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**(2000) 04 AP CK 0049**  
**In the Andhra Pradesh High Court**  
**Case No : LPA No. 72 of 2000**

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|-----------------------------------|----|------------|
| Lalitha Sankar Narayan and others | Vs | APPELLANT  |
| Rohini                            |    | RESPONDENT |

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**Date of Decision :** 06-04-2000

**Acts Referred:**

Succession Act, 1925 — Section 276

**Citation :** (2000) 3 ALD 759 : (2000) 3 ALT 672 : (2000) 2 APLJ 270

**Hon'ble Judges :** V. Eswariah, J;P. Venkatarama Reddi, J

**Bench :** Division Bench

**Advocate :** Mr. K.V. Bhanu Prasad, for the Appellant; Mr. I.S. Seshavataram, for the Respondent

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## Judgement

V. Eswaraiah, J.—Heard both the Counsel appearing for the appellants as well as the respondent at the admission stage. This Letters Patent Appeal is filed with leave of the Court against the judgment and decree in CMA No.1511 of 1992. The application filed by the respondent herein u/s 276 of the Indian Succession Act for granting probate of Will executed by late R.S. Shankar Narayan on 26-9-1989 was dismissed by the Additional Chief Judge, City Civil Court, Hyderabad in OP No.1236 of 1990 dated 15-3-1991. Against the said order, the respondent herein filed CMA No.1511 of 1992 which was allowed by the learned single Judge on 31-12-1999 against which the appellants herein filed this Letters Patent Appeal with the leave of the Court. 1st appellant is the wife, appellants 2 and 3 are the sons and the 4th appellant is the father of late Shankar Narayan.

2. The brief facts of the case are that the respondent herein filed OP No.1236 of 1990 for grant of probate of Will u/s 276 of Indian Succession Act alleging that she is one of the two wives of late R. S. Shankar Narayan, who executed a Will on 26-9-1989 in the presence of two witnesses bequeathing certain properties in her favour and her sons and the said Shankar Narayan died on 16-1-1990. Late Shankar Narayan was working as Manager of Bank of Baroda at Coonoor, Nilgiris District, Tamil Nadu. It is stated that according to the Will, Flat Bearing

No.43, II Floor, situated at Somajiguda, Hyderabad, is bequeathed in her favour for her life time without the right to alienation and after her life time, absolute rights were conferred in favour of two sons of first wife of late Shankar Narayan and also her two sons. Late Shankar Narayan bequeathed all his movable and immovable properties in her name. Provident Fund, Gratuity and other service benefits which may amount to Rs.80,000/- were also bequeathed in her favour and she stated that she is entitled for an amount of Rs.25,000/- from Bank of Baroda Staff Co-operative Credit Society, Hyderabad, after adjusting the loan and death benefits of late Shankar Narayan. The OP was filed against all concerned without impleading anyone and a publication was made in Deccan Chronicle English Daily, Hyderabad, calling for objections, if any, to allow the petition, but no objections were received. The respondent herself was examined as PW1 and the Will dated 26-9-1989 was marked as Ex.P1. She stated that as per the Will, she is entitled for the retirement service benefits of her deceased husband from the Bank of Baroda and also to enjoy the immovable property Bearing Flat No.T-43, Shanti Shikhara Apartments, Somajiguda, Hyderabad, for her life time. The learned Additional Chief Judge, City Civil Court, rightly dismissed the OP by a reasoned order holding that the respondent is not entitled for grant of probate with respect to Will dated 26-9-1989 said to have been executed by late R.S. Shankar Narayan stating that Ex.P1-Will is an unregistered one and none of the attested witnesses were examined in proof of the execution of the Will and she has not chosen to examine any of the attesting witnesses and she also did not specifically say that the testator executed the Will out of his own free will without fraud and coercion and that the Will was executed in the presence of two witnesses and those witnesses saw the testator signing the Will and the testator saw those witnesses attesting the Will Ex.P1. As there was a dispute with regard to succession to the properties, the respondent filed an application for grant of probate of Will, and therefore, the Will had to be proved, but as the respondent failed to prove the execution of the Will, the OP was dismissed.

3. Against the said order dated 15-3-1991 made in OP No.1236 of 1990, the respondent filed CMA No.1511 of 1992 and the learned single Judge allowed the same holding that the Will was executed by the deceased, a Hindu, in Andhra Pradesh, in respect of the immovable and movable properties situated within the jurisdiction of Andhra Pradesh High Court, and the legatee-appellant and her two sons and two sons of the first wife of late Shankar Narayan are entitled to enjoy the properties bequeathed in their favour by the deceased without obtaining probate or letter of administration from the Competent Civil Court. The learned single Judge missed from his sight the implead petition and stay petition filed by the appellant in CMA and the vacate stay petition filed by the appellants herein and did not consider the rival contentions.

