



IN THE COURT OF VI ADDL. DISTRICT AND SESSIONS JUDGE
AT TUMAKURU

PRESENT : Smt.Shilpa K.S

BA.L., LL.M.,

VI Addl. District and Sessions Judge,
Tumakuru

Dated this the 11th day of June 2026

P and SC.02/2026

PETITIONERS : 1. S.K. Narasimhaiah,
S/o Late Kadarappa, A/a 51 years,
2. S.K. Ugrappa, S/o Late Kadarappa,
A/a 48 years,

Both are R/at Suragondanahalli,
Urdigere Hobli, Tumakuru Taluk.

(By Sri. B.R., Adv.)

V/s

RESPONDENT: N I L

O R D E R

The petitioners have filed this petition under section 376 of Indian Succession Act praying the court to issue Probate Certificate in their favour with respect of petition schedule properties.



2. It is the case of petitioners that the petition schedule property originally belongs to one Kadarappa which is his self acquired property. The said Kadarappa out of love and affected had bequeathed the schedule property in favour of the petitioners on 04.09.2022 which was registered in presence of witnesses. The said Kadarappa died 14.12.2025. Thus, the petitioners have succeeded the petition schedule properties after the death of said Kadarappa and they were in possession and enjoyment of the same. Then the petitioners have approached the revenue authorities to change khatha in their name and they have informed to obtain probate. The cause of action arose when the petitioners have approached the revenue authorities and within the jurisdiction of this court. Hence, this petition seeking grant of Probate.

3. After filing of the petition, citation was issued through a "Vijaya Karnataka" Kannada daily News Paper



calling upon all persons claiming to have any interest in the estate of the deceased to come and see the proceedings before the grant of probate. However, none appeared.

4. The petitioners in order to prove their case the petitioner No.1 has got examined himself and other two witnesses were got examined as PW.1 to 3 and got marked 03 documents at Ex.P1 to Ex.P.03 and closed their side.

5. Heard the counsel for petitioners.

6. The following points arise for my determination:

1. Whether the petitioners are entitled for issuance of Probate of will dated 04.09.2022 ?
2. What order ?

7. My answer to the above points are as under :-

Point No.1 :- In ***affirmative***

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

REASONS

8. **Point No.1** :- The petitioners have filed this petition seeking issuance of probate. In order to prove this the



petitioner No.1 has got examined himself as PW.1 by reiterating all the averments of the petition in his affidavit. Further the PW.1 has got marked the will executed by late Kadarappa in their favour and in favour of petitioner No.2 as per Ex.P.1. On perusal of the said will it reveals that the schedule property belongs to said Kadarappa who had self acquired it. That as the petitioners were looking after late Kadarappa he out of love and affection had executed the will on 04.09.2022 in favour of the petitioners.

9. The Ex.P.2 is the RTC with respect to the schedule property and Ex.P.3 is the death certificate of Kadarappa. Further it is the case of petitioners that said Kadarappa during his life time had executed an will dated 04.09.2022 bequeathing the schedule property in their favour which is marked as Ex.P1. Further in order to prove the case the petitioners have examined two attesting witnesses of Ex.P.1 as PW. 2 and 3 who have stated that the late Kadarappa had



executed the will in their presence in favour of the petitioners. The said Kadarappa had affixed his signature on all pages and then they have signed to the said will as attesting witnesses. They have stated that they were present at the time of execution of the will by late Kadarappa and after preparing the will and it was read over to them. Even the oral testimony of PW.2 and 3 remains intact for the reason that there is no objection by anyone.

10. Thus, the petitioner by examining the attesting witnesses as PW2 and 3 as required U/sec 68 and 69 of Indian Evidence Act has proved the execution of the will dated 04.09.2022 in their favour by late Kadarappa with respect of petition schedule property.

11. It is further case of petitioners that after the death of Kadarappa, they have approached the revenue authorities for changing the revenue documents in to their names based on the will Ex.P1. However, the revenue authorities have



directed him to get Probate. Hence, they have approached this court seeking for granting Probate in their favour.

12. Now, the question is whether the petitioners who are the beneficiary under the will can seek Probate U/sec 276 of Indian Succession Act when there is no executor appointed and whether the Court can grant probate of a Will on a petition filed by a beneficiary. Section 222 of Indian Succession Act, 1925 defines to whom probate certificate be issued. It says probate shall be granted only to an executor appointed by the Will. The appointment may be expressed or by necessary implication. The section 234 of the Act states that when there is no executor, then the person or persons who would be entitled to the administration of the estate of the deceased, if he had died intestate or any other legatee having a beneficial interest, or a creditor, may be admitted to prove the Will, and letters of administration may be granted to him or them accordingly. Therefore, the above referred



section is very clear that the probate certificate has to be issued in the name of the executor appointed by the Will to maintain and manage the properties of the testator in accordance with his/her will and wish but the executor cannot be the beneficiary under the will.

