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Laxmans/O Satteppa Vs. Basavanni

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Court : Karnataka Dharwad

Decided On : Jan-24-2018

Judge : John Michael Cunha

Appeal No. : MFA 14805/2007

Appellant : Laxmans/O Satteppa

Respondent : Basavanni

Judgement :

1 IN THE HIGH COURT OF KARNATAKA DHARWAD BENCH R DATED THIS THE24H DAY OF JANUARY, 2018 BEFORE THE HONBLE MR. JUSTICE JOHN MICHAEL CUNHA MFA NO.14805 OF2007(ISA) BETWEEN LAXMAN S/O SATTEPPA HANCHINAMANI AGE MAJOR, OCC AGRICULTURE R/O SAMAY GALLI YAMAKANAMARADI TQ HUKKERI ... APPELLANT (By SRI R M KULKARNI & SMT. HEMALEKHA K S, ADVS.) AND1 BASAVANNI S/O SATTEPPA HANCHINAMANI AGE40YEARS, OCC COOLIE, R/O YAMAKANAMARADI TQ HUKKERI2 MISS. SHANTAWWA D/O SATTEPPA HANCHINAMANI AGE30YEARS, OCC HOUSE HOLD WORK R/O YAMAKANAMARADI TQ HUKKERI (KUM. BHAGYASHREE, ADV. FOR SRI RAMACHANDRA MALI, ADV. FOR R1 & R2) ... RESPONDENTS2THIS MFA IS FILED UNDER SECTIONS299& 384 OF INDIAN SUCCESSION ACT, AGAINST THE

JUDGMENT

AND

ORDER
DATED0409.2007 PASSED IN P & SC NO.5/2002 ON THE FILE OF THE PRINCIPAL DISTRICT JUDGE, BELGAUM, ALLOWING THE PETITION FILED UNDER SECTION276OF THE INDIAN SUCCESSION ACT. THIS APPEAL HAVING BEEN HEARD AND RESERVED FOR

JUDGMENT
FOR PRONOUNCEMENT OF

JUDGMENT
THIS DAY, THE COURT DELIVERED THE FOLLOWING:

04. 01.2018, ON COMING ON

JUDGMENT
This appeal is directed against the order dated 04.09.2007 passed by the Principal District Judge, Belagavi in P & SC No.5/2002 ordering probate of the Will dated 20.06.2001 in favour of the respondents.

2. The facts leading to the appeal are as follows: (i) The respondent Nos.1 & 2 (hereinafter referred to as petitioner Nos.1 &

2) propounded a Will said to have been executed by their father late Satteppa Hanchinamani on 20.06.2001 bequeathing to them half share each in the house property bearing No.563 and open space bearing No.351 situated at Yamakanamaradi in Hukkeri taluk. In the petition, the 3 appellant herein was arrayed as the sole respondent. He opposed the petition inter alia contending that the petition was bad for non-joinder of necessary parties; the deceased Satteppa was not in sound state of mind to do any transaction much less to execute the alleged Will. The Will propounded by the petitioners is a created document in collusion with the witnesses and the doctor who has falsely certified that the deceased was in sound state of mind. It is a created and concocted document. The respondent also denied that the deceased Satteppa was the exclusive owner in actual and physical possession of the properties involved in the Will. (ii) The

Trial Court recorded the evidence of the GPA of the petitioners, as well as the evidence of the medical officer and the attesting witnesses and the scribe to the Will. The original Will was marked as Ex.P- 8. Rebutting the above evidence, the appellant herein 4 examined himself as RW-1 and produced in evidence 10 documents in support of his contention. Upon hearing the parties and considering the material produced by the parties by the impugned order, the Probate Court directed issuance of the probate to the petitioners in accordance with law. (iii) Feeling aggrieved by the impugned order, the sole respondent before the Court below has preferred this appeal.

3. I have heard the learned counsel appearing for the parties and have scrutinized the original Will, as well as the oral and documentary evidence on record.

