



CNR: KAHC010709812024

NC: 2026:KHC:41728
WP No. 33477 of 2024

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IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 7TH DAY OF AUGUST, 2026

BEFORE

THE HON'BLE MR. JUSTICE C.M. POONACHA

WRIT PETITION NO. 33477 OF 2024 (GM-CPC)

BETWEEN:

SRI. EAN GERARD PREM MANI
S/O LATE GOPALAKRISHNAN
SUBRAMANIAN
AGED ABOUT 53 YEARS
R/AT NO 19, CAMPBELL ROAD
NEAR ST PHILOMENA'S HOSPITAL
AUSTIN TOWN
BENGALURU 560047

...PETITIONER

(BY SRI. S KALYAN BASAVARAJ, ADVOCATE)

AND:

Digitally
signed by
BHARATHI S
Location:
HIGH
COURT OF
KARNATAKA

1. SRI. PRAKASH XAVIER
S/O P XAVIER
NO 1125, 6TH CROSS ROAD
NEAR RED BUILDING
C BLOCK, ROBERTSONPET
KGF 563122
2. HEMA X
D/O P XAVIER
NO 1125, 6TH CROSS ROAD
NEAR RED BUILDING
C BLOCK, ROBERTSONPET
KGF 563122



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3. LEENA X
D/O P XAVIER
NO 16,2ND FLOOR,
4TH MAIN B CROSS
SARASWATHI PURAM
ULSOOR,
BANGALORE 560008
4. J JACINTHA VINCENT
D/O JOSEPH
NO. 7TH STREET
ASHOK NAGAR
BANGALORE 560025
5. H JAYAPAL
S/O HIRUDHAYNATHAN
NO 8/11TH CROSS
RA ROAD
BANGALORE 560047

...RESPONDENTS

(BY SRI. SURESH S LOKRE, SENIOR ADVOCATE FOR
SRI. SHRAVAN S LOKRE., ADVOCATE FOR R1 TO R5
SMT. K.P. YASHODHA, HCGP FOR STATE
V/O DTD 13.1.2025)

THIS W.P. IS FILED UNDER ARTICLE 227 OF THE
CONSTITUTION OF INDIA PRAYING TO SET ASIDE THE ORDER
DTD. 25.11.2024 PASSED BY THE VI ADDL. CITY CIVIL AND
SESSIONS JUDGE, IN O.S.NO. 3688/2024 (P AND SC 191 OF
2022) PRODUCED AT ANNEX-A AND ETC.

THIS PETITION, COMING ON FOR PRELIMINARY HEARING
IN 'B' GROUP, THIS DAY, ORDER WAS MADE THEREIN AS
UNDER:

CORAM: HON'BLE MR. JUSTICE C.M. POONACHA



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ORAL ORDER

The present writ petition is filed impugning the order dated 25.11.2024¹ passed in OS No.3688/2024 by the VI Additional City Civil and Sessions Judge, Bengaluru.²

2. The relevant facts in a nutshell are that the petitioner instituted P&SC No.191/2023 before the trial Court under Section 276 of the Indian Succession Act 1925³, seeking for probate of Will dated 05.12.2022 of one Sri Paul Joseph⁴. Consequent to the publication made in the said probate proceedings, the respondents herein entered appearance in the said probate proceedings and contested the same, pursuant to which, the said probate proceedings [P&SC No.191/2023] was registered as a suit [OS No.3688/2024]. Consequent to the registration of the suit, the petitioner who was the plaintiff in the suit was directed by the trial Court by the impugned order dated 25.11.2024 to pay necessary Court Fees.

3. It was the contention of the petitioner that he was not required to pay the Court Fees at the said stage and that

¹ hereinafter referred to as 'the impugned order'

² hereinafter referred to as 'the trial Court'

³ hereinafter referred to as 'the Act'

⁴ hereinafter referred to as 'the deceased'



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the court Fee was required to be paid at the conclusion of the probate proceedings. Reliance was placed by the petitioner on a coordinate Bench judgment of this Court in the case of **A.G.Hariharan v. A.G.Singaravalu**⁵.

