

KAMS010049062022



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

Dated this the 9th day of March, 2023

PRESENT

Sri. G.S.Sangreshi, B.A., LL.B.(Spl.),
Prl. District & Sessions Judge,
Mysuru.

P and SC/34/2022

Petitioner:

Shivamurthy S/o Karisiddegowda,
Aged about 61 years, R/at # 108,
3rd Cross, Shivamurthy Block,
Belwadi, Yelwala Hobli, Mysuru
Taluk.

(By **Advocate Sri. M.Mahadeva Swamy**)

Vs.

Respondent:

NIL

O R D E R

The petitioner has filed this petition under Section 276 of Indian Succession Act, seeking to grant Probate in his favour with respect to the petition schedule properties as per the Will dated 20.12.2021.

2. The brief facts of the case of the petitioner are that:

He got married to one Bhagya and out of their wedlock, they have got 3 children by name B.S.Prateep, B.S.Kavitha and B.S.Padmini and he acquired some of the schedule properties and same has been gifted in favour of his son B.S.Prateep, who was enjoying the same as its absolute owner. His son B.S.Prateep passed away on 24.12.2021 at Belwadi Village and during his life time, he has executed a Will on 20.12.2021 bequeathing all the schedule properties in his favour and the said B.S.Prateep also appointed his Advocate H.S.Kumar as the Executor of the Will. After his death, the fact of execution of the Will has been brought to the notice of the petitioner through the Executor and after receiving the original Will from the custody of the Executor, he has presented the same before the Sub-Registrar North for registration of the same and the same came to be registered on 07.04.2022. In order to manage the schedule properties, he petitioner requires the Probate Certificate and as such he has filed this petition seeking Probate.

3. The petition schedule properties read as under:

1. All that piece and parcel of the property bearing survey No.70, Katha Junger No. 839 measuring East to West 40 feet, North to South 90 feet situated at Belwadi Village, Yelwala Hobli, Mysuru Taluk, bounded on:-

**East by : Private property
West by : Road
North by : Road
South by : Road**

2. All that piece and parcel of the property bearing No.1973/1 [as per grama panchayath document] unique identify number 152200407129021023 measuring East to West 9.14 meters, North to South 16.76 meters totally 153.18 square meters consisting of 17.83 square meters red oxide AC Sheet residential house with sanitary and electricity facility, situated at Belwadi Village, Yelwala Hobli, Mysuru Taluk, bounded on:-

**East by : Road
West by : Property of Nagamma
North by : Road
South by : Property of Kempajogigowda**

3. All that piece and parcel of the property bearing No.356 [as per grama panchayath document] unique identify number 152200404165003288 measuring East to West 18.28 meters, North to South 12.19 meters totally 222.96 meters consisting of 18.16 square meters red oxide AC Sheet residential house with sanitary and electricity facility, situated at Belwadi Village, Yelwala Hobli, Mysuru Taluk, bounded on:-

**East by : Government Road
West by : Property of M.A. Subramanya
North by : Private Property (property of Jagadeesh. H)
South by : Road**

4. Site property bearing No.670/1 (as per Belwadi Grama Panchayath document) unique identity number 152200407129021106 measuring East to West 9.75 meters and North to South 21.95 meters totally 214.01 meters consisting of 20.00 square meters red oxide AC Sheet residential house with sanitary and electricity facility, situated at Belwadi Village, Yelwala Hobli, Mysuru Taluk, bounded on:-

**East by : Property of Kempajogegowda
West by : Property of Kumaraswamy
North by : Road**

South by : Property of Kempajogegowda

5. All that piece and parcel of the property bearing survey No.23/5 measuring 0.01 guntas situated at Maratikyathanahalli Village, Jayapura Hobli, Mysuru Taluk, bounded on:-

**East by : Property of Sarasamma
West by : Property of Shivamurthy
North by : 25 feet road
South by : Property of Shivamurthy**

