



IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 24TH DAY OF JUNE, 2026

BEFORE

THE HON'BLE MR. JUSTICE PRADEEP SINGH YERUR

MISCELLANEOUS FIRST APPEAL NO. 8204 OF 2023 (ISA)

BETWEEN:

1. SMT. PUTTAMAYAMMA,
W/O LATE SHIVALINGAIAH,
AGED ABOUT 65 YEARS,
R/A NO.554, 5TH MAIN ROAD,
JINK LINE, BHADRAVATHI TOWN,
BHADRAVATHI TALUK,
SHIVAMOGGA DISTRICT - 577 245.
2. SRI. RAJU,
S/O LATE SHIVALINGAIAH,
AGED ABOUT 39 YEARS,
R/A NO.554, 5TH MAIN ROAD,
JINK LINE, BHADRAVATHI TOWN,
BHADRAVATHI TALUK,
SHIVAMOGGA DISTRICT - 577 245.
3. SMT. VEENA,
D/O LATE SHIVALINGAIAH,
AGED ABOUT 34 YEARS,
R/A NO.554, 5TH MAIN ROAD,
JINK LINE, BHADRAVATHI TOWN,
BHADRAVATHI TALUK,
SHIVAMOGGA DISTRICT - 577 245.
4. SMT. SUVARNAMMA,
D/O LATE JAVARAIAH,
AGED ABOUT 55 YEARS,
R/A SANJEEV NAGAR,



- 3RD CROSS, DEVARAHALLI POST,
BHADRAVATHI TALUK,
SHIVAMOGA DISTRICT - 577 245.
5. SRI. RAJASHEKAR,
S/O LATE JAVARAIAH,
AGED ABOUT 54 YEARS,
R/A SANJEEV NAGAR,
3RD CROSS, DEVARAHALLI POST,
BHADRAVATHI TALUK,
SHIVAMOGGA DISTRICT - 577 245.
6. SMT. MANJULA R,
D/O LATE JAVARAIAH,
AGED ABOUT 51 YEARS,
R/A SANJEEV NAGAR,
3RD CROSS, DEVARAHALLI POST,
BHADRAVATHI TALUK,
SHIVMOGGA DISTRICT - 577 245.
7. SMT. SHAKUNTHALA,
D/O LATE JAVARAIAH,
AGED ABOUT 49 YEARS,
R/A SANJEEV NAGAR,
3RD CROSS,
DEVARAHALLI POST,
BHADRAVATHI TALUK,
SHIVMOGGA DISTRICT - 577 245.
8. SMT. JANAKI,
D/O LATE JAVARAIAH,
AGED ABOUT 36 YEARS,
R/A SANJEEV NAGAR,
3RD CROSS, DEVARAHALLI POST,
BHADRAVATHI TALUK,
SHIVMOGGA DISTRICT - 577 245.
9. SMT. BHAGYAMMA,



W/O LATE PUTTASWAMY,
AGED ABOUT 67 YEARS,
R/A BYRAVESHWARA NILAYA,
MARIYAMMA TEMPLE,
BHADRA COLONY,
BHADRAVATHI TALUK,
SHIVMOGGA DISTRICT - 577 245.

10. SRI. RAGHU,
S/O LATE PUTTASWAMY,
AGED ABOUT 40 YEARS,
R/A BYRAVESHWARA NILAYA,
MARIYAMMA TEMPLE,
BHADRA COLONY,
BHADRAVATHI TALUK,
SHIVMOGGA DISTRICT - 577 245.
11. SMT. RENUKA,
D/O LATE PUTTASWAMY,
AGED ABOUT 39 YEARS,
R/A BYRAVESHWARA NILAYA,
MARIYAMMA TEMPLE,
BHADRA COLONY,
BHADRAVATHI TALUK,
SHIVMOGGA DISTRICT - 577 245.
12. SMT. NINGAMMA,
W/O LATE BORAIAH,
AGED ABOUT 85 YEARS,
R/A NANDHIBATLU COLONY,
NANDHIBATLUR POST,
LINGADAHALLI HOBLI,
TARIKERE TALUK,
CHIKKAMAGALURU DISTRICT - 577 101.
13. SMT. BHAGYAVATHI,
D/O LATE BORAIAH,



AGED ABOUT 50 YEARS,
R/A NANDHIBATLU COLONY,
NANDHIBATLUR POST,
LINGADAHALLI HOBLI,
TARIKERE TALUK,
CHIKKAMAGALUR DISTRICT - 577 101.

14. SMT.SHAKUNTHALA,
D/O LATE BORAIAH,
AGED ABOUT 48 YEARS,
R/A NANDHIBATLU COLONY,
NANDHIBATLUR POST,
LINGADAHALLI HOBLI,
TARIKERE TALUK,
CHIKKAMAGALURU DISTRICT - 577 101.

15. SMT. TRIVENI,
D/O LATE BORAIAH,
AGED ABOUT 38 YEARS,
R/A NANDHIBATLU COLONY,
NANDHIBATLRU POST,
LINGADAHALLI HOBLI,
TARIKERE TALUK,
CHIKKAMAGALURU DISTRICT - 577 101.

