HC-KAR

NC: 2026:KHC:60538-DB
MFA No. 6554 of 2023

CNR: KAHC010501302023

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 30TH DAY OF OCTOBER, 2026

PRESENT

THE HON'BLE MR. JUSTICE D K SINGH

AND

THE HON'BLE MR. JUSTICE H.SHANTHI BHUSHAN

MISCELLANEOUS FIRST APPEAL NO. 6554/2023 (ISA)

BETWEEN:

1. SMT. YELLAMMA P
   W/O LATE M MUNIKRISHNAPPA
   AGED ABOUT 57 YEARS,

2. SMT. M MAMATHA
   D/O LATE M MUNIKRISHNAPPA
   AGED ABOUT 33 YEARS,

3. SRI. M NATARAJ
   S/O LATE M MUNIKRISHNAPPA
   AGED ABOUT 31 YEARS,

   ALL ARE R/AT NO.335, BABAIAH GUDI STREET,
   NEAR BBMP OFFICE, YELAHANKA OLD TOWN,
   YELAHANKA, BENGALURU-560 064.

...APPELLANTS

(BY SMT. S SUSHEELA, SENIOR COUNSEL FOR
SRI. SOMANTHA H, ADVOCATE)

Digitally signed by MALA K N
Location: HIGH COURT OF KARNATAKA

AND:

SRI. M MANJUNATHA,
S/O LATE M MUNIYAPPA
AGED ABOUT 53 YEARS,
R/AT MELURU VILLAGE, JANGAM KOTE HOBLI,
SHDLAGHATTA TALUK,
CHIKKABALLAPURA DISTRICT-562 102.

...RESPONDENT

(BY SRI. DEVARAJA B, ADVOCATE FOR C/R
IN CP NO.13387/23)

CNR: KAHC010501302023

THIS MFA FILED UNDER SECTION 299 INDIAN SUCCESSION ACT, 1925 AGAINST THE ORDER DATED 13.07.2022 PASSED IN P AND S.C.NO. 22/2022 ON THE FILE OF THE PRINCIPAL DISTRICT AND SESSIONS JUDGE, CHIKKABALLAPURA, ALLOWING THIS APPEAL.

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

CORAM: HON'BLE MR. JUSTICE D K SINGH
AND
HON'BLE MR. JUSTICE H.SHANTHI BHUSHAN

ORAL JUDGMENT

(PER: HON'BLE MR. JUSTICE H.SHANTHI BHUSHAN)

The present appeal is directed against the order dated 13.07.2022 passed by the Principal District and Sessions Judge, Chikkaballapura, in P & SC No.22/2022 ("***Trial Court***" for brevity) whereby the petition filed by the petitioner under Section 276 of the Indian Succession Act, 1925 was allowed and Probate was ordered to be issued in respect of Will dated 23.08.2017 executed by one Munikrishnappa.

(i) Facts in P & SC No.22/2022:

2. The respondent/M.Manjunatha is the brother of late M. Munikrishnappa, who was the husband of appellant No.1 and

father of appellant Nos.2 and 3. Their parents were late M. Muniyappa and late M. Muniyamma, who had five sons and two daughters. Late M. Munikrishnappa, who had worked as an Assistant Manager in the State Bank of Mysore and voluntarily retired from service on 14.10.2010, purchased two agricultural properties situated at Ragimakalahalli Village, Jangamakote Hobli, Shidlaghatta Taluk, under two registered sale deeds dated 07.12.2012, namely, Sy.No.27/7 (old Sy.No.27/1), measuring 15.04 guntas, and Sy.No.27/8 (old Sy.No.27/6), measuring 6.12 guntas. The said lands were converted for non-agricultural residential purposes under the Deputy Commissioner's order dated 27.04.2016, and a three-storeyed RCC building measuring 33 feet x 37 feet was also constructed thereon. According to the respondent, late M. Munikrishnappa executed a Will dated 23.08.2017, bequeathing the aforesaid properties in his favour. On that basis, he instituted P & SC No.22/2022 under Section 276 of the Indian Succession Act, 1925, seeking grant of probate. He claimed that the Will had been executed in the presence of two attesting witnesses, R.Naveen and C. Surya Prakash, and that the testator was in a sound state of mind at the time of its execution. He also relied

upon the sale deeds, revenue records, conversion order, death certificate and genealogy certificate to establish the testator's title and his own relationship with the deceased. Notice of the proceedings was published in the Kannada daily Hosadigantha on 17.03.2022. The respondent proceeded with the petition on the ground that no person had appeared to contest the proceedings.

