

IN THE COURT OF THE SENIOR CIVIL JUDGE & JMFC,
DODDABALLAPUR.

PRESENT: Sri. Arvind Saibanna Hagargi,
B.Sc., LL.B (Spl)
Senior Civil Judge & JMFC., Doddaballapur.

Dated this 13th day of October 2022

O.S.No.467/2020

Plaintiff:

Sri.K.R.Panchaksharaiah,
S/o. Late Rudrappa, A/a. 58 years,
R/at. Kurubarahalli Village,
Kasaba Hobli, Doddaballapura Taluk.

(Represented by Advocate Sri.Sathisha.R.H.)

Versus

Defendants:

1. Smt.Shankaramma,
W/o. Late Rudrappa, A/a. 86 years,
2. Sri.Mallikarjuna,
S/o. Late Rudrappa, A/a. 60 years,
3. Smt.Dakshayanamma,
D/o. Late Rudrappa, A/a. 58 years,
4. Smt.Vinutha,
D/o. Late Rudrappa, A/a. 54 years,
5. Smt.Girija,
D/o. Late Rudrappa, A/a. 49 years,
6. Smt.Kathyayini,
D/o. Late Rudrappa, A/a. 47 years,
7. Smt.Prameela,
D/o. Late Rudrappa, A/a. 45 years,

8. Smt.Sridevi,
D/o. Late Rudrappa, A/a.38 years,
All are R/at. Kurubarahalli Village,
Kasaba Hobli, Doddaballapura Taluk.

(Represented by Advocates
Sri.B.S.Mallikarjunaiah for D1 & 2,
Sri.E.Maheshwara for D3 to 8.)

* * * * *

Order on I.A.No.VI

This is an application under order 22 Rule 4 and 10 r/w section 151 of CPC filed by the legatee of defendant No.1 for his substitution as legal heir of deceased defendant No.1. On the basis of Will executed on 15-03-2021 registered on 18-03-2021 executed by defendant No.1 in favour of proposed legal heir of deceased defendant No.1.

2. FACTS IN BRIEF:

This is a suit for partition and separate possession by the plaintiff claiming his 1/3rd share in the suit property. The defendant No.1 had put in her appearance and filed her written statement in this case. The defence of defendant No.1 was that the suit schedule property is her absolute property acquired under the partition dated 26-07-2007. It is the case of defendant No.1 that by application of Section 14 of the Hindu Succession Act she has become absolute owner of suit property and the plaintiff has no right to claim the suit property. In pendency of suit the defendant No.1 has expired. Now the proposed LRs legatee has filed the present application for his substitution as legal heir of defendant No.1 on the basis of the Will dated 15-03-2021.

3. The plaintiff has filed objection to I.A.No.VI. The substance of objection of plaintiff is that the defendant No.1 is age old lady of 86 years and she was mentally not sound to execute the Will. The plaintiff has contended that the Will is created by the proposed LR of defendant No.1 and accordingly prayed to reject I.A.No.VI.

4. Heard both sides on I.A.No.VI.

5. The point that arises for my consideration are

1. Whether the proposed legatee of deceased defendant No.1 under Will executed on 15-03-2021 registered on 18-03-2021 can be substituted as legal heir of defendant No.1?

2. What order?

6. My findings on the afore said points are as under;

Point No.1: In affirmative.

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

REASONS

POINT No.1:

7. The suit is for partition and separate possession in between plaintiff and defendants. Defendant No.1 has expired in pendency of suit on 23-06-2021. The death of defendant No.1 is not at dispute. The execution of Will executed on 15-03-2021 registered on 18-03-2021 in favour of proposed LR of defendant No.1 is disputed fact. The plaintiff is contesting I.A.No.VI. Now the definition of legal heirs defined in Section 2(11) of CPC becomes relevant. The definition of legal representatives in section 2(11) of

CPC is an inclusive definitions which includes a person who in law represent the estate of deceased and also includes any person who intermeddle with the estate of deceased and the person on whom the estates devolves on the death of party so suing are sued. The definition is very clear i.e., provision of law is very clear the legatee comes within the person on whom the estate devolves on the death of the party so suing or sued.

8. The plaintiff in the objection has disputed the Will and suspected the Will. The burden is on the proposed LR of deceased defendant No.1 i.e., legatee to dispense all the suspicious circumstance surrounding the Will executed on 15-03-2021 registered on 18-03-2021. When the definition of legal heir is word by word it connotes that the legatees can come on record by substitution as legal heir of the testator or testatrix. In the present case the proposed legatees are seeking their substitution as legal heirs of deceased defendant No.1 and they are the person entitled to succeed to the estate of deceased defendant No.1 under the Will refereed above and within the words "On whom the estate devolves on the death of party so suing or sued engrafted in Section 2(11) of CPC." This principle of law is laid down by the **Hon'ble Supreme Court of India** in the case of **Raviprakash Goel Versus Chandraprakash Goel and another** reported in **2013 SCC 667** and also the principle of law is laid down by the **Hon'ble Supreme Court of India** in the case of **R.Krsna Murti Verus R.R.Jagadesan** reported in **2022 SC SAR Online (SC) 640** which reads as under;

“R-Legal Representative Substitution of Application for Could not have dismissed altogether on ground of existence of other legal heirs of deceased plaintiff provided the appellant was son of plaintiff and the suit was being prosecuted by him as the power agent of the plaintiff.

“Civil Procedure Code , 1908 - Order XXII Rule 5 - Substituting as the legal representative of the deceased plaintiff Suit for declaration and perpetual injunction and alternatively, for declaration and recovery of possession - Death of plaintiff - Appellant is the son of plaintiff - The suit was being prosecuted by the appellant as the power agent of the plaintiff After death of plaintiff the appellant moved an application seeking his substitution as legal representative of the deceased plaintiff -Having regard to the factum of existence of other legal heirs of the deceased plaintiff, the learned Trial Judge dismissed the application - In a revision petition before the High Court

the High Court proceeded to dismiss the said revision petition-Held; Leaving aside any other aspect of the matter, it is but apparent that the appellant is admittedly the son of the deceased plaintiff - Thus, his entitlement, whether by way of testamentary succession or non - testamentary succession, as being the legal heir of the deceased plaintiff cannot be denied - That being the position, the application made by him for substituting himself as the legal representative of the deceased plaintiff could not have been declined by the Trial Court - If any inquiry was required to be made, the Trial Court could have adopted the course envisaged by Rule 5 of Order XXII of the Code of Civil Procedure, 1908 but, in any case, the application made by the appellant could not have been dismissed altogether."

9. Hence, I am of the opinion that the proposed LR's of deceased defendant No.1 defined in Section 2(11) of CPC for their substitution to succeed to the estates of deceased defendant No.1 under the Will dated 15-03-2021 registered on 18-03-2021. Hence, point No.1 in affirmative.

POINT No.2:-

10. In view of my findings on point No.1, I proceed to pass following order;

ORDER

I.A.No.VI is allowed. The proposed legatees of defendant No.1 under Will dated 15-03-2021 are hereby substituted and brought on record as LR's of deceased defendant No.1 as defendant No.1(a) and 1(b).

For amendment and amended plaint.

Call on 25-10-2022.

(Dictated to the Typist copyist, typed by her, corrected and then pronounced by me in the open Court on the 13th day of October, 2022.)

(ARVIND SAIBANNA HAGARGI)

Senior Civil Judge & JMFC.,
Doddaballapur.