6. All that piece and parcel of the property bearing survey No.8/14 measuring 2 acres 20 guntas converted land dated 13.01.2020 vide LAND10012647 situated at Karakanahalli Village, Yelwala Hobli, Mysuru Taluk, bounded on:-

**East by : L.H. No.12
West by : L.H. No.3 and Road
North by : L.H. No.10, 11
South by : Sy. No.33, 34**

7. All that piece and parcel of the property bearing survey No.8/5 measuring 0.22 guntas converted land dated 20.01.2020 vide LAND 10010898 situated at Karakanahalli Village, Yelwala Hobli, Mysuru Taluk, bounded on:-

**East by : Road and L.H.3
West by : L.H.4
North by : L.S No.7
South by : L.H.6**

8. All that piece and parcel of the property bearing survey No.8/1 measuring 0.29 guntas converted land dated 20.01.2020 vide LAND 10010888 situated at Karakanahalli Village, Yelwala Hobli, Mysuru Taluk, bounded on:-

**East by : L.H.3
West by : Road**

North by : L.S 6
South by : L.H.2

9. All that piece and parcel of the property bearing Re.Sy. No.544/1P2 now poded and durasth and allotted re-survey No.544/4 measuring 6 acres coming within the office of the Sub-Registrar, Thuruvanuru Village and Hobli, Chitradurga Taluk and District, bounded on:-

East by : Property of Parvathamma
West by : Property of K.T. Kallesh
North by : Property of Basavaiah
South by : Property of Chitrappa

10. All that piece and parcel of the property bearing re-survey No.523/5 measuring 2 acres 07 guntas coming within the office of the Sub-Registrar, Thuruvanuru Village and Hobli, Chitradurga Taluk and District, bounded on:-

East by : Road and property in Sy. No.524
West by : Property in survey No.522
North by : Property of Smt. Ningamma
South by : Property of Smt. Hanumakka

11. All that piece and parcel of the property bearing re-survey No.527/7 measuring 2 acres 05 guntas coming within the office of the Sub-Registrar, Thuruvanuru Village and Hobli, Chitradurga Taluk and District, bounded on:-

East by : Road and property in Sy. No.524
West by : Property in survey No.522
North by : Portion of Property of Ajjanna
South by : Property in Hissa No.03

12. All that piece and parcel of the property bearing re-survey No.523/2 measuring 0.33 guntas coming within the office of the Sub-Registrar, Thuruvanuru Village and Hobli, Chitradurga Taluk and District, bounded on:-

East by : Road and property in Sy. No.524
West by : Property in survey No.522
North by : Property in Hissa No.01
South by : Property of Smt. Ningamma

13. All that piece and parcel of the property bearing re-survey No.523/6 measuring 0.07 guntas situated at Thuruvanuru Village and Hobli, Chitradurga Taluk and District, bounded on:-

East by : Road and Sy. No.524
West by : Property in survey No.522
North by : Property of Anjinappa & others
South by : Property in Hissa No.2

14. All that piece and parcel of the property bearing survey No.154/4 measuring 0.25 guntas out of which 0.1.0.00 Karab land and converted vide order 157437 dated 01.12.2020, situated at Belwadi Village, Yelwala Hobli, Mysuru Taluk, bounded on:-

East by : Property in Survey No. 154/5
West by : Government Voni
North by : Property in Survey No.148, 156
South by : Property in Sy. No.154/1A

15. All that piece and parcel of the property bearing survey No.154/5 [old No.154/1B] measuring 0.18 guntas, situated at Belwadi Village, Yelwala Hobli, Mysuru Taluk, bounded on:-

East by : Private property
West by : Property in survey No.154/4
North by : Road
South by : Property in Sy. No.154/1B

16. All that piece and parcel of the property bearing survey No.26/1 measuring 2 acres 32 guntas, situated at Dadadakallahalli Village, Yelwala Hobli, Mysuru Taluk, bounded on:-