16. SMT. CHANDRAKALA,
D/O LATE BORAIAH,
AGED ABOUT 35 YEARS,
R/A NANDHIBATLU COLONY,
NANDHIBATLUR POST,
LINGADAHALLI HOBLI,
TARIKERE TALUK,
CHIKKAMAGALURU DISTRICT - 577 101.

APPELLANTS ARE ALL
REPRESENTED BY THEIR
GPA HOLDER
SRI. GIRISH C.K.,



S/O KRISHNEGOWDA,
AGED ABOUT 35 YEARS,
R/A NO.38, 5TH CROSS,
IST MAIN ROAD,
BEHIND DM SCHOOL,
BYRAVESHWARA NAGARA,
BANGALORE NORTH TALUK,
BANGALORE - 560 058.

...APPELLANTS

(BY SRI. NARAYANA RAO, ADVOCATE FOR
SRI.RAJESWARA.P.N., ADVOCATE)

AND:

1. SRI. PARAMESHA,
S/O LATE CHIKKAIAH,
AGED ABOUT 52 YEARS,
R/AT KOPPA VILLAGE,
BINDIGANAVILE HOBLI,
NAGAMANGALA TALUK,
MANDYA DISTRICT - 571 425.
2. SRI.M.C.CHANNAPPA,
AGED ABOUT 48 YEARS,
S/O CHIKKANARASIAH,
RESIDENT OF K.MALLENAHALLI VILLAGE,
KASABA HOBLI,
NAGAMANGALA TALUK,
MANDYA DISTRICT - 571 148.
3. SRI.PUTTARAJU P.H.,
AGED ABOUT 48 YEARS,
S/O HARUVEGOWDA,
RESIDENT OF PADUVALAPATANA
VILLAGE, KASABA HOBLI,
NAGAMANGALA TALUK,



MANDYA, KARNATAKA - 571 148.

4. SMT.LAVANYA,
AGED ABOUT 34 YEARS,
WIFE OF C.K.GIRISH,
RESIDENT OF NO.44,
5TH CROSS ROAD,
5TH MAIN ROAD,
GANGADHARAPPA LAYOUT,
PAPAREDDYPALYA,
BENGALURU - 560 072.
5. SRI.P.T.SRINIVASA,
AGED ABOUT 35 YEARS,
S/O THIMMAPPA,
RESIDENT OF NO.13,
DOMMARAHALLI VILLAGE,
LAKSHMIPURA POST,
BENGALURU NORTH,
BENGALURU - 561 123.

...RESPONDENTS

(BY SRI MONISH C P., ADVOCATE FOR R1;
SRI H.K. HONNEGOWDA, ADVOCATE FOR R2 TO R5)

THIS MFA IS FILED UNDER SECTION 299 INDIAN SUCCESSION ACT, 1925 AGAINST THE ORDER DATED 26.07.2022 PASSED IN P AND S.C.NO.22/2022 ON THE FILE OF THE II ADDITIONAL DISTRICT AND SESSIONS JUDGE, MANDYA, ALLOWING THE PETITION FILED UNDER SECTION 276 OF INDIAN SUCCESSION ACT, 1925.

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 is an appeal preferred by the appellants, who are not parties to the Probate Petition filed by the respondent in P & SC No.22 of 2022, whereby the learned II Additional District and Sessions Judge, Mandya allowed the petition filed by the respondent and the respondent was entitled for grant of Probate Certificate as per the Will dated 06.01.2021 executed by Gangadharappa son of Boraiah, in respect of the petition schedule property.

2. The appellants have questioned the said order of grant of probate in favour of the respondent and are claiming independent right and title over the property, as according to the appellants, one Ninga alias Bora alias Boraiah was the original grantee. It was a Kulavadi Inam land and he was the original Palupattidar. He had three sons namely, (1)Boraiah; (2)Boraiah; and (3)Shivalingaiah. That the first son-Boraiah had three



children namely, (1) Gangadharappa, (2) Javaraiah and (3) Puttaswamy. It is also contended that Gangadharappa had no issues out of his marriage with Smt.Parvathamma. The second son Javaraiah died intestate leaving behind his five children namely, Smt.Suvarnamma, Sri Rajashekara G., Smt.Manjula, Smt.Shakuntala and Smt.Janaki. The third son Puttaswamy also died intestate, leaving behind his wife, Bhagyamma and two children, Raghu and Smt.Renuka. Thus, he contends that appellants No.4 to 11 are the surviving legal heirs of branch of first son Boraiah. The second son-Boraiah had four daughters namely, (1)Smt.Bhagyavathi, (2)Smt.Shakunthala, (3)Smt.Triveni and (4)Smt.Shakunthala, who are appellants No.12 to 16 herein. The third son-Sri.Shivalingaiah also died intestate leaving behind his wife Smt.Puttamayamma and children Sri.Raju and Smt.Veena, who are appellants No.1, 2 and 3. The several other contentions are taken up by the appellants in this appeal to set aside the order dated



22.06.2022 passed in P & SC No.22 of 2022, by the II Additional District and Sessions Judge, Mandya.

