

**IN THE COURT OF THE LXXII ADDL. CITY CIVIL
& SESSIONS JUDGE AT MAYO HALL
BENGALURU, (CCH-73)**

Present:

Sri.Abdul-Rahiman. A. Nandgadi,
B.Com, LL.B., (Spl.)
LXXII Addl. City Civil & Sessions Judge, Bengaluru.

Dated this the 3rd day of December, 2021

Civil Misc.No.25018/2012

Petitioners:-

1. Ammayamma,
D/o Sadappa & Muniyellamma,
Aged about 68 years,
R/at Bangalore South Taluk,
Bellandur Village,
Varthur Hobli.
AND OTHERS.

[By Sri. Mohumed Sadiqh B A-Adv]

V/s

Respondent:-

Ramesh @ Parashurama,
Muninanjappa,
Grandson of Smt. Muniyellamma,
Aged about 46 years,
R/at Bilekahalli,
Bannerghatta Road,
Bangalore-560 076.

[By Sri. A. C Patil-Adv]

ORDER.

The Petitioners have filed the Petition U/Sec. 263 of Indian Succession Act, praying to revoke the probate granted on the Will of Muniyellamma, in P&SC No.25046/2008 dtd.04.12.2009.

2. The case of the Petitioners is as under:-

The Petitioner Nos.1 and 2 are the daughters of the Muniyellamma, the Petitioner No.3 is the grand daughter of Muniyellamma, through her son Ramappa, who has died on 09.10.2008. The Respondent is also the grandson of Muniyellamma through her daughter Muniyamma- the Petitioner No.2. Said Muniyellamma had three daughters and two sons viz., Ammaiamma- the Petitioner No.1; Yelamma; Muniyamma – mother of Respondent; Nagaraj; and Ramappa- the father of the Petitioner No.3. Further contends that, Muniyamma was the owner of the Schedule Properties, as the said properties were inherited by her from her father Pete Muniswamappa; and her right of possession was recognized, as the cultivator of the Schedule Properties. The said Muniyellamma died intestate on 18.10.2008. After the death of Muniyellamma,

Schedule Properties were succeeded by her five children. The Respondent suppressing the fact of existence of legal heirs of Muniyellamma, appeared to have forged and fabricated the document alleging to be a Will, said to have been executed by Muniyellamma, had obtained a probate in P&SC No.25046/2008, behind the back and without the knowledge of the Petitioners. Further the Respondent has not made the Petitioners or other heirs of Muniyellamma as party to the probate proceedings. Very recently, they have come to known about granting of the said probate by the Courts of law in P& SC No.25046/2008, as the Respondent starts alleging that, he has been declared as the owner of the Schedule Properties by the Courts of law on the basis of the Will executed by Muniyellamma. On obtaining the certified copy of the probate order and other documents, they came to know that, the said probate is obtained by, suppressing the truth about the existence of the legal heirs of Muniyellamma; and on the basis of fabricated and concocted document -Will, which is created without disclosing the nature or impact of the document to Muniyellamma, when she was unsound and incapable of executing it. Hence prayed to revoke and annul the

probate granted to the Respondent in P&SC No.25046/2008 dtd.04.12.2009.

3. *Notice of the petition was issued to the Respondent. The Respondent has set in his appearance through his counsel on 16.03.2012. In spite of affording sufficient opportunity, the Respondent has failed to file his objections. Hence objections of the Respondent was taken as "Not filed" on 05.12.2012.*

4. *The Petitioners in order to prove their case, Petitioner No.3 was got examined as PW1 and got marked 08 documents as ExP1 to ExP8. PW.1 was cross examined on behalf of the Respondent on 17.01.2020, 05.02.2020 and 27.02.2020.*

The Respondent got himself examined as RW.1 and has not produced any document. RW.1 was cross examined on behalf of the Petitioner on 08.10.2021 and 28.10.2021.

As per the application filed by the Respondent, the records in P&SC No.25046/2008 were called for and the same were received on 08.07.2015.

