

KACB010000162026



Presented on : 06-01-2026
Registered on : 06-01-2026
Decided on : 03-07-2026
Duration : 5 months 28 days

**IN THE COURT OF THE PRINCIPAL DISTRICT
JUDGE, AT CHIKKABALLAPURA**

Dated this the 3rd day of July 2026

Present:

Sri. T.P.RAMALINGE GOWDA,

B.Sc., LL.M., M.B.A.

***Principal District & Sessions Judge,
Chikkaballapura.***

MISC. NO.1 OF 2026

Petitioner/s :

1. Sri.Venkataronappa
S/o Late Venkata Nayaka,
Aged about 74 years,
R/at Nandiganahalli Village & Post,
Murugamalla Hobli,
Chintamani Taluk,
Chikkaballapura District.

2. Sri.Dodda venkataswamy
S/o Late Venkata Nayaka,
Aged about 71 years,
R/at Beemakanahalli Village,
Nandagudi Hobli, Hosakote Taluk,
Bengaluru Rural District.

3. Sri.Chikka Venkataswamy
S/o Late Venkata Nayaka,
Aged about 67 years,
R/at Lakshmiddevanakote,
Ambajidurga Hobli,
Chintamani Taluk,
Chikkaballapura District.

4. Sri.Chalapathi
S/o Late Venkata Nayaka,
Aged about 65 years,
R/at Nandiganahalli Village & Post,
Murugamalla Hobli,
Chintamani Taluk,
Chikkaballapura District.

5. Smt.Nayanamma
W/o Late Krishnappa,
Aged about 64 years,
R/at Nandiganahalli Village & Post,
Murugamalla Hobli,
Chintamani Taluk,
Chikkaballapura District.

6. Smt.K.Manjula
D/o Late Krishnappa and Narayanamma,
W/o Vijay Kumar,
Aged about 38 years,
R/at Byappanahalli Village,
Sadali Hobli,
Sidlaghatta Taluk,
Chikkaballapura District.

7. Smt.Vijiyamma
W/o Late Krishnappa,
Aged about 52 years,
R/at Nandiganahalli Village & Post,

Murugamalla Hobli,
Chintamani Taluk,
Chikkaballapura District.

8. Smt.K.Gayithri
D/o Late Krishnappa and Vijiyamma,
W/o Muniraju,
Aged about 31 years,
R/at Jathavara Village,
Nandi Hobli,
Chikkaballapura District.
(Represented by Sri H.R.K., Advocate)

Vs.

Respondent/s:

1. Smt. N.G. Prabhavathi
D/o Late Govindappa,
W/o Hari Babu,
Aged about 40 years,
R/at., Nandiganahalli Village & Post,
Murugamalla Hobli, Chintamani Taluk,
Chikkaballapura District.

2. N.G. Radhamma.
W/o Shankara,
D/o Late Govindappa,
Aged about 35 years,
R/at., Gownapalli Village & Post,
Srinivasapura Taluk, Kolar District.

3. N.G. Rani,
D/o Late Govindappa,
W/o C.V. Masappa,
Aged about 32 years,
R/at., # 64, Chikkattamangala Village,
Devanahalli Taluk,
Bangalore Rural District.

4. N.G. Rajamma,
D/o Late Govindappa,
Aged about 30 years,
R/at., Nandiganahalli Village & Post,
Murugamalla Hobli,
Chintamani Taluk,
Chikkaballapura District.

5. Smt. Eswaramma,
W/o Late Govindappa,
Aged about 70 years,
R/at., Nandiganahalli Village & Post,
Murugamalla Hobli,
Chintamani Taluk,
Chikkaballapura District.

(Represented by Sri R.C.S., Advocate)

ORDER

This petition has been filed under Sections 263 and 264 of the Indian Succession Act (herein after referred to as the '**Act**') praying to revoke the probate, dated 18.04.2024 granted by this court in favour of respondents in P & SC No.66/2023.

