

KAHS400011832022



Presented on : 21-10-2022
Registered on : 21-10-2022
Decided on : 11-11-2025
Duration : 3 years 0 months 21 days

**IN THE COURT OF THE SENIOR CIVIL JUDGE &
JMFC, ARSIKERE**

DATED THIS THE 11th DAY OF NOVEMBER 2025

Present: Sri.Kirankumar D.Wadigeri, B.A.L., L.L.B.,
Senior Civil Judge & JMFC.,
Arsikere.

P & Sc. No.06/2022

Petitioner: Malleshappa S/o Govindappa
Aged about 50 years,
R/o Chikkannanakoppalu Village,
Banavara Hobli, Arsikere Taluk.

(By Sri K.A.R., Advocate)

-V/s-

Respondent : **-NIL-**

J U D G M E N T

The petitioner has filed this petition U/s 372 of Indian Succession Act for issuance of Succession Certificate in respect of the petition property to mutate his name in the revenue records.

2. The petitioner has stated in his petition that, originally the petition property was belonging to one Sri.Govindappa S/o Yalavana Thimmaiah who is his father and said Sri.Govindappa was under the care and custody of the petitioner and out of his love and affection has bequeathed the petition property in his favour under the registered Will dated:14.08.2000 and he died on 23.11.2000. Therefore, by virtue of the said registered Will, he became the absolute owner in possession of the petition property and accordingly he applied to mutate his name in the revenue records of the suit property before Tahasildar, Arsikere, in which his mother Smt.Thimmamma has given objections not to mutate his name in the revenue records. Accordingly, the Tahasildar, Arsikere has registered RRT No.100/2021-22 and on 03.06.2002 has dismissed the application holding that without producing probate and other certificates, the very application filed by him is not maintainable. Accordingly, he filed this petition to get the succession certificate and probate.

3. After filing of the petition, the petitioner has taken Paper Publication which was duly published but no one come forward to contest the petition.

4. Heard the arguments and perused the pleadings and evidence of the petitioner.

5. The following points arise for my consideration.

1. Whether the petitioner has made out grounds to allow the petition?

2. What order?

6. In order to prove his case, petitioner has got examined as PW.1 and one attesting witnesses to the said Will got examined as PW.2 and documents got marked as per Ex.P.1 to Ex.P.6.

7. My findings on the above points are as under.

Point No.1 : In the **Negative**

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

REASONS

8. **Point No.1:-** It is the case of the petitioner that, originally the petition property was belonging to one Sri.Govindappa S/o Yalavana Thimmaiah who is his father and said Sri.Govindappa was under the

care and custody of the petitioner and out of his love and affection has bequeathed the petition property in his favour under the registered Will dated:14.08.2000 and he died on 23.11.2000. Therefore, by virtue of the said registered Will, he became the absolute owner in possession of the petition property and accordingly he applied to mutate his name in the revenue records of the suit property before Tahasildar, Arsikere, in which his mother Smt.Thimmamma has given objections not to mutate his name in the revenue records. Accordingly, the Tahasildar, Arsikere has registered RRT No.100/2021-22 and on 03.06.2002 has dismissed the application holding that without producing probate and other certificates, the very application filed by him is not maintainable. Accordingly, he filed this petition to get the succession certificate and probate.

9. In order to prove his case, the petitioner has filed his affidavit in lieu of examination-in-chief and he got examined as PW.1 and he has reiterated the contents of his petition. He has produced documents as per Ex.P.1 to P.6. Ex.P.1 is the original registered Will dated:14.08.2000, which shows that the father of the petitioner by name Sri.Govindappa has bequeathed the petition property in favour of petitioner in presence of attesting witness who got examined as PW.2. Ex.P2 is the death certificate of Sri.Govindappa who died on

23.11.2000. Ex.P3 to P5 are the RTC extracts of the petition properties which are still standing in the name of Sri.Govindappa. Ex.P6 is the genealogical tree of family of Sri.Govindappa, which shows that Thimmamma is wife of Sri.Govindappa who had sons by name Sri.Giriyappa, Sri.Thimmaiah, late Govindappa and this petitioner and daughters by name Eramma, Lakkamma and late Lalitha. That PW.2 is one of the attesting witnesses to Ex.P1 registered Will who has stated in his chief-examination that in his presence, the deceased Govindappa had executed registered Will and bequeathed petition property in his favour. Accordingly, his signature got marked as Ex.P1(a) and also stated one Sri.Anandappa is another attesting witness to Ex.P1.

