

(2025) 07 KAR CK 0455

In the Karnataka High Court, Principal Bench

Case No : Civil Revision Petition No. 28 Of 2025

Nagamani @ S. Nagarathna

APPELLANT

Vs

S. Rajashekara Murthy & Ors.

RESPONDENT

Date of Decision : 04-07-2025

Acts Referred:

Citation : (2025) 07 KAR CK 0455

Hon'ble Judges : Shivashankar Amarannavar, J

Bench : Single Bench

Advocate : Vidyasagar H V, M. Divakar Maddur

Final Decision : Dismissed

Judgement

R Devdas, J

CAV ORDER

1. This Civil Revision Petition is filed by defendant No.1 in O.S.No.8855/2012, aggrieved by the rejection of the application filed under Order VII Rule 11(a) & (d) of Code of Civil Procedure.

2. For the sake of convenience, the parties shall be referred to in terms of their ranking before the trial court.

3. The suit was filed by the respondents herein with a prayer to restore P & SC No.19/1982; to set aside the certificate issued by the District Court in P & SC No.19/1982, by order dated 12.08.1986 and to decree the suit for 1/3rd share out of one half of the suit schedule property by metes and bounds. Defendant No.2 is the mother of the plaintiffs. Obviously the suit was directed against defendant No.1, who is the sister of defendant No.2. Defendant No.1 filed an application under Order VII Rule 11 (a) & (d), contending that the defendants father late Sri B.N.Shamanna had left behind a Will bequeathing the suit schedule property in favour of defendant No.1 and that the P & SC case was contested by defendant No.2 and the District Court, after holding an enquiry,

concluded that the petitioner therein was entitled for grant of Probate, while rejecting the objections raised by defendant No.2 herein and proceeded to issue Probate in favour of defendant No.1. Thereafter, the 2nd defendant herein filed a suit in O.S.No.565/1996 seeking declaration and possession and partition and separate possession of the suit schedule property, while arraigning defendant No.1 herein as the sole defendant. The suit was partly decreed on 22.02.2006, declaring that defendant No.2 herein (plaintiff in the said suit) was entitled for partition and separate possession of one half share in plaint 'C' and 'D' schedule properties. It was clearly declared that 'A' schedule property, which is the present suit schedule property was the self acquired property of Sri B.N.Shamanna and by virtue of the Will executed at the hands of Sri B.N.Shamanna, defendant No.1 herein became the absolute owner and the plaintiff cannot contend that the Will is unenforceable. The 2nd defendant herein filed RFA No.1301/2008 and the same was dismissed by this Court on 16.11.2011, while observing that defendant No.2 contested the matter in P & SC case and succession certificate was issued in favour of defendant No.1 herein. Thereafter, the plaintiffs have filed the present suit in the year 2012, seeking to set aside the certificate issued in favour of the 1st defendant, in the P & SC case.

4. Learned counsel for defendant No.1 has also taken this Court through the orders passed by this Court in W.P.No.32166/2016 dated 30.06.2021, which was filed by the 1st defendant herein being aggrieved of the rejection of I.A.No.5 filed under Order 14 Rule 5 of CPC to recast the issues by deleting issues No.2 and 3. This Court held that issues No.2 and 3 are exactly the same as issues No.3 and 4 in O.S.No.565/1996. It was noticed that both the issues have been affirmed in the previous suit in favour of defendant No.1 herein and in the judgment in O.S.No.565/1996, it was recorded that the Will left behind by Sri B.N.Shamanna bequeaths the property in question in favour of defendant No.1 herein. Accordingly, the writ petition was allowed and issues No.2 and 3 were deleted.

5. That being the position, learned counsel for defendant No.1 submitted that having regard to the two issues being deleted, where the plaintiffs wanted to re-open the question as to whether the suit schedule property is the self acquired property of the defendant and whether the defendant is required to prove the due execution of the Will left behind by Sri B.N.Shamanna, the other prayers become redundant.

6. Learned counsel would also submit that the mother of the plaintiffs (defendant No.2 herein) having contested the P & SC case and the suit in O.S.No.565/1996 and having failed, it would not be permissible for the plaintiffs to contend that they were not parties to the P & SC case and the suit and therefore they are entitled to file a fresh suit seeking to raise a challenge to the grant of Succession Certificate in favour of defendant No.1 herein. In this regard, learned counsel for defendant No.1 seeks to place reliance on a recent decision of the Apex Court in the case of Ramakrishna (dead) through LRs /vs./ Pillamma and others in Civil Appeal No.14275/2024 dated 10.12.2024.

