

KAKL010031452023



Presented on : 17.11.2023

Registered on : 17.11.2023

Decided on : 25.06.2026

Duration : 2 years 7 months 9 days

**IN THE COURT OF PRINCIPAL DISTRICT AND
SESSIONS JUDGE AT KOLAR**

DATED THIS THE 25th DAY OF JUNE 2026

PRESENT

SHRI V.M. ANANDASHETTI

PRINCIPAL DISTRICT & SESSIONS JUDGE, KOLAR

P and SC/146/2023

PETITIONERS:

1. Rathnamma
D/o Late Venkateshappa and
Late Smt.Parvathamma,
Aged about 51 years,
2. Smt.Lakshmidevi
D/o Late Venkateshappa and
Late Smt.Parvathamma,
Aged about 45 years,
3. Sri.Ramesh
S/o Late Venkateshappa and
Late Smt.Parvathamma,
Aged about 40 years,
4. Smt.Rukmani
D/o Late Venkateshappa and
Late Smt.Parvathamma,
Aged about 35 years,

All are R/at Kadaripura Village,
Kasaba Hobli, Mulbagal Taluk,
Kolar District.

(Reptd. by **Sri.C.M.Niranjana Swamy,**
Advocate)

VERSUS

RESPONDENT: NIL

ORDERS

Seeking probate of Will, un-registered, dated 26.10.1998 said to be executed by Y.Krishnappa the petitioners have filed this petition under Section 278 of Indian Succession Act, 1925.

2. Citation was issued inviting public objections, if any, in a local Newspaper. None has appeared to oppose the prayer.

3. The facts necessary for disposal of this petition are thus;

The testator Y.Krishnappa is said to be the absolute owner of 2 acres of land in Sy.No.49/P23 of Kadaripura Village, Mulbagal Taluk. He happens to be the brother of Parvathamma, who is the mother of the petitioners. The testator during his life time was residing with his sister Parvathamma and Parvathamma was taking care of him. The testator was suffering from ill-health. Considering the service

and care taken by Parvathamma, the testator on 26.10.1998 under an un-registered Will bequeathed the petition property in favour of the petitioners and subsequently died on 25.05.2001. The mother of petitioners died on 12.06.2020. Being beneficiaries under the said Will, the petitioners filed the present petition seeking probate of the Will.

4. In order to substantiate their case the 1st petitioner examined herself as PW-1, one of the attesting witnesses to the Will at Ex.P.1 as PW-2 and the son of scribe as PW-3. The other two attesting witnesses and scribe are said to have expired. The Will is marked at Ex.P.1, signature of testator is marked at Ex.P.1(a) through PW-1, the death certificates of petitioners' mother and testator are marked at Exs.P.2 and 3, the genealogy details at the instance of 1st petitioner is marked at Ex.P.4 and the RTC of petition property is marked at Ex.P.5.

5. Heard.

6. The learned counsel for the petitioners submitted that the testator is the uncle of petitioners and he was ailing. His care was taken by the mother of petitioners, hence, on account of love and affection testator bequeathed the petition property in favour of petitioners by executing Ex.P.1 Will. Since the two of the attesting witnesses and the scribe have died, the petitioners have examined one attesting witness,

who is alive and the son of scribe to prove the attestation and execution of Will. The testator was the absolute owner of petition property. There is nothing to doubt the execution of Will. Thus, he submits that probate may be granted in respect of the Will at Ex.P.1.

7. Perused the records. The point arising for my consideration is;

“Whether the petitioners have proved due execution of Will at Ex.P.1 by the testator and thus are entitled for its probate?”

8. My finding to the aforesaid point is in the negative, for the following;

REASONS

9. In order to prove their case the first petitioner examined herself as PW-1 and filed affidavit reiterating the petition averments. She has identified the signature of testator and other attesting witnesses to Ex.P.1. One of the attesting witness is examined as PW-2. PW-3 is the son of scribe.

10. Initially the petition was filed under Section 276 of Indian Succession Act seeking probate. However, at later point of time the petitioners have amended the provision by making it the petition under Section 278 of Indian

Succession Act i.e., seeking letters of administration, but however the prayer is still for probate of the unregistered Will at Ex.P.1 dated 26.10.1998. The entitlement of petitioners either to probate or letters of administration depends upon the proof of due execution of Will at Ex.P.1. For the following reasons I entertain serious doubt about execution of Ex.P.1 by the said testator, consequently the petitioners' dis-entitlement to either probate or letters of administration.

11. One of the requirement of petition under Section 278 of Indian Succession Act is to aver the family or other relatives of the testator and their respective residences. In the petition except stating that the petitioners' mother is the sister of testator and the testator was under the care of petitioners' mother, nothing is stated about the testator being married, having any children or of other relatives of him. Hence, there is no compliance of requirement of Section 278 of Indian Succession Act.

12. Ex.P.1 is dated 26.10.1998. The testator is said to have died on 25.05.2001. The mother of petitioners died on 12.06.2020. What is conspicuous by its absence in the entire records is how the petitioners came into possession of Ex.P.1, why immediately after the death of testator steps were not taken to get the probate, why there was delay of about nearly 20 years, computed from the date of death of testator, in

filing the petition. For nearly 20 years from the date of death of testator the Ex.P.1 not seeing the light of the day is a surrounding circumstance creating doubt about Ex.P.1.

