

KABC010133102007



IN THE COURT OF THE III ADDL. CITY CIVIL AND
SESSIONS JUDGE, (CCH-25) AT BENGALURU.

DATED: THIS THE 3rd DAY OF JUNE, 2025.

PRESENT : Smt. Nisharani A.C., B.A., LL.B.,
III Addl. City Civil and Sessions
Judge, Bengaluru

O.S.No.4832/2007

PLAINTIFF : Sri. Armugam
Since dead by LRs

V/s.

DEFENDANTS : Smt. Shakuntala
& Others

ORDERS ON INTERLOCUTORY APPLICATION No.XXI
FILED BY THE DEFENDANT Nos.1 to 3 UNDER ORDER XVI
RULE 6 R/W SECTION 151 OF CPC

The plaintiff has filed the present suit for declaration of title and such other reliefs over the suit schedule property and seeking direction from the Court to vacate and deliver vacant possession of the suit schedule property to the plaintiffs.

This application filed by the defendants No.1 to 3 under Order 16 Rule 6 r/w Sec.151 of CPC to summon the Senior Sub-Registrar Srirampura, Bengaluru.

2. In the annexed affidavit the reason assigned by the defendant No.1 is that in order to substantiate the execution of the Will by the testator Smt.Dhanabhgyammal bequeathing her right in the suit schedule property in favour of defendant Nos.1 to 3, it is necessary to examine Senior Sub-Registrar, Sriram Puram, Bengaluru to produce the Thumb Sheet Register pertaining to the Will to establish the fact of late Smt.Dhanabhgyammal (Testator), affixing her LTM before the Sub-Registrar for executing the Will along with pages 52 to 56 of Book No.III, in Volume-51 of its office as detailed in the accompanying application, if the said application is allowed, no injury, hardship cause to the otherside, in turn if the application is not allowed, it would cause much hardship to the defendants herein in proving the Will (Ex.D.34). Therefore, prays to allow the application.

3. On the other hand, the plaintiff filed objections stating that the issue involved in the suit is the defendants have to prove the Will executed by the Testator Smt.Dhanabhgyammal

in favour of defendant Nos.1 to 3. Therefore, to prove the said issue summoning to the Sub-Registrar is not required. D.W.2 is one of the son of the attesor is already examined. The thumb impression if any of the testator by itself does not meet the statutory requirements of proving a disputed Will, which is shrouded by several suspicious circumstances, which the propounder is bound to discharge instead of diverting the evidence on issues involved. Therefore, prays to reject the application.

4. From the contents of the I.A. and contention taken by parties the points that arise for my consideration are,-

POINTS

1. Whether the defendant Nos.1 to 3 made out grounds to allow IA.No.XXI ?
2. What order ?

5. Heard arguments. After hearing the arguments and considering the available material on record my answer to the above points are,-

POINT NO.1 : In the **Affirmative**,

POINT NO.2 : As per final order,
for the following-

REASONS

6. **POINT No.1:-** The plaintiff claiming declaration of title over the suit schedule property by way of Hindu Succession Act. On the other hand, the defendants herein claiming declaration of title over the suit schedule property by virtue of Will, which is got marked as Ex.D.34. It is true that Will has to be proved in accordance with law as contemplated under Section 68 to 72 of Indian Evidence Act, 1872. On careful perusal of the Will which is got marked as Ex.D.34, the seal in the Will clarifies that it has got pages 51 to 56, however, all these pages are not produced by the defendants herein.

7. While appreciating the Will, the Court should be much careful as the person who has executed the Will is not available to adduce his evidence as the Will come into force after the death of the testator. Therefore, as it is already mentioned in the seal annexed on the Will shows that there are other pages to the Will, therefore, by summoning the Sub-Registrar, the other pages are also produced by the Sub-Registrar, then it would be useful for the Court for proper adjudication of the matter and also helps in appreciating the Will as it is the suit document. Moreover, by allowing this

application, no injury or hardship would be caused to the other side. Therefore, the said application is allowed and I answer this **point No.1 in Affirmative.**

8. **POINT No.2:-** For the foregoing reasons, I proceed to pass the following,-

ORDER

I.A.No.XXI filed by the defendant
Nos.1 to 3 under Order XVI Rule 6 r/w
Section 151 of CPC is hereby allowed.

Office is directed to issue witness
summons to the Senior Sub-Registrar, Sub-
Registrar Office, Srirampuram, Bengaluru
to produce the Thumb Sheet Register as
prayed for in the above I.A.

(Dictated to the Stenographer on computer, typed by her, corrected and pronounced by me in open Court on this **3rd day of June, 2025**).

(NISHARANI A.C)
III ADDL. CITY CIVIL AND
SESSIONS JUDGE, BENGALURU.