

KAUP200000582026



**IN THE COURT OF
SENIOR CIVIL JUDGE AND ACJM AT KARKALA,UDUPI
Presided Over by Sri. PRAVEEN NAYAK, LL.M.**

Dated:- This the 5th day of June, 2026.

O.S. NO.11 OF 2026

Mr. R. Prashantha Kini,
Aged about 45 years,
S/o. Devendra Kini,
R/at. 4-164A, Ganga Nivas,
Jarkala, Kukkundoor Post,
Yerlapady, Karkala Taluk,
Udupi District - 576 117.

.. Plaintiff

(By Sri. M.K. Vipul Tej, Advocate)

-Vs. -

1. Mr. Ganesh Kini,
Aged about 75 years,
S/o. Late Shripathi Kini,
R/at. Mahalasa Kripa,
24th Kasthurba Nagar Ward,
Kalkuda Temple Road,
Bundaru, Kunjibettu Village,
Udupi Taluk and District-576 102.

2. Mr. Ramani Kini,
Aged about 65 years,

(Defendants No.1 and 2 - Exparte)

JUDGMENT

2. Brief averments of the complaint are as follows:

The plaint 'A' schedule property originally belonged to one Late Venkatraya Kini, who acquired the same through Registered Partition Deed dated 25-03-1948. He passed away on 31-07-1951 by leaving behind his three children. They



entered into a Registered Partition Deed dated 18-10-1979, in which plaint 'A' schedule property fallen to the share of K. Shripathi Kini . The said K. Shripathi Kini was married to one Ganga Kini. They had five children including the defendant No.1 and the husband of defendant No.2. K. Shripathi Kini transferred the portion of his property situated at Bailur Village in favour of his second son - Karunakar Kini. Similarly he proceeded to transfer the proceeds of properties situated in Yerlapady Village in favour of his fourth son - Ganesh Kini. Karunakar Kini passed away in the year 1996 by leaving behind the defendant No.2. K. Shripathi Kini passed away on 07-09-2004. Devendra Kini, the father of the plaintiff , passed away on 14-11-2018. The mother and his siblings and his paternal aunts executed a Release Deed dated 22-08-2025 in favour of the plaintiff and put the plaintiff in exclusive possession of the suit 'A' schedule property. In January 2026 , the plaintiff found old records and documents while cleaning his house situated in the suit 'A' schedule property. The plaintiff found that his grandfather K. Shripathi Kini , when he was of sound disposing



state of mind, had executed a Will dated 16-03-1998 by bequeathing the suit 'A' schedule property in favour of his eldest son Late Devendra Kini . After death of K. Shripathi Kini on 07-09-2004, Devendra Kini succeeded the suit 'A' schedule property by virtue of the Will. After the death of Devendra Kini in the year 2018, his wife and children succeeded to the suit 'A' schedule property. The plaintiff informed the defendants about the Will and they have refused to accept the same. Therefore, the plaintiff is constrained to file the present suit.

3. In response to suit summons, defendants No.1 and 2 have failed to appear before this court and were placed exparte.

4. In order to prove the case, the plaintiff entered into witness box as P.W.1 and also examined two attesting witnesses to the Will as P.W.2 and P.W.3 . The plaintiff got marked Ex.P.1 to Ex.P.13 documents.

5. Heard the arguments by the counsel for plaintiff .



6. The following points arise for my consideration.

1) Whether the plaintiff proves that Late K. Shripathi Kini had executed Will dated 16-03-1988 in favour of his eldest son - Late Devendra Kini , when he was of sound and disposing state of mind?

2) Whether the plaintiff proves that he is the absolute owner in exclusive possession of the suit 'A' schedule property as on the date of filing of the suit?

3) Whether the plaintiff proves the alleged interference caused by the defendants?

4) Whether the plaintiff is entitled for the reliefs sought for?

5) What Order or Decree?

7. My answers to the above points are as follows:

Point No. 1 – In the affirmative ,

Point No. 2 – In the affirmative,

Point No.3 – In the affirmative,

Point No.4 – In the affirmative,

Point No.5 - As per final order
for the following;



REASONS

8. **Point Nos.1 and 2:-** These two points are taken up together for common discussion since they involve same set of facts and circumstances.