10. After perusal of the pleadings and evidence of the petitioner, no doubt the deceased Sri.Govindappa has bequeathed the petition property in his favour. As per the case of the petitioner itself, he has applied for mutating his name on the basis of the said Will before the Tahasildar, Arsikere in RRT No.100/2021-22 in which mother of the petitioner by name Smt.Thimmamma has given objections and accordingly, Tahasildar on 03.06.2002 has dismissed his application holding that the very application is not maintainable without producing probate or other succession documents. However, the petitioner has not produced the said order copy of learned Tahasildar. But he has

specifically pleaded about the said petition and order passed by the learned Tahasildar and he himself has pleaded that his mother by name Smt.Thimmamma has objected for the said mutation entries, but the petitioner has not made said Smt.Thimmaiah as party to the petition. As per Section 214 of Indian Succession Act 1925, which reads as follows:

214. Proof of representative title a condition precedent to recovery through the Courts of debts from debtors of deceased persons.—

(1) No Court shall—

(a) pass a decree against a debtor of a deceased person for payment of his debt to a person claiming on succession to be entitled to the effect of the deceased person or to any part thereof, or

(b) proceed, upon an application of a person claiming to be so entitled, to execute against such a debtor a decree or order for the payment of his debt, except on the production, by the person so claiming of—

(i) a probate or letters of administration evidencing the grant to him of administration to the estate of the deceased, or

(ii) a certificate granted under section 31 or section 32 of the Administrator- General's Act, 1913 (3 of 1913), and having the debt mentioned therein, or

(iii) a succession certificate granted under Part X and having the debt specified therein, or

(iv) a certificate granted under the Succession Certificate Act, 1889 (7 of 1889), or

(v) a certificate granted under Bombay Regulation No. VIII of 1827, and, if granted after the first day of May, 1889 having the debt specified therein.

(2) The word "debt" in sub-section (1) includes any debt except rent, revenue or profits payable in respect of land used for agricultural purposes.

11. Then as per the provisions of the said Act, it is very clear that the Succession Act is applicable only to immovable property or for execution of decree relating to immovable properties. In this petition, the petition property is the landed property which is immovable property and the very petition filed by the petitioners is not maintainable in order to get the succession certificate on the basis of the registered Will in respect of the movable property. Further, I rely the decision passed by

the Hon'ble High Court of Karnataka, Kalaburagi Bench, in W.P.No.204059/2018 (GM-CPC) dated 22.10.2019 in between Mallikarjun S/o Gurulingappa Koujalgi Since deceased Rep., by his LRS V/s Vijayalaxmi @ Jayashri W/o Late Basavaraj Patil.

In the said decision also, it is clearly held by relying Section 214 of the Indian Succession Act and held that the said Act is not applicable in respect of immovable properties. Therefore, the petitioner has not made out any grounds to allow the petition. Hence, **my finding to point No.1 is in the Negative.**

12. **Point No.2**:- In the result, I proceed to pass the following:-

ORDER

The petition filed by the petitioner under section 372 of Indian Succession Act is hereby dismissed.

No order as to costs.

(Dictated to the Stenographer, transcribed and computerized by her and after corrections, signed and pronounced by me in the open Court on this 11th day of November 2025)

(Kirankumar D. Wadigeri)
Senior Civil Judge & JMFC,
Arsikere.

:ANNEXURE:**1. LIST OF WITNESSES EXAMINED BY THE PETITIONERS:**

PW.1 : Sri Malleshappa

PW.2 : Sri.Govindappa

2. LIST OF DOCUMENTS MARKED BY THE PETITIONER:

Ex.P.1 : Original Will Deed dated:14.08.2000

Ex.P1(a) : Signature of PW.2

Ex.P.2 : Death Certificate

Ex.P.3 to 5 : RTC extracts

Ex.P.6 : G-Tree

3. LIST OF WITNESSES EXAMINED BY THE RESPONDENTS:

-NIL-

4. LIST OF DOCUMENTS MARKED BY THE RESPONDENTS:

-NIL-

**Senior Civil Judge & JMFC,
Arsikere.**