
RULES GOVERNING PROBATE AND SUCCESSION MATTERS, 1966

CONTENTS

PART 1 :- PART

1. .
2. .
3. .
4. Title of applications under the Indian Succession Act, 1925
5. .
6. Age of minor to be stated
7. Probate or Letters of Administration with will annexed
8. Particular in caveat
9. Notice of caveat
10. .
11. .
12. Order for grant of Probate
13. Decree
14. Form of inventory
15. Form of account
16. Extension of time to file inventory or accounts
17. Administration bond
18. Preservation and inspection of Wills

PART 2 :- PART

19. Application for Succession Certificate
20. Extension or amendment of Certificate
21. Procedure when application is granted
22. Bond and sureties
23. .

RULES GOVERNING PROBATE AND SUCCESSION MATTERS, 1966

In exercise of the powers conferred by Article 227 of the Constitution of India and all other powers thereunto enabling, the High Court of Karnataka with the previous approval of the Governor of Karnataka hereby makes and promulgates the following rules to govern the procedure for the grant of Probate and Letters of Administration by Courts subject to the superintendence of the High Court of Karnataka.

PART 1

PART

1. . :-

These rules shall be called the Rules Governing Probate and Succession Matters, 1966.

2. . :-

(i) These rules shall come into force from the date of publication thereof in the Karnataka Gazette, and shall apply to all Civil Courts subordinate to the High Court of Karnataka.

(ii) On the coming into force of these rules, all existing rules, orders, circulars, practices, conventions or the like governing any matter dealt with or covered by these rules shall stand repealed:

Provided that this repeal shall not affect or invalidate anything done, any action or decision taken, any disposal made, any decree, order or proceeding made or issued under the existing rules before the commencement of these rules.

3. . :-

(i) In these rules the word "Act" means the Indian Succession Act, 1925 (Central Act 39 of 1925).

(ii) "Code" means the Code of Civil Procedure as amended from time to time; and

(iii) "Form" shall, unless otherwise provided, mean the Form prescribed in the Appendix to these rules.

4. Title of applications under the Indian Succession Act, 1925 :-

All applications under the Act shall be entitled in the matter of the Will of the testator, or of the goods of the intestate or of the estate of the deceased' as in Form 1.

5. . :-

(a) Application for Probate or Letters of Administration.

(i) An application for Probate or Letters of Administration shall be by original petition in Form 2 or 3 and shall be accompanied by an authenticated copy of the application and the valuation of the estate in duplicate as prescribed by Section 52 of the Karnataka Court Fees and Suits Valuation Act, 1958 (Karnataka Act 16 of

1958).

(ii) The Court shall forward to the Deputy Commissioner of the District in which the estate is situated or, if the estate is situated in more than one District, to the Deputy Commissioner of the District in which the most valuable portion of the immovable property included in the estate is situated, the copy of the petition together with a notice in Form 4 and also a copy of the valuation aforesaid.

(iii) The application shall also be accompanied by proof of death of the testator or the person in respect of whose estate administration is sought in the shape of a certificate of death issued by the Registrar of Births and Deaths or a certificate of death issued by the authorities of the Government Hospital where the death occurred if the issue of such certificate is permitted or provided for by the rules governing such Hospital, or an affidavit of the person or persons who had actually witnessed the death or in such other form as may be convenient, provided that the Court may in any case require production of such other further evidence as it may deem fit to establish or prove the fact of death.

(iv) Unless the Court otherwise orders, notice of an application for Letters of administration in Form 4 shall be posted on the Notice Board of the Court and shall be served by the petitioner on all persons of the same degree of relation as, or nearer degree than, the petitioner and send the same under prepaid registered cover to their respective addresses and shall be published in one or more of the principal newspapers of the District in which the deceased was residing at the time of his death and an affidavit proving the said service and publication shall be filed by the petitioner.

(b)

(i) When the Court directs that citation issued shall be published in any newspaper, the petitioner shall file into Court a copy of the newspaper in which citation is published.