This matter was initially allotted to CCH-21. Thereafter the same was transferred to this Court on 24.09.2018, as per the Notification bearing No.ADM-1(A) 413/2018 dtd.31.07.2018.

5. *Heard the arguments of learned counsels for the Petitioners and the Respondent, respectively.*

The Learned Counsel for the Petitioner has placed his reliance on two decisions namely; 1) of the Hon'ble High Court of Karnataka in the case of Jagjeevan Prasad V/s Parvathi Bai and Ors., (MFA No.200373/2016 (ISA) D/d 03.02.2020; and 2) of the Hon'ble Apex Court, in the case of Basanti Devi V/s Raviprakash Ramaprasad Jaiswal, (Appeal (Civil) 4896/2007, D/d 12.10.2007).

6. *Percontra, the Learned Counsel for the Respondent has placed his reliance on the decision reported in 2006 SCC Online Kar 714.*

7. *The following points that arise for my consideration are:*

1) Whether the Petitioners show that, they have locus-standi to file the present

petition claiming revocation of grant or probate in P&SC No.25046/2008, dtd.04.12.2009?

2) Whether the Petitioners show that, the Respondent has obtained grant of probate in P&SC No.25046/2008, on suppressing the existence of the legal heirs of Muniyellamma?

3) Whether the Petitioners show just cause for revocation/ annulment of grant of probate in P&SC No.25046/2008, dtd.04.12.2009, as required by law?

4) What order?

8. My findings on the above points are as under:

***Point No.1 : In the Affirmative;
Point No.2 : In the Affirmative;
Point No.3 : In the Affirmative;
Point No.4 : As per final order for the following :***

REASONS

9. Point Nos.1 and 2:-

Since both these points are interrelated to each other, they are taken for joint discussion, in order to avoid repetition and confusion, in the discussion.

The Learned Counsel for the Respondent would contend that, the Petitioners have no locus standi to file the present petition, seeking revocation of the grant of probate to the Respondent on the Will of deceased Muniyellamma, in P&SC No.25046/2008, dtd.04.12.2009.

*Per contra, the Learned Counsel for the Petitioners would firstly contend that, Petitioner No.1 and 2 are the daughters of the Muniyellamma and Petitioner No.3 is the grand daughter of Muniyellamma, so they being the legal heirs are having locus standi to question the grant of probate in respect of the alleged Will said to have been executed by Muniyellamma. He has placed his reliance on the decision **of the Hon'ble Apex Court, in the case of Basanti Devi V/s Raviprakash Ramaprasad Jaiswal, (Appeal (Civil) 4896/2007,***

D/d 12.10.2007), wherein it is observed in Para No.22, as under:-

“It is now well settled that an application for grant of probate is a proceeding in rem. A probate when granted not only binds all the parties before the Court but also binds all other persons in all proceedings arising out of the Will or claims under or connected therewith. Being a judgment in rem, a person, who is aggrieved thereby and having had no knowledge about the proceedings and proper citations having not been made, is entitled to file an application for revocation of probate on such grounds as may be available to him. We are, therefore, of the opinion that the application for revocation of the grant of probate should have been entertained.”

10. Generally whoever has a right to contest grant, can also said to be having locus-standi, to seek revocation of the grant of Probate. Such person has to show that, he has some interest in the estate left by the deceased, whose Will is said to be probated.

10.01. *The test for such determination will be,*

a) whether a person is having an interest in the estate left by the deceased; and

b) whether his right will be displaced, on grant of probate of the Will, said to have been executed by the deceased.

If the answers to the above questions are in the affirmative, then such person will be having locus-standi to seek revocation of grant of Probate.