East by : Property of Narayanachari
West by : Water Chanal
North by : Property of Kalaiah
South by : Property of Dasharathachari Thammaiahchari and Late Shanthappa Siddappa

17. All that piece and parcel of the property bearing survey No.146/4 measuring 0.19 guntas, converted land vide order No.193412 dated 26.02.2021 situated at Madagaloli Village, Yelwala Hobli, Mysuru Taluk, bounded on:-

East by : Sy. No.146/3
West by : Sy. No.146/5
North by : Sy. No.146/2
South by : Sy. No.17

18. All that piece and parcel of the property bearing survey No.26/3 measuring 1 acre 20 guntas, out of total extent of 2 acres 07 guntas situated at Dadadakallahalli Village, Yelwala Hobli, Mysuru Taluk, bounded on:-

East by : Property of Children of Puttappa
West by : Property of Shivamma
North by : Property of B.S. Prateep (Own)
South by : Property of Mahadevappa

19. All that piece and parcel of the property bearing survey No.28/4 measuring 0.18 guntas, situated at Dadadakallahalli Village, Yelwala Hobli, Mysuru Taluk, bounded on:-

East by : Property of Mahadevappa
West by : Water Chanal
North by : Property of Shivamma
South by : Property of Shivamma W/o. Shivarajappa

20. All that piece and parcel of the property bearing survey No.26/2 measuring 0.39 guntas, situated at Dadadakallahalli Village, Yelwala Hobli, Mysuru Taluk, bounded on:-

**East by : Property of Chennajamma
West by : Property of Chennajamma
North by : Property of Prateep (Own)
South by : Property of Kashiraj**

21. All that piece and parcel of the property bearing Belwadi Grama Panchayath Register No. 594 UID No. 152200407129000867 situated at Belwadi Village, Yelwala Hobli, Mysuru Taluk, bounded on:-

**East by : Property of Pandu & Nagamma
West by : Road
North by : Road
South by : Property of Raju & Shivalinge Gowda**

Consisting of 743.40 square meters of site property house construction on the site measuring 418 square meters of ground floor with granite flooring and 418 square meters of first floor duplex RCC House with electricity, water and sanitary facilities.

22. All that piece and parcel of the property bearing Belwadi Grama Panchayath Register No. 1551 UID No. 1522004071290002211 situated at Belwadi Village, Yelwala Hobli, Mysuru Taluk, bounded on:-

**East by : Property of Gopalakrishna
West by : Private property
North by : Road
South by : Private property**

Measuring East to West 14.2 meters and North to South 30.18 meters totally measuring 427.27 square meters with constructed building of 232.25 square meters.

23. All that piece and parcel of the property bearing survey No. 49/14 measuring 0.10.08 guntas out of 1 acre 11.04 guntas situated at Maratikyathanahalli Village, Jayapura Hobli, Mysuru Taluk, bounded on:-

East by : Portion of property of Shivamurthy in Block No.1
West by : Property in L.S. No.23
North by : Property in L.H.No.5
South by : Property in L.H. No.13 and Portion of property of Shivamurthy in Block-1

24. All that piece and parcel of the property bearing Belwadi Grama Panchayath Register No. 318 UID No. 152200407129000476 situated at Belwadi Village, Yelwala Hobli, Mysuru Taluk, bounded on:-

East by : Private property
West by : Private property
North by : Road
South by : Private property

Site measuring East to West 18.29 meters and North to South 12.19 meters totally measuring 222.95 square meters.

25. All that piece and parcel of the property bearing Belwadi Grama Panchayath Register No. 733/1 UID No. 152200407129001104 situated at Belwadi Village, Yelwala Hobli, Mysuru Taluk, bounded on:-

East by : Road
West by : Private property
North by : Road
South by : Private property

Site measuring East to West $(1371 + 19.20)/2$ meters and North to South 19.51 meters totally measuring 321.11 square meters.

