

KAKL010026032023



**IN THE COURT OF THE II ADDL. DISTRICT &
SESSIONS JUDGE AT KOLAR**

PRESENT

Smt. DIVYA P.K., M.A., LL.B.,
II Additional District & Sessions Judge, Kolar.

DATED THIS THE 19th DAY OF JULY, 2024

P & SC. No.110 of 2023

PETITIONER : **Kalpana,**
W/o M.S.Srinivas,
Aged about 43 years.
Maderahalli Village,
Vakkaleri Hobli,
Kolar Taluk.

(Rep. by Sri. **Krishnappa,**
Advocate.)

V/S

RESPONDENT: **- NIL -**

ORDER

The petitioner/Kalpana has filed this petition under Section 276 of The Indian Succession Act, 1925, for grant of probate in respect of the registered Will dated 9.12.1999 said to have been executed by her mother **Venkatalakshamma, W/o**

Narayanappa, bequeathing the petition schedule properties which were the ancestral properties acquired under re-grant proceedings from her father. The husband of testator Narayanappa was the illatom son in law of parents of the testator Venkatalakshmamma.

2. The petitioner is requesting for grant of probate in respect of the said registered Will executed by the Testator in respect of the petition schedule properties situated at Yeldur village, Srinivasapura Taluk, so as to enable her to administer the properties bequeathed in her favour and to enjoy the said properties as a beneficiary under the Will.

3. According to the petitioner, the Testator of the Will viz., **Venkatalakshmamma, W/o Narayanappa** was the absolute owner of the petition schedule properties. The petitioner is the daughter of Testator **Venkatalakshmamma, W/o Narayanappa** and the petitioner used to take care of her mother during his life time. The said **Venkatalakshmamma, W/o Narayanappa** has executed registered Will dated 19.12.1999 in her favour before the Sub Registrar Office, Srinivasapura. During the life time of deceased, the petitioner was looking after the deceased **Venkatalakshmamma, W/o**

Narayanappa who died on 17.03.2022 at Yelduru of Srinivasapura Taluk, hence, out of love and affection the deceased has appointed the petitioner as her sole executor as per her wish and the petitioner has acquired and enjoying the schedule properties till today. Therefore, the petitioner is entitled for probate as the said testator did not appoint any other executor/s other than the petitioner. However, when the petitioner applied for change of khatha to her name on the basis of registered Will, the revenue authorities advised the petitioner to produce the probate by the competent Court. Hence, the Probate Certificate is essential. Petitioner is the only successor to the petition schedule properties as legatee under the Will. Hence, the petition.

4. The citation of this petition and due notice on the prayer of the petitioner was got published in Kannada Daily local newspaper "SAMYUKTA KARNATAKA" vide issue dated 4.10.2023. But nobody has come forward to object the prayer of the petitioner.

5. The petitioner has got examined herself as **PW.1** and also examined attesting witnesses and deed writer to the said Will as **PWs.2 and 3** and got marked 24 documents at

Ex.P1 to Ex.P.24. Since none has raised objection and there is no resistance by anybody to consider the prayer of the petitioner, the evidence of PWs 1 to 3 remains unchallenged.

6. Heard the learned counsel for petitioner. This Court has also carefully perused the material on record.

7. The only points that would arise for the consideration of the Court is:

1. Whether the petitioner is entitled to probate in her favour in respect of the registered Will dated 19.12.1999 executed by **Venkatalakshamma, W/o Narayanappa** with respect to petition schedule properties?

2. What Order?

8. The answer to the above points is as follows:

Point No.1 : In the Affirmative

Point No.2 : As per final order
for the following;

REASONS

9. Point No.1 : The petitioner, who is claiming to be a legatee under the registered Will executed by **Venkatalakshamma, W/o Narayanappa** on 19.12.1999, has

filed the present petition seeking for issuance of probate. In order to substantiate her case, petitioner/Kalpna has got examined herself as PW.1 and attesting witnesses to Will as PWs.2 and 3.

10. PW1/Kalpna has sworn to the Affidavit in lieu of examination-in-chief reiterating the petition averments. PW.1 has produced original registered Will dated 19.12.1999 executed by **Venkatalakshamma, W/o Narayanappa** bequeathing the petition schedule properties in favour of petitioner at Ex.P.1. Exs.P.2 is the death certificate of the death certificate of **Venkatalakshamma, W/o Narayanappa** who died on 17.03.2022, Ex.P-3 is the death certificate of Srinivas the brother of petitioner, Ex.P-4 to 22 are the RTC Extracts in respect of Sy.Nos.101, 22, 75 184 and 223 of Yelduru village. Ex.P-23 is the paper publication publishing petition notice in Samyukta Karnataka dated 4.10.2023. Ex.P-24 is the genealogical tree.

11. Further, petitioner has also got examined PW.2/Srinivas and PW.3/M.N.Srinivas, the attesting witnesses and the deed writer to Ex.P-1 the registered Will dated 19.12.1999 who have identified their signatures and the

signatures of other attestor and the testator to the said Will at Ex.P1(a) to (d).

