



IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 23RD DAY OF MARCH, 2026

BEFORE

THE HON'BLE MRS. JUSTICE K.S. HEMALEKHA

MISCELLANEOUS FIRST APPEAL NO. 693 OF 2025 (ISA)

BETWEEN:

1. SHIVASHANKAR
S/O. LATE BADREGOWDA,
AGED ABOUT 57 YEARS,
R/AT TOREKADANAHALLI VILLAGE,
HALAGURU HOBLI,
MALAVALLI TALUK,
MANDYA DISTRICT-571 421.

...APPELLANT

(BY SRI SREENIVASAN M Y, ADVOCATE)

AND:

1. SRIDHARA H. S.
S/O. LATE SHIVALINGEGOWDA,
AGED ABOUT 39 YEARS,
R/AT NO. 58, HEGGURU VILLAGE,
BANNURU HOBLI,
T. NARASIPURA TALUK,
MYSURU DISTRICT-571 101.

...RESPONDENT

(BY SRI RAVINDRA PRASAD B., ADVOCATE)

THIS MFA IS FILED U/S 299 OF INDIAN SUCCESSION ACT, AGAINST THE ORDER DATED 27.04.2024 PASSED IN P & SC.33/2023 ON THE FILE OF THE I ADDITIONAL DISTRICT AND SESSIONS JUDGE, MANDYA, ALLOWING THE PETITION FILED UNDER SECTION 276 OF INDIAN SUCCESSION ACT.



THIS APPEAL, COMING ON FOR ADMISSION, THIS DAY,
JUDGMENT WAS DELIVERED THEREIN AS UNDER:

CORAM: HON'BLE MRS. JUSTICE K.S. HEMALEKHA

ORAL JUDGMENT

This present Miscellaneous First Appeal is preferred against the order passed in P & SC No.33/2023 on the file of the I Additional District and Sessions Judge, Mandya ('Trial Court' for short). By the impugned Order dated 27.04.2024, the petition filed by the respondent herein under Section 372 of the Indian Succession Act ("Act" for short) was allowed and the probate was granted in favour of the respondent herein as under:

"The petition filed by the petitioner under Section 276 of Indian Succession Act is hereby allowed.

It is hereby ordered that, petitioner is entitled for probate in respect of last Will of Padma w/o Late Rudregowda dated 01.03.2023 in respect of petition schedule properties.

Issue Probate in respect of petition schedule properties in the name of petitioner subject to following conditions:



"1) The petitioner shall pay required Court fee.

2) The petitioner shall execute indemnity bond with one solvent surety for the value of Rs.10,00,000/- (Rupees Ten Lakhs only)".

2. Heard learned counsel appearing for the appellant and learned counsel appearing for the respondent.

BRIEF FACTS

3. Padma, wife of late Rudregowda, died on 15.03.2023 leaving behind a Will (Exhibit P1) dated 01.03.2023 in favour of the respondent. The respondent claiming under the said Will, filed a probate petition.

4. The grievance of the appellant is that the appellant was not made a party in the P & SC proceedings and the respondent has obtained probate by suppressing the material facts. The appellant claims to be the brother



of the deceased Rudregowda under whom the respondent traces title through the Will.

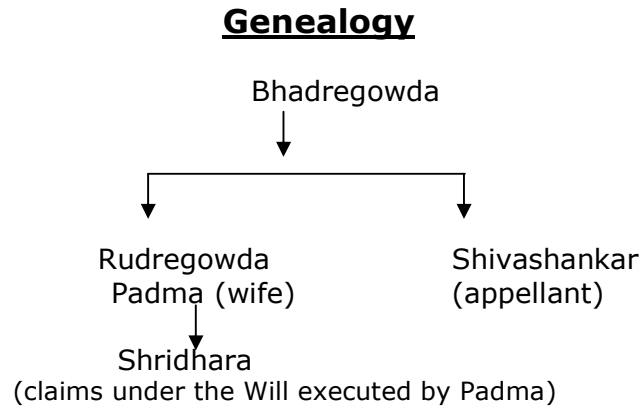
5. Learned counsel appearing for the appellant submits that the appellant was a necessary party to the probate proceedings but was not included. The respondent has also filed a suit for declaration based on the same Will, against the appellant, but did not disclose the probate proceedings and hence, the probate obtained is liable to be interfered with.

6. Learned counsel appearing for the respondent sought to justify the impugned order and submits that the impugned order is passed after considering all materials on record and that the appellant is not a necessary party in P & SC proceedings. It is submitted that grant of probate does not confirm ownership or title and a separate suit for declaration is already pending adjudication.

7. This Court has carefully considered the rival submissions and perused the material on record.



8. The genealogy of the parties is as under :



9. The grievance of the appellant is that, the appellant being the interested person in the estate ought to have been made a party to the probate proceedings. Though paper publication was issued, the appellant contends that he was not aware and had no opportunity to contest the proceedings. It is also not in dispute that the respondent has filed a suit for declaration against the appellant based on the same Will. In such circumstances, the respondent ought to have made the appellant a party to the probate proceedings. When a civil suit based on the same Will is pending between the parties, non-



impleadment of the appellant in probate proceedings assumes significance and the impugned order warrants interference. Accordingly, this Court pass the following:

ORDER

- (i) The Miscellaneous First Appeal is ***allowed.***
- (ii) The impugned order dated 27.04.2024 passed in P & SC No.33/2023 by the I Additional District and Sessions Judge, Mandya, is hereby ***set aside.***
- (iii) The matter is remitted back to the Trial Court for fresh consideration in accordance with law.
- (iv) The appellant is permitted to enter appearance on ***15.04.2026*** and file objections within two (2) weeks thereafter.
- (v) Upon such objections being filed, the Trial Court shall treat the proceedings as contentious, afford reasonable opportunity to both parties and dispose of the petition expeditiously.



(vi) It is made clear that the grant of probate, if any shall be subject to the outcome of the proceedings and shall not be construed as adjudication of title which is the subject matter of the pending civil suit.

(vii) All contentions of the parties are kept open.

Sd/-

JUSTICE K.S. HEMALEKHA