26. All that piece and parcel of the property bearing Survey No.77/6 measuring 0.04 guntas residentially converted land vide order No. ANL[1] CR.87/2018

[39518] dated 30.06.2018 situated at Belwadi Village, Yelwala Hobli, Mysuru Taluk and District bounded on:-

**East by : Property in Re.Sy. No.71 (Now Road)
West by : Property in Re-Sy. No.77/1
North by : Property in Re-Sy. No.77/1
South by : Property in Re-Sy. No.77/5 (Now Road)**

27. All that piece and parcel of the property bearing Survey No.6/6 measuring 0.20 guntas out of 2 acres 01 guntas situated at Halladakallahalli Village, Bilikere Hobli, Mysuru Taluk, Mysuru District bounded on:-

**East by : Property in L.S No.7
West by : Property in L.S No.2
North by : Vaddarahalli border
South by : Portion of property of Devaraja Boyi
@ Devaraja Bovi family in Block No.1**

28. All that piece and parcel of the property bearing survey No.29/7 [old No.29/4] measuring 0.20 guntas, situated at Vaddarahalli Village, Bilikere Hobli, Mysuru Taluk, Mysuru District, bounded on:-

**East by : Portion of property of Dodda Swamy Gowda
@ Siddegowda Family in Block No.1
West by : Property in L.H. No.3
North by : Property in L.H 5 and Road
South by : Halladakallahalli Border**

29. All that piece and parcel of the property bearing survey No.49/17 [old No.49/4] measuring 0.01.08 guntas, situated at Maratikyathanahalli Village, Jayapura Hobli, Mysuru Taluk and District, bounded on:-

**East by : Road and portion of property of Shivamurthy
in Block No.1
West by : Property in L. No.23
North by : Property in L.H 13
South by : Portion of own property in Block No.1**

30. All that piece and parcel of the property bearing survey No.327/2 [old No.327] measuring 0.04.04 guntas, out of 0.16 guntas situated at Belwadi Village, Yelwala Hobli, Mysuru Taluk and District, bounded on:-

East by : Road and Portion of property of Shivamurthy in Block No.1
West by : Portion of property in Block No.1 (belonging to Bhagyamma by Gift Deed measuring 0.02.04 guntas)
North by : Property in L.H 1
South by : Road and portion of property in Block No.1

31. All that piece and parcel of the property bearing survey No.29/1 [old No.29] measuring 1 acre 01 guntas, situated at Yelwala Village and Hobli, Mysuru Taluk and District, bounded on:-

East by : Water Chanal
West by : Property of Venkategowda and Sakamma
North by : Property of Deshikachar
South by : Land belonging to Santhemala and Hunsur-Mysuru Road

32. All that piece and parcel of the property bearing survey No.90/2 measuring 0.22.04 guntas, out of 2 acre 34 guntas situated at Madagalli Village, Yelwala Hobli, Mysuru Taluk and District, bounded on:-

East by : Road and property of Kempegowda & Ningegowda
West by : Property of Ningegowda
North by : Water chanal
South by : Private property

33. All that piece and parcel of the property bearing survey No.146/3 measuring 0.16.04 guntas, situated at Madagalli Village, Yelwala Hobli, Mysuru Taluk and District, bounded on:-

East by : Property in Sy. No.146/1 & Road
West by : Property in Sy. No.146/4
North by : Property in Sy. No.146/2
South by : Survey No.17

34. All that piece and parcel of the property bearing survey No.327/3 (Old No.327/2) measuring 0.02.04 guntas, situated at Belwadi Village, Yelwala Hobli, Mysuru Taluk and District, bounded on:-

East by : Own property
West by : Remaining portion
North by : Property in L.H 1
South by : Road and portion of property of Shivamurthy in Block No.1

35. All that piece and parcel of the property bearing survey No.86/12 measuring 0.03 guntas converted land, situated at Belwadi Village, Yelwala Hobli, Mysuru Taluk and District, bounded on:-

