

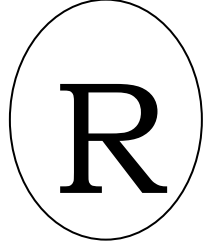
**IN THE HIGH COURT OF KARNATAKA AT BENGALURU**

**DATED THIS THE 22<sup>ND</sup> DAY OF MARCH 2017**

**BEFORE**

**THE HON'BLE MR. JUSTICE H.G.RAMESH**

**WRIT PETITION NO.47012/2013 (GM-CPC)**



**BETWEEN:**

MR. PALANISWAMY  
S/O SHIVAN NADAR @  
SEDEYAN MEISTRY  
AGED ABOUT 53 YEARS  
RESIDING AT SUNTIKOPPA TOWN  
SOMWARPET TALUK  
KODAGU DISTRICT - 571 237

... PETITIONER

(BY SRI S.R.RAVI PRAKASH, ADVOCATE)

**AND:**

1. SRI S.ARMUGAM  
S/O SHIVAN NADAR @  
SEDEYAN MEISTRY  
AGED ABOUT 50 YEARS  
RESIDING AT  
SUNTIKOPPA TOWN  
SOMWARPET TALUK  
KODAGU DISTRICT - 571 237

2. SRI GANESH  
S/O SHIVAN NADAR @  
SEDEYAN MEISTRY  
AGED ABOUT 42 YEARS  
RESIDING AT  
SUNTIKOPPA TOWN  
SOMWARPET TALUK  
KODAGU DISTRICT - 571 237

... RESPONDENTS

(BY SRI G.RAVISHANKAR SHASTRY, ADVOCATE FOR R1;  
R2 SERVED)

THIS WRIT PETITION IS FILED UNDER ARTICLES 226 & 227 OF THE CONSTITUTION OF INDIA PRAYING TO QUASH THE ORDER DATED 04.09.2013 ON I.A.NO.1 VIDE ANNEXURE-A IN O.S.NO.47/2013 ON THE FILE OF THE PRL. CIVIL JUDGE AT MADIKERI ETC.

THIS WRIT PETITION COMING ON FOR PRELIMINARY HEARING IN 'B' GROUP, THIS DAY, THE COURT MADE THE FOLLOWING:

**ORDER**

**H.G.RAMESH, J. (Oral):**

**1.** Heard. This writ petition is by defendant No.1. Two questions fell for consideration before the trial Court, namely, (i) whether valuation of the estate made by the plaintiff in the suit for grant of probate is in accordance with law, and (ii) whether court fee paid on the application for probate after it was registered as a suit is correct. The trial Court has examined the aforesaid two questions without referring to the relevant provisions of the Karnataka Court-Fees and Suits Valuation Act, 1958 ('the Act' for short) and has dismissed the application filed by the petitioner under Section 11(2) of the Act by the impugned order dated 04.09.2013.

**2.** The prayer in the suit is for grant of probate relating to the will dated 09.04.2002. The trial court ought to have

examined the aforesaid two questions in the light of Section 52 of the Act and the proviso to Article 11(I) of Schedule II of the Act. In the impugned order, the trial Court has referred to Section 7(2) of the Act. Section 7(2) of the Act applies to determine the market value of the land on a fictional basis in the suits falling under certain sections of the Act referred to therein. As the trial Court has not examined the matter in the light of the relevant provisions of the Act, the impugned order dated 04.09.2013 is liable to be set aside and is accordingly set aside. The matter is remitted to the trial court for reconsideration in accordance with law. All contentions of both the parties are kept open.

Petition disposed of.

**Sd/-  
JUDGE**

hkh.