12. It is well settled that *a Will is required to be proved in accordance with **Section 63 of the Indian Succession Act** read with **Section 68 of the Indian Evidence Act***. The burden is always upon the propounder to prove the due execution of the Will, by warding off all the suspicious circumstances surrounding the Will. The proof of a Will has to be considered keeping in mind the principles laid down by the **Hon'ble Apex Court** in the case of ***H. Venkatachala Iyengar - V/s - B. N. Thimmajamma*** reported in **AIR 1959 Supp. (1) SCR 426** and our **Hon'ble High Court** in the case of ***Sri. J.T. Surappa and another - V/s - Satchidhanandendra Saraswathi Swamiji Public Charitable Trust and Others*** reported in **ILR 2008 KAR 2115**.

13. It is also well settled law that *the Will is required to be proved independently and no presumption can be attached to the Will, whether it is registered or unregistered*. The basic ingredients that has to be appreciated in matters pertaining to Will has been laid down by our **Hon'ble High Court** in the case

of ***J.T. Surappa & Another*** (*supra*), wherein it is held that with respect to the proof of Will, the Courts have to tread carefully on the path in the enquiry to be conducted with regard to the Will and the said path consists of five steps popularly known as “***panchapadi***”, which can be summarized thus:

1. Whether the Will bears the signature or mark of the testator and is duly attested by two witnesses and whether any attesting witness is examined to prove the Will?
2. Whether the natural heirs have been disinherited? If so, what is the reason?
3. Whether the testator was in a sound state of mind at the time of executing the Will?
4. Whether any suspicious circumstances exist surrounding the execution of the Will?
5. Whether the Wills has been executed in accordance with Section 63 of Indian Succession Act, 1925, r/w Section 68 of the Indian Evidence Act?

Hence, the material on record is required to be appreciated, keeping in mind the above said principles.

14. In the instant case, signatures/LTM of Testator - **Venkatalakshamma, W/o Narayanappa** contained in Ex.P.1/Will is identified by attesting witnesses PWs.2 and 3 and they have also identified their signatures **as well**. That apart, as

noticed from the contents of Ex.P.1/ registered Will dated 19.12.1999 Testator - **Venkatalakshamma, W/o Narayanappa** was aged about 60 years as on that day and she was aged senior citizen. That Testator being the mother has executed the Will in question in favour of petitioner who is her daughter, out of her own will and affection, since petitioner was looking after her welfare. Further, there are no materials to arrive at the conclusion that Testator was physically or mentally incapable of executing the Will. Ex.P.2/ Death Certificate of Testator - **Venkatalakshamma, W/o Narayanappa** would show that she expired on 17.03.2022, 23 years from the date of execution of Ex.P.1/Will and not immediately after execution of the Will. There is nothing to indicate that Testator has executed any other Will during her lifetime subsequent to Ex.P.1. Further, there are no suspicious circumstances surrounding Ex.P.1/Will. The petitioner has adduced sufficient evidence to satisfy the mandatory requirements contained under **Section 63 of the Indian Succession Act & Section 68 of the Evidence Act** to prove the due execution of the Will in question.

15. It is also to be noticed that the **Division Bench** of our **Hon'ble High Court** in the case of **Smt. Rihana Parveen**

V/s Nil (M.F.A. No.3238/2019 dated 07.11.2019) has held thus:

“8.16.Thus, from the conjoint reading of Sections 222(2), 231 and 234 of the Act, it is clear that it is not only the executor named in the Wills can seek for a probate, but depending on the circumstances whether other persons could also seek such probate.

8.17. In the present case, the appellant is the wife and heir of the deceased testator, as also she has been named as a legatee in the last Wills and testament of the testator. On both these grounds when no executor is named, she would be eligible to seek for probate and or letters of administration. The petition, therefore, filed by the appellant under Section 276 of the Act is proper and valid. Not permitting the legatee to seek for probate of a Wills would render the Wills ineffective and thereby negate the last wishes of the testator. There ought to be a meaningful reading, meaning and interpretation given to the provisions of the Act so as to permit the legatee to be an executor in the event of no executor being named in the Wills.”

16. Even in the instant case, Testator has not named any Executor under Ex.P.1/Will dated 19.12.1999 which was executed before the Sub Registrar, Srinivasapura and petitioner is the daughter of Testator and legatee under the said Will. If petitioner is not permitted to seek for probate of

the Will in question, the same would render the Will ineffective and thereby negate last wishes of Testator. By applying the aforesaid principles laid down by the *Division Bench of our Hon'ble High Court*, this Court is of the humble opinion that present petition filed seeking for probate of the Will by petitioner who is the legatee is *maintainable*, notwithstanding that no other Executor has been named in the Will.