East by : Property in L.H2 (Property of Chamundegowda @ Gurumurthy in Sy. No.86/1
West by : Main Road
North by : Property in L.H1 (Portion of Survey No.86/1)
South by : Property in L.S 87(Government Land or dairy building)

36. All that piece and parcel of the property bearing Belwadi Grama Panchayath Register No. 360/2 UID No. 152200407129020254 situated at Belwadi Village, Yelwala Hobli, Mysuru Taluk, bounded on:-

East by : Conservancy Road
West by : Main Road
North by : Road
South by : Road and Dairy building

Site measuring East to West 17.98 meters and North to South 20.42 meters totally measuring 367.15

square meters with RCC House, electricity, water and sanitary facility.

37. All that piece and parcel of the property bearing survey No.171/2 measuring 1 acre 18 guntas situated at Ratnahalli Village, Yelwala Hobli, Mysuru Taluk and District, bounded on:-

**East by : Property of Rachaiah
West by : Property of Venkata Bai
North by : Property of Shivamurthy
South by : Road and property of Thammaiahchari & Siddappa**

38. All that piece and parcel of the property bearing survey No.101 measuring 0.15 situated at Karakanahalli Village, Yelwala Hobli, Mysuru Taluk and District, bounded on:-

**East by : Road
West by : Property of Kenchanayaka
North by : Property of Chandranayaka
South by : Property of Puttegowda and Lokesha**

39. All that piece and parcel of the property bearing Belwadi Grama Panchayath register No.2153/1 UID No.15220040129020512 situated at Belwadi Village, Yelwala Hobli, Mysuru Taluk and District, bounded on:-

**East by : Road
West by : Remaining portion of property
North by : Vacant site and house of Krishna
South by : Road**

Site measuring East to West 24.39 meters and North to South 19.20 meters totally measuring 468.28 square meters.

4. After filing this petition, Citation was published in Daily Newspaper, but none appeared before this Court nor filed any objections. Hence, the petitioner is heard exparte.

5. To prove his case, the petitioner is examined as P.W.1 and produced documents at Exs.P.1 to P.66 and also examined three witnesses as P.Ws.2 to 4 and closed his side.

6. Heard the arguments of learned Counsel for the petitioner and perused the records.

7. The points that arise for my consideration at this stage are:

1. Whether the petitioner has made out sufficient grounds to grant Probate Certificate in his favour in respect of the petition schedule properties as per the Will dated 20.12.2021 executed by Late B.S.Prateep ?

2. What order ?

8. My answers to the above points are:

Point No.1 :: In the **affirmative**,

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

REASONS

9. **Point No.1:**

It is the case of the petitioner that, he married one Bhagya and out of their wedlock, they have got 3 children namely B.S.Prateep, B.S.Kavitha and B.S.Padmini and he has acquired some of the schedule properties and he has gifted the same in favour of his son Prateep. His son Prateep, during his during

lifetime, executed a Will on 20.12.2021 bequeathing all the petition schedule properties in his favour and his son also appointed Advocate H.S.Kumar as the Executor of the Will. His son Prateep passed away on 24.12.2021 and after his death, he came to know about the execution of the Will through the Executor, who has handed over the original Will to his custody and thereafter he has got registered the said Will on 07.04.2022. To manage the affairs of the schedule properties, he requires the Probate Certificate, as such, he has filed this petition seeking grant of Probate Certificate.

10. In support of his case, the petitioner has filed an affidavit in lieu of his examination-in-chief and reiterated all the averments made in the petition. He has produced the documents at Exs.P.1 to P.66. Ex.P.1 is the original Will dated 20.12.2021 executed by B.S.Prateep in favour of his father-the petitioner, wherein he has bequeathed all the petition schedule properties in favour of his father. The petitioner has produced the relevant Tax Paid Receipts, Gift Deeds, Sale Deeds, RTCs., Alienation Orders in respect of the petition schedule properties. On perusal of the said documents, it clearly discloses that, some of the petition schedule properties have been purchased by the Testator Prateep himself and some were gifted by his father-the petitioner. It is also clear from the documents produced by the petitioner that, said B.S.Prateep was enjoying all the petition schedule properties during his life time as absolute owner thereof and has exercised his right of ownership by paying tax and by obtaining alienation orders.

