

KACB010005942025



Presented on : 21-04-2025
Registered on : 21-04-2025
Decided on : 02-05-2026
Duration : 01 year 11 days

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

Dated this the 2nd day of May 2026

Present:

Sri. T.P.RAMALINGE GOWDA,

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

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

MISC. NO.9 OF 2025

Petitioner/s :

1. Smt.Lakshmidamma
d/o late Chikkamaddareddy @ Maddanna
@ Gu Maddanna,
w/o T.R.Nanjireddy,
aged about 42 years,
r/at Thimmampalli post,
Thathannagaridinne village,
Bagepalli taluk,
Chikkaballapura District – 561207.

2. Smt.Shilpa K.M.
d/o late Chikkamaddareddy @ Maddanna
@ Gu Maddanna,
aged about 30 years,
r/at 16th ward,

Beside Santhe Maidan,
Bagepalli town and taluk,
Chikkaballapura District – 561207.

3. Smt.Sudharani M
d/o late Chikkamaddareddy @ Maddanna
@ Gu Maddanna,
aged about 28 years,
r/at Gummareddyhalli village,
Somenahalli hobli,
Gudibande taluk,
Chikkaballapura District – 561209.

4. Smt.Venkataravanamma
w/o late Chikkamaddareddy @ Maddanna
@ Gu Maddanna,
aged about 73 years,
r/at Kammavaripalli village,
Thimmampalli post,
Gulur hobli,
Bagepalli taluk,
Chikkaballapura District – 561207.
(Represented by Sri K.V.V., Advocate)

Vs.

Respondent/s:

B.Bayareddy
s/o Nanjireddy,
aged about 52 years,
r/at Kammaravaripalli village,
Guluru hobli,
Bagepalli taluk,
Chikkaballapura District – 561207.

Presently r/at 23rd ward,
Bagepalli town and taluk,
Chikkaballapura District.
(Represented by Sri M.F.A., 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 19.08.2022 granted by this court in favour of respondent in P & SC No.90/2021.

2. Brief facts of the petition are that the petitioners No.1 to 3 are sisters of one Bhagyamma and all of them are daughters of 4th petitioner. Said Bhagyamma who is none other than the wife of the respondent and both have created false revenue documents and unregistered Will. Originally one Subbarayappa s/o late Buddanna was in possession and enjoyment of the schedule properties. Accordingly, R.T.C. entries were made in his name. After the death of Subbarayappa his son Chikka Maddireddy @ Maddanna @ Gu Maddanna was in possession and enjoyment of the said properties till his death. After the death of said Chikka Maddireddy the petitioners and one Gowramma are in joint possession and enjoyment of the schedule properties as tenants in common. After institution of P & SC No.90/2021 a notice was duly served in "Hosa Digantha" Kannada newspaper, dated 25.11.2021 and also in "Udayakala" Kannada daily

newspaper, dated 25.11.2021 calling upon the interested persons to appear before this court. But none appeared. The petitioners are having no knowledge of the same. But the order of probate came to the knowledge of petitioners on 31.01.2025. Being aggrieved by the said order the petitioners have filed the present petition.

3. Further it is contended that the respondent has filed original suit in O.S.No.1/2025 before the Civil Judge & JMFC, Bagepalli for permanent injunction against the defendants stating that he is the absolute owner of the suit properties. He has also contended that he became the absolute owner of the said properties by way of Will, dated 26.08.2009. The respondent with an intention to cheat the petitioners has not made them as parties to P & SC 90/2021. The order of probate obtained by the respondent is fraud and the same is liable to be set aside as the same is bad for non-joinder of necessary parties. The petitioners came to know about the probate order when the respondent has filed O.S.No.1/2025 against them before the Civil Judge & JMFC, Bagepalli for the relief of permanent injunction. Immediately, they have obtained certified copies from this court on

15.04.2025. Therefore, there is a delay in filing this miscellaneous petition. Hence, prayed to allow the petition.

4. After filing of this petition, notice was issued to the respondent. In response to the notice respondent appeared through his 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 stated that one Subbarayappa is the propositus of the family. He had a wife by name Bayamma and they had two sons namely Maddanna @ Chikka Maddanna @ Chikkamaddireddy @ Gumaddanna and Byrareddy. Both the propositus and his wife Bayamma were died in the year 1945. Byrareddy was suffering from 100% blindness and therefore, he was under the care and custody of his brother. He died without marriage and issues in the year 2006. Maddanna @ Chikkamaddanna @ Chikkamaddireddy @ Gumaddanna had a wife by name Gowramma. Further he had married one Venkataravvanamma. Out of his second marriage he had four children namely Bhagyamma, Lakdhmidevamma, Shilpa K.M. and Sudharani M. The petitioners have suppressed the said facts.

