

## B.R. Jayanthi and Others Vs Radamma and Others

**Court:** Karnataka High Court

**Date of Decision:** Feb. 15, 2008

**Acts Referred:** Karnataka Civil Courts Act, 1964 "Section 23 A, 23 A (1) Succession Act, 1925 "Section 264, 265, 276

**Citation:** (2008) ILR (Kar) 4612 : (2009) 3 KarLJ 459 : (2008) 3 KCCR 1622

**Hon'ble Judges:** A.N. Venugopala Gowda, J

**Bench:** Single Bench

**Advocate:** G.B. Shastry, for the Appellant;

### Judgement

@JUDGMENTTAG-ORDER

A.N. Venugopala Gowda, J.

A petition u/s 276 of the Indian Succession Act 1925 ("Central Act" for short) was filed by the respondents

herein, in the court of District Judge, Madikeri, Kodagu District, by impleading the petitioners herein. The prayer in the petition was to hold that,

the will said to have been executed by one Ramanna Rai, in common form be allowed to be proved and that probate thereon to have effect

throughout India may be granted to them, pertaining to the "A" schedule property and for such other relief. The respondents in the Probate Petition

have opposed the petition, by filing statement of objections. Since the petition was contested, it was ordered to be converted in to a original suit.

Thereafter, issues have been framed on 29.6.2001. Considering the office note with regard to the pecuniary and territorial jurisdiction of the suit

property, by an order dated 12.12.2003, the petition which was converted into a suit, was transferred and directed to be considered by the

Principal Civil Judge (Junior Division) at Madikeri, by directing the parties to appear in the Court of the Principal Civil Judge (Junior Division), at

Madikeri on 24.1.2004 and to take further orders. The defendants, i.e., the petitioners herein, had filed I.A. No. IV u/s 151 of CPC with a prayer

to return the plaint to the plaintiffs, to present the same in the proper Court, contending that the Civil Judge (Junior Division), has no jurisdiction to

issue the probate, in view of the provisions contained u/s 264 of the Act. Said application was opposed by the respondents herein. After hearing

the parties, the learned Civil Judge (Junior Division), Madikeri, has rejected LA. No. IV, holding that, since the District Court has transferred the

suit for disposal to it, the plaint cannot be returned, for presentation in the proper court and the earlier order passed by the District Court,

transferring the suit to it, having not been questioned by filing an appeal or revision, the order having attained finality, the application was not

meritorious. The said order has been questioned in this writ petition.

2. I have heard Sri. G. Balakrishna Shastry, learned Counsel for the petitioners and perused the records. The respondents though served remained

unrepresented.

3. Sri. G. Balakrishna Shastry, learned Counsel for the petitioners contended that, the probate case u/s 276 of the "Central Act" has to be tried

only by the District Court and the subordinate Courts have no jurisdiction to try the suit. Learned Counsel contended that the District Court had

erred in transferring the suit and hence I.A. No. IV filed before the Civil Judge (Junior Division) to exercise its inherent power and to return the

plaint for presentation to the District Court or to re-transfer the record to the District Court, ought to have been allowed. It is contended by the

learned Counsel that, in not ordering so and by dismissing I.A. No. IV, the court below has committed illegality and hence the impugned order be

set aside and the relief prayed in I.A. No. IV be granted.

4. Considering the contentions and the record, the point that arises for consideration is:

Whether the Civil Judge (Junior Division), has been conferred with the jurisdiction, to try and dispose of a petition filed u/s 276 of Indian

Succession Act 1925, which petition was subsequently converted into a suit?

5. Provisions relating to granting and revoking of probate and letters of administration, is contained in Chapter IV of the Central Act.

Section 264 confers jurisdiction on the District Judge in granting and revoking probate and letters of administration etc.,

Section 265 empowers the High Court to appoint such judicial officers within any district as it thinks fit to act for the District judge as delegates for

granting and revoking, probate and letters of administration in non-contentious cases within such local limits as it may prescribe.

Section 272 empowers the grant of probate and letters of administration by delegate.

6. In order to appreciate the dimensions of the problem and seeking an answer thereto, it is required to examine the relevant provisions contained

under the Central Act, Karnataka Civil Courts (Amendment) Act, 1976 (Karnataka Act 81/76), Karnataka Civil Courts (Second Amendment)

Act, 1978 (Karnataka Act 28/1978), Notification issued thereunder, and Article 254 of the Constitution of India.

