
(2025) 06 KAR CK 0239
In the Karnataka High Court, Principal Bench
Case No : Probate Civil Petition No. 1 Of 2023

B.A. Gautham

APPELLANT

Vs

Nil

RESPONDENT

Date of Decision : 27-06-2025

Acts Referred:

Citation : (2025) 06 KAR CK 0239

Hon'ble Judges : C M Joshi, J

Bench : Single Bench

Advocate : Arun Shyam, H.R. Showri

Final Decision : Disposed Of

Judgement

H.P. Sandesh, J

CAV ORDER

1. Heard learned counsel for the petitioner.
2. This petition is filed under Section 232(a), 276 and Chapter IV of the Indian Succession Act, 1925 read with Rule 5 of the Rules Governing Probate and Administration Matters, 1964 and sought for the relief to allow the petitioner to prove the Last Will and Testament dated 31.12.1997 executed by late Sri B.A. Ananda Rao and grant Letters of Administration in favour of the petitioner in respect of the schedule properties and credits of Sri B.A. Ananda Rao of the Will dated 31.12.1997 and grant such other relief as deems fit in the circumstance of the case.
3. The factual matrix of case of the petitioner is that the testator Sri B.A. Ananda Rao professed Hindu religion and was residing in Bangalore City which was his fixed place of abode within the jurisdiction of this Court and he was also ordinarily a resident of Bangalore City having permanent residence at No. 168D/E, 5th Main, 3rd Cross, J.P. Nagar 3rd Phase, Bangalore and he had executed a Will and Testament dated 31.12.1997 and he also passed away within the

jurisdiction of this Court on 25.08.2003.

4. It is the case of the petitioner that the Testator's younger son Sri Anil Bapu predeceased him on 30.05.1997 and thereafter only he had executed the present Will and while executing the Will, his wife Smt. Pramila A. Rao and elder son Sri B.A. Gautam, who is the petitioner herein were alive and his widow also passed away on 23.07.2022. The Testator was owning both movable and immovable properties and the said properties listed in schedule are referred to as schedule properties. The Testator was in sound and disposing state of mind at the time of execution of the Will and also had full mental capacity to understand the purport of the Will. The Testator was not suffering from any infirmities affecting his mental ability either at the time of execution of the Will or otherwise.

5. The Will was duly executed by the Testator in the presence of two attesting witnesses Sri M.R. Guruprasad and Sri M.B. Rao also known as Sri Madava Rao Bhima Rao. Sri M.B. Rao died on 11.03.2017. The affidavit of Sri M.R. Guruprasad, the 1st attesting witness is produced and the affidavit of Sri Kiran Kumar Bheemrao, son of late Sri M.B. Rao also known as Sri Madhava Rao Bhima Rao, identifying the signature of his father, who was the 2nd attesting witness is also produced along with the petition.

6. The petitioner is the son of the Testator. Except the petitioner herein, the Testator has not left behind any other Class I heirs. It is also contented that the Will does not appoint an Executor/Executrix, the petitioner in his capacity as the Universal Legatee to the estate of the Testator, is entitled to seek grant of Letters of Administration with respect to the estate of the Testator. The petitioner also undertakes to administer the estate of the Testator and make a full and true inventory of his assets and exhibit the same after the grant of Letters of Administration and also to render the true accounts of the estate. It is also stated that the value of the movable and immovable properties is Rs.6,53,000/- and undertakes to pay the prescribed Court fee at the time of grant of Letters of Administration.

7. The petitioner also filed an application to dispense the notice to the Deputy Commissioner and the same was dismissed at the first instance and later on, an application was filed undertaking to pay the maximum Court fee of Rs.39,000/-. Hence, this Court allowed the application by recalling the earlier order and permitted to pay the maximum Court fee of Rs.39,000/- vide order dated 19.06.2014. It is also noticed that a prayer for citation is also sought by filing an application I.A.No.2/2024 and this Court allowed to give paper publication in English daily newspaper 'The Hindu' and Kannada daily newspaper 'Udayavani', Bangalore edition and accordingly, paper publication was taken and none appeared before the Court claiming any interest.

8. Hence, this Court, having considered the material on record, allowed the petitioner to examine himself and examine the witness to prove very execution of the Will before the CPC. Accordingly, the petitioner examined a witness

M.R.Guru Prasad, who is an attesting witness to the document of Will. The witness in the evidence says that he is conversant with LTM found on the said document and he can also identify the signature of Testatrix and stated that Testatrix affixed his signature on the Will in the presence of other witness Sri M.B. Rao. He also says that he signed as a witness to the Will and thereafter, other attesting witness also signed in his presence and also identifies the signature of the Testatrix as Ex.P1(a) and his signature as Ex.P1(b) and also the signature of the Scribe Advocate Sridhar as Ex.P1(e).

9. The petitioner also examined himself as P.W.2 and in his evidence also, he says that he was looking after his father and mother all along. Hence, his father bequeathed his properties in his favour and also in favour of his mother and identifies the Will as Ex.P1. The petitioner also produced the Death Certificate of his father as Ex.P2 and also the Death Certificate of his mother as Ex.P3, Death Certificate of his brother as Ex.P4 and paper publication as Exs.P5 and P6.

10. The learned counsel for the petitioner would submit that Will is marked as Ex.P1 and in order to prove the fact that younger son of the Testator also passed away and so also mother passed away, documents are also placed on record and this petitioner is the only son and out of two witnesses, one witness passed away and another witness is examined as P.W.1 and attesting witness also identifies the signature of the Testatrix. Hence, will is proved and prayed the Court to grant the relief.