4. The main contention urged by the learned counsel for the appellant is that, PW-1 was the Power Of Attorney of the petitioners. He was not competent to speak about the due execution of the Will and hence his evidence could not have been taken into consideration in proof of the Will propounded by the petitioners. He 5 has further contended that, the deceased was aged 86 years at the time of his death. The Will in question is stated to have been executed by him 25 days earlier to his death. He was not in a fit physical and mental condition to execute the said Will. He further contended that the appellant/respondent had specifically disputed the execution of the Will, as well as the mental capacity of the testator to execute the said Will. In view of the said contentions, the proceedings had become contentious and therefore, it was incumbent on the Court below to convert the petition into a regular suit as prescribed in Sec. 295 of the Indian Succession Act, 1925 (hereinafter referred to as the Act, for brevity); but the Trial Court proceeded to dispose of the petition in a summary way contrary to the provisions of the Act; therefore, the entire proceedings are vitiated and are liable to be set aside. With regard to the findings recorded by the Trial Court, the learned Counsel would contend that the petitioners have failed to prove the due 6 execution of the Will. The doctor examined by them is an interested witness and hence he pleads that the impugned Judgment be set-aside and the probate ordered to the petitioners be cancelled.

5. Refuting the above contentions, the learned counsel appearing for the petitioners would submit that, merely because the deceased was advanced in age cannot be a reason to hold that he was not in a fit condition to execute the Will or that the Will is shrouded with suspicion. The execution of the Will is duly proved by examining the attesting witnesses as well as the scribe to the said Will. Their evidence has not been shaken in the cross-examination. The mental condition of the deceased is proved by the evidence of the medical officer who has certified that the testator was in fit condition to execute the Will. Therefore there is absolutely no error or infirmity in the findings recorded by the Probate Court on the question of the execution of 7 Will. The learned counsel further contends that even with regard to the bequests made under the Will, the testator has explained the reasons for disinheriting the respondent. The GPA was one of the sons of the testator. Since the petition was presented under Section 276 of the Act in their capacity as the executors, it was not necessary for the petitioners to make all the legal heirs of the testator as parties to the proceedings. The order passed by the Probate Court is in accordance with the provisions of the Indian Succession Act and hence, she seeks for the dismissal of the appeal.

6. After hearing the parties and on perusal of the impugned order and the records of the proceedings, the questions that fall for consideration are:- (i) Whether the Court below was justified in granting probate to the petitioners in respect of the last Will and Testament of late Satteppa Hanchinamani dated 20.06.2001?. (ii) Whether the petition filed under Section 276 of the Indian Succession Act seeking probate 8 of the aforesaid Will dated 20.06.2001 is in accordance with the provisions of the Indian Succession Act?.

7. Having regard to the provisions of the Indian Succession Act, 1925, I am of the view that the probate ordered by the Court below is defective in form and substance and is contrary to the specific provisions of the Act and therefore cannot be sustained for the following reasons: (i) Section 222 of the Act, specifies the persons to whom probate can be granted. It reads as under: S.

222. Probate only to appointed executor- (1) Probate shall be granted only to an executor appointed by the Will. (2) The appointment may be expressed or by

necessary implication. The above provision in unambiguous terms lays down that probate could be granted only to an executor appointed by the Will either expressly or by necessary implication. It is now well settled that the 9 right of an executor to apply for probate of the Will is personal to the executor. Though the executor may renounce probate, but in view of the above provision, no discretion is left with the Court to grant probate to any person other than the executor. Even an universal or residuary legatee is not entitled for grant of probate. This position becomes clear from the reading Section 232 of the Act, which is extracted here below: S.232. Grant of administration to universal or residuary legatees - When - (a) the deceased has made a Will, but has not appointed an executor, or (b) the deceased has appointed an executor who is legally incapable or refuses to act, or who has died before the testator or before he has proved the Will, or (c) the executor dies after having proved the Will, but before he has administered all the estate of the deceased, an universal or a residuary legatee may be admitted to prove the Will, and letters of administration with the Will annexed may be 10 granted to him of the whole state, or of so much thereof as may be unadministered. (ii) A conjoint reading of Sections 222 and 232 of the Act, makes it abundantly clear that probate could be granted only to an executor appointed under the Will either expressly or by implication. All other persons who claim under the Will as legatees or beneficiaries including an universal legatee or residuary legatee are entitled only for grant of Letters of Administration with Will annexed. A universal legatee is one to whom the whole of the estate of the testator is disposed under the Will; whereas a residuary legatee is a person to whom the surplus or residuary of the property is bequeathed under the Will. But in the absence of any express or implied appointment of a person as executor, merely on the basis of the bequests made in their favour as legatees or beneficiaries, they do not derive a right to grant of probate. From the above provisions, it follows that in order to entitle for grant of probate, the Will 11 must contain expressly or by implication the name of the executor, otherwise no probate can be granted to any person. This legal position is now well settled.

