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IN THE HIGH COURT OF KARNATAKA AT BANGALORE

DATED THIS THE 28<sup>TH</sup> DAY OF FEBRUARY 2002

BEFORE

THE HON'BLE MR.JUSTICE N.S.VEEERABHADRAIAH

C.R.P.NO.2833/98 C/W C.R.P.NO.2983/98

...  
(IN C.R.P.NO.2833/98)

**BETWEEN:**

Mrs. Lynette Fernandes,  
Christian, Aged about 50 yrs,  
W/o C.G.F.Fernandes,  
R/at: 41, Charles Campbell Road,  
Bangalore-560 005. ...Petitioner

(By M/s.Tarakaram A/s. & Leslie D.Silva, Advs.)

**AND:**

1. Mrs. Gertie Mathias  
W/o R.P.Mathias,  
Indian Christian Catholic,  
Aged 70 years,  
R/at: Highlands,  
Rosario church Road,  
Bolar, Mangalore-575 001.
  2. Bennet Mathias,  
S/o late R.P.Mathias,  
Indian Christian Catholic,  
Aged 47 years,  
R/at:Highlands,  
Rosario Church Road,  
Bolar, Mangalore-575 001.
  3. Antony D'Souza,  
S/o late Austin D'Souza,  
Aged 43 years,  
Indian Christian Catholic,  
R/at: Milagres Cross Road,  
Mangalore.
- [Signature]*

4. Mrs. Iris Albuquerque,  
Aged 61 years,  
Indian Christian Catholic,  
R/at: 18/1, Vivekananda,  
1<sup>st</sup> Cross, JaiBharathiNagar,  
Bangalore-560 056.

.. Respondents

(By M/S. Holla & Holla, Advs. for R.1,  
M/s. Jayakar A/s., Advs. for R.2.)

This civil revision petition is filed U/S 115  
C.P.C. against the order dt. 24.7.98 passed in P &  
SC No. 8/96 on the file of the III Addl. District  
Judge, Mangalore, allowing I.A. IV filed U/S 151,  
152 & 153 of CPC.

(IN C.R.P. NO. 2983/98)

**BETWEEN**

Mr. Bennet Mathias,  
S/o Late R.P. Mathias,  
Aged 47 years,  
R/at: Highlands,  
Church Road, Bolar,  
Mangalore-575001.

.. Petitioner

(By M/s. Jayakar A/s., Advs.)

**AND:**

1. Mrs. Lynette Fernandes,  
W/o C.G.F. Fernandes,  
Aged about 49 years,  
R/at: No. 41,  
Charles Campbell Road,  
Cox Town,  
Bangalore-560 005.

2. Mrs. Gertie Mathias,  
W/o late Richard P. Mathias,  
Aged 69 years,  
R/at: Highlands,  
Church Road, Bolar,  
Mangalore-575 001.

.. Respondents

(By M/S. Tarakaram A/s., Advs. for R.1,  
M/s. Holla & Holla, Advs. for R.2.)

*[Handwritten signature]*

This Civil Revision petition is filed U/S 115 of CPC against the order dt.20.6.98 passed in P & SC No.76/96 on the file of the III Addl. District Judge, D.K. Mangalore, ordering that the General Administrator maintain proper accounts till the final result of the suit and execute administration bond for the value etc.,

These Civil Revision Petitions coming on for hearing this day, the Court made the following:

ORDER


C.R.P.No.2833/98 is by the petitioner in P & S.C.No.76/96 questioning the order passed by the III Addl.District Judge, Mangalore, on I.A.No.IV reviewing the order dated 20.6.98 passed in P & S.C.No.8/96. C.R.P.No.2983/98 is by the 2<sup>nd</sup> respondent in P & S.C.No.76/96 questioning the order passed by District Judge, Mangalore, dated 20.6.98, holding the petition is maintainable.