4. The trial Court vide the impugned order directed the petitioner to pay the Court Fees as per Schedule II, Article 11(m) of the Karnataka Court Fees and Suits Valuation Act, 1958⁶. Being aggrieved, the present petition is filed.

5. The learned counsel for the petitioner in support his contention relies upon the Full Bench judgment of this Court in the case of **G.Somashekar v. Smt.Jayamma & Ors.**,⁷. The question for reference that fell for consideration before the Full Bench is extracted hereunder for ready reference:

"Whether a petition filed under Section 270 of the Indian Succession Act, 1925 seeking grant of probate or letters of administration, regardless of the caveat under Section 284, on being contested under Section 295 automatically metamorphizes into a regular suit and therefore, such a petition has to be valued on ad valorem basis in terms of Article 11(1) of Schedule II to the Karnataka Court Fees and Suits Valuation Act, 1958 ?"

⁵ AIR 1983 Kar 213

⁶ hereinafter referred to as 'the Court Fees Act'

⁷ Order dated 17.01.2023 in W.P.No.26087/2015.



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5.1. The Full Bench while considering the said question, framed various questions for consider, *inter alia*, as to the differences between the probate proceedings and the suit proceedings, etc. The Full Bench also considered the differences between "caveated probate proceeding v. contested probate proceeding". While considering the said aspect, the Full Bench concluded as under:

"CONCLUSION: To put all this concisely, a suit ordinarily can be defined as a proceeding instituted by the presentation of a 'plaint' (Section 26 read with Order VII Rule 1) in a civil court, resulting into a decree (Section 33). However, these ingredients lack in a proceeding commenced by the filing of a 'petition' under Section 270 of the 1925 Act, for the grant of probate of a will or letters of administration, whether caveated or not, and whether contested or not. Therefore, a probate proceeding for all practical purposes is much different from a suit proceeding."

(emphasis supplied)

5.2. Further, while considering the aspect as to contentious probate proceedings automatically becoming suit proceedings, the Full Bench held as under:

"Therefore, merely because Section 295 mandates the trial of contentious probate proceeding in the procedure applicable to the trial of a suit under CPC, one cannot hastily jump to the conclusion



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that the said proceeding should be deemed to be a suit. The words 'plaintiff' and 'defendant' employed in this section are intended to give the rights to the petitioner and to the contestant, that do ordinarily avail to the parties to a suit, and nothing more."

(emphasis supplied)

6. As noticed above, the Full Bench held that "*merely because Section 295 mandates the trial of contentious probate proceeding in the procedure applicable to the trial of a suit under CPC, one cannot hastily jump to the conclusion that the said proceeding should be deemed to be a suit.*" It was concluded that the nomenclature of the parties as plaintiff and defendant was only to give rights to the petitioner and the contestant, which are ordinarily available to the suit and nothing more.

7. Having regard to the findings recorded by the Full Bench as noticed above, the petitioner is justified in contending that he is liable to pay the requisite fees as contemplated under Schedule II Article 11(m) of the Court Fees Act at the conclusion of the proceedings.



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8. In view of the aforementioned discussion, the impugned order dated 25.11.2024 passed in OS No.3688/2024 by the VI Additional City Civil and Sessions Judge, Bengaluru, is set aside.

9. It is jointly submitted by both the learned counsels that the proceedings before the trial Court are posted on 27.08.2026. The trial Court shall conduct further proceedings in the suit in terms of the judgment of the Full Bench in the case of **G.Somashekar** (*supra*).

10. All rights and contentions of the parties on the merits of the suit are kept open.

11. Accordingly, the writ petition is allowed in the aforementioned terms.

**SD/-
(C.M. POONACHA)
JUDGE**

ND
List No.: 1 Sl No.: 8