

Maithra Devi Vs. B .Thyagaraju S/O Basappa

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Court : Karnataka

Decided On : Nov-09-2010

Judge : H.G.Ramesh J.

Acts : Indian Succession Act - section 263, 276 ;

Appeal No. : Miscellaneous First- Appeal_NO.2228/2009_ And
Misc.Cvl.Nos.5712, 14294 & 5713 of 2009

Appellant : Maithra Devi

Respondent : B .Thyagaraju S/O Basappa

Advocate for Def. : SRI M.N.MADHUSUDHAN, ADV

Advocate for Pet/Ap. : SRI M.VINAYA KEERTHY. ADV

Judgement :

1. Heard. The delay of 341 days in filing the appeal is condoned. Misc.Cvl.5712/2009 is allowed accordingly. Misc.Cvi. 14294/2009 filed for permission to file the appeal is also allowed.

2. This appeal is directed against the order dated 18.01.2008 passed by the Court of III Additional District Judge, Tumkur, in P & SC No.23/2007. By the impugned order, the Court below has allowed the petition filed by the respondent herein for grant of a probate under Section 276 of the Indian Succession Act, 1925

M.F.A.No.2228/2009 and Misc.Cvl.Nos.5712, 14294 & 5713 Of 2009 ['the Act' for short) by granting a probate in respect of the will dated 18.09.2006 executed by one Renukamma.

3. Learned counsel appearing for the appellant submits that the respondent, ought to have arrayed the appellant as a party to the aforesaid probate proceeding and the respondent has obtained the probate by playing fraud on the trial Court.

4. On being asked as to whether the case of the appellant would fall within the ambit of Section 263 of the Act, learned counsel appealing of the appellant fairly and rightly answered in the affirmative. If that be so, the appropriate remedy for the appellant is to apply to the trial Court under Section 263 of the Act in accordance with law for revocation of the probate granted by it. Accordingly, the appellant is at liberty to apply to the trial Court in accordance with law for revocation of the probate. The appeal is disposed of accordingly.

M.F.A.No.2228/2009 and Misc. Cvl.Nos.5712. 14294 & 5713 Of 2009

5. In view of disposal of the appeal, no order need be passed on Misc.Cvl.5713/2009 field for an interim stay Order and it stands disposed of accordingly.

Appeal disposed of.

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