

KABC0A0030182022



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

Present:

**Sri. P. G Chaluva Murthy,
M. A. L.L.M**

LXXII Addl. City Civil & Sessions Judge, Bengaluru.

Dated this the 25th day of January, 2023.

P. & S.C. No.25052/2022

Petitioner:-

Vikram Rao,
*S/o Late Dr. Bantval Bhaskar Rao,
Aged about 57 years,
Presently R/at No.1025,
D Wing Westend,
Raheja Vihar, Powai,
Mumbai- 400 072.*

[By Messrs Rego & Rego -Adv.]

V/s

Respondents: Nil

**Orders Under Part IX, Chapter IV, Section 276 of
Indian Succession Act, 1925.**

The Petitioner has filed the above petition seeking probate in respect of the Will and testament executed by deceased B. Meera Rao dtd.07.04.2003 and for other consequential reliefs.

2) *The case of the petitioner in a nutshell is that, deceased B. Meera Rao wife of Late B. Krishna Rao expired at Bengaluru on 22.01.2020 and her last place of abode was Bangalore and she was residing at No.30, Ram Krupa, Sankey Road Cross, Abshot Layout, Bangalore-52. Smt. B Meera Rao died issueless. The parents of B. Meera Rao are H. Chennapaiyya and Mahalakshmi expired several years ago. The husband of Meera Rao also expired in the year 1981. Smt. B. Meera Rao died testate.*

The further case of the petitioner is that, Smt. B Meera Rao executed her last Will and testament on 07.04.2003, which was duly attested by one Mr. K Subba Rao, Senior Advocate and one Mr. K Sachindra Karanth- Advocate both from Bangalore. Smt. B Meera Rao died leaving behind movable and immovable properties in the city of Bengaluru. The

details of the properties are annexed to the petition. Smt. B. Meera Rao appointed one Dr. Bhaskar Rao, resident of Omkar, No.28, 1st Cross, 2nd Main BSK 3rd Stage, 3rd Phase, Bangalore-85 and the petitioner herein residing at No.1025, D Wing Westend, Raheja Vihar, Powai, Mumbai as executors of her last Will. Dr. Bhaskar Rao has expired on 30.05.2005 and as such appointment of Dr. Bhaskar Rao as executor has lapsed. The value of properties left behind Smt. B Meera Rao is around Rs.5,20,03,400/- and the amount of assets which are likely to come to the petitioner hands does not exceed in the aggregate the sum of Rs.5,20,03,400/-. The petitioner undertakes to duly administer the property and credits of the late B. Meera Roa and to make a full and true inventory thereof and exhibit the same before this court within six months from the date of grant of probate. Therefore the petitioner approached this court seeking probate of the Will executed by Smt. B Meera Rao.

3. *Inspite of public notice, no one has appeared before the court to contest the matter on merits.*

4. The Petitioner got examined himself as PW1 and got marked 03 documents as Ex.P1 to Ex.P3. One witness by name K. Sachindra Karanth was examined as PW2 and the petitioner closed his side.

5. Heard the counsel for the Petitioner. Perused the evidence and documents on record.

6. On appreciation of evidence and documents on record, the points that would emerge for consideration of this court are as follows:-

(1) Whether the petitioner proves that he was appointed as a executor under the Will and testament said to have been executed by Smt. B Meera Rao W/o Late B. Krishna Rao?

(2) Whether the petitioner is entitled for grant of probate inrespect of Will and testament of Smt. B. Meera Rao dtd.07.04.2003?

(3) What order?

7. My findings to the above Points are as follows:

Point No.1: In the Affirmative.

Point No.2: In the Affirmative.

**Point No.3: As per final order,
for the following:**

REASONS**8. POINT No.1:-**

The petitioner has filed the above petition for grant of probate inrespect of Will dtd.07.04.2003 said to have been executed by Smt. B Meera Rao, who died testate, according to petitioner. The petitioner filed his affidavit in lieu of his oral evidence and while reiterating the petition averments regarding execution of the Will by Smt. B Meera Rao in the presence of the attesting witnesses and appointment of petitioner as executor of the Will etc, relied on 3 documents. Ex.P1 is the death certificate of Smt. B Meera Rao, who died on 20.01.2020, Ex.P2 is the death certificate of her husband Dr. Bantval Bhaskar Rao dtd.30.05.2005 and Ex.P3 is the material document, which is an unregistered Will said to have been executed by Smt. B Meera Rao and Clause-VI of the document indicate that the petitioner herein and one Bhaskar were appointed as executors of the Will to act either jointly or individually inrespect of the properties bequeathed under the Will. The death certificate at Ex.P1 indicate that Smt. B Meera Rao was permanently residing at Bangalore at the time of her death. The

schedule A property which is a immovable property is also situated at Bengaluru and as such this court is having jurisdiction to entertaining the above petition.