11. P.W.2, who is the scribe of the Will, has deposed that, he knows B.S.Prateep, who passed away on 24.12.2021. He further deposed that, on 20.12.2021, the said Prateep executed a Will in favour of his father-the petitioner herein, by bequeathing all the properties mentioned in the Will in his favour. At the time of executing the said Will, Prateep himself gave instructions and details regarding the properties and after drafting the Will, the same was read over and explained to him and after understanding the contents of the Will, Prateep affixed his signature before him. P.W.2 further deposed that, at the time of executing the said Will, the testator was in sound state of mind and three witnesses have affixed their signatures to the said Will and he being the scribe, also affixed his signature. Under the said Will, he was appointed as an Executor of the Will. After the death of B.S.Prateep, when his father-the petitioner approached him, he handed over the original Will to his custody and thereafter the petitioner presented the said Will before the Sub-Registrar for registration. On receipt of the notice from the Sub-Registrar's Office, he went to the said Office and gave his statement regarding the execution of the Will and after recording his statement as well as the statements of the attesting witnesses, the said Will was duly registered in accordance with Law. P.W.2 has identified his signature as Ex.P.1(a) and the signature of the testator as Ex.P.1(b).

12. P.Ws.3 and 4 are the attesting witnesses to the Will-Ex.P.1. They have deposed that, they know the facts of the case and they know B.S.Prateep and now he is no more. During his life

time, the said B.S.Prateep executed a Will on 20.12.2021 in favour of the petitioner, by bequeathing all the properties mentioned in the Will. At the time of executing the Will, B.S.Prateep was in sound state of mind and the contents of the said Will were read over and explained to him and after understanding the contents, the executant has affixed his signature in their presence and thereafter these witnesses have affixed their signatures as witnesses to the Will. Both these witnesses further deposed that, they went to the Sub-Registrar's Office on 30.03.2022 and P.W.3 had given his statement and both of them put their signatures before the Sub-Registrar. One Manjunath also put his signature as a witness to the statements given by Padmini B.S., Ravikiran.L.(P.W.3) and Kavitha B.S. Both P.Ws.3 and 4 have also identified their signatures on the Will at Ex.P.1(c) and P.1(d) respectively and P.W.3 also identified the signature of the Testator at Ex.P.1(b).

13. On perusal of the evidence of P.Ws.2 to 4-the scribe and the attesting witnesses and also the documents produced by the petitioner, particularly Ex.P.1-Will, it is seen that, the testator, when he was healthy and in sound disposing state of mind, had voluntarily executed the Will in favour of the petitioner on 20.12.2021 in the presence of the scribe-P.W.2 and attesting witnesses-P.Ws.3 and 4. The Death Certificate produced at Ex.P.2 discloses that, the testator B.S.Prateep died on 24.12.2021.

14. Before entering into the merits of the case, it is necessary to state that, the Law is now well settled as regards the grant of Probate to a propounder. It has been held by the Hon'ble

Supreme Court in number of cases that, “***the mode of proving a Will does not ordinarily differ from that of proving any other document except to the special requirement of attestation prescribed in the case of a Will under Section 63 of the Succession Act. The onus of proving the Will is on the propounder and in the absence of suspicious circumstances, surrounding the execution of the Will, proof of testamentary capacity and the signature of the testator, as required by law, is sufficient to discharge the onus. Even where the circumstances give rise to doubts, it is for the propounder to satisfy the conscience of the Court***”.