13. The tampering of dates on Ex.P.1 further amplifies the doubt mentioned supra. The dates to which I am referring to are the dates found in seal of District Treasury, at seal of stamp vendor and also at the seal of scribe in first page of Ex.P.1. In the District Treasury seal found at the back side of Ex.P.1 there is tampering regarding the year of it. The last number in describing the year is tampered. Even the date of selling by the stamp vendor and also the serial number are tampered, which are very apparent to the naked eye. A date is also appearing beside the seal of deed writer. It also testifies to its tampering. The tampering of dates in such manner affects the genuineness of Ex.P.1 in the absence of any explanation for the same from the petitioners. This tampering assumes more importance in the light of suspicious circumstance mentioned supra i.e., not seeing light of the day for 20 years.

14. The contents of Will are found on one side of the stamp paper. At the bottom the sub-heading is of witnesses and Sl.No.1 and 2 are typed. Two persons have signed against the said serial number as witnesses. However, PW-2's name and signature as 3rd attesting witness is found

beside the sub-heading “ಸಾಕ್ಷಿಗಳು”. If PW-2 was present at the time of execution of Will by the testator with animus to attest it and had been called for said purpose, then definitely Sl.No.3 would have been typed to indicate his presence as 3rd attesting witness. Absence of such serial number with type writer and mention of his name adjacent to such sub-heading lead to unerring inference that he has put his signature at very later point of time. This also affects not only the genuineness of Ex.P.1, but also credibility of PW-2. Hence, even this is a suspicious circumstance surrounding Ex.P.1.

15. Will is a document, which requires compulsory attestation at least by two persons. As per the petitioners there are 3 witnesses in the instant case. The place at which signature of PW-2 is appearing in Ex.P.1 creating doubt is already analyzed by me supra. Another aspect with reference to his evidence, not coming to the aid of petitioners to prove the Will at Ex.P.1, is that in his evidence he does not identify the purported signature of testator at Ex.P.1(a). Hence, he cannot be reckoned as an attestor. So far as other two witnesses to Ex.P.1 are concerned, the petitioners have not taken any pains to examine any person acquainted with the signatures of them. When the petitioners could examine PW-3 to prove the signature of scribe, then in my opinion they should have taken similar steps to prove the signatures of two attestors. It is true that PW-1 identifies the signatures of

those two attestors at Ex.P.1(c) and Ex.P.1(d). When she had the occasion to witness the signatures by those two attestors is not at all stated by her. Hence, she identifying those signatures is not infusing confidence to believe. Hence, from the evidence on record it could be opined that attestation is not proved by the propounders i.e., the petitioners.

16. According to the petitioners the two attesting witnesses have died. Their death certificates are not produced to believe that they are dead. Even this renders the version of petitioners that those two attestors are dead unbelievable.

17. Ex.P.5 is the RTC pertaining to the disputed property. It pertains to land bearing Sy.No.49, the total extent of which is 334.14 acres. Name of one Y.Krishnappa S/o. Yallappa is found against 2 acres extent. The basis for mutation is division under MR No.23-10/86-87 and in the encumbrance column there is prohibition for alienation for a period of 15 years. In the light of such encumbrance a doubt arises about said person having title to bequeath the said property in favour of present petitioners. According to the petitioners testator died in the year 2001, but the said RTC for the year 2023-24 still shows the name of purported testator Y.Krishnappa. Except oral statement, no documents are produced to show that the person found in Ex.P.5 is

related to the petitioners in the manner portrayed. Production of death certificate at Ex.P.3 would not invariably forge such relationship. Hence, even this is one of the doubtful circumstance surrounding Ex.P.1.

18. As per the evidence of PW-2 he is the resident of Chamareddyhalli Village, Kasaba Hobli, Mulbagal Taluk, whereas the testator is said to be resident of Kadaripura Village, Mulbagal Taluk. He seems to be about 4 to 6 years younger to the testator, when calculated with reference to the age of testator and age of PW-2 forthcoming from the records. What would be the occasion for testator to call PW-2 when there were others available in his village, and as per the petitioners there were already two persons, as an attesting witness, is also not explained. Hence, no reliance can be placed upon the evidence of PW-2 and his evidence is not helpful to prove Ex.P.1.

19. Ex.P.4 is genealogy details, which is at the instance of 1st petitioner herself and hence, has no probative value. That apart it would not describe all other relatives of testator.

20. Hence, for the aforesaid reasons, I am of the opinion that the Will at Ex.P.1 is not proved by its propounders. Hence, they are not entitled for either probate

or letters of administration of it. Therefore, answering the aforesaid point in the negative, I proceed to pass the following;

ORDER

The petition is dismissed.

(Dictated to the Stenographer, transcribed and computerized by him, revised, corrected and then pronounced by me in the open Court on this the **25TH DAY OF JUNE 2026**).

(V.M. ANANDASHETTI)
PRL. DIST. & SESSIONS JUDGE, KOLAR.

ANNEXURE

List of witnesses examined on behalf of petitioners:

PW1	:Rathnamma
PW2	:V.Krishnappa
PW3	:T.Shekar

List of documents exhibited on behalf of petitioners:

Ex.P.1	:Will
Ex.P.1(a)	:Signature of Krishnappa
Ex.P.1(b) & (c)	:Signatures of witnesses
Ex.P.2 & 3	:Death Certificates
Ex.P.4	:Genealogical tree
Ex.P.5	:RTC extract

PRL. DIST. & SESSIONS JUDGE, KOLAR.