judge, but where the appellant is making out a case for revocation or annulment of the probate for "just cause" and he was not a party to the proceedings before the Probate Court, the appellant would have to invoke the provisions of Section 263 of the Act and go before the very same Court to seek necessary relief for revocation or annulment by showing just cause.

9. My view is fortified by the judgment of the Hon'ble Apex Court in the case of **Swaminathan & Ors. -vs- Alankamony (dead) thorough LRs.**¹ wherein at paragraph-6 it is held as under:

"6-As per Section 263, the grant of Letters of Administration may be revoked for "just cause". Explanation (a) under Section 263 states that just

¹ 2022 LiveLaw (SC) 276



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cause shall be deemed to exist where the proceedings were defective in substance. Illustration (ii) under Section 263 deals with a case where "the grant was made without citing parties who ought to have been cited".

10. It is the case of the appellant that the order obtained in the Probate Court by the respondent is defective in substance and obtained fraudulently by concealing the true facts from the Court and also suppressing the material facts. It is also the contention of the learned counsel for the appellant that the respondent have made untrue allegations and have deliberately not impleaded the appellant as party to the Probate Petition. Therefore, in view of these factual aspects and the allegations so made, the appeal preferred by the appellant under Section 299 of the Act would not be maintainable before this Court. The appellant will have to approach the same Court i.e., the Court of V Addl. District & Sessions Judge, Hassan, by filing an application seeking revocation or annulment of the Probate for "just cause" as per the



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judgment of the Hon'ble Apex Court in the case of ***Swaminathan*** (supra).

11. In view of the discussion made hereinabove, I pass the following order:

ORDER

- i) Appeal is **disposed of**.
- ii) Liberty is reserved to the appellants to invoke relevant provisions of the Indian Succession Act, 1925 and file necessary proceeding before the jurisdictional District Court as per law.
- iii) In the event, such proceedings are initiated, the learned District Judge shall consider the same and hear the matter in accordance with law by providing suitable opportunity to all parties concerned, including the parties in this appeal, so also any other proper and necessary parties.
- iv) All contentions of parties are kept open.



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- v) It is made clear that this Court has not expressed any opinion on merits of the matter.
- vi) In view of disposal of main matter, pending interlocutory applications, if any pale into insignificance.

**Sd/-
(PRADEEP SINGH YERUR)
JUDGE**

RCK
List No.: 1 Sl No.: 15