

Search



Home > Case Status > Case Status

back

Status: Pending

Case Number: RFA 1796/2012
(KAHC010437402012)

Classification: RES

Date of Filing: 17/10/2012
15:42:02

Petitioner: SRI V SIVA PRASAD
REDDY

Petitioner Advocate: KARTHIK
V

Respondent: SMT PILLAMMA

Respondent Advocate: M S
VARADHARAJAN & SANTOSH

Filing No.: RFA 1796/2012

Judge: SACHIN SHANKAR
MAGADUM

Last Posted For: FURTHER
HEARING

Last Date of Action: 24/02/2026

Last Action Taken:
ADJOURNED

Next Hearing Date:

Daily Orders: RFA 1796/2012

1	24/02/2026	SACHIN SHANKAR MAGADUM	ADJOURNED
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The present appeal is filed under Section 96 of the Code of Civil Procedure, 1908, (for short "CPC") assailing the judgment and order dated 25.07.2012 passed in O.S.No.718/2010 arising out of P & SC No.21/2005 by the learned District Judge, whereby the petition filed under Section 272 of the Indian Succession Act, 1925 (for short "Act 1925") seeking grant of probate came to be dismissed.

2. During the course of hearing, learned counsel appearing for the respondents raised a preliminary objection as to the maintainability of the present appeal under Section 96 CPC. It was contended that the impugned adjudication arises out of a probate proceeding under the Act 1925 and therefore, the proper appellate remedy would lie under Section 299 of the Act 1925, which provides for an appeal to the High Court from every order passed by the District Judge under the Act 1925. It was therefore argued that the present appeal, filed as a Regular First Appeal under Section 96 CPC, is not maintainable.

3. In order to examine the said objection, it becomes necessary to advert to the relevant statutory provisions: Section 295 of the Act 1925, provides that when probate proceedings become contentious, the proceedings shall take, "as nearly as may be, the form of a regular suit according to the provisions of the Code of Civil Procedure." The expression "as nearly as may be" indicates that the procedural framework of a civil suit is adopted for purposes of trial, such as framing of issues, recording of evidence and hearing of arguments. However, such procedural assimilation does not convert the proceeding into a civil suit in the substantive sense. Section 299 of the Act 1925, provides that every order made by a District Judge under the powers conferred by the Act shall be subject to appeal to the High Court. Thus, ordinarily, an adjudication rendered in probate jurisdiction is treated as an order appealable under the special statute.

The Karnataka Probate Rules, 1964 framed by the High Court provide that when a probate proceeding becomes contentious, the matter may be numbered as an original suit and tried in accordance with the procedure applicable to civil suits. In certain situations, a decree format may also be drawn. However, it is well settled that rules framed under a statute cannot override the parent statute. The rules operate subject to the Act 1925 and cannot alter the substantive character of the jurisdiction exercised by the probate court.

4. Therefore, if a probate Court, even after contest, confines its enquiry strictly to matters within testamentary jurisdiction, such as due execution and attestation of the Will, testamentary capacity of the testator, and absence of suspicious circumstances the adjudication remains an order under the Act 1925. In such cases, the appellate remedy is governed by Section 299 of the Act 1925.

5. Learned counsel for the respondents has placed reliance on the Division Bench judgment of this Court in *Miss Pressy Pinto v. Rony Maxim Pinto*, to contend that the present appeal under Section 96 CPC is not maintainable. In the said decision, the Division Bench, while examining the scheme of the Act 1925 in conjunction with Section 2(2), Section 96 and Order XLI Rule 1 of the CPC, observed that once probate proceedings become contentious and are tried in the form of a regular suit, culminating in adjudication of rights between the parties and the drawing of a decree, the adjudication answers the description of a "decree" within the meaning of Section 2(2) CPC. Consequently, the Division Bench held that where a decree is drawn in such contentious probate proceedings, the remedy of a Regular First Appeal under Section 96 CPC would lie. The Division Bench thus emphasised that the decisive test is the nature of the adjudication and the decree drawn pursuant to such adjudication.

