

(2015) 11 KAR CK 0141
In the Karnataka High Court
Case No : M.F.A. No. 1025 of 2014 (ISA)

Ramakka and Others

APPELLANT

Vs

Nil

RESPONDENT

Date of Decision : 27-11-2015

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 41 Rule 27
Succession Act, 1925 — Section 276, 372

Citation : (2015) 11 KAR CK 0141

Hon'ble Judges : N.K. Patil and P.D. Waingankar, JJ.

Bench : Division Bench

Advocate : T. Srinivasan, Advocate, for the Appellant

Final Decision : Allowed

Judgement

P.D. Waingankar, J.—This appeal by the appellants is against the order dated 30.11.2013 in P and S.C. No. 3/2013 whereby the application filed by the appellants for grant of probate of the Will came to be rejected by the Principal Civil Judge (Sr. Dn.), Bangalore Rural District, Bangalore.

2. The case of the appellants before the Court below is as under:

One Chikkaramaiah Reddy, S/o. Muniswamy Reddy of Doddakannahalli village, Varthur Hobli of Bangalore died on 06.11.2010 leaving behind a Will dated 11.02.2004 executed by him, whereby he bequeathed all his immovable properties and bank deposits as shown in the schedule to the petition in favour of the appellants, since he had no issues and his wife predeceased him. Petitioner No. 1-Ramakka was his fostered daughter. She is the daughter of Thimmappa, the elder brother of the testator Chikkaramaiah Reddy. The petitioner No. 2-Venkatesha is the son of petitioner No. 1. Petitioner No. 3-Yeshaswini is the daughter of Vasantha, the sister of petitioner No. 1-Ramakka. Both Ramakka and Vasantha had married to one Venugopal Reddy. The testator Chikkaramaiah Reddy died on 06.11.2010 leaving behind his last Will dated 11.02.2004 in

favour of the petitioners. After the death of testator, the petitioners produced the Will before the Tahasildar, K.R. Puram and requested to enter all the immovable properties shown in the Will in their names. The Tahasildar gave an endorsement calling upon them to produce the probate of the Will issued by the Competent Court. Similarly, when the petitioners approached the bank authorities to collect the amount lying in the account of deceased-Chikkaramaiah Reddy, the bank authorities gave them an endorsement calling upon them to produce the probate of the Will. Therefore, the petitioners filed a petition for grant of a probate of the Will before the Principal Civil Judge, (Sr. Dn.), Bangalore Rural District, Bangalore.

The Court issued a citation in "Samyuktha Karnataka" Kannada daily newspaper calling for objections for the grant of probate. No one came forward to oppose the petition.

In order to prove the due execution of the Will, petitioner No. 1 got herself examined as PW. 1, petitioner No. 2 as PW. 2, the mother and minor guardian of petitioner No. 3 Vasantha as PW. 3, Ramachandraiah and Srinivasa Reddy, the attestors to the Will were examined as PW. 4 and PW. 5 and the scribe of the Will P.G. Ramesh, Advocate was examined as PW. 6. The Original Will was marked as Ex. P1, death certificate of the testator as Ex. P2, endorsement given by the Canara Bank and Tahasildar, K.R. Puram, were marked as Exs. P3 and P4, Bank pass books were marked as Exs. P6 to P7.

Upon hearing the counsel appearing for the petitioners and on appreciation of evidence, the Court below dismissed the petition for grant of the probate by the impugned judgment on the ground that the mother of petitioner No. 3 Yeshaswini is not made as party to the petition and the petitioners have failed to furnish the proper information regarding "A" and "B" schedule properties shown in the petition. Aggrieved by the rejection of the petition, this appeal is preferred.

3. We have heard the learned counsel for the appellants. Perused the records and also an application filed under Order 41 Rule 27 of CPC along with an affidavit for production of additional documents.

4. The submission of the learned counsel for the appellants is that the learned Civil Judge has wrongly held that the mother of petitioner No. 3 is not made as party though her name is shown as guardian of the minor petitioner No. 3, who has been appointed as executor of the Will. Further, the learned counsel would submit that though the documents in respect of immovable properties shown in the Will were not produced, they have been produced in this appeal along with an application under Order 41 Rule 27 of CPC, which may kindly be considered to dispose of the appeal on merits. It is also contended that the learned Principal Civil Judge has failed to frame proper points for consideration, the learned judge failed to understand the scope of the petition for grant of probate and the issues to be framed in a petition for grant of the probate and thereby the learned judge lost the track and dismissed the petition. Hence, the learned counsel sought to set aside the impugned judgment, allow the petition and grant probate of the

Will so as to enable the petitioners to inherit the properties shown in the Will left behind by deceased Chikkaramaiah Reddy.

5. Having heard the submission made by the learned counsel for the appellants and on perusal of the entire material on record including the documents sought to be produced along with I.A. No. 1/2014, an application under Order 41 Rule 27 of CPC, the point that would arise for our consideration is as under:

"Whether the impugned judgment calls for our interference?"

6. At the outset, it has to be stated that Section 276 of the Indian Succession Act, 1925 speaks about the petition for probate. As such, the petitioner ought to have filed a petition under Section 276 of Indian Succession Act, 1925 instead of 372 of the Act. Be that as it may, wrong quoting of the provision of law cannot be a ground to reject the petition for grant of probate.

7. It is relevant to note that the learned judge framed the following points for consideration in order to decide a petition for grant of probate and answered the points in negative.