11. *Applying the above said Principles of law to the instant case at hand, when the Petitioner Nos.1 and 2 being the daughters of Muniyellamma and Petitioner No.3 being the grand daughter of Muniyellamma, will be entitle for intestate succession on the death of Muniyellamma. Therefore they will be having locus standi to seek for revocation of grant of Probate inrespect of the Will, said to have been executed by Muniyellamma.*

*Hence, I am constrained to answer **POINT NO.1 IN THE AFFIRMATIVE.***

12. Secondly, the Learned Counsel for the Petitioners would contend that, the Respondent by suppressing the fact of existence of legal heirs of Muniyellamma, has obtained the grant of probate in P&SC No.25046/2008, dtd.04.12.2009.

13. Coming to ocular evidence, on this point, more specifically,

a) cross examination of RW.1, at Page No.6, Para No.1 to 5 and Page No.7, Para No.1, which read as under:-

I have studied upto 6th Standard. Muniyellamma is my maternal grandmother. Muniyellamma was having 2 sons and 3 daughters namely : Ammaiamma, Yellamma, Muniamma, Nagaraj and Ramappa.

I do not know whether the second daughter of Muniyellamma by name Yellamma has died about 40 years back. Witness volunteers that, Yellamma has died. Yellamma is having 3 sons and 2 daughters. One Venkatesh is the son of Yellamma. It is true to suggest that, children of Yellamma are residing at Bellandur.

Muniamma is my mother. She died about 8 months back, from today.

Ammaiamma the 1st daughter of Muniyellamma is still alive. She is

residing at Kariyammana Agrahara, Bellandur.

I do not know where the children of Nagaraj, the 1st son of Muniyellamma are residing.

The children of Ramappa the second son of Muniyellamma are residing at Kariyammana Agrahara, Bellandur.”

As per this evidence, Respondent/RW.1 contends that, Muniyellamma was having two sons and three daughters viz., 1) Ammaiyamma; 2) Yellamma; 3) Muniyamma; 4) Nagaraja; and 5) Ramappa. Yellamma died leaving behind her three sons and two daughters. Venktesh is one amongst the said children of Yellamma. Children of Yellamma are residing at Bellandur. Muniyamma is his mother, she died about 8 months back (from the date of his deposition – 08.10.2021). Ammaiamma- the first daughter of Muniyellamma is still alive and she is residing at Kariyammana Agrahara, Bellandur. He pleads his ignorance, as to where the children of Nagaraj- the first of son of Muniyellamma, are residing. Further contends that, the children of Rammappa- the second son of Muniyellamma are residing ta Kariyammana Agrahara, Bellandur.

b) cross examination of RW.1, at Page No.7, Para No.4, Line Nos.1 and 2, which reads as under:-

“It is true to suggest that, in P & SC. No. 25046/2008, I have not impleaded the legal heirs of Muniyellamma.”

As per this evidence, Respondent/RW.1 admits that, he has not impleaded the legal heirs of Muniyellamma in P&SC No.25046/2008.

c) cross examination of RW.1, at Page No.8, Para No.2, which reads as under:-

“I have not averred about the existence of legal heirs of Muniyellamma in the Petition bearing P & SC. No. 25046/2008. Since, there was an impediment, so I have not made all the legal heirs of Muniyellamma as party in the Petition bearing P & SC. No. 25046/2008, since they were not the necessary parties.”

As per this evidence, Respondent/RW.1 contends that, he has not averred about the existence of legal heirs of Muniyellamma in the petition bearing P&SC No.25046/2008, as there was no necessity to make them, as party to this suit.

d) cross examination of RW.1, at Page No.7, Para No.4, Line Nos.1 and 2, which reads as under:-

“It is true to suggest that, in P&SC No.25046/2008, I have not impleaded the legal heirs of Muniyellamma.”

As per this evidence, Respondent/RW.1 admits that, he has not impleaded the legal heirs of Muniyellamma in P&SC No.25046/2008.