2. The brief facts of the case are as follows:

One Arthur D'souza executed a Will dated 9.8.1954 appointing his wife Mrs.Prescy D'souza as the sole executrix with a further direction that in case Mrs.Prescy D'souza pre-deceased him, then, Mr. N.E.L.Paris would be the executor of the said will. It is urged that Mrs.Parscy

D'souza pre-deceased the testator-Arthur D'souza and Mr.N.E.L.D'souza also predeceased the Testator. As there was no executor alive, an application for letter of administration came to be filed on the basis of the alleged Will dated 9.8.1954. The beneficiaries are Mrs. Gertie Mathias and Mr.Bennet Mathias, who are the petitioners in P & S.C.No.8/96. Another petitioner Mrs.Lynette Fernandes filed Caveat in P & S.C.No.8/96, alleging that the testator had last executed 'Will' dated 2.2.1956. On the basis of the said 'will', also filed P & S.C.No.76/96 for grant of Letter of Administration. The learned District Judge clubbed both the matters and passed a common order dated 20.6.98 as follows;

"The petition in P & S.C.No.76/96 is maintainable. Since the claim made therein is contentious, the said P & S.C.No.76/96 is hereby ordered to be converted into a suit as provided under Sec.285 of the Indian Succession Act. P & S.C.No.8/96 is disposed of subject to the final result of the said P & S.C.No.76/96. It is hereby directed that Letters of Administration be issued in favour of the 2<sup>nd</sup> petitioner



appointing him as Administrator in P & S.C.No.8/96 under sec.247 of the Indian Succession Act. The 2<sup>nd</sup> petitioner in P & S.C.No.8/96 is appointed as Administrator of the estate of the deceased-Testator. He shall have all the rights and powers of a General Administrator other than the rights of distributing the estate. He shall be subjected to the immediate control of the Court. He shall manage the estate and maintain proper accounts till the final result of the suit arising out of P & S.C.No.76/96. He shall also execute requisite Administration fund for the value of the estate inherited".

3. Subsequently, the petitioners Mrs.Gartie Mathias and Mr.Bannet Mathias filed an application U/ss. 151, 152 & 153 C.P.C. for review of the order dated 20.6.98 and the said I.A. came to be allowed by order dated 24.7.98, which reads thus;

"I.A.IV is allowed. It is hereby directed that in place of the words "under section 247 of the Indian Succession Act" mentioned in the operative portion of the order, the words "in respect of the will dated 9.4.1954 executed by the deceased



Arthur D'Souza subject to the result of the said suit, appointing him as the administrator" shall be substituted so as to express the true intention of the Court regarding the relief granted to the parties".

4. Against the common order in so far as it relates to reviewing the order dated 20.6.98, Mrs.Lynette Fernandes preferred C.R.P.No.2833/98. Whereas, Mr. Bennet Mathias preferred C.R.P.No.2983/98 questioning the order dated 20.6.98 in so far as it relates to converting P & s.C. No.76/96 into a suit.

5. Heard both side Counsels.

6. On going through the impugned order, it shows that Mrs.Gertie Mathias and Mr.Bennet Mathias claim the property in question under Will dated 9.4.1954 whereas, it is the case of Mrs.Lynette Fernandes that the Testator had executed his last Will and Testament dated 2.2.1956. It is further seen that the learned District Judge has granted Letter of Administration pendente lite. However, in the

subsequent order dated 24.7.98, by deleting Section 247 of Indian Succession Act, has clarified the operative portion thus;

"It is hereby directed that in place of words "under Section 247 of the Indian Succession Act", mentioned in the operative portion of the order, "in respect of Will dated 9.4.1954 by the deceased Arthur D'souza subject to the result of the said suit, appointing him as administrator" shall be substituted so as to express the true intention of the Court regarding the relief granted to the parties".

7. The order shows that Section 247 of the Indian Succession Act is substituted. Virtually it is an order pendentelite. Therefore, it can be inferred that, such Letter of Administration granted is only till other matters reaches finality.

8. Accordingly, the order of the learned District Judge, Mangalore, dated 24.7.98 is clarified as above. It is also made clear that the Letter of Administration granted, shall be in force till the disposal of P & S.C. 76/96 which

has been converted into original suit. The person holding the letter of administration shall not alienate the property till the disposal of the suit. The learned District Judge is directed to expedite the matter.

9. With the said observation, both the Civil Revision Petitions are disposed of.

Sd/-  
Judge

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