

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

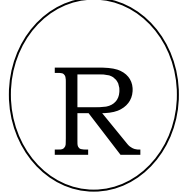
DATED THIS THE 18TH DAY OF SEPTEMBER 2017

PRESENT

THE HON'BLE MR. JUSTICE H.G.RAMESH

AND

THE HON'BLE MRS. JUSTICE K.S.MUDAGAL



MICELLANEOUS FIRST APPEAL NO.3726/2017 (ISA)

BETWEEN:

1. V.GOVINDA RAJU
S/O LATE VENKATAPPA
AGED ABOUT 50 YEARS
RESIDING AT NO.334
H.GROUND FLOOR
GOLLAHALLI, VIDYAPEETA POST
KENGARI, BANGALORE-560 060
 2. SMT.INDRA
W/O LATE R.DASHARATH
AGED ABOUT 60 YEARS
R/AT 7/1, SHIVAJI ROAD, 2ND CROSS
VASANTH NAGAR
BANGALORE-560 051
- ...APPELLANTS

(BY SRI ANIL SHEKAR.K.S, ADVOCATE)

AND:

NIL ...RESPONDENT

THIS MFA IS FILED UNDER SECTION 299 OF THE INDIAN SUCCESSION ACT, 1925 AGAINST THE ORDER DATED 28.02.2017 PASSED IN P&SC.NO.305/2016 ON THE FILE OF THE XXXIX ADDITIONAL CITY CIVIL AND SESSIONS JUDGE, BENGALURU CITY DISMISSING THE PETITION FILED UNDER SECTION 276 OF THE INDIAN SUCCESSION ACT AS NOT MAINTAINABLE.

THIS MFA COMING ON FOR ADMISSION, THIS DAY, **H.G.RAMESH J.**, DELIVERED THE FOLLOWING:

J U D G M E N T

H.G.RAMESH, J. (Oral):

Whether Section 213 of the Indian Succession Act, 1925 prohibits grant of *probate* to a Will not covered by Clauses (a) & (b) of Section 57 of the Act? This is the question that requires to be answered in this appeal and it is answered in the negative.

2. This appeal is directed against the order dated 28.02.2017 passed by the Court of XXXIX Additional City Civil and Sessions Judge, Bangalore City dismissing the appellants' petition in P&SC No.305/2016 filed under Section 276 of the Indian Succession Act, 1925 ('the Act') for grant of probate in respect of the Will dated 05.06.2015 as not maintainable.

3. We have heard learned Counsel appearing for the appellants and perused the impugned order. By the impugned order, the trial Court has dismissed the petition on the ground that no probate is required to a Will executed

by a Hindu not covered by Clauses (a) & (b) of Section 57 of the Act.

4. Learned Counsel appearing for the appellants, in support of the appeal, placed reliance on a decision of the Supreme Court in *Balbir Singh Wasu v. Lakhbir Singh* [(2005)12 SCC 503] and referred to the following observations made therein:

"5. The appellant's counsel then contended that Section 213 of the Succession Act which requires an executor to obtain probate before establishing his claim under the Will was not applicable outside the Presidency Towns of Calcutta, Madras and Bombay. Assuming this to be correct, we do not read Section 213 as prohibiting the executor from applying for probate as a matter of prudence or convenience to the courts in other parts of the country not covered by Section 213. Those courts are competent to entertain such applications if made."

5. In the context of the question raised, it is appropriate to refer to Section 213 of the Act:

"213. Right as executor or legatee when established.— (1) No right as executor or legatee can be established in any Court of Justice, unless a Court of competent jurisdiction in India has granted probate of the Will under which the right is claimed, or has granted letters of administration with the Will or with a copy of an authenticated copy of the Will annexed.

(2) This section shall not apply in the case of Wills made by Muhammadans or Indian Christians, and shall only apply—

(i) in the case of Wills made by any Hindu, Buddhist, Sikh or Jaina where such Wills are of the classes specified in clauses (a) and (b) of section 57; and

(ii) in the case of Wills made by any Parsi dying, after the commencement of the Indian Succession (Amendment) Act, 1962 (16 of 1962), where such Wills

are made within the local limits of the ordinary original civil jurisdiction of the High Courts at Calcutta, Madras and Bombay, and where such Wills are made outside those limits, in so far as they relate to immoveable property situated within those limits.”

6. If a Will executed by a Hindu is not covered by Clauses (a) & (b) of Section 57 of the Act, question of application of Section 213(1) of the Act to such a Will does not arise. However, in such a case, there is no prohibition to apply for grant of probate and Section 213 of the Act does not bar a legatee to get a Will probated. Hence, the reasoning of the trial Court in dismissing the petition as not maintainable is not correct. The impugned order dated 28.02.2017 is accordingly set aside and the matter is remitted to the trial Court for reconsideration in accordance with law.

Appeal disposed of.

**Sd/-
JUDGE**

**Sd/-
JUDGE**

nv