5. Further it is contended that the schedule properties originally owned and possessed by Smt.Gowramma w/o late Chikka Maddireddy, r/at Kammavaripalli village, Bagepalli taluk, who acquired the same by virtue of registered sale deed, vide document No.182/1978-79, dated 01.05.1989 executed by H.K.Krishnamurthy and H.Ravindranath and she is in possession and enjoyment of the same. The said properties were the absolute properties and held by her as stridhana properties. Therefore, the petitioners have no right to claim any share in the schedule properties. Smt.Gowramma had bequeathed the said properties in favour of respondent who is a fostered son and husband of Bhagyamma by virtue of unregistered Will, dated 26.08.2009 when she was in sound state of mind. She died on 26.08.2009. The petitioners are total strangers to the schedule properties and they have no right to question the orders passed by this court in P & SC 90/2021, dated 19.08.2022. They are very well aware of all the material facts, inspite of that the 1st petitioner has attempted to interfere with the lawful possession and enjoyment of the respondent over the schedule properties. Therefore, he has filed a suit against 1st petitioner in respect of schedule properties in

O.S.No.1/2025 on the file of Civil Judge & JMFC, Bagepalli. In the said suit the an order of temporary injunction was granted in favour of respondent and the said suit is pending. The petitioners have not shown just cause to revoke or annul the probate granted in favour of respondent. Hence, prayed to dismiss the petition.

6. Along with the petition the petitioners hae also filed an application under Section 5 of Limitation Act with a prayer to condone the delay of 81 days in filing the present miscellaneous petition.

7. The respondent has refuted the same by filing objections.

8. In order to prove their case, the petitioners examined the 1st petitioner as Pw.1, examined one more witness on their behalf by name Manjunatha as Pw.2 and got marked the document at Ex.P1 to P9. On the otherhand, the respondent has examined himself as Rw.1 and got marked 9 documents as per Ex.R1 to R9.

9. Heard the arguments on both sides. Both the counsels have also submitted notes of arguments.

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

- 1) Whether the petitioners have made out grounds to condone the delay in filing this petition?
- 2) Whether the petitioners have made out sufficient cause to revoke the order of probate, dated 19.08.2022 passed in P & SC No.90/2022?
- 3) To what order?

11. My findings on the above points are:

Point No.1 & 2 : *In Affirmative.*

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

REASONS

12. **Point No.1:** In the affidavit sworn to in support of the application the petitioner No.1 has contended that she was not aware of the proceedings in P & SC 90/2021 and the delay caused in filing the miscellaneous petition is bonafide one and not intentional. If the delay is condoned no prejudice will be caused to respondents. Hence, prayed to allow the application.

13. On the otherhand, the respondent has filed objections to the said application contending that the application is not maintainable either in law or on facts and the same is liable to be dismissed. The

petitioners have not shown any sufficient cause to condone the delay of 81 days to file the petition. Hence, prayed to dismiss the application.

14. The reason assigned by the petitioners is that they are not aware of the probate proceedings and therefore, there is a delay in filing the petition after obtaining the certified copies of the order in P & SC No.90/2021. It is an admitted fact that there is a delay of 81 days in filing the petition. Here it is worthy to note that, nodoubt the delay of each day is to be explained and no such explanation is forthcoming. But, as per the settled position of law, the law courts shall take lenient view while disposing the applications filed for condonation of delay instead of disposing the matter on technicalities in order to advance the cause of justice. Therefore, the matter requires to be disposed off on merits. Accordingly, the application filed by the petitioner for condonation of delay is requires to be allowed and if it is allowed no prejudice would be caused to the respondent. Accordingly, **point No.1 is answered in the affirmative.**

15. **Point No.2:** 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.”

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.

16. 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.

17. Whereas the 1st petitioner who has been examined as Pw.1 in her examination-in-chief reiterated the very averments of the petition. In the cross-examination Pw.1 has admitted that the testator Gowramma was her paternal aunt and she had obtained the schedule properties from her father i.e., father of petitioners and the said properties are originally belongs to grandfather of petitioners. Which would demonstrates that Gowramma had acquired the properties from her husband i.e., father of petitioner No.1 to 3 and husband of 4th petitioner. Again Pw.1 denied that the said Gowramma purchased the schedule property from one Ravindranath s/o Krishnamurthy vide sale deed, dated 01.05.1978.

18. Pw.2 Manjunatha, who has been examined on behalf of petitioners has deposed that the petitioners father had two wives by name Gowramma and Venkataramanamma. The said Gowramma had no issues, whereas Venkataramanamma had four children. Further stated that the petitioners are in possession of the schedule properties.