14. *As per the general rules of Intestate Succession, all the sons and daughters of Muniyellamma will succeeds to her estate. So all her legal heirs will be having right in the estate left by deceased Muniyellamma, incase if the Respondent fails to prove the Testamentary Succession, which he is claiming through the Will said to have been executed by Muniyellamma.*

15. *Further the Petitioners contend that father of the Petitioner No 3, by name Ramappa died on 09.10.2008 and after his death, the Petitioner No 3 will succeed to the estate of deceased Muniyellamma.*

15.01. Coming to the documentary evidence, produced by the Petitioners, on this point, more specifically,

a) death certificate of Ramappa at ExP1. As per this document it is seen that the Ramappa S/O: Sadappa died on 09.01.2008, at Surya Nursing Home, Tavarekere and the said event of death is registered at No BOM/D/2009/00320/036312 dated 23.03.2009.

b) Pass Book of Cauvery Kalpatharu Grameena Bank of Ramappa at ExP2. As per this document the name of Ramappa is shown as Ramappa S/O: Sadappa.

c) Identity Card issued by the Election Commission of India of Ramappa at ExP5. As per this document the name of Ramappa is shown as Ramappa S/O: Sadappa.

d) Aadhaar Card of the Petitioner No 3 at ExP6. As per this document, the name of Petitioner No 3 is PremaKumari W/O: Gopal.

e) Transfer Certificate issued by the Principal, Yuvak Vikas Mandal High School, Marathalli, HAL, Bangalore at ExP7. As per this document, the name of Petitioner No 3 is shown as Prema Kumari D/O: Ramappa and Gouramma.

16. *Considering the documentary evidence coupled with the ocular evidence, referred to supra, wherein the Respondent has admitted the fact of existence of the Legal heirs of deceased Muniyellamma and the relationship of the Petitioners with Muniyellamma, it can be concluded that, under such circumstances, the Petitioners and legal heirs of Yallamma and Nagaraj will become the heirs, in the absence of proof of the Will; and though the Respondent was aware of the existence of the such legal heirs of deceased Muniyellamma, but has failed to make them as party to the Probate Proceedings. Thus it will amount to suppression by the Respondent.*

*Hence I am constrained to answer **POINT NO 2 IN THE AFFIRMATIVE.***

17. POINT NO 3:

Firstly, the Learned Counsel for the Petitioners would contend that, the proceedings taken up at the instance of the Respondent to obtain the grant were defective in substance, as the Spot Citation in the said proceedings is not taken, either at the place where the Properties shown in the Petition are situated; or where deceased Muniyellamma, had lastly resided, or where the Legal heirs of Muniyellamma are residing. He has placed his reliance on the decision of **the Hon'ble High Court of Karnataka, in the case of Jagjeevan Prasad V/s Parvathi Bai and Ors., (MFA No.200373/2016 (ISA) D/d 03.02.2020**, wherein it is observed in Para No 24, as under:

“24. It is true that issuance/non-issuance of a citation to a party is left to the jurisdiction of a probate court. However, in facts of the case on hand, having regard to the fact that there was sufficient material to prima-facie indicate that the respondents were the wife and children of Manohar Prasad coupled with the fact that Manohar Prasad had other relatives who are related to Manohar Prasad in the same degree or a nearer degree as the appellant, it was necessary

for the appellant as well as the probate court to issue notice/citation to them as provided in [Section 283\(1\)\(c\)](#) of the Act r/w Rule 5(1)(iv) of the Rules. In the instant case, indisputably, the appellant has not complied with [Section 283\(1\)\(c\)](#) of the Act r/w Rule 5(1)(iv) of the Rules and notice/special citation of the proceedings was not served by the appellant or the probate court either on the respondents herein or other relatives who are related to Manohar Prasad in the same degree or a nearer degree as the appellant. It is therefore clear that it was incumbent upon the appellant to serve notice/special citation of the proceedings upon the respondents herein or the other relatives of Manohar Prasad and the omission on the part of the appellant to do so not only renders the proceedings defective in substance but would also vitiate the grant of probate.”