9. The case of the plaintiff is that the suit 'A' schedule property originally belonged to one Venkatraya Kini, and after his death, his children have acquired the same. There was a partition among the children of Venkatraya Kini in the year 1979, in which K. Shripathi Kini has acquired the suit 'A' schedule property. The said K. Shripathi Kini had executed a Will dated 16-03-1998 and passed away on 07-09-2004. As per the Will, suit 'A' schedule property was given to Devendra Kini, who is none other than the father of the plaintiff. The said Devendra Kini died on 14-11-2018. After his death, his wife and children have jointly succeeded to suit 'A' schedule property. The mother and siblings and paternal aunts of the plaintiff have executed Registered Release Deed dated 22-08-2025 in favour of the



plaintiff. The plaintiff became the absolute owner of the suit 'A' schedule property by virtue of the Release Deed and also by virtue of the earlier Will executed by K. Shripathi Kini. The plaintiff is in exclusive possession and enjoyment of the suit 'A' schedule property.

10. In order to prove the above facts, the plaintiff entered into witness box and deposed as P.W.1 and reiterated the plaint averments in his chief examination. The plaintiff got marked Ex.P.1 to Ex.P.13 documents. In addition, the plaintiff also examined two of the attesting witnesses to the Will as P.W.2 and P.W.3 and got marked Ex.P.12 and Ex.P.13 through them. It is to be noted here that the oral and documentary evidence placed on record by the plaintiff remained undisputed by the otherside as the defendants placed themselves exparte.

11. On going through the evidence on record, it is clearly deposed by P.W.1 that K. Shripathi Kini died in the year 2004 by leaving behind the Will dated 16-03-1998. As per the provisions of Indian Evidence Act, the Will has to be proved before the civil



court by examining atleast one of the attesting witnesses. In this regard the plaintiff got examined the P.W.2 and P.W.3 to prove the Will. They have clearly deposed that K. Shiripathi Kini has signed the Will in their presence by giving the suit 'A' schedule property to Late Devendra Kini. The plaintiff has also got marked the original Will dated 16-03-1998 as Ex.P.1. The signatures on the document have been marked as Ex.P.1(a) to Ex.P.1(g). Ex.P.12 and Ex.P.13 have been got marked for the identification of P.W.2 and P.W.3. Ex.P.2 is the death certificate of K. Shripathi Kini, which shows that he died in the year 2004. The evidence on record indicates that K. Shripathi Kini died by leaving behind Ex.P.1 – Will in favour of Devendra Kini. It appears that Devendra Kini became the absolute owner of the suit 'A' schedule property by virtue of the Will subsequent to the death of K. Shripathi Kini. Ex.P.3 is the death certificate of Devendra Kini. P.W.1 has clearly deposed that Devendra Kini died intestate by leaving behind his wife and children. The plaintiff is now claiming that he is the absolute owner of the suit 'A' schedule property. He has relied upon the Release Deed



dated 22-08-2025 which has been marked as Ex.P.4 in this regard. Ex.P.5 is the R.T.C., which reflects the name of the plaintiff along with defendants No.1 and 2. It is pertinent to note here that the plaintiff has produced sufficient materials to show that K. Shripathi Kini has executed the Will in favour of the father of the plaintiff. As admitted by the plaintiff in para No.III(d) of the plaint, the said Karunakara Kini is the son of K. Shripathi Kini. The defendant No.2 is also claiming through K. Shripathi Kini. As observed supra, K. Shripathi Kini had executed the Will dated 16-03-1998 in favour of Devendra Kini . Therefore, immediately after the death of K.Shripathi Kini, Karunakar Kini and the defendant No.2 lost their right over the suit 'A' schedule property. Under such circumstances, in view of the release deed executed by the legal representatives of Devendra Kini in favour of the plaintiff, the plaintiff became the absolute owner of the suit 'A' schedule property.