2. Brief facts of the petition are that the respondents herein have filed the petition in P & SC No.66/2023 praying to issue the probate certificate under Section 276 of Indian Succession Act. The said Will was bequeathed by Govindappa who is the father of respondents the same is registered before the Sub-Registrar at Chintamani Taluk vide document No.CMN-3-00253/2022-23 dated

09.12.2022 in favour of respondents No.1 to 4 with respect to schedule property bearing Sy.No.10 totally measuring 2-05 guntas situated at Kodigavarahalli Village, Murugamalla hobli, Chintamani Taluk and this court has issued the probate certificate in favour of respondents No.1 to 4 to an extent of 0-20 guntas each in above said survey number. Further, the said property is the joint family properties of petitioners and respondents, one Venkatesh Nayak and Venkatamma are died leaving behind their six children namely Venkataronappa (petitioner No.1), Govindappa (father of respondent No.1 to 4 and husband of respondent No.5), Dodda Venkataswamy (petitioner No.2) and Krishnappa he has died leaving behind his wives Narayanamma and Vijayamma i.e., petitioner No.5 and 7 herein, Chikkavenkataswamy (petitioner No.3) and Chalapathi (petitioner No.4). One Govindappa who is the father of the respondent No.1 to 4 and husband of respondent No.5 has filed suit for declaration in respect of the petition schedule properties. The petitioners are defendants in the above suit and the same is pending for adjudication in O.S.No.22/2018 on the file of the Additional Civil Judge and JMFC at Chintamani.

3. Further it is contended that the wives of Krishnappa have filed suit for the relief of partition and separate possession with respect to joint family properties in O.S.No.322/2016 on the file of Prl. Civil Judge and JMFC at Chintamani and the same is pending for consideration and the said case is posted for additional written statement of respondents No.1 to 4 who are defendants in O.S.No.322/2016. Further, the said Govindappa died on 06.05.2023 the same has been reported by the petitioners No.5 and 7 on 23.05.2023 in O.S.No.322/2016 and they have filed application Under Order 22 Rule 4 of the Code of Civil Procedure to bring the LR's of said Govindappa and the same is allowed. After issuance of the notice the respondents have engaged counsel and filed their vakalath on 11.09.2023. The petitioners No.5 and 7 have filed their suit for their legitimate share in suit schedule properties belonging to Venkatanayak who is the grandfather of petitioners and respondents, the same is acquired by said Govindappa through grant made by government under the joint family funds. The petition schedule properties are the item No.3 in O.S.No.322/2016 and the said suit is filed on 17.12.2016.

4. Further, it is the contended that the respondent No.1 to 5 colluded with each other and have created the Will in their favour, when the original suit is pending before the Prl. Civil Judge and JMFC., Chintamani. The alleged Will is created on 09.12.2022. The respondents are well aware about the above said facts and circumstances, but they have intentionally created the Will without the knowledge of the petitioners and the respondents have played fraud. Thereafter respondents have filed petition for grant of probate certificate in favour of respondent No.1 to 4 without making petitioners as necessary parties in the said petition and they have obtained orders from this court by suppressing the true and material facts before this court, in this scope itself the order passed by this court is not maintainable.

5. Further, it is contended that on the color of the probate certificate, colluding with the revenue officials, the respondents have got the impugned mutation No.H8/2024-25 dated 20.06.2025 accepted an extent of 0-20 guntas each in the name of respondents No.1 to 4. On the basis of impugned revenue documents on 26.12.2025 the respondents have come with some real estate agents, were negotiating

to sell schedule properties. On questioning by petitioners, the respondents have disclosed that the mutation and RTC are standing in their names and they have obtained revenue documents on the basis of probate certificate issued by this court. The respondents have suppressed the true and material facts before this court and have intentionally not disclosed the O.S.No.322/2016 pending before the Prl. Civil Judge and JMFC at Chintamani and another suit filed by the father of respondents No.1 to 4 in O.S.No.22/2018 the same is pending before Additional Civil Judge and JMFC at Chintamani. By great astonishment, the petitioners have approached the office of this court and enquired about the proceedings of the case. Then only they learnt about the order obtained by respondents fraudulently. The petitioners have applied for copies on 20.12.2025 and the copies were issued on 26.12.2025, immediately the petitioners have arranged to prefer this petition. Therefore, the petition is in time deducting the date of obtaining the certified copy of the orders. Hence, prayed to allow the petition.