18. *Percontra, the Learned Counsel for the Respondent would contend that, after approval, the Spot Citation is taken, a per law and there is no any defect, muchtheless which lead to form a ground for Revocation of Probate, as shown under Explanation (a), U/Sec 263 of Indian Succession Act. He has placed his reliance on the decision of **the Hon’ble***

High Court of Karnataka, in the case of Mrs Lynette Fernandes Vs Mrs Gertie Mithias (dead) by Lrs, reported in 2006 SCC OnLine Kar 715, wherein it is observed in Para Nos 9 & 11, as under:

“9. The first ground urged by the appellant's counsel is that no citation was taken out and proclamation made at Chikmagalur where the estate of the appellant was situated. As far as this contention is concerned, there is no doubt that a bare look at the order sheet of the trial court discloses that citation was not in fact taken out at Chikmagalur. The reason given by the trial judge is that the deceased died at Mangalore. Learned Counsel for the appellant referring to this ground submitted that unless citation was taken out as required under law, the proceedings therefore becomes defective in substance. In this regard, he placed reliance on the decision and 1996-II MLJ 74. The principles laid down in the above said decisions in effect is that where notice was not taken out as required by law, the proceedings become defective in substance. In this connection, he also placed reliance on [Section 283\(1\)\(c\)](#) of the Act which contemplates issuance of citations calling upon all the persons claiming for any interest in the estate of the deceased to come and see the proceedings Page 0413 before the grant of probate and letters of administration. Therefore, a person who is interested in the estate of the deceased is entitled to be issued by the citation under [Section](#)

283(1)(c). Referring to the decision reported in AIR 1931 Calcutta 713, it was submitted that where notice of probate proceedings was thrown in the verandah where the woman was in the baraghar at the distance of four or live cubits behind a jhap, it could not be held that the service amounted to formal service, but it was of no greater effect in law than the personal service on an infant of tender years. Therefore, there was no effect of service. Hence, reliance on the aforesaid decisions. It is submitted that in the instant case, as there was no citation taken at Chikmagalur, the appellant has made out a ground to be brought within just because there is mention in Section 263 of the Act and therefore, the grant of probate ought to have been revoked.

10. As far as this ground is concerned, learned Counsel for the respondent placed reliance on the decisions and in the case of Anil Bihari Ghosh v. Smt. Latika Bala Dassi and Ors. , the Hon'ble Supreme Court has observed thus:

Defective in substance" in Clause (a) of the Explanation to Section 263 must mean that the defect was of such a character as to substantially affect the regularity and correctness of the previous proceedings.

The omission to issue citations to persons who should have been apprised of the probate proceedings may well be in a normal case a ground by itself for revocation of the grant. But this is not an

absolute right irrespective of other considerations arising from the proved facts of a case. The law has vested a judicial discretion in the Court to revoke a grant where the Court may have prima facie reasons to believe that it was necessary to have the will proved afresh in the presence of interested parties. The Court may refuse to grant annulment in cases where there is no likelihood of proof being offered that the will admitted to probate was either not genuine or had not been validly executed."

19. As per the decision **of the Hon'ble Apex Court in the case of Anil Behari Ghosh Vs Smt Ltika Bala Dassi & Ors, reported in AIR 1955 Sc 566**, wherein it is observed in Para No 15, as under:

"15. Defective in substance" must mean that the defect was of such a character as to substantially affect the regularity and correctness of the previous proceedings. If there were any suggestions in the present proceedings or any circumstances were pointed out to show that if Girish had been cited he would have been able to enter a caveat, the absence of citation would have rendered those proceedings "defective in substance... ."