6. However, the subsequent Full Bench judgment of this Court in *G. Somashekar vs. Jayamma*, examined the nature and character of contentious probate proceedings from the standpoint of the statutory scheme under the Act 1925. The Full Bench was specifically called upon to consider whether, once a petition for grant of probate or letters of administration filed under Section 270 of the Act 1925, becomes contentious under Section 295 of the Act 1925, the proceeding would assume the character of a regular civil suit so as to attract the provisions relating to valuation and court fee applicable to ordinary civil suits under the Karnataka Court Fees and Suits Valuation Act, 1958, particularly the proviso to Article 11(I)(iii) of the Schedule thereto. The Full Bench, after analysing the statutory framework, held that even when a probate proceeding becomes contentious and adopts the procedural form of a suit under Section 295 of the Act 1925, the proceeding does not lose its essential character as a probate proceeding under the special statute. It was clarified that Section 295 of the Act 1925 imports only the procedural form of a civil suit and does not transform the proceeding into a civil suit in the substantive sense. Consequently, the Full Bench held that the subject matter of such a petition continues to be governed by the provisions applicable to probate proceedings and must be valued accordingly for purposes of court fee.

7. The Full Bench thus authoritatively clarified that despite contest, a proceeding initiated under the Act 1925 continues to remain a probate proceeding distinct from an ordinary civil suit, and the mere adoption of the procedural framework of a suit does not alter its statutory character. At the same time, the Full Bench did not lay down that in every case the adjudication rendered in such proceedings must invariably be treated as a statutory order irrespective of the nature of findings recorded by the Court. The principle emerging from the Full Bench decision is that Section 295 of the Act 1925 imports procedural form without enlarging the substantive jurisdiction of the probate court.

8. In view of this authoritative pronouncement, the proposition emerging from the Division Bench decision in *Miss Pressy Pinto* (supra), to the extent it suggests that every contested probate proceeding necessarily culminates in a decree appealable under Section 96 CPC, cannot be treated as laying down the correct position of law. The Full Bench has clarified that the source of jurisdiction remains the Act 1925, and the proceeding continues to be one under the special statute notwithstanding the procedural form of a suit. The Full Bench clarifies that a contentious probate proceeding does not automatically become a civil suit merely because it is tried in the form of one. However, if in a given case the probate court travels beyond the limits of testamentary jurisdiction and renders findings conclusively determining proprietary rights between the parties and grants declaratory relief regarding ownership, the adjudication may assume the character of a decree within the meaning of Section 2(2) CPC. In such exceptional situations, the appellate remedy would depend upon the true nature and substance of the adjudication rather than the label attached to the proceeding.

9. Thus, the guiding principle emerging from the precedents is that the source of jurisdiction remains the Act 1925, but the character of the adjudication ultimately determines the appellate remedy. Where the probate court confines itself to testamentary validity, the decision remains an order appealable under Section 299 of the Act 1925. Where, however, the court expands the enquiry and conclusively determines proprietary civil rights, the adjudication answers the description of a 'decree' attracting Section 96 CPC.

10. Thus, position stands on a different footing where the probate court travels beyond the limited scope of testamentary enquiry and undertakes adjudication of substantive civil rights between the parties. If the court, while adjudicating the probate petition, examines title documents, interprets partition deeds, determines the nature of the property, adjudicates possession and enjoyment, and ultimately declares ownership rights of the parties, the adjudication transcends the limited jurisdiction of a probate court.

11. In such circumstances, the decision ceases to be a mere statutory order under the Act 1925 and assumes the character of a civil adjudication determining proprietary rights. Section 2(2) of CPC defines a "decree" as the formal expression of an adjudication conclusively determining the rights of the parties with regard to matters in controversy. When the adjudication rendered by the probate court conclusively determines such rights, it answers the description of a decree within the meaning of Section 2(2) CPC.

12. At this juncture, it is necessary to examine whether Rule 13 of the Karnataka Probate Rules, 1964 which contemplates that contentious probate proceedings may be tried in the form of a suit and culminate in drawing of a decree, stands in conflict with Section 299 of the Act 1925, which provides that every order passed by the District Judge under the Act 1925 shall be subject to appeal to the High Court. A careful reading of the statutory scheme indicates that no such conflict exists. Section 295 of the Act 1925 expressly provides that when probate proceedings become contentious, the proceedings shall take, "as nearly as may be," the form of a regular suit according to the provisions of the CPC. Rule 13 of the Karnataka Probate Rules, 1964 merely operationalises this statutory mandate by prescribing the procedure to be followed once a caveat is entered and the matter becomes contentious, including framing of issues, recording of evidence and pronouncement of judgment in the manner of a civil suit. Thus, Rule 13 does not enlarge or alter the jurisdiction of the probate court; it merely regulates the procedural mechanism through which such contentious proceedings are to be tried.

13. Section 299, on the other hand, deals with the appellate remedy against orders passed by the District Judge under the Act 1925. The fact that a decree may be drawn in a contentious probate proceeding pursuant to the procedural scheme under Section 295 of the Act 1925 and the Probate Rules does not automatically alter the substantive nature of the adjudication contemplated under the statute. Rules framed by the High Court are subordinate legislation and cannot override the parent enactment. Therefore, the drawing of a decree in accordance with Rule 13 cannot by itself elevate every probate adjudication into a decree for purposes of appeal.