19. On perusal of the entire materials on record it appears that the petitioner Nos.1 to 3 are the children of one Chikkamaddireddy. Further admittedly the said Chikkamaddireddy had two wives by name Gowramma and Venkataravanamma, who is none other than the 4th petitioner. Further it is an admitted fact that the present respondent had married the elder sister of the petitioner Nos.1 to 3. This petition for revocation of probate is filed by the siblings of wife of respondent B.Bayareddy, who are the legal representatives of testator Gowramma, who is admittedly the 1st wife of their father Chikkamaddireddy. The said fact is not been denied by the present respondent. This fact is also fortified by the Genealogical tree which is marked as Ex.P1. Wherein it appears that Chikkamaddanna @ Maddanna @ Chikkamaddireddy @ Gumaddanna had two wives namely Gowramma and Venkataravanamma. He had four children

through his second wife Venkataravanamma, namely Bhagyamma, Lakshmiddevamma, Shilpa K.M. and Sudharani M. 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.

20. Further on perusal of Ex.R1 certified copy of plaint in O.S.No.759/2024 shows that the present petitioners have filed the said suit against one Bhagyamma who is none other than the wife of the present respondent for the relief of partition and separate possession. Ex.R2 certified copy of the plaint in O.S.No.1/2025 reveals that the present respondent had filed the said suit against present petitioner No.1 for the relief of permanent injunction. The schedule properties shown in the said suit are none other than the schedule properties shown in P & SC No.90/2021. In the said suit the present petitioner No.1 has also filed written statement and the said suit is still pending before the Civil Judge & JMFC, Bagepalli.

21. From the above said documents it is ample clear that litigation is pending before the competent civil court between the present petitioners and the respondent and his wife. All these have

undoubtedly indicates that all is not well. Further as per records, respondent is contending that, schedule properties are self acquired properties of testator, he is her fostered son and thereby she had bequeathed the same through the Will. But all these aspects are been denied by the petitioners by contending that, schedule properties are belongs to their father. 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 respondent has 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 during his cross-examination Rw.1 has given categorical admission to that effect that, petition can be allowed and he is ready to contest the P & SC petition on merits.

22. 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”.***

23. 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”.

24. 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”.

25. Under these factual scenario no hardship and injustice would be caused to the respondent 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 respondent is revoked by setting aside the impugned order with a direction to contest the matter by restoring the original probate proceedings. Accordingly, ***point No.2 is answered in the affirmative.***

26. **Point No.3:** In view of my findings on point No.1 and 2, I proceed to pass the following:

ORDER

The petition filed by the petitioners is allowed.

Consequently, the probate issued in favour of respondent in P & SC No.90/2021 is hereby revoked by setting aside the order, dated 19.08.2022 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 10.06.2026.

No order as to costs.

Parties shall appear before the court on 10.06.2026 without expecting any fresh notice.

(Dictated to the STENOGRAPHER GRADE-I directly on computer, revised and corrected by me, signed and then pronounced in the open court on this the 2nd day of May 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 : Lakshmidamma

PW2 : Manjunatha

List of witnesses examined on behalf of respondent:-

RW1 : B.Bayareddy

List of documents marked on behalf of petitioners:-

- Ex.P1 : Genealogical tree
- Ex.P2 : Copy of the order sheet, petition, valuation slip, application under order 13 rule 9 CPC, application under Order 7 Rule 14 CPC, application under Order 16 Rule 1 & 2 read with Section 151 of CPC, deposition of Byrareddy, deposition of Narayana Naik and order, dated 19.08.2022 in P & SC 90/2021
- Ex.P3 : Certified copy of the order sheet, plaint, verifying affidavit, valuation slip, written statement of the defendant, application under Order 39 Rule 1 & 2 read with Section 151 of CPC, objections to application, under Order 39 Rule 1 & 2 read with Section 151 of CPC in O.S.No.1/2025 on the file of Civil Judge & JMFC, Bagepalli.
- Ex.P4 : R.T.C. extract for Sy.No.19/3
- Ex.P5 : R.T.C. extract for Sy.No.20/1
- Ex.P6 : R.T.C. extract for Sy.No.29/P2
- Ex.P7 : R.T.C. extract for Sy.No.44/2
- Ex.P8 : Mutation extract for Sy.No.20/1 & 19/3
- Ex.P9 : Mutation register extract in respect of property bearing Sy.No.44

List of documents marked on behalf of respondent:-

- Ex.R1 : Certified copy of order sheet, amended plaint, original plaint in O.S.No.759/2024

- Ex.R2 : Certified copy of order sheet, plaint, written statement, issues, I.A.I, objections to I.A.I, order on I.A.I, chief of Pw.1 in O.S.No.1/2025
- Ex.R3 : Certified copy of the probate in P & SC 90/2021
- Ex.R4 : Certified copy of the sale deed
- Ex.R5 : Certified copy of Official Memorandum
- Ex.R6 : Mutation extracts
- Ex.R7 : Hand written R.T.C. extracts
- Ex.R8 : Certified copy of hand written mutation extract
- Ex.R9 : Notarized copy of death certificate

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