13. At this stage, it is relevant to refer the definition of the term executor defined in section 2(C) of said Act as **“Executor” means a person to whom the execution of the last Will of a deceased person is, by the testator’s appointment, confined.”**

14. So on careful reading of the above provisions of law, it is very much clear that in order to issue probate certificate, the minimum requirement U/sec.276(i)(e) of Act, is that the person who is seeking probate certificate has to be named in the Will as executor by the testator. The said appointment may be expressed or by necessary implication.



15. No doubt in the petition it is stated that the petitioners are the persons in whose favour the will was executed and they are the beneficiary of the will. Thus, from conjoint reading of section 222(2) and Section 234 of the Act, it is clear that it is not only the executor named in the Will can seek for a probate, but depending on the circumstances other persons could also seek such probate.

16. At this stage I would like to rely upon decisions reported in :-

a) **MFA.No.4399/2023 dated 01.02.2024 - M.R.Mohan Kumar and others V/s Nil** – It is observed that having with regard to the probate proceedings and if a probate proceedings is initiated, the transferee would be deemed to have notice thereof and the same is not on the issue involved between the parties with regard to the appointment of executor.



b) MFA.No.4477/23 dated 17.02.2025 - Smt.Renuka

V/s Nil - It is observed that on combined reading of provisions of the Act the inescapable conclusion is that an executor of a will, by express appointment or necessary implication can maintain an application for probate. Further a sole legatee by necessary implication can act as an executor of will.

17. In the light of the decision referred to above, it is now clear that the beneficiary can file a petition U/sec.276 of Indian Succession Act when there is no executor has been appointed and the court can grant probate of will on a petition filed by the beneficiary.

18. Further on perusal of entire file it is seen that petitioners and deceased Kadarappa are Hindus by Religion. It is needless to say that the Will executed by Hindu by Religion need not require any probate to enforce the same. At this stage I would like to rely upon decision reported in **(2005)**



12 SCC 504 – Balbir Singh Wasu V/s Lakhbir singh – wherein it is observed that though a probate is not required for a will executed by a Hindu for properties outside the erstwhile presidency towns, there is no bar as to applying for or obtaining a probate even in case the testator is a Hindu. The probate so granted will have the same value as provided in the Act.

19. Therefore in the instant case the petitioners being the beneficiary and sole legatee under the will produced and marked at Ex.P1 where they were not been appointed as an executor under the will in question. Having considered the principles laid down in the judgment supra and with the factual aspects of the case on hand, none claimed interest in respect of the subject matter of the Will. It is important to note that notice is also issued in Vijaya Karnataka newspaper and none appeared and claimed any interest. It is also important to note that when the Will was executed in favour



of the beneficiary, admittedly, no executor has been appointed and mere non-appointment of an executor cannot be a ground to reject grant of probate. Under such circumstance when such claim of probate is made and as the petitioner had proved the Will by examining two attesting witnesses as P.W.2 and 3, the probate can be granted, if no executor is appointed in the Will. The petitioners have complied with the provisions of section 63 and 68 of the Evidence Act as well as Indian Succession Act, 1925. When such being the case, the petitioners are entitled for the issuance of the probate as claimed. Hence I answered the **point No.1 in affirmative.**

20. **Point No.2** :- In view of my above finding I pass the following :-

ORDER

The petition filed under section 372 r/w 376 of Indian Succession Act is hereby allowed.



In the result issue Probate of will dated 04.09.2022 in favour of the petitioners after collecting necessary court fees.

(Dictated to the Stenographer Grade-1 directly, got typed by her and printout taken by her, corrected, signed and then pronounced on this the 11th June, 2026)

(SHILPA. K.S)

VI Addl. Dist. and Sessions Judge,
Tumakuru.

ANNEXURE

List of witnesses examined for the petitioner :

PW.1 : S.K.Narasimhaiah
PW.2 : Y.L.Krishnappa
PW.3 : Rangaswamy

List of documents marked for the petitioner :

Ex.P1 : Will dated 4.9.22
Ex.P1 (a): Signature of PW.2
Ex.P1(b) : Signature of scribe
Ex.P1 (c): Signature of PW.3
Ex.P2 : 9 pahani copies
Ex.P3 : Death certificate of Kadarappa

List of witnesses examined and documents marked for the respondent :

-Nil-

VI Addl. Dist. & Sessions Judge,
Tumakuru.