7. Part X of the Central Act deals with grant of succession certificate. Section 371 of the Act provides that the District Judge within whose

jurisdiction the deceased ordinarily resided, or, if at the time of his death he had no fixed place of residence, the District Judge, within whose

jurisdiction any part of the property of the deceased may be found, may grant succession certificate under the Act, Sections 372, 373 and 374

provide the procedure for making an application for grant of succession certificate, its entertainment and the contents of the certificate to be

granted. Section 388 has made provision for investiture of inferior Courts, with jurisdiction of District Courts with the power to exercise the

function of the District Judge under Part-X i.e. in relation to grant of succession certificate.

8. By Sections 4, 5 and 10 of the Karnataka Civil Courts (Amendment) Act, 1976 (Karnataka Act 81/76), The Karnataka State Legislature has

made three material amendments concerning Court's jurisdiction and appeal provisions in relation to the proceedings under the Central Act.

Subsequently, by Karnataka Civil Courts (Amendment) Act, 1978 (Act 8/78), Sections 4, 5 and 10 of the Karnataka Act 81/76 were omitted by

a further exercise, the State legislature has passed Karnataka Civil Courts (Second Amendment) Act, 1978 (Karnataka Act 28/1978) for the very

same object, though with some material changes.

9. By Section 2 of the Amending Act 28/1978, Clause (iv) of Sub-section (1) of Section 23 of the Karnataka Civil Courts Act, 1964 (in Short the

"Civil Courts Act") was omitted and simultaneously a new Section 23-A was inserted, which read thus :-

23-A. Investiture of Sub-ordinate Courts with jurisdiction of District Court under the Indian Succession Act, 1925 - (1) The High Court may, by

Notification, invest any civil Judge or Munsiff, with such local limits and subject to such pecuniary and other limitations as may be specified in such

Notification with all or any of the powers of a District Judge under the Indian succession Act, 1925 (Central Act 39 of 1925).

(2) Any Civil Judge or Munsiff invested with powers under Sub-section (1) shall have concurrent jurisdiction with the District Judge in the exercise

of the powers conferred by the said Act upon the District Judge, and the provisions of the said Act relating to the District Judge shall apply to such

Civil Judge or Munsiff, as the case may be, as if he were the District Judge:

Provided that every order made by the Civil Judge or the Munsiff by virtue of the powers conferred upon him under Sub-section (1) shall be

subject to appeal.

(i) to the Court of Civil Judge when the order is passed by the Munsiff,

(ii) to the District Court where the order is passed by a Civil Judge.

(3) Every order passed on appeal under the proviso to Sub-section (2) shall be subject to appeal to the High Court under the rules contained in

the Code of Civil Procedure, 1908, applicable to appeals from appellate decree.

10. By the above Amending Act, Section 265 and 388 of the Central Act which had made provisions for delegation of powers of the District

Judge in non-contentious cases arising under Chapter IV and in relation to grant of succession certificate under Part X, were omitted.

11. Pursuant to the above powers conferred on the High Court under the newly inserted Section 23-A of the Civil Courts Act, the High Court has

issued a Notification, published in the gazette dt. 29.3.1979 which reads as under.

No. GOB 460/78. In exercise of the powers conferred under Sub-section (1) of Section 23A of the Karnataka Civil Courts Act, 1964.

(Karnataka Act 28 of 1978), the High Court of Karnataka hereby invests all the Officers Presiding over the Courts of Civil Judges and Munsiffs in

the State, with all or any of the powers of a District Judge, u/s 388 of the Indian succession Act, 1925, within the limits of their respective territorial

jurisdiction and respective pecuniary jurisdiction.

12. Reference to Section 388 of the Central Act in the above Notification appears to be an inadvertent error, since the section had been omitted,

by State Amending Act 28/1978, as already noticed above. The intention appears to be to clothe Civil Judge (Sr. Dn) and Civil Judge (Jr. Dn.)

with the power of the District Judge u/s 317 of Part X of the Central Act which deals with grant of succession certificate only.