6. After filing of this petition, notice was issued to the respondents. In response to the notice respondents appeared through

their counsel and filed objections. Wherein it is stated that the petition is not maintainable either in law or on facts and the same is liable to be dismissed in limine. Further respondents have admitted the averments of para 6 of the plaint, but contended that the item No.3 of the suit schedule property is the self acquired property of the said Govindappa which was granted by the government authorities in to his name individually where the averments in the application furnished by Govindappa reflects. Further stated that, this court after enquiry has passed an order in accordance with law after fulfilling the statutory requirements under the Act by the respondents by way of adducing evidence and furnishing documents. The petitioners have not disputed regarding the registered Will dated 09.12.2024. The petitioners have not furnished any cogent reasons for revocation of probate. The petitioners are entirely depending upon the civil cases pending before the civil court which is totally outside the scope of enquiry in a probate proceedings. Further, the Hon'ble Supreme Court in case of ***Smt.Severine D'Souza and Anr V. Felix Ambrose D'Souza, ILR 2003 Kar 194*** has discussed that the probate court is not entitled to examine the question of the title of the testator to the

property. The probate court will not go in to the question of the title of the property which is beaqueted under the Will. It is totally outside the scope of enquiry in a probate proceedings. If the testator has a right in the property the beneficiary gets that right on the death of the testator under the Will. The scope of enquiry in a probate proceedings is only to find out whether the Will siought to be probated has been duly executed by the testator and is proved in accordance with law and the statutory requirements under the Act have been complied with. Therefore, grant of probate in no way affects the right of a person who claims title to the property independently or adverse to the interest of the testator. It does not decide the question of title or the existence of the property itself. Hence, prayed to dismiss the petition.

7. In order to prove their case, the petitioners examined the 7th petitioner as Pw.1 and got marked the document at Ex.P1 to P13. On the other hand learned counsel for respondents has submitted to have no respondent evidence.

8. Heard the arguments on both sides. Counsel for respondents has submitted written arguments. Learned counsel for respondents has also relied on the decision in ***Civil Appeal.No.2277 of 2008 between***

Krishna Kumar Birla Vs Rajendra Singh Lodha & Ors of the Hon'ble Supreme Court of India.

9. On the basis of the above said facts, the following points arise for my consideration:

1) Whether the petitioners have made out sufficient cause to revoke the order of probate, dated 18.04.2024 passed in P & SC No.66/2023?

2) To what order?

10. My findings on the above points are:

Point No.1 : *In Affirmative.*

Point No.3: As per final order for the following:

REASONS

11. **Point No.1:** Before proceeding to appreciate the rival contentions of parties it is useful to refer the provision of law as envisaged under Section 263 of Indian Succession Act, which reads thus;

“263. Revocation or annulment for just cause.—The grant of probate or letters of administration may be revoked or annulled for just cause.

Explanation.—Just cause shall be deemed to exist where -

- (a) the proceedings to obtain the grant were defective in substance; or*
- (b) the grant was obtained fraudulently by making a false suggestion, or by concealing from the Court something material to the case; or*
- (c) the grant was obtained by means of an untrue allegation of a fact essential in point of law to justify the grant, though such allegation was made in ignorance or inadvertently; or*
- (d) the grant has become useless and inoperative through circumstances; or*
- (e) the person to whom the grant was made has wilfully and without reasonable cause omitted to exhibit an inventory or account in accordance with the provisions of Chapter VII of this Part, or has exhibited under that Chapter an inventory or account which is untrue in a material respect.”*

12. Upon meaningful reading of the aforesaid provision of law it is amply forthcoming that the probate issued by this court can very well be revoked or annulled, where the probate was obtained by pleading false and untrue facts or it appears issue of probate is defective under law or where operation of probate become useless and inoperative in view of the facts and circumstances made out before the court. By keeping in mind the rival arguments coupled with the aforesaid provision of law, I have carefully scrutinized the averments

made in the petition and statement of objections coupled with oral and documentary evidence adduced by both sides.

13. Whereas the 7th petitioner who has been examined as Pw.1 in her examination-in-chief reiterated the very averments of the petition. Nothing worthwhile was elicited from the mouth of Pw.1 during the course of cross-examination.