9. *As per the Will, deceased Smt. B Meera Rao W/o Late Sri. B Krishna Rao was residing at Rama Krupa, No.30, Sankey Road Cross Bengaluru at the time of execution of the Will.*

10. *Section 217 of the Indian Succession Act, expressly provides that, 'save as other-wise provided by this Act or by any other law for time being in force, all grants of Probate with the Will annexed shall be made or carried out as the case may be, in-accordance with the provisions of Part-IX.'*

Section 222 of the Indian Succession Act, declares that,

1. Probate shall be granted only to an executor appointed by the Will;

2. The appointment of the executor may be expressed or by necessary implications;

Section 223 of Indian Succession Act, prohibits grant of Probates to the persons specified therein.

11. The petitioner has produced the original Will at Ex.P3 executed by Smt. B Meera Rao at Bengaluru and as stated above, the petitioner herein was appointed as one of the executors of the Will and as such the petitioner has been able to prove that he was appointed as the executor of the Will by Smt. B Meera Rao. Hence, **Point No.1 is answered in the Affirmative.**

12. Point No.2:-

Section 211 of Indian Succession Act, says that the executor of a deceased person is his legal representative for all the purposes and all the property of the deceased person vests in him, as such.

Section 227 of the Indian Succession Act, declares the effect of Probate, 'Probate of a Will when granted establishes the Will from the death of the Testator and renders valid all intermediate acts of the executor as such'.

Section 273 of the Indian Succession Act, declares conclusiveness of Probate thus 'Probate shall have effect over all the property and estate, movable or immovable of the deceased, throughout the State in which the same is or are granted and shall be conclusive as to the representative title against the debtors of the deceased and all persons holding property which belongs to him and shall accord full indemnity to all the debtors, paying their

debts and all persons delivering up such property to the person to whom such probate has been granted'.

13. As per the decision of the Hon'ble Apex Court in the case of Eswardev Naren Singh V/s Smt. Kamta Devi, reported in AIR 1954 SC 280, wherein it is held that,

"The Court of Probate is only concerned with the question as to; whether document put forward as the last Will and Testament of a deceased person was duly executed and attested in accordance with law; and whether at the time of execution the Testator has sound disposing mind. The question whether particular bequest is good or bad is not within purview of the Probate Court. Therefore, the only issue in a Probate proceedings relates to the genuineness and due execution of the Will and the Court itself is under duty to determine it and preserve the original Will in its custody. The Succession Act is a self contained code in so far as the question of making an application for Probate, grant or refusal of probate or an appeal carried against the decision of the Probate Court. This is clearly manifested in the fascicule of the provisions of the Act. The probate proceedings shall be conducted by the probate court in the manner prescribed in the Act and in no other ways. The grant

of probate with a copy of the will annexed establishes conclusively as to the appointment of the executor and the valid execution of the will. Thus, it does no more than establish the factum of the will and the legal character of the executor. Probate court does not decide any question of title or of the existence of the property itself."

14. As per the decision of **the Hon'ble Apex Court in the case of Krishna Kumar Birla V/s Rajendra Singh Lodha, reported in (2008) 4 SCC 300**), wherein it is held that,

"The jurisdiction of the Probate Court is limited being confined only to consider the genuineness of the Will. A question of title arising under the Act cannot be gone into the probate proceedings, construction of a Will relating to the right, title and interest of any other person is beyond the domain of the Probate Court.

15. As per the decision of **the Hon'ble Apex Court in the case of Kanwarjit Singh Dhillon V/s Hardyal Singh Dhillon, reported in 2007 (11) SCC 357**, wherein it is observed that,

“The Probate Court does not decide any question of title or of the existence of the property itself”.

16. As per the decision of **the Hon'ble Apex Court in the case of Basati Devi V/s Raviprakash Ram Prasad, reported in (2008) 1 SCC 267**, wherein it is held that,

“The Probate Court in disputably exercises a limited jurisdiction and it is not concerned with the question of title.