(ii) When the Court directs publication of the citation in the Gazette, the petitioner shall be required to remit the requisite amount of the publication charges to any Government Treasury under the appropriate head of account and file the receipt or challan into the Court.

(iii) Upon receipt of the challan, as soon as practicable, the Court shall cause the citation to be published in the Gazette.

(iv) The citation shall be in Form 5-A.

6. Age of minor to be stated :-

A petition for the grant of Letters of Administration under Section 244 or 246 of the Act, shall, if the petitioner is acquainted with the facts, state the age of the minor or shall be accompanied by the affidavit of the person who is so acquainted, stating the age of the minor.

7. Probate or Letters of Administration with will annexed :-

(i) If a Will has been deposited with a Registrar or Sub-Registrar under the Indian Registration Act, 1908 (Central Act 16 of 1908), an affidavit shall be filed before Court stating the fact and that the applicant intends to apply to the Court for a grant of Probate or Letters of Administration with the Will annexed and praying that an order may be issued to the Registrar to forward the Will to the Court and thereupon the Judge may direct an order to be issued accordingly. Upon the production of the Will, the petitioner and the attesting witnesses shall attend the Court-house with the petition, and the Will shall be annexed to or exhibited with the petition, which shall then be signed and verified.

(ii) If the petitioner or the said witness is unable to attend the Courthouse, the said affidavit shall state the reason for such inability; and there upon the Judge may direct the Will to be annexed to the petition. The petition shall then be signed and verified and forwarded to the Court.

8. Particular in caveat :-

The caveat shall be in the form prescribed by Schedule V of the Act and it shall also state the full and true address of the caveator for service on him.

9. Notice of caveat :-

When a caveat against the grant of Probate or Letters of Administration is filed, the Court shall cause notice thereof to be given to the petitioner as in Form 5 and the petition shall thereupon be amended by inserting the name of the caveator as a defendant.

10. . :-

The application shall thereupon be numbered and registered in the Register of Suits and shall thereafter be governed as far as practicable by the procedure prescribed for suits under the Code

and the Rules thereunder.

11. . :-

Within five days after the service of the said notice upon him or such further time as may be granted by the Court, the petitioner shall bring into Court a notice to the caveator in Form 6, a copy of the petition and the prescribed fees for the service of the same; and the provisions of the Code and the Rules thereunder with respect to summons to a defendant and service thereto shall apply to the notice.

12. Order for grant of Probate :-

(a) The order for grant of Probate or Letters of Administration shall direct the grantee to file in Court within six months and one year respectively the inventory and account prescribed by Section 317 of the Act.

(b)¹ [x x x x] no order granting Probate or Letters of Administration shall be made until the petitioner has produced a certificate from the Controller under sub- section (2) of Section 57 or Section 67 of the Estate Duty Act, 1953 (Central Act 34 of 1953) that the estate duty payable in respect of the 1 property included in the schedule to the petition has been paid or will be paid or that none is due, as the case may be.

1. The words and figures "Where the value of the property mentioned in the petition is more than Rs. 50,000" omitted by Notification No. Spl 327/63, dated 24-2-1967.

13. Decree :-

(i) In all cases falling under Section 295 of the Act, a decree shall be drawn up in Form 7.

(ii) The decree shall direct the grantee to file in Court within six months and one year respectively, the inventory and account mentioned in Section 317 of the Act.

(iii) After an order for grant of probate is made, and in contentious cases the decree is drawn up, the Probate or Letters of Administration shall be drawn up in the form prescribed in Schedule VI or VII of the Act, as the case may be, on stamp paper of requisite value produced by the petitioner, upon the petitioner filing into Court the Administration Bond of himself, and/or his sureties in accordance with the order of the Court.

14. Form of inventory :-

The inventory referred to in Rule 12, shall be in Form 8 and shall be verified by the affidavit of the executor or administrator. It shall set out under the several heads contained in the said form a detailed description of the property, credits and the effects of the deceased and, if the deceased did not possess property falling under any particular head, it shall be so stated in each case.