20. *Adverting to the fact of the instant case,Coming to the ocular evidence on this point, more specifically,*

a) cross examination of RW1 at Page No 7, Para No 4, Line Nos 2 to 8, which reads as under:

“.... We have conducted spot citation in the said Petition through Tom-Tom at Kariyamma Arahara. It is false to suggest that, spot citation in the said Petition is conducted at my residence and not at Kariyamma Arahara. Witness volunteers that, the said spot citation was conducted on both the places.”

b) cross examination of RW1 at Page No 7, Para No 5, which reads as under:

“It is false to suggest that, spot citation was not conducted at the place where the petition scheduled properties are located, but it was conducted near my house at Bilekahalli.”

c) cross examination of RW1 at Page No 9, Para No 2, which reads as under:

“It is false to suggest that, spot citation by way of Tom-Tom has not been conducted Kariyamma Arahara, as per the Mahazar report.”

d) cross examination of RW1 at Page No 9, Para No 5, which reads as under:

“It is false to suggest that, we have surreptitiously taken the spot citation and Gazette Notification in P & Sc. No. 25046/2008, without bringing to the notice of present Petitioners.”

As per this evidence, the Respondent/RW1 contends that, the spot citation in P & Sc No 25046/2008 was conducted through Tom-Tom at Kariyammana Agrahara and not at his residence. Further he contends that, the spot citation was conducted at both the places.

As per this evidence, the Respondent/RW1 denies that the spot citation in P & Sc No 25046/2008 was not conducted at the place where the Petition Schedule Properties are located.

20.01. *Further it is seen, as per the ocular evidence, referred to supra, while discussing Point No 2, that the Respondent has admitted that the Petitioner Nos 1, 3 and other heirs of Muniyellamma, except Muniamma- the Petitioner No 2- the mother of the Respondent, were residing at Kariyammanna Agrahara.*

20.02. Secondly, on perusal of the Schedule of properties shown by the Respondent in P & Sc No 25046/2008, it is seen that, all the said properties are situated at Kariyammanna Agrahara.

20.03. Thirdly, on perusal of the Baileef Report in P & Sc No 25046/2008 (Records of the said proceedings are called for, in this case), it is seen that spot citation in the said proceedings are taken, at the residence of the Respondent i.e., at Billekehalli.

Even the notice of the said proceedings are shown to have been affixed to the outer door of the house of the Respondent, situate at Billekehalli, which can be seen as per the Baileef Report in P & Sc No 25046/2008.

20.04. It is neither the case of the Respondent in the said proceedings that, either deceased Muniyellamma was residing at Billekehalli, nor deceased Muniyellamma has died at Billekehalli, nor the Schedule of properties, shown in the said proceedings, situate at Billekehalli.

20.05. On the basis of documentary evidence on record, like Baileef Report in P & Sc No 25046/2008, it is seen that the Spot citation was taken at Billekehalli and not at Kariyammanna Agrahara, where the Petition Schedule Properties are located, or at both the places, as contended by the Respondent.

20.06. The purpose and object of issuance of citation in the Probate Proceedings or other proceedings, under law is to make known the Public at Large, more specifically of the vicinity, where either the deceased was living, or lived at the time of her death, or where the Schedule Properties are located.

20.07. So definitely, improper conducting of citation, through Tom Tom, will affect the proceedings in P & Sc No 25046/2008, for the simple reason that, if the citation was conducted through Tom Tom at the place where the Petition Schedule Properties are located, i.e., at Kariyammanna Agrahara, then it would have known to the Petitioners or the other heirs of Muniyellamma, and they could have afforded

with an opportunity to participate in the proceedings i.e., P & Sc No 25046/2008, by entering into a caveat. So the absence of citation at Kariyammanna Agrahara, where the Petition Schedule Properties are located, renders the proceedings defective in substance.

21. *Secondly, the Learned Counsel for the Petitioners would contend that, the Petitioners and/or the other legal heirs of deceased Muniyellamma, have not been cited in the Petition P & Sc No 25046/2008, who ought to have been cited. The said fact attracts Illustration No (ii) to Sec 263 of Indian Succession Act. So also, he would further contend that, the Respondent has purposely and conveniently avoided citing the Petitioners and the other legal heirs of deceased Muniyellamma in the said proceedings. And the said act of the Respondent will attract Explanation (b) provided to Sec 263 of the Indian Succession Act, to call it as a just cause. He has placed his reliance on the decision of **the Hon'ble High Court of Karnataka, in the case of Jagjeevan Prasad V/s Parvathi Bai and Ors., (MFA No.200373/2016 (ISA) D/d***