8. The very points for consideration framed by the learned judge were uncalled for in a petition for grant of probate of the Will. In a probate proceedings, the only point for consideration would be whether the due execution of the Will is proved by legatee under the Will. The learned Judge instead of framing the relevant point for consideration has framed the points for consideration which were not relevant for disposal of a petition for grant of probate. It is needless to say that the probate Court cannot go into the issues relating to the nature of the acquisition of the property shown in the Will, as to the share of the testator in the property shown in the Will or any other disputes. They are all extraneous in a petition for the grant of probate. Unless the point regarding the due execution of the Will in question is framed, a probate petition cannot be decided at all. Thus, the scope in a probate petition is very limited. That is to say, whether petitioners prove the due execution of the Will. If the probate Court holds that the execution of the Will is duly proved, it has to allow the petition and grant probate with a true copy of the Will annexed thereto. Probate is nothing but a certificate given by a Competent Court of law declaring that the Will has been duly proved before the Court. Once the certificate i.e., probate is granted and if the validity of the very same Will is questioned in any other proceeding, the said issue need not be gone into by that Court once the probate of the Will is granted by the probate Court is produced in those proceedings. Once the probate is produced before the competent authorities, the authorities are bound to carry out the wishes of the testators expressed in the Will. If a particular property mentioned in the Will does not stand in the name of testator, despite the grant of the probate, the concerned authorities are not bound to enter the name of the legatee under the Will to that property which does not stand in the name of the testator, though it is shown in the Will. It is not open for the probate Court to make an enquiry whether the properties shown in the Will are standing in the name of the testator

or not or for that matter how the testator became the owner of those properties. All these matters are extraneous in a probate proceedings. Therefore, it is suffice to say that the learned Civil judge ought to have framed the point for consideration as to whether the execution of the Will in question has been duly proved by the petitioners and after recording the evidence, he ought to have answered regarding the validity and due execution of the Will. Instead of answering the same, the learned judge made futile attempt to enquire into the nature of the acquisition of the properties by the testator etc.,

9. Be that as it may, since the Appellate Court can reappreciate the entire evidence, we deem it just and proper to frame the relevant point for consideration and answer the same on the basis of evidence already recorded. The point for consideration is as under:

"Whether the petitioners prove the due execution of the Will dated 11.02.2004 by late Chikkaramaiah Reddy?"

10. As we have already stated that in order to prove the case, the petitioners have examined in all 6 witnesses and marked 7 documents. PW. 1 Ramakka, PW. 2-Venkatesh and One Yeshaswini petitioner No. 3 are the beneficiaries under the Will. Petitioner No. 3-Yeshaswini was minor at the time of the execution of the Will and therefore her mother PW. 3 Vasantha is appointed as the executor of the Will, being a minor guardian. PW. 1 to PW. 3 have deposed regarding the Will left behind by the deceased-Chikkaramaiah Reddy, whereby he bequeathed all his properties shown in the "A" and "B" schedule in favour of the beneficiaries. They have produced the Original Will executed by Chikkaramaiah Reddy as per Ex. P1, the death certificate of the deceased-Chikkaramaiah Reddy testator of the Will as per Ex. P2 which discloses that he died on 06.11.2010. PW. 1 to PW. 3 have further deposed that when they produced the copy of the Will before Tahasildar, K.R. Puram and the bank officials to enter their names and to transfer the bank deposits in their names, they were issued with endorsements as per Exs. P4 and P5 to produce probate of the Will and therefore, they filed the petition for grant of probate of the Will.

11. In order to prove the due execution of the Will, the petitioners examined the attestors to the Will Ramachandraiah of Kodthi Village and Srinivasa Reddy of Gunjur village as PW. 4 and PW. 5. Both of them have identified Ex. P1 is the original Will executed by deceased Chikkaramaiah Reddy on 11.02.2004 in their presence. They identified the thumb impression of the testator Chikkaramaiah Reddy on Ex. P1. PW. 4 and PW. 6 have identified their signature on the Will Ex. P1 at Ex. P1(a) and Ex. P1(b) respectively. They have also deposed that the Will was drafted and prepared by an advocate P.G. Ramesh, PW. 6 as per the instructions of the testators and as desired by him. The petitioners have also examined the scribe of the Will P.G. Ramesh, Advocate as PW. 6 who inturn has deposed that the Will was prepared as per the instructions of the testators by him in his office and it was executed in his office by the testator Chikkaramaiah Reddy in the presence of witnesses P.Ws. 4, 5 and 6. All of them have deposed

that the testator was hale and healthy at the time of the execution of the Will. Thus, the evidence placed on record by the petitioners, especially as that of PW. 4 to PW. 6 is sufficient to hold that the petitioners have proved the due execution of Ex. P1 the Will dated 11.02.2004 by late Sri. Chikkaramaiah Reddy and as such the petitioners being the beneficiaries/legatees under the Will are entitled for the grant of probate.

Accordingly, the appeal is allowed. The judgment dated 30.11.2013 in P and S.C. No. 3/2013 passed by Principal Civil Judge (Sr. Dn.), Bangalore Rural District, Bangalore, is hereby set aside.

The petition filed by the appellants/petitioners in P and S.C. No. 3/2013 before Principal Civil Judge (Sr. Dn.), Bangalore Rural District, Bangalore, is hereby allowed. The petitioners are entitled for grant of probate of the Will Ex. P1 dated 11.02.2004 with a copy of the Will annexed thereto. The learned Principal Civil Judge (Sr. Dn.) is hereby directed to issue the probate with a copy of the Will annexed thereto in favour of the petitioners by collecting the necessary Court fees based on the market valuation of "A" and "B" schedule property. If the petitioners are ready and willing to pay the maximum Court fee of Rs. 49,500/-, no enquiry needs to be done regarding the valuation on the property.