15. Form of account :-

The said account shall be in the form of Debtor and Creditor Account, all moneys and other properties received by the executor or administrator being placed on the debit side and all disbursements made by him being placed on the credit side and a balance shall be struck. The accounts shall be headed with the cause title of the matter and shall be verified by the affidavit of the executor or administrator.

16. Extension of time to file inventory or accounts :-

(i) If the inventory or account is not filed within the time prescribed therefore, the matter shall be posted before Court for orders. The Court may either extend the time or call upon the party in default to file an application for the purpose or pass such other order as may be lawful and just in the circumstances of the case.

(ii) An application for further time to file the inventory or account shall be made by an interlocutory application entitled in the petition in which the grant of Probate or Letters of Administration was made and shall be supported by an affidavit stating the cause of the delay in filing the same.

17. Administration bond :-

An administration bond shall be in Form 9. The Court shall determine the actual amount of security to be given and may examine the proposed sureties as to their properties and liabilities and for this purpose may direct notice to issue to the proposed sureties and adjourn the further hearing of the application to a fixed day by passing an order in Form 10. The proposed administrator and his sureties, when approved by the Court, shall execute the administration bond before the Judge or the Officer authorised to take affidavits. The bond shall be filed in Court not less than three days before the adjourned hearing and, if approved by the Judge, shall be signed by him in the margin.

18. Preservation and inspection of Wills :-

Subject to the provisions that may be made by the State Government under Section 294(2) of the Act, the following procedure shall be followed in regard to the preservation and inspection of Wills:

(i) Every original Will filed in the Court of a District Judge for the purpose of an application for the grant of a Probate or Letters of Administration with the Will annexed shall except as hereinafter provided, remain in the custody of the Chief Ministerial Officer of the Court in which it has been filed and shall be preserved by him in the manner hereinafter mentioned:

Provided that it shall be lawful for the District Judge upon the requisition from any Court for the production of an original Will in a case pending in such Court to forward the Will in a sealed packet under the Custody of a responsible Officer to such Court for production in the pending case. The Officer to whom the original Will is so entrusted shall deliver the sealed packet containing the same to the Judge of such Court and the Presiding Judge shall thereupon take all needful precautions for the safe custody and preservation of the Will until he has returned the same in a sealed packet to the Officer to whom it was entrusted for production, who shall deliver the sealed packet to the District Judge in whose Court the Will was filed for the purpose of the application for the grant of Probate or Letters of Administration.

(ii) A District Judge may transmit a Will to a Court requiring its production by registered post insured for not less than Rs. 1,000 when its production through a responsible Officer before that Court will, in view of the distance of that Court, entail an amount of delay or expense which the District Judge considers unreasonable.

(iii) No District Judge shall comply with any requisition for the production of a Will except on receipt of a sum sufficient to cover all necessary expenses.

(iv) When any original Will is filed for the purpose of an application for the grant of Probate or Letters of Administration, the petitioner concerned shall file a true copy of the Will clearly written or typewritten on foolscap paper along with the original Will. Then the Chief Ministerial Officer shall verify the copy and if it is correct, certify it and place it with the record and the Will shall thereupon be placed in a sealed cover (to be sealed in the presence of the District Judge) and the sealed cover containing the Will shall be

locked up in a fire-proof box which shall be kept in the sole charge of the Chief Ministerial Officer. The key of the box shall also be in the sole charge of the Chief Ministerial Officer, who will be held responsible for the safe custody of the box and its contents.

(v) No original Will, after being placed in the fire-proof box, shall be removed therefrom except under an order in writing of the District Judge made for the purpose of (a) complying with a requisition within the meaning of the proviso to Rule (i), (b) it being produced in Court on the hearing of the application for the purpose for which it was filed or on the hearing of an application for the revocation of a grant of Probate or Letters of Administration with the Will annexed or on the hearing of a case in the District Judge's Court in which it is necessary to put such Will in evidence, (c) it being copied, and (d) for inspection of such Will.