17. By considering the evidence of PWs. 1 to 3 and also the documents produced, there is no hesitation to conclude that **Smt.Venkatalakshamma, W/o Narayanappa** had executed registered Will as per Ex.P.1 bequeathing the petition schedule properties in favour of the petitioner. Petitioner has proved due execution of Ex.P.1/registered Will dated 19.12.1999 executed before the Sub-Registrar, Srinivasapura by Testator in accordance with law. Hence, this Court is of the opinion that petitioner is entitled for grant of probate, as prayed for by her.

18. Point No.2 : In view of my findings on point No.1, this Court proceed to pass the following: -

ORDER

The petition filed by petitioner/Kalpana under Section 276 of the Indian Succession Act, 1925, is ***allowed.***

Probate of Ex.P.1/registered Will dated 19.12.1999 executed by **Smt. Venkatalakshamma, W/o Narayanappa** before Sub-Registrar, Srinivasapura is ordered to be issued in favour of the petitioner in respect of the petition schedule properties in the prescribed form, after collecting necessary fees, if any.

*(Dictated to **Stenographer Grade-I** directly on the Computer, computerized by him, revised, corrected by me and then pronounced in the open court on this the **19th day of July, 2024**)*

(DIVYA P.K.)

II Addl. District & Sessions Judge,
Kolar.

SCHEDULE

1. The properties bearing Sy.No.101 measuring 36 1/4th guntas bounded on:
East by : PWD Road
West by : Property of Reddolla Narayanappa
North by : Property of KEB
South by : Property of petitioners No.2 to 6
(Seenappa)

2. The properties bearing Sy.No.22 measuring 1 acre 9 ½ guntas bounded on:

East by : Property of Bhajanthri Rangappa
West by : Property of Reddolla Narayanappa
North by : Shanubhog Inamthi land;
South by : Property of petitioners No.2 to 6
(Seenappa)

3. The properties bearing Sy.No.75 measuring 1 acre 1 1/4th gunta bounded on:

East by : Property of Bhajanthri Rangappa
West by : Property of Reddolla Narayanappa
North by : Shanubhog Inamthi Land
South by : Property of petitioners No.2 to 6
(Seenappa)

4. The properties bearing Sy.No.184 measuring 5 1/4th guntas bounded on:

East by :Property of Reddolla Narayanappa,
West by : Property of Ayanna
North by : Property of Lagumanna
South by : Property of petitioners No.2 to 6
(Seenappa)

5. The properties bearing Sy.No.223 measuring 5 1/4th guntas bounded on:

East by : Kaluve
West by : Property of Reddolla Narayanappa
North by : Property of Garumatha Manya
South by : Property of petitioners No.2 to 6
(Seenappa)

6. The properties bearing VP Katha No.242 measuring 13x17 ft. house construction and 13x19 vacant space bounded on:

East by : Property of Arikiere
Munivenkatappa
West by : Property of Beedapalli Papanna
North by : Property of Krishnappa
South by : Road

All the items above (1) to (6) situated at Yeldur village and Hobli, Srinivasapura Taluk.

(DIVYA P.K.)
II Addl. District & Sessions Judge,
Kolar.

A N N E X U R E

1. The list of witnesses examined on behalf of the petitioner: -

PW1 : Kalpana
PW2 : Srinivas
PW3 : MN Srinivas

2. The list of witnesses examined on behalf of the respondent: -

- Nil -

3. The list of documents exhibited on behalf of the petitioner: -

Ex.P.1 : Original Will
dated 19.12.1999 executed

before Sub Registrar

Ex.P-1(a)	:	Signature of Srinivas
Ex.P-1(b)	:	Signature of Narayanaswamy
Ex.P-1(c)	:	Signature of Venkatalakshamma
Ex.P-1(d)	:	Signature of M.Narayanappa
Ex.P.2	:	Death Certificate of Venkatalakshamma
Ex.P.3	:	Death certificate of Srinivas
Ex.P.4 & 5	:	RTC Extracts of Sy.No.101 of Yelduru village.
Ex.P.6 to 9	:	RTC Extract of Sy.No.22 of Yelduru village.
Ex.P.10 to 13	:	RTC Extract of Sy.No.75 of Yelduru village.
Ex.P.14 to 18	:	RTC Extract of Sy.No.184 of Yelduru village.
Ex.P-19 to 22	:	RTC Extract of Sy.No.184 of Yelduru village.
Ex.P.23	:	Paper Publication in Samyukta Karnataka daily news paper dated 4.10.2023
Ex.24	:	Genealogical Tree

4. The list of documents exhibited on behalf of the Respondent/s: -

- Nil -

(DIVYA P.K.)

II Addl. District & Sessions Judge,
Kolar.

Orders pronounced in open court vide separate order with following operative portion:

ORDER

The petition filed by petitioner/ Kalpana under Section 276 of the Indian Succession Act, 1925, is **allowed**.

Probate of Ex.P.1/registered Will dated 19.12.1999 executed by **Smt. Venkatalakshamma, W/o Narayanappa** before Sub-Registrar, Srinivasapura is ordered to be issued in favour of the petitioner in respect of the petition schedule properties in the prescribed form, after collecting necessary fees, if any.

II Addl. District & Sessions Judge,
Kolar.