15. In addition to the above principles, I would like to rely upon the reported Case Law in **AIR 1985 CALCUTTA 349** between ***Smt. Chinmoyee Saha Vs. Debendra Lal Saha and others***, wherein at Head-note 'A', it was held as follows:

(A) Succession Act(39 of 1925), Ss. 59, 61 and 63 - Will - Proof - Suspicious circumstances - Due execution and attestation of Will as well as sound disposing mind of testatrix proved - Court cannot refuse to grant probate when testatrix has made only some of her grandchildren as legatees to exclusion of other near relations.

16. Even on perusal of the Judgment of the Hon'ble Supreme Court of India in the case of ***Swaminathan and others Vs. Alankamony (Dead) through LRs***. reported in **2022 LiveLaw (SC) 276**, it was held as follows:

Indian Succession Act, 1925; Sections 299, 279, 276, 263 - 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 - 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".

17. On going through the principles of law enunciated in the above cited decisions respectfully, it is noticed that, a Probate Court is not to enter into the question of title for deciding the extent of share of each of the parties in the properties left by the testator of the Will. The Will is the Will of the testator and he has, under the Law, the freedom to give his property to whomsoever he likes. But, it should be established that the testator was free and had a sound disposing mind, it is no longer the duty of the Court to go further to inject its own ethics of what is or is not a moral or a fair disposition according to the Court's own stand. Further, the main contention might arise that the necessary legal heirs have been left out while granting the Probate. In view of the 2nd decision cited supra, it is clear that, the grant of Probate may be revoked for just cause. Further, under Section 263 of Indian Succession Act, 1925, the legal heirs who are not included in the petition are always at liberty to seek for revocation or annulment of Order of Probate.

18. Further, in the case on hand, there is not even a defence suggestion since nobody has appeared and objected in the case

after Paper Publication that the testator had no sound disposing mind. As it has been held, “***the Court is to grant Probate, even if the Will might be unnatural and might cut off wholly or in part near relations***”.

19. So, considering the above cited Judgments and also the provisions of Law as provided under Indian Succession Act, 1925, there is no bar to grant an Order of Probate in favour of the petitioner as prayed, since the petitioner has proved that the testator B.S.Prateep was the owner in possession and enjoyment of the petition schedule properties having obtained the same under different registered Gift Deeds and Sale Deeds and that he had executed the Will voluntarily when he was healthy and in a sound disposing state of mind. Non-inclusion of other legal heirs cannot be a ground to reject the issuance of Probate, as the other legal heirs are always at liberty to revoke the Order of Probate under Section 263 of the Indian Succession Act. Since after issuance of Publication in the Daily Newspaper nobody has appeared before the Court and filed any objections, there is no impediment to issue an order of Probate in favour of the petitioner in respect of the petition schedule properties, by virtue of the Will-Ex.P.1. Accordingly, I answer **point No.1** in **affirmative**.

20. **Point No.2:**

For the foregoing reasons and discussion, I proceed to pass the following:

ORDER

The petition filed by the petitioner under Section 276 of the Indian Succession Act is allowed.

Issue Probate Certificate in favour of the petitioner in respect of the petition schedule properties as per the Will dated 20.12.2021 executed by Late P.S.Prateep, after collecting necessary probate fees.

(Typed to my on-line dictation by the Judgment Writer and after corrections, signed and then pronounced by me in the open Court on this the **9th day of March, 2023.**)

(G.S.Sangreshi)

Prl. District & Sessions Judge,
Mysuru.

:R:

ANNEXURE**1) Witnesses examined on behalf of the Petitioner:**

P.W.1 : Shivamurthy (petitioner)
P.W.2 : H.S.Kumar
P.W.3 : Ravikiran
P.W.4 : Jagadish

2) List of Documents exhibited on behalf of petitioner:

Ex.P.1: Original Will dated 20.12.2021
Ex.P.1(a): Signature of P.W.2
Ex.P.1(b): Signature of the Testator
Ex.P.1(c): Signature of P.W.3
Ex.P.1(d): Signature of P.W.4
Ex.P.2: Death Certificate of Testator Prateep B.S.

