

**(2010) 05 KAR CK 0002**

**Karnataka High Court**

**Case No:** Miscellaneous First Appeal No. 480 of 2010 (ISA)

M.B. Vishwanath

APPELLANT

Vs

Chidambara and Others

RESPONDENT

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**Date of Decision:** May 24, 2010

**Acts Referred:**

- Succession Act, 1925 - Section 264 (1)

**Citation:** (2011) 1 KarLJ 282 : (2011) 4 KCCR 2996

**Hon'ble Judges:** V. Jagannathan, J

**Bench:** Single Bench

**Advocate:** G.R. Mohan, for the Appellant; R. Gopal, for Caveator, for the Respondent

**Final Decision:** Allowed

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### **Judgement**

V. Jagannathan, J.

Heard learned Counsel for the Appellant. None appears for the caveators Respondents though the matter was called twice.

2. Submission of Sri G.R. Mohan, learned Counsel for the Appellant is that the Trial Court dismissed the petition filed by the Appellant u/s 264(1) of the Indian Succession Act, 1925 and the only reason for the Trial Court dismissing the petition is on account of the Appellant not leading any evidence though the Appellant had filed the affidavit in support of his case. Further, submission made is that, the Trial Court's order sheet does not indicate that the evidence of the Petitioner was closed but on the other hand, straight away the matter was posted for arguments when the matter was actually posted for evidence on 21-11-2009. Under the said circumstances, the order of the Court below be set aside and the Appellant be given an opportunity to lead evidence in support of his case.

3. The above submission of the Appellant's Counsel finds ample support from the order sheet of the Trial Court which has been produced at Annexure-II. The matter was listed for evidence by an order dated 4-11-2009 and was posted to 21-11-2009.

But on the said date i.e., on 21-11-2009, there was no order of the Court indicating that the evidence of the Appellant was closed. But on the other hand, straight away the matter was posted for arguments.

4. I therefore find enough force in the submission made by the Appellant's Counsel and the matter requires remand to the Trial Court for giving an opportunity to the Appellant to lead evidence in support of his case. All the contentions raised touching on the merits of the case are left open.

The appeal is allowed. The impugned order of the Trial Court is set aside. The appeal stands remitted to the Trial Court for affording the Appellant an opportunity to lead evidence and also for giving the Respondent liberty to cross-examine the Petitioner i.e., the Appellant herein and record the evidence of the Respondent, if any. The Trial Court shall dispose of the matter in accordance with law within six months from the date of this order's receipt.