

ORDER ON APPLICATION FILED UNDER ORDER 6 RULE 17
READ WITH SECTION 151 OF C.P.C.

This application is filed by the petitioner under Order 6 Rule 17 read with section 151 of C.P.C. seeking to permit amendment of the petition to the limit extent of replacement of the word 'probate' with the words 'letters of administration' and deletion of the second prayer of the prayer column i.e., deletion of the words ' and the petitioner may kindly be declared as absolute owner in respect of the schedule properties by way of contents of the Will, in the interest of justice and equity.

In the annexed affidavit, the petitioner has contended that he is a legatee under a Will dated 07.01.2004 and a condicil dated 05.02.2004, executed by his father late Masthi Gowda @ Chikkanna. He has preferred the petition, seeking probate of the said deeds of testament, in his capacity as legatee under the said documents. By sheer inadvertance, an additional prayer seeking a declaratory relief was added to the prayer column, which was absolutely unintended. The respondents after having sought nearly 25 adjournments to cross-examine him and after having partly completed his cross-examination, have raised a contention that the said prayer cannot be sustained in the present proceedings. It is further contended that, inclusion of such additional prayer was the result of a bonafide mistake and he intend to abandon the said prayer. It was by sheer

inadvertence that he had not made a comprehensive prayer. Although he is aware that this Court is fully empowered to mold an appropriate relief, the deliberate and highly technical objections being raised by the other side, with the sole intent of protracting the present matter, has prompted him to withdraw the earlier application and to file the application in its place. Hence, this application.

The respondent No.1, 2, 4 and 5A and 5C have filed objection statement contending that, the application is not maintainable either in law or on facts. The respondents appeared on 15.10.2015 after coming into know the filing of the petition filed by the petitioner for probate under section 276 of Indian Succession Act. The petition is to declare him as absolute owner in respect of the schedule property by way of contents of the Will. Even though according to the petitioner along with him, his brother was also beneficiary under the Will, which was disputed by the 2nd respondent, the petition was filed, which is against the tone and tenor of section 276 of the Indian Succession Act, 1925. the respondents at the first instance on appearing in the matter have filed objection as early as on 30.01.2016 raising the preliminary objections.

The petitioner being a Hindu and residing in Karnataka and properties are situated in Bengaluru, therefore, the petition under section 372 off Indian Succession Act, 1925 is not

maintainable and is having no jurisdiction to entertain, try and decide this petition in view of specific bar contained under section 57 read with section 213 of Indian Succession Act, 1925. Therefore, the petition filed by the petitioner is without jurisdiction and this Court is not competent to entertain the petition under section 372 or 276 of the Indian Succession act and there is a inherent bar of jurisdiction under the provisions of Indian Succession Act, 1925, therefore, on that ground alone, this petition requires to be dismissed. The petitioner has failed to plead as to the fact that why the wife and other children of late Masthi Gowda @ Chikkanna and the respondents have been excluded from natural inheritance. The petition therefore deserves to be dismissed by suppression of material facts by the petitioner in this petition. The petition under section 372 of Indian Succession Act, seeking probate is not complied with mandatory provision contained under section 276 of Indian Succession Act. Therefore, the petition requires to be dismissed for want of particulars as required under section 276 of the Act as to valuation of the property, which is not shown in the petition. The petitioner had intentionally left out the details of the relatives such as wife, son and daughters of late Masthi Gowda @ Chikkanna and their address in the petition, which is mandatory. Despite the same no action has been taken by the petitioner.

It is pertinent to note that particulars required to be filed in the petition under section 276 and 278 Indian Succession Act, 1925 are not furnished and which is mandatory to maintain the petition and the same is not complied by the petitioner. Now seeking amendment after the commencement of the evidence is again barred under Order 6 Rule 17 of C.P.C. The respondent contended that, the petitioner has slept over the matter for almost 6 years and now come up with amendment application seeking for letter of administration, which is not maintainable either in law or on facts and further contended that, the application is also hit by principles of res-judicate as earlier application for similar relief was withdrawn by the petitioner and no liberty was granted by this Court. The respondent further contended that, the petitioner has not approached this Court with clean hands and seeking amendment after 6 years is bad in law and that to for non compliance of the mandatory provision contained under section 276 and 278 of Indian Succession Act and the petition is defective and which defect is not curable and is contrary to the specific provisions of the Indian Succession Act and offends section 222 of the Indian Succession Act and further contended that, it is pertinent to note that the petitioner is not an executor under the fabricated Will. Under such circumstances, seeking probate does not arise. Therefore, he cannot maintain the petition under section 276 of the Act. Even the present application seeking for amendment for petition seeking letter of administration and seeking substitution of the

prayer is again falls short of mandatory requirements as contained in section 278 of the Act. Even in view of bar contained in section 263 of the Act, when the petitioner has sought for grant of probate without sighting the parties is a ground for rejection of the petition. The sufficient grounds are not made out by the petitioner the amendment at the belated stage. The petitioner cannot seek amendment of the petition to cure the defects, which were highlighted by the respondents in their statement of objection way back in the year 2016. When the petition itself is not maintainable and when the case is posted for hearing on maintainability of the petition itself, the question of seeking amendment does not arise. Hence, the application may be rejected.

Heard the arguments.

Now, the points that arise for my consideration are as under :

1. Whether the petitioner has made out sufficient grounds to allow this I.A.?
2. What order?

My answer to the above points are as follows :

Point No.1 : In the Affirmative

Point No.2 : As per final order for the following :

REASONS

I have gone through the contents of the application and

objection statement.

The petitioner vehemently argued that, Will has been executed by the father of the petitioner and further submitted that his father has not appointed any executor in the Will. Hence, he filed the above application to delete the words 'probate' insert the words 'letters of administration and also deletion of second prayer.

The respondent counsel vehemently argued that, the petitioner had filed this application after cross-examination of P.W.1 and chief examination. P.W.2 and P.W.3 and further contended that, this Court has no jurisdiction to try this suit as there is bar as per section 57 read with 213 of Indian Succession Act.

After perusing and hearing of the both the counsel, I feel that the petition is maintainable or not will be decided at the time of determining the merits of the case. In this case, there is a dispute between execution of two Wills in favour of petitioner and his brother.

The petitioner is not the executor appointed under the Will Ex.P.1 and Ex.P.2 which was executed by Masthi Gowda @ Chikkanna; it cannot be said that probate cannot be granted in favour of the petitioner. Original suit is filed seeking grant of

probate and the executor not been appointed by the testator in the Will and accordingly, the proposed amendment by the plaintiff is with regard to the grant of relief of insertion of letters of administration. I feel it is just and necessary to amend the petition eventhough it is filed after commencement of trial. Here testator had made a Will, but has not appointed an executor then the heir of the deceased is entitled to file an application for grant of probate or letter of administration and if no executors are named in the Will then some one else will normally need to apply to the probate registry to administer the estate. Hence the petitioner moved this application. Hence, application is deserves to be allowed. Accordingly, I answer the above point in the AFFIRMATIVE and proceed to pass the following :

ORDER

The application filed by the petitioner under Order 6 Rule 17 read with section 151 of C.P.C. is hereby allowed.

The petitioner is directed to amend the petition within 14 days from the date of this order and furnish the amended petition on the next date of hearing without fail.

Call on 12.01.2023.

IX Addl. City Civil & Sessions Judge,
Bangalore.