12. The plaintiff has produced other materials such as tax paid receipts, electricity bills, election identity card and Aadhar



card etc., to establish his possession over the suit 'A' schedule property. It is once again pertinent to note here that the oral and the documentary evidence produced by the plaintiff remained intact. Under such circumstances, the plaintiff has proved that K. Shripathi Kini had executed the Will dated 16-03-1998, when he was of sound and disposing state of mind, in respect of suit 'A' schedule property, in favour of his son Late K. Devendra Kini. The plaintiff has also proved that he is the absolute owner in exclusive possession and enjoyment of suit 'A' schedule property. Hence I answer Point Nos.1 and 2 in the affirmative.

13. **Point No.3:** The plaintiff has claimed that there is illegal interference by the defendants in his possession over the suit 'A' schedule property. The P.W.1 has clearly deposed in this regard. Though the plaintiff has not placed materials on record to show that there is interference by the defendants No.1 and 2, the oral evidence of P.W.1 is not disputed by the otherside in this regard. It is settled law that mere denial of the lawful right and possession of the plaintiff by the defendants itself amounts



to illegal interference. Under such circumstances, I am of the opinion that the evidence on record is sufficient to hold that there is interference by the defendants in the possession of the plaintiff over the suit 'A' schedule property. Hence I answer Point No.3 in the affirmative.

14. **Point No.4:-** The plaintiff has sought for the relief of declaration that K. Shripathi Kini had executed Will dated 16-03-1998 when he was of sound and disposing state of mind in respect of suit 'A' schedule property in favour of Devendra Kini. The plaintiff has also sought to declare that he is the absolute owner , in exclusive possession and enjoyment of the suit 'A' schedule property. In addition, the plaintiff has sought for permanent injunction. As observed supra, the plaintiff has proved the due execution of Will dated 16-03-1998 by K. Shripathi Kini and also that he became the absolute owner of the suit 'A' schedule property by virtue of the subsequent registered document. The plaintiff has also proved his lawful possession over the suit 'A' schedule property and interference caused by



the defendants. Under such circumstances, the plaintiff is entitled for the reliefs sought for. Hence I answer Point No.4 in the affirmative.

15. **Point No.5:-** In view of above findings, this court proceeds to pass the following -

ORDER

The suit is decreed with costs.

It is declared that Late K. Shripathi Kini had executed the Will dated 16-03-1998 , when he was of sound and disposing state of mind , in respect of suit 'A' schedule property in favour of Late Devendra Kini, the father of the plaintiff.

Further, it is declared that the plaintiff is the absolute owner in possession and enjoyment of the suit 'A' schedule property.

Draw up decree accordingly.

(PRAVEEN NAYAK)
Senior Civil Judge & ACJM, Karkala

WITNESS EXAMINED FOR THE PLAINTIFF:-

WITNESS EXAMINED FOR THE DEFENDANTS:-

DOCUMENTS EXHIBITED FOR THE PLAINTIFF :-

Ex.P.1(a) – Signature of P.W.2



Ex.P.1(b) to 1(f) - Signatures of Shripathi Kini

Ex.P.1(g) – Signature of P.W.3

Ex.P.2 – Death certificate of Shripathi Kini ..29-01-2026

Ex.P.3 – Death certificate of Devendra Kini ..22-11-2018

Ex.P.4 – Release Deed executed by Geetha
Kini and others in favour of plaintiff ..22-08-2025

Ex.P.5 – R.T.C extract of suit property .. 2025-26

Ex.P.6 – Notarized copy of Aahdar card of
plaintiff --

Ex.P.7 – Aadhar card of Devendra Kini --

Ex.P. 8 – Voter's identity card of Devendra Kini --

Ex.P.9 – Electricity bills --

Ex.P.10 -Tax paid receipts

Ex.P.11 – Paper publication in 'Hosadigantha' --

Ex.P.12 – Notarized copy of driving licence of P.W.2

Ex.P.13 – Notarized copy of aadhar card of P.W.3

DOCUMENTS EXHIBITED FOR THE DEFENDANTS:-

- Nil -

Senior Civil Judge & A.C.J.M,
Karkala.