13. In view of Section 30-B of the Civil Courts Act, as inserted by Karnataka Act 16/1996, the words "'Court of Munsiff' and "'Court of Civil

Judge'" as referred to has to be construed as "'Court of Civil Judge (Junior Division)'" and "'Court of Civil Judge (Senior Division)'" . Section 30-B

reads thus:

30-B. Construction of references to Civil Judge, Court of the Civil Judge, Munsiff and Munsiffs Court in any judgment and decree, etc. Unless the

context otherwise requires, any reference made to "'Civil Judge'" "'Court of the Civil Judge'", "'Munsiff or "'Munsiffs Court'" in any judgment, decree,

order or other instrument, prior to the date of commencement of the Karnataka Civil Courts (Amendment) Act, 1996. shall respectively be

construed as reference to "'Civil Judge (Senior Division)'" , "'Civil Judge (Junior Division)'" and "'Court of the Civil Judge (Junior Division)'" .

14. The State amending Act 28/78 has received the assent of the President on 22-11-1978. Further, the legislative field of Wills, intestacy and

succession is in the Concurrent list of the seventh schedule at its Entry 5. Therefore in view of Article 254(2) of the Constitution of India, in case of

inconsistency between the Central Act and the Civil Courts Act, the latter having received the assent of the President, has to prevail in the State.

15. Thus, it is clear that by virtue of powers exercised u/s 23-A of the Karnataka Civil Courts Act 1964 Notification has been issued and in

pursuance of the said Notification, the District Judge having considered the office note with regard to the pecuniary and territorial jurisdiction of the

property, by an order dated 12.12.2003, has transferred the petition filed u/s 276 of the Act, which was converted into a suit, for being tried and

disposed of by Civil Judge (Junior Division), Madikeri.

16. Thus, the power exercised and order passed by the District Judge, is in conformity with the Notification issued by the High Court, which was

in pursuance of the power conferred u/s 23-A of the 1964 Act. I.A. No. IV filed in the Court of Civil Judge (Junior Division), considering the

Notification dated 12.3.1979 referred to supra, issued u/s 23-A of the 1964 Act is clearly not maintainable. Even though, the trial Court has not

considered the matter in the above background, the order passed holding that I.A. No. IV to be not maintainable, is required to be upheld, for the

reasons stated herein.

17. From the examination of the provisions contained in chapter X of the Central Act and Section 23-A of the Karnataka Civil Courts Act, 1964 it

has to be held that, there is provision for delegation and conferring of jurisdiction on the Civil Courts to try matters relating to grant of probate or

letters of administration within their pecuniary and territorial jurisdiction. Hence the contentions of the learned Counsel for the petitioner, has to be

held as untenable and devoid of merit.

For the foregoing reasons, the Writ Petition is devoid of merit and the impugned order is upheld. Consequently, Writ Petition fails and is hereby

dismissed. No costs.

Order on "Being Spoken To"

Dated: 15th day of February, 2008

By an order dated 29-1 -2008, this writ petition was heard and allowed and the impugned order was quashed. Before the draft of the order could

be corrected and order could be signed, having entertained doubt as to whether there is any Notification issued u/s 23-A of the Karnataka Civil

Courts Act, 1964 by this Court, investing the jurisdiction of District Court under the Indian succession Act on the subordinate Courts, Registrar

General, High Court of Karnataka was requested to look into the old records and make available the Notification, if any, issued.

2. Registrar General made available to me a Notification No. GOB 460/78, dated 12-3-1979, which shows that High Court of Karnataka has

invested all the officers, presiding over the Courts of civil Judges and munsiffs in the State, with all or any of the powers of a District Judge u/s 388

of the Indian Succession Act 1925, with-in the limits of their respective territorial jurisdiction and respective pecuniary jurisdiction.

3. Since the said Notification referred to supra, was not brought to my notice, even after I had made enquiries with the branch dealing with

succession matters, on the date writ petition was heard and said order was dictated in the Court, allowing the writ petition, before the draft could

be corrected and order could be signed, the doubt was clarified. Hence, the writ petition was ordered to be posted before the Court for ""being

spoken to"", to reconsider the order dictated in open Court on 29-1-2008.

Heard Sri G. Balakrishna Shastry, learned Counsel appearing for the petitioners. In view of the Notification dated 12-3-1979 referred to supra,

learned Counsel has no objection to recall the order dated 29-1-2008 and to rehear the writ petition. For the foregoing reasons the order dated

29-1-2008 is recalled. Further arguments in the writ petition are heard and a separate order is passed.