(ii) <u>Order passed in P & SC No.22/2022:</u>

3. The learned Principal District and Sessions Judge, Chikkaballapura, by order dated 13.07.2022, allowed P & SC No.22/2022 and directed issuance of probate in respect of the Will dated 23.08.2017. The Court relied upon the evidence of the respondent, who was examined as PW.1, the two attesting witnesses examined as PW.2 and PW.3, and the scribe examined as PW.4. It also took note of the original Will marked as Ex.P.1, the sale deeds marked as Ex.P.2 and Ex.P.3, the death certificate, genealogy certificate, conversion order, RTC extracts and mutation records marked in evidence. The Court accepted the testimony of the attesting witnesses regarding execution of the Will and the identification of the testator's

signatures and held that the respondent had established the Will in accordance with law. Taking into consideration that notice had been published and no objections had been received, the learned Judge concluded that there was no impediment to grant probate and accordingly directed the office to issue probate after collection of the requisite fee.

(iii) <u>Grounds of appeal:</u>

4. Aggrieved by the aforesaid order, appellant Nos.1 to 3, being the wife, daughter and son of late M. Munikrishnappa, have preferred the present appeal contending that the probate proceedings were conducted without impleading them, though the respondent was fully aware of their relationship with the deceased and their status as his legal representatives. They contend that the respondent himself produced the genealogy certificate, marked as Ex.P.5, which disclosed their relationship with the testator, yet no notice was issued to them and the proceedings were concluded solely on the basis of a newspaper publication. The appellants further question the manner in which the Will dated 23.08.2017 was accepted, pointing out that it excludes the natural heirs, is an

unregistered document, and was required to be scrutinised with greater care in the circumstances pleaded by them. They also contend that the Will purportedly bequeaths not only the properties purchased by the deceased but also his alleged share in O.S.No.444/2008, though the deceased had no absolute title to such share. It is their further case that the respondent filed the probate petition only on 10.03.2022, more than four years after the death of the testator on 09.12.2017, without explaining the delay. Relying upon the subsequent conduct of the parties in O.S. No.444/2008 and the appellants' assertion that they were brought on record as legal representatives of the deceased, they contend that the probate Court failed to consider material circumstances and did not afford the persons directly interested in the estate an opportunity to contest the Will. On these grounds, they seek setting aside of the order granting probate.

5. We have heard Smt.S.Susheela, learned Senior Counsel on behalf of the appellants and Sri.Devaraja B., learned counsel for the respondent. Upon consideration of the pleadings, the records placed before this Court and the

submissions advanced on behalf of the parties, the following point arises for our consideration:

> *Whether the appellants have made out any ground warranting interference with the order dated 13.07.2022 passed in P & SC No.22/2022 by the learned Trial Court?*

(iv) <u>REASONS AND CONCLUSION:</u>

6. For the foregoing reasons, it is evident that the present appellants, though being the wife and children of the deceased and persons directly interested in the estate, were not arrayed as parties in the proceedings in P & SC No.22/2022. Since the probate proceedings were concluded without impleading them or affording them an opportunity to place their objections on record, they have been constrained to prefer the present appeal challenging the order granting probate. Hence, the matter requires to be remanded back to the Trial Court for fresh consideration.

Accordingly, we pass the following;

<u>ORDER</u>

(i) The appeal is allowed.

(ii) The order dated 13.07.2022 passed by the learned Principal District and Sessions Judge, Chikkaballapura, in P & SC No.22/2022, is hereby set aside.

(iii) The matter is remitted back to the learned Principal District and Sessions Judge, Chikkaballapura, for fresh consideration in accordance with law, after affording the appellants an opportunity to file their objections and permitting all parties to participate in the proceedings.

(iv) The parties are directed to appear before the learned Principal District and Sessions Judge, Chikkaballapura, on **12.11.2026**, without awaiting further notice.

(v) The learned Trial Court shall thereafter proceed with the matter and dispose of the same in accordance with law, after affording reasonable opportunity of hearing to all parties.

(vi) It is made clear that this Court has not expressed any opinion on the merits of the rival claims or the genuineness and validity of the Will dated 23.08.2017. The learned Trial Court shall independently adjudicate the matter on its merits, on the basis of the pleadings and evidence placed before it,

without being influenced by any observations made in this judgment.

Sd/-
(D K SINGH)
JUDGE

Sd/-
(H.SHANTHI BHUSHAN)
JUDGE

KNM/
List No.: 1 Sl No.: 28