3. During the course of the arguments, learned counsel for the appellants files an authority of this Court passed by the Co-ordinate Bench in the case of **SRI SHESHAPPA AND OTHERS V/S SRI PRAVEEN**¹, where in a similar situation when the appeal was preferred by the persons who were not parties to the Probate Petition was challenged, the same was disposed reserving liberty to the appellants therein to file application under Section 263 of the Indian Succession Act-1925 (for short, 'Act of 1925') before the Probate Court. In the present case, appellants were deliberately not made parties and an order of Probate of Will executed by Gangadharappa was obtained by the respondent No.1.

4. It is also seen that the Co-ordinate Bench of this Court has disposed of the appeal, reserving liberty to the

¹ 2025(4) Kar LJ 307



appellants to invoke the provisions of Section 263 of the Act of 1925. By producing this judgment, learned counsel submits that the matter requires to be heard and order be passed on merits. Though the learned counsel himself files a copy of the order of this Court which disposed of the matter, by reserving liberty to the appellant therein to invoke the provisions of Section 263 of Act of 1925, now he seeks for passing necessary orders on merits in the present petition.

5. It is submitted across the bar that pursuant to grant of Probate in favour of the respondent, the appellants have alienated the property in favour of respondents No.2 to 5 during pendency of this appeal.

6. In view of the alienation made by the appellants during the pendency of this appeal, the lands have already changed hands from the appellants to respondents No.2 to 5. Therefore, much water has flown pursuant to the grant of probate and the pendency of appeal before this Court.



7. Per contra, learned counsel appearing for the respondent vehemently contends that the appeal is not maintainable before this Court in view of the fact that the appellants have invoked the provisions of Section 299 of the Act of 1925 as they ought to have filed necessary application or a petition if aggrieved by the order of grant of probate for revocation or annulment of the same under Section 263 of the Act of 1925.

8. Learned counsel also relies upon the judgment of the Hon'ble Apex Court in the case of **SWAMINATHAN AND OTHERS V/S ALANKAMONY (DEAD) THROUGH LRS**, whereby the Hon'ble Apex Court has held that the right provision for application by the deceased heir would be under Section 263 for revocation of the grant of Letters of Administration for "just cause".

9. Having heard the learned counsel appearing for the appellants and learned counsel appearing for the respondent, the only point that arises for consideration is:



"Whether the appellants, who are not parties before the Probate Court can file an appeal before this Court under Section 299 of the Indian Succession Act-1925?"

10. It would be necessary to extract the provisions of Section 299 of the Act of 1925, 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 provisions of the Code of Civil Procedure, 1908 (5 of 1908), applicable to appeals."

It would also be relevant to extract the provisions of Section 263 of the Act of 1925, 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 Chapter an inventory or account which is untrue in a material respect".

11. On going through the provisions of Sections 263 and 299 of the Act of 1925, 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 for "just cause" and he was not a party to the proceedings before the Probate Court, in my opinion, the appellants herein would have to invoke the provisions of Section 263 of the Act of 1925 and go before the District Court to seek necessary relief for revocation or annulment by showing just cause,



which is enumerated at para-6 of the judgment in the case of **SWAMINATHAN** (supra), which reads 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 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".

12. It is the case of the appellants that the order obtained in the Probate Court by the respondent is defective in substance and by making false suggestions, obtained fraudulently by concealing the true facts from the Court and suppressing the material facts. It is also the contention of the learned counsel for the appellants that the respondent has made untrue allegations and has deliberately not impleaded the appellants as parties to the Probate Petition. Therefore, in view of these factual aspects and the allegations so made, the appeal preferred by the appellants under Section 299 of the Act of 1925 would not be maintainable before this Court. The appellants will have to go before the learned District Judge



by filing an application seeking revocation or annulment of the Probate for "just cause", which is fortified by the judgment of the Hon'ble Apex Court in the case of **SWAMINATHAN** (supra).

13. In view of the discussions 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 Act and file necessary proceeding before the learned District Judge as per law.
- iii) In the event, such proceedings are initiated, the learned District Judge shall hear the matter in accordance with law by providing suitable opportunity to all parties concerned who are parties in this appeal, so also any other proper and necessary party.



In view of the disposal of main matter, pending interlocutory applications also stand disposed of.

Ordered accordingly.

Sri Monish C.P., learned counsel for respondent No.1 appointed through the High Court Legal Services Committee, Bengaluru has provided valuable assistance to this Court. Appreciation for his assistance is placed on record.

Sri Monish C.P., learned counsel shall be paid an honorarium at Rs.10,000/-, by the High Court Legal Services Committee, within two weeks from the date of receipt of copy of this order.

A copy of this order shall be furnished to the High Court Legal Services Committee, Bengaluru.

Sd/-
(PRADEEP SINGH YERUR)
JUDGE