

ORDERS

Petitioner contend that, one Krishnamurthy was the absolute owner of the petition schedule properties. The said Krishnamurthy is none other than the father-in-law of 1st respondent, great grand father of 2nd and 4th respondents, father of petitioner, respondents No.3, 5 and 6, husband of 1st respondent. He has bequeathed the schedule properties in favour of petitioner under registered Will dated 08.01.2023 and died on 03.03.2007. It is the last Will executed by Krishnamurthy. After the death of testator, petitioner has become absolute owner. When he had applied for khatha, respondents No.1 to 3, 5 and 6 are objecting for the change of khatha and revenue authorities insisted for probate certificate. Therefore, respondents are made as parties to the present petition. Hence, the petition.

On the other hand, 2nd respondent had filed objections contending that, the petition schedule properties are ancestral properties. Deceased Krishnamurthy did not had any authority to execute any Will. The said document is forged and created by petitioners, 3rd and 4th respondents. The 1st and 2nd respondents have filed OS No.2/2008 for partition & separate

possession and it was decreed on 20.10.2009. All the properties fell to the share of 1st and 2nd respondents. FDP No.3/2022 is still pending. Therefore, 2nd respondent has prayed for rejecting the said petition.

In view of the above circumstances, it is appropriate to make a reference to Sec.295 of Indian Succession Act. As per the said provisions of law in case the respondents contest the case, the court shall conduct the matter just like a regular civil suit as provided under the provisions of CPC.

Further Hon'ble High court of Karnataka in the case between **Lakshman v/s Basavanni and others** has held that, in view of Section 295 of the Indian Succession Act, once the proceedings become contentious, it is not open for the court to proceed with the matter in a summary way and allow the parties to prove the Will in common form. Therefore, in view of the above position of law, this court is required to convert the petition in to a Regular Suit and to deal with the matter by framing issues and pronouncing judgment as provided under Code of Civil Procedure.

Further in **Smt. Rathidevi D.S v/s D.S.Devaprasad and another**, it was held

that the contentious cases shall be tried by the District Court and need not transfer the same to the jurisdictional Civil court for adjudication.

In addition to the above, by virtue of decision of the Hon'ble High Court in **Harish v/s Ramareddy and others reported in 2016 (2) KLJ 224**, it is for the petitioner to pay requisite court fee as provided Article 1 Schedule 1 of Karnataka Court Fees and Suit Valuation Act.

With the above observations, I proceed to pass the following:

ORDER

Acting u/sec.295 of the Indian Succession Act, 1925, the present petition is converted into the form of Regular suit.

The office is directed to register the matter as Original Suit.

The counsel for the petitioner is hereby directed to file valuation slip and pay requisite court fee.

Put up the file after compliance of above conditions

**IV ADJ,
Mandya**