



IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 6TH DAY OF JUNE, 2025

PRESENT

THE HON'BLE MRS. JUSTICE ANU SIVARAMAN

AND

THE HON'BLE DR. JUSTICE K.MANMADHA RAO

MISCELLANEOUS FIRST APPEAL NO. 8090 OF 2024 (ISA)

BETWEEN:

SRI. JAYARAM B.S.
S/O LATE SANJEEVAIAH B.T.
AGED ABOUT 46 YEARS
RESIDING AT No.6
BILLINAKOTE VILLAGE
SOMPURA HOBLI
NELAMANGALA TALUK
BENGALURU RURAL DISTRICT

...APPELLANT

(BY SRI. SANDESH C.R., ADVOCATE FOR
SRI. JAYARAJ D.S., ADVOCATE)

AND:

NIL

...RESPONDENT

THIS MFA IS FILED UNDER SECTION 384 INDIAN SUCCESSION ACT, 1925 AGAINST THE ORDER DATED 14.08.2024 PASSED IN P AND S.C.No.32/2023 ON THE FILE OF THE IX ADDITIIONAL DISTRICT AND SESSIONS JUDGE, BENGALURU RURAL DISTRICT, BENGALURU. DISMISSING THE PETITION FILED UNDER SECTION 276 OF INDIAN SUCCESSION ACT, 1925 AND ETC.





THIS APPEAL, COMING ON FOR ORDERS, THIS DAY,
JUDGMENT WAS DELIVERED THEREIN AS UNDER:

CORAM: HON'BLE MRS. JUSTICE ANU SIVARAMAN
and
HON'BLE DR. JUSTICE K.MANMADHA RAO

ORAL JUDGMENT

(PER: HON'BLE MRS. JUSTICE ANU SIVARAMAN)

This appeal is preferred against the order dated 14.08.2024 of the IX Additional District and Sessions Judge, Bengaluru Rural District, Bengaluru in P & SC No.32/2023.

2. The appellant is the sole legatee named in the Will of his father late B. T. Sanjeevaiah. The Will dated 20.01.2020 was duly proved by the appellant before the Probate Court as is evident from the order of the Probate Court. However, on the contention that the appellant was a legatee in the bid and not an executor appointed under the Will, the Probate Court has declined to grant probate. It is stated that Section 222 of the Indian Succession Act, 1925 provides that the Probate shall be granted only to an executor appointed by the Will and since the appellant is only the beneficiary of the Will and not the executor, probate cannot be granted.



3. Learned counsel for the appellant submits that the appellant is a son of the executor of the Will and that a reading of the Will would clearly show that the property in question is bequeathed to him by his father. The property stands transferred to him and vests in him by virtue of the Will as an absolute right holder. It is submitted that Section 222 of the Indian Succession Act, 1925 specifically provides that the appointment as executor may be express or by necessary implication.

4. Learned counsel also places reliance on judgment of co-equal bench of this Court in MFA No.4477/2023 which has held that the executor of the Will by express appointment or necessary implication can maintain an application for probate. Relying on an earlier decision of another co-ordinate bench of this Court in MFA No.3238/2019, it was held that the sole legatee of a Will would be executor by necessary implication. It was further held that though a probate is not required for a Will executed by a Hindu, there is no bar to apply or to obtaining a probate even in case the testator is a Hindu.



5. We have considered the contentions advanced on either side. It is an admitted fact that the Will was executed on 20.01.2020. The appellant is a son of the testator. In the Probate Court as well as before this Court, notice was taken out by paper publication and there is no objector who has entered appearance. The execution of the Will has been duly proved by the appellant by examining two attesting witnesses. The Probate Court has also observed all these matters and has declined relief only on the ground that the appellant is not an executor named in the Will.

6. Having considered the contentions advanced, we are of the opinion that since a person who is an executor of the Will, by express appointment or by necessary implication can maintain an application for probate, the sole legatee, in the instant case and specifically in view of the wording of the Will was entitled to maintain this application for probate.



7. In the result:-

(i) The appeal is ***allowed***.

(ii) The order dated 14.08.2024 of the IX Additional District and Sessions Judge, Bengaluru Rural District, Bengaluru in P & SC No.32/2023, is set aside.

(iii) There will be a direction to the probate Court to grant probate of the Will of Sri. B. T. Sanjeevaiah dated 20.01.2020 in due form to the appellant, forthwith.

**Sd/-
(ANU SIVARAMAN)
JUDGE**

**Sd/-
(DR.K.MANMADHA RAO)
JUDGE**

RAK
List No.: 1 Sl No.: 29