7. Per contra, learned counsel for the plaintiffs would contend that the trial court has rightly held that the defendant No.1 is seeking to raise a contention that the present suit is hit by the principles of resjudicata, the same cannot be considered without recording evidence to find out whether the dispute/issues in the suit have been earlier considered in a previous suit or proceedings and whether it is between the same parties.

8. Heard the learned counsel for defendant No.1 and learned counsel for the plaintiffs and perused the petition papers.

9. Since an application filed under Order VII Rule 11 can be considered by looking at the plaint only, this Court finds from the plaint that the plaintiffs are contended that they were not aware of the execution of the alleged Wills; that the plaintiffs being successors of late Erappa are entitled for a share in the suit schedule property; that the plaintiffs were not parties to any of the proceedings initiated earlier and they had no opportunity to putforth their case before any court of law. It is contended that plaintiffs No.2 and 3 were minors even at the time of granting Probate and plaintiff No.1 had just attained majority and he was not represented in the P & SC case. It is noticeable that in the case of Ramakrishna (supra), the Apex Court has held that such a contention cannot be countenanced at this length of time, when it was clear that all the members of the family were represented in the suit. No plea was taken in the earlier proceedings with respect to non-joinder of proper and necessary parties. Applying the same principles, this Court has to hold that when the mother of the plaintiffs has contested the matter, both in the P & SC case as well as the suit in O.S.No.565/1996, it cannot be contended by the plaintiffs that they are entitled to seek re-opening of the cases that have attained finality in the year 1986 and 2011. It is not the case of the plaintiffs that the proceedings in the P & SC case are nullity in the eye of law. Therefore, merely because the plaintiffs contend that they were minors and they were not parties to the proceedings, they will not be permitted to seek re-opening of the case in P & SC No.19/1982. It is also to be noticed that the plaintiffs have cleverly decided not to seek re-opening of the suit in O.S.No.565/1996, since it was a suit filed at the hands of their mother, defendant No.2 herein. The plaintiffs were all majors at the time of filing of the said suit at the hands of their mother and they were watching the proceedings till the Regular First Appeal filed by their mother was dismissed by this Court on 16.11.2011. The declaration of title sought by the plaintiffs mother having failed, the present suit is filed by the plaintiffs to seek the same relief.

10. It would be apt to notice the observations of the Apex Court in the case of Ramakrishna (supra), which would apply on all fours to this matter:

"A suit for partition would lie among the co-owners, who are presumed to be in joint possession. We are dealing with a case where the possession has been taken over decades ago and a feeble attempt has been made after challenging the earlier suit by making one of the sisters to file a suit subsequently, duly supported by others. It is a case where the plaintiff, who lost the suit along with

other family members, joined hands and made a fresh attempt to get the property back.

Thus, continuation of the proceedings would amount to travesty of justice. Therefore, we have no hesitation in setting aside the order passed in the impugned judgment."

11. In the present case, it is required to be noticed that in a suit filed by the plaintiffs mother in O.S.No.565/1996, which was decided by the trial court on 22.02.2006, it was held that the court is not required to ascertain the validity of the Probate. That issue has been decided in the P & SC case. It was held that Section 227 of the Indian Succession Act, 1925 provides that Probate of a Will when granted establishes the Will from the date of death of the testator and renders valid the intermediate acts of the executors as such. Since Probate was granted, the factum of due execution was proved and there is no need to discuss the evidence on that aspect of the matter again. Further, this Court in the RFA has held that the contention of the learned counsel appearing for the plaintiff/appellant that the plaintiff was not aware of the execution of the Wills by her father in favour of the plaintiff and the defendant is falsified by virtue of the fact that the plaintiff herself had contested the matter by filing the statement of objections in the P & SC case. It was also held that the order passed in P & SC No.19/1982 and the certificate issued thereunder were not challenged by the plaintiff and they have become final. That being the position, this Court is of the considered opinion that if the present suit is permitted to be continued, it would amount to travesty of justice.

12. Consequently, the Civil Revision Petition is allowed. The impugned order in I.A.No.6 under Order VII Rule 11(a) and (d) of CPC is hereby set aside and the I.A. No.6 is allowed. Consequently, the plaint in O.S.No.8855/2012 on the file of the learned XXIV Addl. City Civil and Sessions Judge, Bangalore City, stands rejected.

Ordered accordingly.