14. The true test lies in applying the well-established principle of "substance over form." Where the probate court confines its enquiry to the limited testamentary questions, such as due execution of the Will, testamentary capacity and removal of suspicious circumstances the adjudication remains one under the Act 1925 notwithstanding the procedural form adopted under Section 295 and Rule 13. In such cases, even if a decree is drawn, the decision in substance remains an order under Section 299 of the Act 1925, and the appeal lies in the manner provided under that provision.

15. However, where the probate court travels beyond the statutory limits of testamentary jurisdiction and undertakes a comprehensive adjudication of civil proprietary rights by interpreting title documents, determining the effect of partition, adjudicating possession or declaring ownership of the property, the character of the adjudication changes. In such circumstances, though the proceeding originated under the Act 1925, the court effectively exercises civil jurisdiction and renders a determination conclusively affecting civil rights. Such adjudication answers the definition of a "decree" under Section 2(2) of the CPC, and the appellate remedy would accordingly fall under Section 96 CPC.

16. Thus, Rule 13 of the Karnataka Probate Rules, 1964 read with Section 295 of the Act 1925 is not in conflict with Section 299 of the Act 1925. The former provisions regulate procedure, while Section 299 governs the appellate remedy in respect of orders passed within probate jurisdiction. Whether the adjudication in a given case is to be treated as an "order" or a "decree" ultimately depends upon the substance and scope of the determination rendered by the probate court and not merely upon the procedural form in which the judgment is expressed.

17. In the present case, a careful examination of the impugned judgment reveals that the Probate Court did not restrict its inquiry to the validity of the Will. The learned Judge undertook an extensive examination of the partition deed dated 18.02.1989, considered the Panchayat Palapatti, scrutinised the RTC records, and recorded findings that a partition had already taken place between the testator Subbaiah and his son. The Court further examined the evidence of D.W.2 and recorded categorical findings regarding possession and cultivation of the suit schedule property, observing that the plaintiff's husband was in possession and had grown eucalyptus trees on the land. The Court ultimately proceeded to declare that the plaintiffs were the absolute owners of the suit schedule property.

18. Such findings clearly demonstrate that the probate court went far beyond the limited enquiry contemplated under Sections 272 and 295 of the Act 1925. By interpreting title documents, determining the effect of partition, examining revenue records and adjudicating possession, the court undertook a comprehensive determination of proprietary civil rights between the parties.

19. Once the court renders findings determining ownership and proprietary entitlement, the adjudication squarely falls within the definition of a decree under Section 2(2) CPC, as it conclusively determines the rights of the parties with regard to the property in controversy.

20. Therefore, though the proceeding originated as a petition under Section 272 of the Act 1925, the nature of the adjudication rendered by the trial court is not confined to testamentary jurisdiction. It constitutes a civil adjudication determining proprietary rights. Consequently, the impugned decision cannot be treated merely as an "order" under Section 299 of the Act 1925.

Conclusions:

21. From the foregoing discussion of the statutory provisions, Probate Rules, and the judicial precedents referred to above, the following conclusions emerge.

(i) a petition for grant of probate filed under Section 272 of the Act 1925 remains a proceeding under the special statute. Even when such a petition becomes contentious, Section 295 of the Act 1925 only imports the procedural form of a regular civil suit for purposes of trial. The expression "as nearly as may be" clearly indicates that the legislature intended procedural assimilation and not substantive transformation of the proceeding into a civil suit.

(ii) Section 299 of the Act 1925 provides the statutory appellate remedy against orders passed by the District Judge exercising probate jurisdiction. Ordinarily, therefore, an adjudication rendered in a probate proceeding, whether granting or refusing probate, remains an order under the Act 1925, and the appeal would lie in the manner provided under Section 299 of the Act 1925.

(iii) The Karnataka Probate Rules, 1964 framed by the High Court, including provisions such as Rule 13, merely regulate the procedure to be followed once a caveat is entered and the proceeding becomes contentious. These Rules cannot override the parent statute. The drawing of a decree in accordance with procedural rules does not automatically convert every probate adjudication into a decree for purposes of appeal.

(iv) The Full Bench of this Court in *G. Somashekar vs. Jayamma* (supra) has authoritatively clarified that even when probate proceedings become contentious and adopt the procedural form of a civil suit under Section 295, the proceeding does not cease to be a probate proceeding under the special statute. The adoption of civil procedure does not alter the essential character of the jurisdiction exercised by the probate court.