14. On perusal of the entire materials on record it appears that the petitioners No.1 to 4 are the children of one Venkatanayaka, petitioners No.5 and 7 are daughter-in-laws of one Venkatanayaka and petitioners No.6 and 8 are grand-children of Venkatanayaka. Further it is an admitted fact that the father of respondents No.1 to 4 and husband of respondent No.5 by name Govindappa is the second son of said Venkatanayaka. This petition for revocation of probate is filed by the siblings of father of respondent No.1 to 4 and husband of respondent No.5 Govindappa, who are the legal representatives of testator Govindappa, who is admittedly the 2nd son of Venkatanayaka. The said fact is not been denied by the present respondents. This fact is also fortified by the Genealogical tree which is marked as Ex.P12. Wherein it appears that Venkatanayaka had six children namely

Venkataronappa, Govindappa, Doddavenkataswamy, Krishnappa, Chikkavenkataswamy and Chalapathi. Thereby non-arraying of present petitioners as parties in the P & SC proceedings would *ipso facto* leads to revocation of probate for non-compliance of mandatory provision of Section 283(1)(c) of the Act.

15. Further on perusal of Ex.P10 certified copy of plaint in O.S.No.322/2016 shows that the present petitioners No.5 and 7 have filed the said suit against one Govindappa who is none other than the father of present respondents No.1 to 4 and husband of respondent No.5 for the relief of partition and separate possession. Ex.P11 certified copy of the plaint in O.S.No.22/2018 reveals that the father of present respondents No.1 to 4 and husband of respondent No.5 had filed the said suit against Venkataravanappa and others and on perusal of amended plaint in O.S.No.22/2018 reveals that the said Govindappa has impleaded the present petitioner No.5 and 7 as defendants in the said suit and has filed the said suit for the relief of declaration, mandatory injunction and for recovery of damages amount for illegal possession. The suit schedule item No.3 shown in O.S.No.322/2016 and schedule property shown in O.S.No.22/2018 are

none other than the schedule properties shown in P & SC No.66/2023. The said suits are still pending before the Prl. Civil Judge and JMFC, Chintamani and Addl. Civil Judge & JMFC, Chintamani.

16. From the above said documents it is ample clear that litigation is pending before the competent civil court between the present petitioners and the respondents. All these have undoubtedly indicates that all is not well. Further as per records, respondents are contending that, schedule property is self acquired property of testator, they are his children and thereby he had bequeathed the same through the Will. But all these aspects are been denied by the petitioners by contending that, schedule properties are the joint family properties of petitioners and respondents. Consequently, all these aspects are required to be decided before the competent civil court in the suits which are already pending for consideration or any other suit for the comprehensive relief. Under these factual scenario it can be held that the respondents have fraudulently obtained the probate and therefore, it is necessary to revoke the same in order to avoid miscarriage of justice and to provide an opportunity to petitioners to

contest the probate proceedings. Moreover respondents have not produced any material documents to support their defense.

17. That apart, as required under Section 283(1)(c) of Indian Succession Act coupled with rules framed by the Hon'ble High Court of Karnataka in this respect, arraying of all the Lrs of testator as parties to the probate proceedings to ensure fairness is absolute necessary. But the said mandatory provision is not complied by the respondents. In this respect reliance can be placed on a decision in the case of *Swaminathan and others vs. Alankamony (dead) through Lrs* reported in *2022 LiveLaw (SC) 276*. Wherein their lordships have held that ***“Revocation of Letters of Administration. Appeal against High Court judgment which allowed application for revocation of the Letters of Administration on the ground that all the legal heirs were not impleaded in the proceedings for the grant of Letters of Administration is dismissed. The catch is not to be found in the distinction between Section 276 and Section 278. It is to be found in Section 263. Illustration (ii) under Section 263 deals with a case where “the grant was made without citing parties who ought to have been cited”.***

18. Reliance can also be placed to the latest decision of our own High Court in the case of *Smt.Parvathamma and others vs. Smt.Suvarnamma and another* in *Writ Petition No.25976 of 2024 (GM-CPC)*. Wherein his lordship at para 5 of the order observed that; “The only question that arose for consideration was whether the Will dated 05.04.2001 was validly executed. Whenever the grant of probate is contested by a person interested to deny the lawful execution of the Will, for the sake of convenience, such proceedings have to be tried like a suit. This does not mean that it would be a suit before the competent Civil Court. Therefore, such issues which are not germane to the issue regarding the valid execution of a testamentary document cannot be tried by the probate Court. Therefore, the contention whether the Will executed in favour of the respondents was valid, cannot be considered in a proceeding under Section 272 of the Indian Succession Act. Even otherwise, the alternative reliefs sought by the petitioners for partition and separate possession of the suit property also could not be granted by the probate Court”.

