

IN THE HIGH COURT OF KARNATAKA AT BANGALORE

DATED THIS 17TH DAY OF FEBRUARY 2000

BEFORE

THE HON'BLE MR.JUSTICE B.K.SANGALAD

M.F.A.NO.379/1995

BETWEEN;

Ozanam Home for the aged
Kallianpur, Udupi,
run by the Society of
St.Vincent De Paul,
Udupi Particular Council
repby its President
Sri Noel Andrade.

APPELLANT

(By Sri J.M.D. Cunha, Advocate)

AND

Edward S.Cabral,
S/o late Rosario Cabral,
aged 51 yrs,
Anandasagar,
16/1207, M.H.Colony,
Coral Road, Borivili(West)
Bombay 400 092.

RESPONDENT

This appeal is filed u/s 299 of the Indian Succession Act, 1925 against the order dated 16.11.1994 passed in O.S.No.6/88 on the file of the III Addl. D.J:D.K. Mangalore rejecting the plaint u/o 7 R.11(d) of CPC.

This appeal coming on for hearing this day the Court delivered the following:

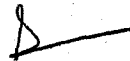
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J U D G M E N T

Heard.

2. It is not necessary to rewrite the facts as they are succinctly drawn in I.A-II. The contention of the learned counsel for the appellant is that letters of administration can be given. Under such circumstances, the amendment ought to have been allowed. The respondent although served is absent. Perused the order.

3. In the decision in the case of INDER CHAND NAYYAR V. SARVADESHIK ARYA PRATINIDHIA SABHA AND ANOTHER (AIR 1977 DELHI 34) it is held that the Probate cannot be granted to any person unless and until he has been named as an executor in the Will. Such a thing is not available in the present case. According to the learned counsel grant of letters of administration to association of individuals or a body registered under the Societies Registration Act is not prohibited. Even it could be obtained in the name of its President. Even assuming for a moment it is true, Hehe^r



has to approach the Court afresh for the grant of letters of administration. In view of this observation, the appeal stands dismissed.

Sd/- JUDGE

akc/