8. In the instant case, the petitioners appear to have filed the petition on the supposition that they are appointed as executors under the Will in question. I have carefully gone through the said Will at Ex.P-8. I do not find any recital therein

appointing the petitioners as executors either expressly or by implication. In the absence of any such appointment as executors, by virtue of the above provisions, the petitioners are not entitled for grant of probate. Petitioners are mere legatees or beneficiaries under the Will Ex.P-8. There is no pleading or evidence whatsoever to show that the petitioners are appointed as executors by implication. In the absence of any such material, the order passed by the Court below granting probate to the petitioners, in 12 my view is opposed to the specific provisions of the Act and therefore, cannot be sustained.

9. Another material defect which renders the grant invalid is that the jurisdiction of the Probate Court is invoked by the petitioners by making an application under Section 276 of the Act. Section 276 of the Act deals with the contents of the petition for probate. But as already discussed above, the petitions are neither appointed as executors under the Will nor have they proved that they answer the character of executors by implication. As such, they were not entitled to present the petition under Section 276 of the Act. Since the petitioners have sought to prove the Will as legatees, they were required to make an application for grant of Letters of Administration with the Will annexed by making necessary application under Section 278 of the Act. Even if the petition made before the Court is construed as one under Section 278 of the Act, still the 13 petition falls short of the requirements prescribed under Section 278. (i) Section 278 of the Act prescribes the procedure for making a petition for Letters of Administration. It reads as follows : S.

278. Petition for letters of administration - (1) Application for letters of administration shall be made by petition distinctly written as aforesaid and stating - (a) the time and place of the deceaseds death. (b) the family or other relatives of the deceased, and their respective residences; (c) the right in which the petitioner claims; (d) the amount of assets which are likely to come to the petitioners hands; (e) when the application is to the District Judge, that the deceased at the time of his death had a fixed place of abode, or had some property, situate within the jurisdiction of the Judge; and (f) when the application is to the District Delegate, that the deceased at the time 14 of his death had a fixed place of abode within the jurisdiction of such Delegate. (2) Where the application is to the District Judge and

any portion of the assets likely to come to the petitioners hands is situate in another State, the petition shall further state the amount of such assets in each State and the District Judges within whose jurisdiction such assets are situate. 10. From the above provision it is clear that in addition to all other requirements prescribed therein the petitioner is also required to state the family or the other relatives of the deceased and their respective residences in the petition. In the instant case, as already stated above, except making the appellant herein as the sole respondent, the other legal heirs of the deceased are not arraigned as parties to the petition. In this context, it may be necessary to refer to Section 263 of the Act which provides for revocation or annulment of probate or letters of administration for just cause. As per this provision, the grant of probate or 15 letters of administration may be revoked or annulled for just cause. The explanation to Section 263 of the Act enumerates just causes which could lead to the revocation of the Will. The said explanation reads as under: S.263 x x x Explanation - Just cause shall be deemed to exist where - (a) the proceedings to obtain the grant were defective in substance; or (b) the grant was obtained fraudulently by making a false suggestion, or by concealing from the court something material to the case; or (c) the grant was obtained by means of an untrue allegation of a fact essential in point of law to justify the grant, though such allegation was made in ignorance or inadvertently ; or (d) the grant has become useless and inoperative through circumstances ; or (e) the person to whom the grant was made has willfully and without reasonable cause omitted to exhibit an inventory or account in accordance with the provisions of Chapter 16 VII of this part, or has exhibited under that Chapter an inventory or account which is untrue in a material respect.