17. Further the Hon'ble Apex Court has observed that,

“The Judgment rendered in a Probate proceedings is a Judgment in Rem. But its application is limited. A Judgment rendered in a Probate proceedings would not be determinative of the question of title”.

18. Keeping in view the scope of the above proceedings which is very limited, let me appreciate whether the Will in question has been validly executed by the Smt. B Meera Rao in accordance with the Sec.68 of the Indian Evidence Act and Sec.63 of the Indian Succession Act. As per the Will at Ex.P3 at Clause – III it is stated by the testator that her only heirs are her husband's brother Sri.

Ramachandra Rao living in United Kingdom, Sri. Sheshagiri Rao living in Canada, Sri. Bhaskar Rao residing in Bangalore and Vishwanath Rao living with her and his sister in law Smt. Shyamala living at Koramangala. After bequeathing several movable and immovable properties infavour of her legal heirs, as per Clause VI one Bhaskar and his son Vikram, who is the petitioner herein were appointed as executors of the Will.

19. *As aforesaid the petitioner got himself examined as PW1 and according to Will at Ex.P3, the petitioner was required to prove the validity of the Will as per provisions stated supra. Inorder to prove the Will, the petitioner examined one of the attesting witnesses Sri. K. Sachindra Karanth as an Advocate as PW2, who deposed regarding execution of the Will by Smt. B Meera Rao in his presence and he signing as one of the attesting witnesses. The witness stated that one Mr. K Subba Rao, Senior Advocate was also present, who also signed the document as one of the attesting witnesses. The witness identified all the signatures of Smt. B Meera Rao at Ex.P3, which are marked as Ex.P3(a) to (f) and*

signature of PW2 is marked as Ex.P3(g) and the signature of another witness by name Mr. K Subba Rao is marked as Ex.P3(h).

20. *By examining one of the attesting witnesses, the petitioner has complied with all the requirements contemplated U/Sec.68 of the Indian Evidence Act and Sec.63 of the Indian Succession Act. In spite of public notice no one has appeared before court to contest the matter on merits. There are no any suspicious circumstances found under Ex.P3. No one has denied the execution of the Will, in spite of public notice. Therefore this court has no doubt to hold that the Will has been validly executed by Smt. B Meera Rao and the petitioner has been appointed as one of the executors of the said Will.*

21. *The petitioner was neither a minor nor a person of unsound mind, nor he has been disqualified under any other law, from obtaining the probate of the Will, as on the date of the above petition, the petitioner is aged about 57 years.*

22. *Proceedings for grant of Probate is summary in nature, and even if the evidence is lead,*

the finding given therein would not operate as resjudicata and the scope of enquiry is very much limited, and the disputed question of status of the parties cannot be gone into in the application for grant of Probate. It categorically provides that no decision under Part-IX upon any question of right between the parties shall be held to bar the trial of the same questions in any suit, or any other proceedings between the same parties.

23. *The Petitioner has produced the original Will-Deed at Ex.P3. U/Sec. 294 it shall be the duty of the Probate Court to preserve Wills. Rule 18 of the Rules governing Probate and Succession matters, 1966, provides procedure for preservation and inspection of Wills. As per the same, original Will produced for grant of Probate with the Will annexed shall remain in the custody of the Chief Ministerial officer of the Court, in which it has been filed and shall be preserved by him. A true copy of the said Will has to be verified with the original Will and if the CMO find it correct, it shall certify it and place with the record and the original Will produced shall there upon be placed in a sealed cover (to be sealed in the*

presence of the District Judge) and the sealed cover containing the Will shall be locked up in a fire proof box, which shall be kept in the sole charge of the Chief Ministerial Officer. The key of the box shall also be in the sole charge of the Chief Ministerial Officer, who will be held responsible for the safe custody of the box and its contents. Further, the CMO has to maintain the register in Form No.11 and enter the receipt of the said Will in the said register as provided under Rule 18.

24. On careful evaluation of the documents placed on record by the petitioner, the petitioner is one of the executors of the Will and he is authorized to act either jointly with another executor or individually and as such petitioner is entitled for grant of probate in order to administer the estate of the deceased as per the terms of the Will. Accordingly **Point No.2 is answered in the Affirmative.**

25. POINT NO.3:-

In view of the findings on above points, the petitioner is entitled for grant of probate as prayed for. Accordingly, I proceed to pass the following:

ORDER

The Petition filed by the Petitioner under Sec. 276 of the Indian Succession Act, 1925, is hereby Allowed.