19. Further reliance can be placed to the decision of Hon'ble Apex court in case of ***Dinesh Goyal @ Pappu V/s Suman Agarwal and others reported in 2024 INSC 726***, wherein their Lordship have held at para 16 that ***“The scope of dispute before us is limited to a procedural aspect. In the larger scheme, this dispute pertains to succession. If there is a Will, it has to be honored. If one of the parties, who will be affected by the Will coming into effect, challenges it on one ground or the other, the process of succession cannot be forward without determination of the dispute regarding the Will”.***

20. Under these factual scenario no hardship and injustice would be caused to the respondents if the petition is allowed by revoking the probate and providing an opportunity to the petitioners to contest the petition. Otherwise it would not only leads to multiplicity of proceedings, but also leads to miscarriage of justice and same is required to be deprecated. In the result, in my considered view petitioners have made out sufficient grounds to allow the petition. Consequently, justice would met if the petition is allowed and probate issued in the favour of respondents No.1 to 4 is revoked by setting

aside the impugned order with a direction to contest the matter by restoring the original probate proceedings. Accordingly, ***point No.1 is answered in the affirmative.***

21. **Point No.2:** In view of my findings on point No.1, I proceed to pass the following:

ORDER

The petition filed by the petitioners is allowed.

Consequently, the probate issued in favour of respondents No.1 to 4 in P & SC No.66/2023 is hereby revoked by setting aside the order, dated 18.04.2024 and the said matter is restored to the original position in order to contest by the petitioners.

Put up records in original P & SC petition by
20.07.2026.

No order as to costs.

Parties shall appear before the court on 20.07.2026
without expecting any fresh notice.

Respondents herein are directed to file necessary impleading applications on the date of appearance without fail.

(Dictated to the STENOGRAPHER GRADE-III directly on computer, revised and corrected by me, signed and then pronounced in the open court on this the 3rd day of July 2026)

(T.P. RAMALINGE GOWDA)
Prl. District and Sessions Judge
Chikkaballapura.

A P P E N D I X

List of witnesses examined on behalf of petitioners:-

PW1 : Vijiyamma

List of witnesses examined on behalf of respondent:-

-- NIL --

List of documents marked on behalf of petitioners:-

Ex.P1 : Certified copy of ordersheet, petition,
chief evidence of PW-1 to 3 in P & SC No.66/2023

Ex.P2 : Certified copy of Will dated 09.12.2022

Ex.P3 : Certified copy of death certificate of testator

Ex.P4 : Certified copy of G-Tree issued by Tahasildar

Ex.P5 : Certified copies of Aadhar card of respondents No.1 to 5

Ex.P6 : Certified copy of RTC

Ex.P7 : Certified copy of news paper publication

- Ex.P8 : Certified copies of two Aadhar cards along with particulars of scribe
- Ex.P9 : Certified copy of order in P & SC No.66/2023
- Ex.P10 : Copy of the order sheet, plaint, amended plaint (3 in numbers), written statement filed by 3rd defendant, IA and order passed on IA No.4 filed U/o 1 Rule 10(2), IA's filed U/o 22 Rule 4 in O.S.No.322/2016
- Ex.P11 : Certified copy of the order sheet, plaint, IA filed U/o 1 Rule 10(2), amended plaint, LR application, amended plaint, objections filed by defendant No.4 and 5 to impleading application, order passed on impleading application, IA No.5 filed U/o 1 Rule 10 and objections filed by defendant No.6 to 8 in the said application in O.S.No.22/2018
- Ex.P12 : Original G-Tree affidavit
- Ex.P13 : 4 RTC's and one MR extract

List of documents marked on behalf of respondent:-

-- NIL --

(T.P. RAMALINGE GOWDA)
Prl. District and Sessions Judge
Chikkaballapura.