(vi) A Special register of Wills filed for the purpose of application for the grant of Probate or Letters of Administration with the Will annexed shall be maintained in English by each District Judge in Form 11.

(vii) In the Register mentioned in the above sub-rule, shall be entered the particulars indicated by the headings of columns.

(viii) Alphabetical index shall be prepared in Form 12 to the entries made in the Register and a copy of such index shall be attached to the Register. The District Judge may, upon an application in writing for inspection of the Register or of any Will mentioned in such Register, make an order permitting the inspection of the same:

Provided that no such order shall be made unless in such application are set forth the names, residences and occupations of the applicant and the person or persons, if any, to be present on his behalf at the inspection and the reason for which the order of inspection is sought and, in the case of an application for the inspection of an original Will, unless the application be accompanied by the Court fee stamps prescribed therefor.

(ix) An order for inspection shall state the date on which the inspection may be had. No inspection shall be allowed under these rules except between the hours of 11 a.m. and 3 p.m. or otherwise than in the presence the District Judge or of the Chief Ministerial Officer of his Court as the District Judge shall direct. No person inspecting the Will under these rules shall be permitted during the inspection to have in his possession, or have access to, a pen and

ink or to write anything whatsoever or to make any erasure or mark in the Register or on the Will, but a person so inspecting may be permitted to make notes in pencil on a separate paper.

(x) Every copy of an original Will shall be made in the presence of the District Judge or the Chief Ministerial Officer of the Court as the District Judge may direct.

(xi) Application for a copy of an original Will shall be submitted to the Judge and such copy shall only be granted subject to the conditions which attach to the inspection of original Wills.

PART 2

PART

19. Application for Succession Certificate :-

(i) An application for a Succession Certificate shall be by original petition in Form 13.

(ii) Where any person other than a Court guardian applies for the issue of a Succession Certificate on behalf of a minor, such person shall be required to execute a bond with such sureties as the Court thinks fit to indemnify the person, if any, who is eventually declared by a Competent Court to be entitled to the estate against any loss caused to the estate by his dealings with it and for proper management of the estate for the benefit of the minor.

20. Extension or amendment of Certificate :-

An application for the extension or amendment of a certificate shall be by interlocutory application entitled under the original petition in which the certificate was granted and shall be in Form 14. The deposit required by Section 379(1) of the Act, shall be made by payment of the amount into Court in the manner prescribed in the Account Rules made by the High Court.

21. Procedure when application is granted :-

(a) If the application is allowed, the Court shall send to the local Treasury Officer a cheque for the amount of the fee payable together with a memorandum headed with the cause title of the application stating the name of the applicant and request the said Officer to issue Court fee stamps for the said amount endorsed in the name of the Court. The certificate shall then be endorsed on the stamp paper so furnished and after cancellation of the stamp, shall be delivered to the grantee. An exact copy of the certificate so

granted shall be placed in the records of the case.

(b)[x x x x] no order entitling the petitioner to the grant of a Succession Certificate shall be made upon his application until he has produced a certificate from the Controller under sub-section (2) of Section 57 or Section 67 of the Estate Duty Act, 1953 (Central Act 34 of 1953), that the estate duty payable in respect of the property included in the schedule to the petition has been paid or will be paid or that none is due, as the case may be.

22. Bond and sureties :-

(i) Where the Court orders a bond to be given, a bond shall be given to the Judge with one or more sureties in Form 15 and Rule 17 shall apply to the preparation and execution thereof and to the justification of the sureties.

(ii) The account mentioned in the said form shall be in the form prescribed by Rule 15 above and shall be verified by the affidavit of the grantee of the certificate.

23. . :-

Save as otherwise expressly provided by these rules, the procedure to be followed in Probate and Succession matters in the subordinate Courts shall be governed by the Civil Rules of Practice made by the High Court from time to time.