11. Illustration (ii) to Section 263 of the Act, clearly states that when the grant is made without citing the parties, who ought to have been cited, the same furnishes a just cause for revocation or annulment of the probate or letters of administration. In the instant case, undisputedly the testator had left behind five sons and three daughters. Even in the petition, the petitioners have given the genealogy, wherein the names of other legal heirs find place. But the petitioners have not made all the legal heirs of the testator parties to the proceedings nor have they taken any citation to the legal heirs of the deceased. It is also noticed that even general

citation has not been issued calling upon the interested persons to see the proceeding or to appose the grant. 17 12. Under the Act, citations are of two kinds. (i) Compulsory citation or Special citation (ii) Discretionary citation or general citation. Section 235 of the Act requires publication of special citation before grant of Letters of Administration to legatees other than universal or residual legatees. Section 235 of the Act reads as under: S.235. Citation before grant of administration to legatee other than universal or residuary - Letters of administration with the Will annexed shall not be granted to any legatee other than an universal or a residuary legatee, until a citation has been issued and published in the manner hereinafter mentioned, calling on the next-of-kin to accept or refuse letters of administration. The citation under this Section is compulsory unlike in Section 283 of the Act where the District Judge is conferred with the discretion to issue citation before grant of probate or letters of administration. In the instant case as already discussed above, the 18 petitioners do not answer the description of either the universal legatee or residuary legatee. Therefore, it was incumbent on the petitioners to distinctly state in the petition the family or the relatives of the deceased and their respective residences as laid down in Section 278 of the Act and also to take out special citation to them as required under Section 235 of the Act. As the petitioners have failed to comply with these statutory requirements, the entire proceedings are rendered defective and vitiated.

13. Another procedural irregularity noted in the proceedings conducted by the Court below is that right from the inception the respondent had disputed the mental capacity of the testator and has also disputed the due execution of the Will. From the nature of the dispute raised by the respondent, it is evident that the proceedings had become contentious and therefore the Probate Court was required to convert the petition into a 19 regular suit as required under Section 295 of the Act. Section 295 reads as follows: S.

295. Procedure in contentious cases - In any case before the District Judge in which there is contention, the proceedings shall take, as nearly as may be, the form of a regular suit, according to the provisions of the Code of Civil Procedure, 1908 (5 of 1908), in which the petitioner for probate or letters of administration, as the case may be, shall be the plaintiff, and the person who has appeared to

oppose the grant shall be the defendant. 14. In view of the above provision, 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. The Section provides that the proceedings shall take as nearly as possible form of a regular suit. The Section does not require that when the petition becomes contentious, it should be registered as a suit. But having assumed the form of a suit, all the incidents of 20 the suit undoubtedly have to be followed as prescribed in Section 268 of the Act. Normally, the proceedings become contentious on filing the caveat supported by affidavit disputing the execution of the Will or the mental capacity of the testator to execute the Will. In the instant case, the respondent having specifically disputed the execution of the Will and the mental capacity of the deceased, the Court below was required to convert the petition into a regular suit and therefore deal with the matter by framing issues and pronouncing the Judgment as provided under Code of Civil Procedure. The Court below has failed to follow these mandatory legal and procedural requirements which in my view, has vitiated the grant.

15. It is also noticed that the petitioners have failed to comply with the requirements of Section 52 of the Karnataka Court Fees and Suit Valuation Act. Affidavit of valuation has not been filed. No direction 21 appears to have been given to the grantee to execute the bond or to file the Accounts and Inventory, as required under Section 291 of the Act. All these defects in my view render the impugned order unsustainable in law.

16. The defects noted above are not mere procedural irregularities but blatant violations of substantive law. For these reasons, the impugned order is liable to be set aside. The proceedings conducted before the learned District Judge being defective in form and substance, keeping in mind the legal and proprietary rights of the petitioners and to safeguard the interest claimed by them under the Will in question, the matter requires to be remanded to the learned Judge for fresh consideration. Hence, the following:

ORDER

The appeal is allowed. The impugned order dated 20.06.2001 passed by the Principal District Judge, Belagavi in P & S C22No.5/2002 and the consequent grant of probate is set aside. The matter is remitted to the Court of the learned District Judge with liberty to the petitioners to seek amendment of the petition or to make fresh petition in accordance with the provisions of the Indian Succession Act, 1925 and the Rules Governing Probate and Succession Matters, 1966, within three months from the date of this order. In such event, the learned District Judge shall dispose of the petition strictly in accordance with the provisions of the above Act and Rules. *Svh/- Sd/- JUDGE

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