Acting U/Sec. 264 R/W Sec. 222 of Indian Succession Act, Probate of Will executed by Smt. B. Meera Rao, dtd.07.04.2003, is granted in favour of the Petitioner, who is named as one of the Executors in the said Will, enabling him to administer the estate left by deceased Smt. B Meera Rao, as per the contents of her Will dtd.07.04.2003-Ex.P3, after collecting necessary Court Fee/Stamp duty.

Office is directed to annex the true copy of the Will dtd.07.04.2003-Ex.P3, alongwith the Probate, granted to the Petitioner.

As per Sec. 294 of Indian Succession Act R/W Rule 18 of the Rules governing Probate and Succession Matters, 1966, the Original Will dtd.07.04.2003-Ex.P3 is directed to be kept in the safe

**custody by following procedure
enumerated in Rule 18 of the Rules
governing Probate and Succession
Matters, 1966.**

No order as to costs.

(Dictation given to the Stenographer, transcript thereof is corrected and then pronounced by me in the open Court on this the 25th day of January, 2023.).

[P. G Chaluva Murthy]
LXXII Addl.City Civil & Sessions
Judge, (CCH-73), Bengaluru.

ANNEXURES:-

LIST OF WITNESSES EXAMINED FOR THE PETITIONER:

PW.1: Vikram Rao.

PW.2: K. Sachindra Karanth.

LIST OF EXHIBITS MARKED FOR THE PETITIONER:

Ex.P1 & 2: Death Certificates.

Ex.P3: Original Will dtd.07.04.2003.

Ex.P3(a) to (h): Signatures of the witness.

[P. G Chaluva Murthy]
LXXII Addl.City Civil & Sessions
Judge, (CCH-73), Bengaluru.

Annexure A

Valuation of the movable and immovable property of deceased.

Rs. Ps.

1. Movable property consisting of

a) Cash in hand:-

Nil

b) Cash in Bank:-

Sl. No.	Particulars	Approx Amt.
1.	Fixed Deposit	
	ICICI Bank (FD No.002013147413)	
	Bank of Baroda	
	Total	Rs.10,00,000/-
2.	Post Office	Rs.12,000/-
3.	Savings Account.	
	Vijaya Bank, Sankey Road (A/c No.118901010119859)	
	Karnataka Bank, Nehrunagar (A/c No.063250010067001)	
	ICICI Bank (A/c No.002001051705)	
	IDFC First Bank (A/c No.5469354575)	
	Total	Rs.3,50,000/-
	Grand Total	Rs.13,62,000/-

(i) Household goods wearing, Apparel, books, plates, jewels etc (approximately) }

Sl.No.	Particulars	Approx Amt.
D.	Jewelry	
1.	Stored in Vijaya Bank Locker and Miscellaneous	5 Lakhs

	<i>Grand total</i>	<i>5 Lakhs</i>
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Sub Total: Rs.5,00,000/-

*II. Property in Government
Securities Transferable at
Public Debt Office*

Nil

III. Immovable Property

Rs.3,47,91,400/-

<i>Sl.No.</i>	<i>Particulars</i>	<i>Approx Amt.</i>
<i>C.</i>	<i>Immovable Property</i>	
<i>1.</i>	<i>House 30 Ram Krupa, Sankey Road Cross, Abshot Layout, Near Windsor Manor Hotel, Bangalore, Karnataka 560052 measuring 3160 Sq.ft</i>	<i>Rs.3,47,91,400/-</i>

IV. Leasehold Property

Nil

V. Property in Public Companies

Nil

*VI. Policies of Insurance upon life,
Money out on mortgage and
other securities, such as bonds
bills, and other securities for money*

Nil

VII. Debts

Nil

VIII. Stock in Trade

<i>Sl. No.</i>	<i>Particulars</i>	<i>Quantity</i>
<i>B.</i>	<i>Stock in Trade (Demat Zerodha)</i>	
<i>1</i>	<i>Goodyear</i>	<i>124</i>
<i>2</i>	<i>ITC</i>	<i>2475</i>
<i>3</i>	<i>KTKBank</i>	<i>1364</i>
<i>4</i>	<i>L&TEF</i>	<i>200</i>
<i>5</i>	<i>LT</i>	<i>675</i>
<i>6</i>	<i>M&M</i>	<i>4897</i>