4. The respondent herein filed CMPNo.1026 of 1997 in CMA No.1511 of 1992 stating among other things that the OP No.1236 of 1990 was filed by her to grant probate of Will dated 26-9-1989 and the lower Court on an erroneous view of law and fact dismissed the OP and aggrieved by the said order, she filed CMA

and she got a direction to get the notice published in Deccan Chronicle Daily and Hindu Daily News Papers and filed proof of service into the Court on 28-9-1995, and in the meanwhile, the other wife of her husband, her children and the father of her late husband-Shankar Narayan, filed OP No.898 of 1994 on the file of the Additional Chief Judge, City Civil Court, for issuance of the succession certificate in the name of the first wife to collect the amounts due to the deceased i.e., Gratuity, Provident Fund and arrears of pay etc., totaling to Rs.2,18,120/-and the said petition was filed on the basis of intestacy. It is further stated that under the Will executed, all the movable and immovable properties were bequeathed in her favour including the Provident Fund, Gratuity and other service benefits and as further proceedings in the said OP No.898 of 1994 would affect with the proceedings in CMA No.1511 of 1992, she filed CMP No.1026 of 1997 to stay the proceedings in OP No.839 of 1994 and by order dated 5-3-1997 stay was granted.

5. The appellants herein filed CMP No.13743 of 1997 to vacate the order in CMP No.1026 of 1997 stating that the 1st appellant is the legally wedded wife of late RS. Shankar Narayan and her marriage took place on 8-2-1965 at Shankarmutt, Nallakunta, Hyderabad as per Hindu rites and customs. Due to wedlock, two sons were born to them and in 1984 her husband got transferred to Bank of Baroda, Coonoor Branch, Coimbatore and he used to visit frequently Hyderabad as her sons were studying at Hyderabad and on 16-1-1990 he died in a car accident. It is further submitted by the appellants herein that when the 1st appellant approached the Bank of Baroda for claiming the Gratuity, Provident Fund amount etc., she came to know that one Rohini wife of Prabhakar (respondent herein) colleague of her husband-late Shankar Narayan, who was working at Bank of Baroda, Coonoor Branch, was also claiming the Gratuity and Provident Fund etc., which were due to her husband and as the respondent was introducing herself as second wife of her husband, she along with her two sons, and her father-in-law filed OP No.839 of 1994 on the file of the Additional Chief Judge, City Civil Court, Hyderabad for issuance of succession certificate impleading the said Rohini-respondent herein and the evidence was completed on 20-11-1996 and the respondent was taking several adjournments and on 10-6-1997 a memo was filed stating that the High Court granted stay in CMP No.1026 of 1997 in CMA No.1511 of 1992. She farther stated that the appellants herein have been impleaded as per the orders in CMP No.1439 of 1997 in CMA No.1511 of 1992 on 5-3-1997.

6. The learned single Judge without noticing the aforesaid CMPs, proceeded to consider the contention of the respondent alone, and therefore, there was no occasion for the learned single Judge to consider the contentions of the appellants herein as they were not heard and the application filed by them was not considered.

7. Admittedly, the execution of the Will by late US. Shankar Narayan is in dispute and the respondent herein filed an application in OP No.1236 of 1990 for grant of

probate of Will and the question before the Court below and before the learned single Judge was only whether the respondent was entitled for grant of probate of Will or not. The Court below rightly considered the issue and dismissed the OP on the ground that the execution of the Will was not proved prima facie as none of the attesting witnesses were examined, but the learned single Judge instead of considering whether on the basis of evidence, the respondent is entitled for grant of probate of Will or not, held that the Will was executed by the deceased-R.S. Shankar Narayan and the respondent and her two sons and two sons of the first wife are entitled to enjoy the properties bequeathed in their favour by the deceased without obtaining probate of Will. When the execution of the Will itself is in dispute and the legally wedded wife of the executor of the so-called Will-1st appellant herein filed OP No.839 of 1994 on the file of the Additional Chief Judge, City Civil Court, Hyderabad, for grant of succession certificate, the question of granting a declaration that the respondent is entitled to enjoy the properties under the Will without obtaining the probate does not arise. In a case where the Will is not in dispute and the execution of the Will is proved, the properties will devolve on the legatees under the testamentary succession but when the execution of the Will itself is in dispute, the question of succeeding to the properties under the testamentary succession does not arise unless the Will is proved and rival contentions of the legal heirs are settled. Under the Indian Succession Act, no doubt, it is true that the legatees are entitled for the ownership of the properties under the testamentary succession without getting the Will probated in respect of the properties situated outside the territories of the States of West Bengal and local limits of the ordinary original civil jurisdiction of the High Courts of Madras and Bombay where there is no dispute with regard to the Wills. But the said normal rule has no application when the Will itself is not proved and disputed and there is a doubt on the marital status of the respondent-2nd wife. The lack of prohibition u/s 213 does not mean that without proving the Will, the respondent can claim the properties thereunder. The relief of declaration granted by the learned Judge goes beyond the scope of relief prayed for.

8. We, therefore, set aside the order and dismiss the CMA No.1511 of 1992 and it is open for the respondent to put forth her claims in OP No.839 of 1994 pending on the file of the Additional Chief Judge, City Civil Court, Hyderabad and in view of the dismissal of the CMA No.1511 of 1992, OP No.839 of 1992 shall be disposed of as expeditiously as possible on its own merits.

9. Accordingly, the letters patent appeal is allowed with costs.