03.02.2020, wherein it is observed in Para Nos 23 & 29, as under:

“23. [Section 283\(1\)\(c\)](#) of the Act contemplates that it was necessary for the trial court seized with proceedings in P & SC No.1/2001 to issue citations calling upon all persons claiming to have any interest in the estate of the deceased Manohar Prasad before the grant of probate in favour of the appellant. In fact, the said proceedings in P & SC No.1/2001 were governed by the "Rules governing Probate and Administration Matters, 1964 (for short 'the Rules'). Rule 5(1)(iv) of the Rules mandate that it was necessary that notice/special citation of the proceedings is served by the appellant on all persons of the same degree of relation or nearer degree than the appellant as per the procedure prescribed under the said Rule. A conjoint reading of [Section 283\(1\)\(c\)](#) of the Act r/w Rule 5(1)(iv) of the Rules clearly indicate that in the facts of the instant case, it was incumbent upon the appellant as well as the trial court to issue notice/special citation of the proceedings upon respondents herein and other relatives who are related to Manohar Prasad in same degree or a nearer degree as the appellant. The Apex Court in the case of [Manju Puri vs Rajiv Singh Hanspal](#) 5, held as under:

"36 - We are of the view that in the facts and circumstances of the present case, learned Single Judge erred in not issuing any citation to Smt. Beena Mehra in the probate proceedings and without

any verification of genuineness of no objection certificates mechanically granted probate which was unsustainable. If it is accepted that in probate proceedings persons who have been dis-inherited in the Will on mere no objection certificates by them without either being called by probate court to appear and certify their no objections or to file any pleading Will lead to unsatisfactory result and may cause prejudice to persons who were not aware of the proceedings and are yet claimed to have submitted no objections. We thus conclude that even though learned Single Judge had discretion to issue citation or not but in the facts of the present case a citation ought to have been issued in exercise of discretion conferred under [Section 283](#) of the Succession Act and the probate granted without issuance of such citation in the facts of the present case deserves to be . 2019 SCC Online SC 1973 revoked and learned Single Judge and the Division Bench committed error in rejecting the application for revocation filed by the appellant."

29. A plain reading of [Section 263\(b\)](#) of the Act will indicate that it is based on the maxim, " Suppressio Veri and Suggestio Falsi " viz., if the grant of probate was obtained by suppressing/concealing material facts and by putting forth false averments/contentions, same would constitute just and sufficient cause for annulment/revocation of probate."

22. As per the decision of the Hon'ble Apex Court in the case of Manju Puri Vs Rajiv Singh Hanspal, reported in 2019 SCC Online Sc 1973, wherein it is observed in Para No 36, as under:

"36. We are of the view that in the facts and circumstances of the present case, learned Single Judge erred in not issuing any citation to Smt. Beena Mehra in the probate proceedings and without any verification of genuineness of no objection certificates mechanically granted probate which was unsustainable. If it is accepted that in probate proceedings persons who have been disinherited in the Will on mere no objection certificates by them without either being called by probate court to appear and certify their no objections or to file any pleading Will lead to unsatisfactory result and may cause prejudice to persons who were not aware of the proceedings and are yet claimed to have submitted no objections. We thus conclude that even though learned Single Judge had discretion to issue citation or not but in the facts of the present case a citation ought to have been issued in exercise of discretion conferred under [Section 283](#) of the Succession Act and the probate granted without issuance of such citation in the facts of the present case deserves to be . 2019 SCC Online SC 1973 revoked and learned Single Judge and the Division Bench committed error in rejecting the application for revocation filed by the appellant."

23. Again considering the ocular evidence, referred to supra, at the time of discussing Point No 2, wherein the Respondent has admitted that deceased Muniyellamma died leaving behind her, three daughters and two sons, then they will succeed to the estate of the deceased, by way of natural succession and they will get dis-inherited, when the Respondent has setup or propounded the Will, said to have been executed by deceased Muniyellamma. Secondly, three daughters and two sons are at a nearer degree of relationship to deceased Muniyellamma, then the Respondent.