- Ex.P.3: Form 11(B) and Tax Paid Receipt
- Ex.P.4: Original Gift Deed dated 17.03.2020
- Ex.P.5: Original Gift Deed dated 31.10.2019
- Ex.P.6: Another Original Gift Deed dated 17.03.2020
- Ex.P.7: Original Gift Deed dated 10.03.2017
- Ex.P.8: RTC of item No.5
- Ex.P.9: Certified copy of Sale Deed dated 10.10.2017
- Ex.P.10: Certified copy of Alienation Order dated 17.11.2022
- Ex.P.11: RTC of Item No.6 to 8
- Ex.P.12: Original Sale Deed dated 14.12.2021
- Ex.P.13: Original Sale Deed dated 10.07.2015
- Ex.P.14: RTC of Item No.10
- Ex.P.15: Original Sale Deed dated 10.07.2015
- Ex.P.16: RTC of Item No.11
- Ex.P.17: Original Sale Deed dated 10.07.2015
- Ex.P.18: RTC of Item No.12 and 13
- Ex.P.19: Original Sale Deed dated 16.11.2019
- Ex.P.20: Alienation Order dated 01.12.2020
- Ex.P.21: RTC of Item No.14 and 15
- Ex.P.22: Original Sale Deed dated 10.12.2006
- Ex.P.23: RTC of Item No.16
- Ex.P.24: Original Partition Deed
- Ex.P.25: RTC of Item No.17
- Ex.P.26: Original Sale Deed dated 07.03.2007
- Ex.P.27: RTC of Item No.18
- Ex.P.28: Original Sale Deed dated 28.11.2006
- Ex.P.29: RTC of Item No.20
- Ex.P.30: Original Gift Deed dated 09.10.2020

- Ex.P.31: Original Gift Deed dated 31.10.2019
- Ex.P.32: Original 11B Form
- Ex.P.33: Original Gift Deed dated 02.06.2018
- Ex.P.34: RTC of Item No.23
- Ex.P.35: Alienation Order dated 12.01.2021
- Ex.P.36: Original Gift Deed dated 31.10.2019
- Ex.P.37: Original 11B Form and Tax Paid Receipt
- Ex.P.38: Original Gift Deed dated 01.10.2018
- Ex.P.39: Original 11B Form and Tax Paid Receipt
- Ex.P.40: Original Sale Deed dated 02.06.2017
- Ex.P.41: RTC of Item No.26
- Ex.P.42: Original Sale Deed dated 30.10.2021
- Ex.P.43: RTC of Item No.27
- Ex.P.44: Original Sale Deed dated 31.10.2021
- Ex.P.45: RTC of Item No.28
- Ex.P.46: Original Gift Deed dated 01.03.2021
- Ex.P.47: RTC of Item No.29
- Ex.P.48: Original Gift Deed dated 01.03.2021
- Ex.P.49: Alienation Order dated 30.09.2021
- Ex.P.50: Original Sale Deed dated 16.01.2008
- Ex.P.51: RTC of Item No.31
- Ex.P.52: Original Sale Deed dated 22.01.2021
- Ex.P.53: RTC of Item No.32
- Ex.P.54: Original Gift Deed dated 26.08.2021
- Ex.P.55: Original Gift Deed dated 30.07.2021
- Ex.P.56: Original Gift Deed dated 29.06.2021
- Ex.P.57: Original 11B Form
- Ex.P.58: Original Sale Deed dated 30.12.2016

- Ex.P.59: RTC of Item No.37
- Ex.P.60: Original Sale Deed dated 09.08.2007
- Ex.P.61: RTC of Item No.38
- Ex.P.62: Original Gift Deed dated 04.01.2017
- Ex.P.63: Original 11 B Form
- Ex.P.64: U.D.R.
- Ex.P.65: Complaint
- Ex.P.66: Certified copy of Gift Deed dated 22.12.2012

Prl. District & Sessions Judge,
Mysuru.

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