11. Having considered the material on record and in order to prove the execution of Will, attesting witness P.W.1 is examined and P.W.1 identifies the signature of Testatrix as well as his signature and also the attesting witness signature and particularly got marked the document of Will as Ex.P1.

12. Having heard learned counsel for the petitioner and also the material available on record, the points that would arise for consideration of this Court are:

(1) Whether the petitioner has made out the grounds to grant Letter of Administration as sought in the petition?

(2) What order?

POINT NO.(1)

13. Having perused the Will, the same was executed by Sri B.A. Ananda Rao and in the Will, he has shown the immovable properties as Schedule 'A' and movable properties are Schedule 'B'. In paragraph No.5 of the Will, it is mentioned regarding the ownership of the immovable property and also stated that son Anil had undergone surgery due to complications and he expired on 30.05.1997. It is also stated in paragraph No.6 that having acquired the property he had built a house in the ground floor measuring approximately 20 squares and the construction was completed in the year 1983. It is also stated that he made a gift deed in favour of son B.A.Gautham in respect of terrace on the ground floor measuring approximately 1,760 square feet, including the terrace area on the

garage. He has put a construction of about approximately 9 squares in the year 1991. It is also stated that the said property is a self- acquired property and none can have any claim over the same. He is having mental capacity to bequeath the property and stated in the Will that he bequeathed this property absolutely to his wife Smt. Pramila A. Rao and she shall have the absolute right to keep the property as she wishes and in any manner whatsoever. In case she were to pre-decease him, God forbid, then this Schedule 'A' property shall absolutely go to the son B.A. Gautham and his son and daughter-in-law both have taken care of him and his wife.

14. Even in paragraph No.10 also in respect of movable properties stated that the same shall go to wife and in the event of his wife were to predecease him, the said movable property shall go to his son. In paragraph No.11 also stated that he is having an account in Indian Overseas Bank, S.B. Account No. 4323 which is being operated by him, his wife and son as the same is in joint name. After his demise, if B.A.Gautham has to operate, it shall be with consent of his wife. Whatever the balance amount is found on the day when the Will becomes enforceable, the same shall go to wife absolutely and in the event of wife were to predeceased him, same shall go to his son. He also stated that he is having two lockers in Indian Overseas Bank which are being operated by himself and his wife as they are in joint name of himself and his wife. The said lockers shall continue in his wife's name. The details are also given in the Will and provision is also made under the Will in respect of the immovable property and so also movable properties.

15. Now, the petitioner has produced the documents of Will and Death Certificate of his brother as Ex.P2 and Death Certificate of mother as Ex.P3 and also got examined the attesting witness as P.W.1, who identifies the signature and the same is not disputed and Will which is marked is proved by examining the attesting witness P.W.1, who identifies his signature as well as the signature of the Testatrix as well as another witness, who is no more. Hence, petitioner has proved the Will.

16. Having proved the Will and also considering other documents, it is very clear that though provision is made in favour of the wife of the Testatrix at the first instance and wife of the Testatrix is deceased in the year 2022 and Death Certificate is also produced to that effect. Hence, the property goes to the petitioner in terms of the Will which is marked as Ex.P1.

17. Now, the question before this Court is with regard to issuance of Letter of Administration as sought by the petitioner and petitioner also undertakes to administer the estate of the Testator and sought the Letter of Administration that he is entitled to seek grant of Letters of Administration and further contended that the petitioner is the son of the Testator and accept the petitioner, Testator has not left behind any other Class-I heir and also Will does not appoint an Executor/Executrix and the petitioner in his capacity as the Universal Legatee to the estate of the Testator is entitled for the relief of issuance of Letter of

Administration.

18. Having considered the grounds urged in the petition as well as Section 232 of the Indian Succession Act, 1925-Grant of administration of universal or residuary legatees, Section 232(a) is very clear that the deceased has made a Will, but has not appointed an Executor, the object is also very clear that the Section is to protect the possible rights of next of kin to effect the administration of the Testator when no Executor has been appointed. It is also very clear that it should be made to the person, who has the greatest interest in the estate of the Testator. The universal or residuary legatee is the Testator's choice. When the whole estate is given to one person, he is described as the universal legatee or devisee and he has the first right to the Will.

19. The petitioner also in the petition in paragraph No.7 of the petition has categorically undertaken to administer the estate of the Testator and make a full and true inventory of his assets and exhibit the same after the grant of Letters of Administration and also to render the true accounts of the estate and a direction can be given to the petitioner to do the same by granting Letters of Administration.

20. Having considered the contents of the Will, it is very clear that property was bequeathed to wife and all rights are given and also made it clear that, if she predeceases, then the same shall go to his son and the petitioner is the only son remaining, since already the younger son of the Testator has passed away and he predeceased the Testatrix and documents which have been placed before the Court is also very clear that the petitioner is the universal legatee as he is the only son left. Accordingly, I answer Point No.(1) as 'affirmative' and the petitioner has made out the grounds to grant the relief of Letters of Administration.

POINT NO.(2)

21. In view of the discussion made above, I pass the following:

ORDER

(i) The petition is allowed and Letter of Administration is granted in favour of the petitioner as sought.

(ii) The petitioner shall file an affidavit of assets and valuation within one month.

(iii) The petitioner shall duly administer the property and credits of the deceased after making a full and true inventory thereof and exhibit the same in this Court within six months from the date of issue of probate and

(iv) The petitioner shall render a true account of the property and credits of the deceased to this Court within one year from the date of issuing probate to him.