So it was incumbent upon the Respondent to issue notice or take special citation to all the legal heirs of deceased Muniyellamma, as he was well aware about them.

So also the Respondent ought to have taken special citation to all the legal heirs of deceased Muniyellamma, who are in the same degree of relationship, comparatively to him, with deceased Muniyellamma.

24. Further the Probate Court could have issued the citation and special citation to the Legal

heirs of deceased Muniyellamma, in case it was brought to its notice. The Respondent has not brought the said fact to the notice of the Probate Court in P & Sc No 25046/2008. This is the suppression, which the Respondent has made before the Probate Court, which has given room for revocation.

25. *Thus, I am of the considered opinion that, a citation ought to have been issued to the present Petitioners and the other heirs of Muniyellamma viz., heirs of Yallamma and Nagaraj, U/Sec 283 of the Succession Act in P & Sc no 25046/2008 and the Probate granted in the said proceedings, without issuance of such citations, in the facts of the present case, deserves to be revoked.*

26. *So the Petitioners have made out the grounds and have shown just cause, to revoke the Probate granted to the Respondent, on the Will, said to have been executed by deceased Muniyellamma, in P & Sc No 25046/2008.*

*Hence, I am constrained to answer **POINT NO 3** **IN THE AFFIRMATIVE.***

27. POINT NO 4:

For having answered Point Nos 1 to 3 in the Affirmative, I proceed to pass the following:

O R D E R

Petition filed by the Petitioners U/Sec.263 of the Indian Succession Act, is hereby Allowed.

In the consequences, the grant of Probate of the Will of Muniyellamma, propounded by the Respondent, in P & Sc No 25046/2008 dated 04.12.2009, is hereby Revoked.

Further without touching the merits of the case, the Probate Proceedings in P & Sc No 25046/2008 is hereby reopened to give sufficient opportunity to the present Petitioners and the other Legal heirs of deceased Muniyellamma and to get adjudicated the matter, in accordance with law, without getting influenced by the observations made in this proceedings.

Registry is requested to Re-open P & Sc No 25046/2008 and place the matter before this Court on 05.01.2022.

For the sake of convenience and to speed up the remedy, the Petitioners and the Respondent are hereby directed to appear in P & Sc No 25046/2008 on 05.01.2022, at the behest, by treating the same as notice and without anticipating any summons or Court notice in P & Sc No 25046/2008. Further both the parties are directed to co-operate with the Trial of the said Probate Proceedings.

Further it is made clear that, either the Respondent can get impleaded the Petitioners and the other heirs of deceased Muniyellamma, and/or the Petitioners can get themselves and other heirs of Muniyellamma, impleaded in the said Probate Proceedings.

De-novo/a fresh trial is to take place in the Probate Proceedings P & Sc No 25046/2008, strictly inaccordance with the provisions of the Indian Succession Act. It is also made clear that, in the event the proceedings in P & Sc No 25046/2008 becomes contentious, the same shall be treated as Contentious Suit, as contemplated U/Sec 295 of the Indian Succession Act.

All rival contentions between all the parties including the contentions

with regard to countering the existence of Will, are hereby kept open for trial in the Contentious Suit, followed by P & Sc 25046/2008.

Having due regards, parties are hereby directed to meet their own costs.

Registry is further requested to Transmit consigned records in P & Sc No 25046/2008 alongwith the copy of this order and to put-up the same on 05.01.2022, enabling the parties to proceed with the said Probate Proceedings, without causing any delay.

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(Dictated to the Stenographer directly on the computer, corrected and pronounced in open court this the 3rd day of December, 2021)

[Abdul-Rahiman. A.Nandgadi]
LXXII Addl.City Civil & Sessions
Judge, (CCH 73), Bengaluru.