7	UNITDSPR	2100
8	MCLEODRUSS	23
9	NIPPOBATRY	200
10	RCOM	648
11	RELIANCE	48
12	RPOWER	162
13	ULTRACMCO	50
	Stock in Trade (Demat ICICI Securities)	
1	MINDA CO-PORATION LTD	470
2	ICICI BANK LIMITED	130
3	STATE BANK OF INDIA	50
4	EMBASSY OFFICE PARKS REIT	200
5	LARSEN AND TURBO LIMITED	90
6	TITIAN COMPANY LIMITED	52
7	MOTILAL OSWAL MS NASDAQ 100 ETF	320
8	SBI-ETF NIFTY 50	1500
9	MOTILAL OSWAL M100ETF	5072
10	SBI-ETF GOLD	3340
11	NARAYANA HRUDAYALAYA LIMITED	40
12	NTPC LIMITED	1210
13	CATROL INDIA LIMITED	300
14	BATA INDIA LIMITED	20
15	BHARTI AIRTEL LIMITED	380
	Total	115 Lakhs (Approx)
	Mutual Funds	
1	ICICI Prudential Mip Regular Quaterly Dividend. Scheme Folio No.257915/24	3,424
2	ICICI Prudential Technology Fund	700

	<i>Scheme Folio No.170655/01</i>	
3	<i>Tata Retirement Savings Funds Scheme Folio No.311425/00</i>	1,335
4	<i>Tata Large & Mid Cap Fund Regular Plan Dividend. Scheme Folio No.515020/53</i>	927
5	<i>Tata Dividend Yiled Fund Regular Fund Scheme Folio No.515020/53</i>	977
6	<i>L&T Triple Ace Bond Fund Scheme Folio No.2013770</i>	781
7	<i>DSP Equity Opportunities Fund Regular Dividend. Scheme Folio No.135705/91</i>	651
8	<i>Scheme Folio No.135708</i>	25
	<i>Total</i>	<i>2.5 Lakhs (Approx).</i>
<i>Sl. No.</i>	<i>Particulars</i>	<i>Quantity</i>
<i>E.</i>	<i>Debt Mutual Funds</i>	
1	<i>IDFC Banking & PSU Debt Reg-g</i>	16,884
2	<i>IDFC Corporate Bond Reg-g</i>	10,246
3	<i>IDFC Corporate Bond Reg-g</i>	3,416
4	<i>SBI Dynamic Bond-G</i>	26,316
5	<i>IDFC GSF Constant Maturity Reg-g</i>	7,292
6	<i>Kotak Low Duration Standard-G</i>	161
7	<i>SBI Magnum Low Duratin-G</i>	227
8	<i>Kotak Medium Term Reg-g</i>	12,183
9	<i>IDFC Bond Income Reg-g</i>	4,739
10	<i>Aditya Birla SL Short Term-G</i>	8,766
11	<i>Bharat Bond ERF April 2023</i>	65
12	<i>Bharat Bond ERF April 2030</i>	84

	Grand Total (debt Mutual Funds)	Approx 36,00,000/-
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Grand Total Rs.1,53,50,000/-

IX. Other property not
comprised under the
foregoing heads

Nil

Total Rs.5,20,03,400/-

Less

Deduct items shown
in Annexure "B" in the
manner provided in
Sub Sec.(2) of Sec.53

Rs.5,00,000/-

New Value of Estate

Rs.5,15,03,400/-

Annexure-B **Schedule of Debts**

I. Amount of debts due and
owing from the deceased,
legally payable out of the estate

Nil

II. Amount of expenses connected
with Medical Treatment to the
deceased during her deathbed
illness, funeral rites and ceremonies Rs.5,00,000/-

III. Amount of mortgage encumbrances

Nil

IV. Property held in trust not
beneficially or with general power
to confer a beneficial interest.

Nil

V. Other property not subject to duty

Nil

Total Rs.5,00,000/-

In the light of the details contained in Annexure 'A' and 'B' here to I submit that the Net Value of the estate is Rs.5,15,03,400/- (Rupees Five Crores Fifteen Lakhs Three thousand four hundred only).

[P. G Chaluva Murthy]
*LXXII Addl.City Civil & Sessions
Judge, (CCH-73), Bengaluru.*