

Rameshappa vs Nil

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Court : Karnataka

Decided On : Jun-24-2025

Judge : Anu Sivaraman,K.Manmadha Rao

Appeal No. : MFA/538/2025

Appellant : Rameshappa

Respondent : NIL

Judgement :

-1-

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 24TH DAY OF JUNE, 2025 PRESENT THE HON'BLE MRS. JUSTICE ANU SIVARAMAN AND THE HON'BLE DR. JUSTICE K.MANMADHA RAO MISCELLANEOUS FIRST APPEAL NO. 538 OF 2025 (ISA) BETWEEN:

1. RAMESHAPPA S/O RANGAPPA AGED ABOUT 67 YEARS
2. CHANNABASAPPA S/O RANGAPPA AGED ABOUT 67 YEARS

3. JAYAMMA W/O KARIYAPPA AGED ABOUT 62 YEARS Digitally signed by 4. CHANDRAPPA CHANNEGOWDA PREMA S/O KARIYAPPA Location: High AGED ABOUT 40 YEARS Court of Karnataka

5. DANESH S/O KARIYAPPA AGED ABOUT 38 YEARS

6. DEVI

D/O KARIYAPPA AGED ABOUT 36 YEARS ALL ARE RESIDING AT NIDHIGE SHIVAMOGGA TALUK -2- SHIVAMOGGA DISTRICT-577 222 APPELLANTS (BY SRI. LEELESH KRISHNA, ADVOCATE) AND: NIL RESPONDENT THIS MFA IS FILED U/S 299 OF INDIAN SUCCESSION ACT, 1925, AGAINST THE ORDER DATED 19.10.2024 PASSED IN P AND SC. No.28/2023 ON THE FILE OF THE II ADDITIONAL DISTRICT AND SESSIONS JUDGE, SHIVAMOGGA, REJECTING THE PETITION FILED UNDER SECTION 278 OF INDIAN SUCCESSION ACT AND ETC. THIS APPEAL, COMING ON FOR ORDERS, THIS DAY,

JUDGMENT WAS DELIVERED THEREIN AS UNDER:

CORAM: HON'BLE MRS. JUSTICE ANU SIVARAMAN and

HON'BLE DR. JUSTICE K.MANMADHA RAO

ORAL JUDGMENT

(PER: HON'BLE MRS. JUSTICE ANU SIVARAMAN) This appeal is preferred against the order dated 19.10.2024 of the II Additional District and Sessions Judge, Shivamogga in P & SC No.28/2023.

2. The appellants herein who are the petitioners before

the Probate Court, were the beneficiaries of a Will executed on 16.12.1996 by Kariyappa, son of Hanumanthappa, who was the testator of the will. It is submitted that the Executor of the Will -3- Kariyappa, son of Hanumanthappa passed away

on 24.04.1999, thereafter, the petitioners and their father Rangappa, son of Kariyappa who were the beneficiaries of the Will were in possession and enjoyment of the property. Kariyappa, son of Rangappa passed away on 29.11.2004. The testator had three siblings, but they have never raised any contention or objections to the enjoyment of the property by the petitioners and their father. It is submitted that after the death of their father, the petitioners had approached the Tahasildar for change of Khatha and their names and the Tahasildar had required the appellants to obtain a probate for the Will and an application came to be filed.

3. The first appellant was examined himself as PW1

and a witness to the Will was examined as PW2. The Trial Court found the Will to be duly proved. However, it was found that since the legal heirs of the testator who were his brothers had not been arrayed as parties to the petition and there is no recital in the Will as to why the legal heirs are being disinherited by the testator, the probate could not be granted as sought for. -4-

4. Learned counsel for the appellants submits that the

brothers of the testator have never raised any objection to the possession of the property or its enjoyment by the beneficiaries of the Will and that the appellants and Kariyappa were in clear and lawful possession of the properties and no litigation whatsoever had been filed. It is submitted that, before this Court as well as before the Probate Court, notice of the proceedings had been duly taken out by paper publication, yet no objections have been raised.

5. Having considered the contentions advanced and in

view of the fact that the execution of the Will stands proved by examination of an attesting witness and further in view of the fact that no objections whatsoever have been raised to the ownership and possession of the property by the appellants herein and their deceased father, we are of the opinion that the finding of the probate Court that the brothers of the testator ought to have been made party to the application is unfounded. In view of the fact that public notice of the application

as well as this appeal has been taken out in the newspaper having wide circulation and since no objection whatsoever has been -5- raised by anybody including the brothers of the testator, we are of the opinion that the appellants are entitled to succeed in this appeal.

6. In the result:-

(i) The appeal is allowed.

(ii) The order dated 19.10.2024 of the II Additional District and Sessions Judge, Shivamogga in P & SC No.28/2023, is set aside

(iii) There will be a direction to the probate Court to issue probate for the Will of Kariyappa, son of Hanumanthappa, executed on 16.12.1996 in favour of the appellants. The necessary shall be done without delay. Sd/- (ANU SIVARAMAN) JUDGE Sd/- (DR.K.MANMADHA RAO) JUDGE RAK,List No.: 1 SI No.: 48

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