(v) However, the true character of an adjudication cannot be determined merely by the procedural label attached to it. The governing principle is "substance over form." If the probate court confines its enquiry strictly to testamentary questions, such as the due execution of the Will, testamentary capacity of the testator, and absence of suspicious circumstances, the adjudication remains within probate jurisdiction and constitutes an order appealable under Section 299 of the Act 1925.

(vi) Where the probate court, while dealing with a contentious petition, travels beyond the limited scope of testamentary enquiry and undertakes a comprehensive adjudication of civil proprietary rights by examining title documents, determining the effect of partition, adjudicating possession, or declaring ownership of the property, the adjudication ceases to be merely testamentary in nature. In such circumstances, the decision conclusively determines civil rights between the parties and answers the definition of a "decree" under Section 2(2) of the CPC.

(vii) In the present case, the impugned judgment clearly demonstrates that the Probate Court did not restrict itself to the validity of the Will. The Court interpreted the partition deed dated 18.02.1989, examined the Panchayat Palapatti, scrutinised the RTC records, recorded findings regarding possession and cultivation of the property,

and ultimately declared the plaintiffs to be the absolute owners of the suit schedule property. Such findings constitute a conclusive determination of proprietary rights between the parties.

22. Therefore, the impugned adjudication cannot be treated merely as an order under Section 299 of the Act 1925. In substance and effect, it constitutes a civil decree determining the rights of the parties within the meaning of Section 2(2) CPC.

23. In view of this authoritative pronouncement, the proposition that every contested probate proceeding necessarily culminates in a decree cannot be accepted as an absolute rule. To that extent, the broad observation in the Division Bench judgment in Miss Pressy Pinto (supra) must be read subject to the clarification made by the Full Bench. The Full Bench has settled that the essential character of the proceeding continues to remain one under the Act, 1925 and merely because the matter is tried in the form of a suit or a decree format is drawn pursuant to procedural rules, it does not automatically convert the adjudication into a decree for the purposes of appeal.

24. Nevertheless, the Full Bench does not preclude the possibility that in a given case the probate court may travel beyond the limited confines of testamentary jurisdiction and render findings determining substantive civil rights between the parties. In such exceptional situations, where the court adjudicates questions of title, ownership, partition, or possession and grants declaratory relief independent of the grant or refusal of probate, the adjudication may assume the character of a decree within the meaning of Section 2(2) CPC. In such cases, the maintainability of an appeal under Section 96 CPC would depend upon the true nature and substance of the adjudication.

25. Therefore, the impugned adjudication cannot be treated merely as an order under Section 299 of the Act 1925. In substance and effect, it constitutes a civil decree determining the rights of the parties within the meaning of Section 2(2) CPC.

26. The apparent conflict between the Probate Rules and Section 299 of the Act, 1925 stands resolved when the statutory scheme is read harmoniously. Section 295 merely imports the procedural form of a civil suit when probate proceedings become contentious, without converting the proceeding into a civil suit in the substantive sense. Section 299, on the other hand, governs the appellate remedy in respect of orders passed by the District Judge exercising probate jurisdiction. The Probate Rules framed by the High Court operate subject to the provisions of the parent statute and cannot either curtail or enlarge the substantive remedies provided under the Act. Consequently, the nature of the appellate remedy ultimately depends upon the true character of the adjudication rendered by the probate court. If the court confines its enquiry to the testamentary aspects, such as the validity, due execution and attestation of the Will, the adjudication remains an order under the Act 1925, appealable under Section 299. However, if the court travels beyond the limits of testamentary jurisdiction and conclusively determines title, ownership or other proprietary civil rights between the parties, the adjudication assumes the character of a decree within the meaning of Section 2(2) CPC, and an appeal under Section 96 of the CPC would be maintainable.

27. In view of the above discussion, this Court is of the considered opinion that the impugned adjudication amounts to a decree within the meaning of Section 2(2) CPC, and therefore an appeal under Section 96 CPC is maintainable.

28. Accordingly, the preliminary objection raised by the respondents regarding maintainability of the appeal is rejected. The appeal shall now be listed for hearing on merits.

List this matter for further hearing on 10.04.2026.

Last Updated On: 2026-03-09 17:07:55

2	<u>17/02/2026</u>	SACHIN SHANKAR MAGADUM	ADJOURNED
	Re-list this matter on 24.02.2026. Last Updated On: 2026-02-17 15:22:29		
3	<u>09/02/2026</u>	SACHIN SHANKAR MAGADUM	ADJOURNED