

**IN THE COURT OF SENIOR CIVIL JUDGE AND JMFC AT
HIRIYUR**

Dated on this 11th day of September 2025

**Present: SMT. SUJATHA SUVARNA B.,
B.Com., LL.B.,
Senior Civil Judge & JMFC,
Hiriyur
OS No.96/2014**

PLAINTIFFS : P.Sharadamma & Others

[Rep. By Sri.M.M., Advocate]

Vs

RESPONDENTS : K.Veerappa & Others

(D.1,4,5 Rep. By Sri.B.N.T., Advocates
D.11, 12(a).Rep.By Sri.S.J., Advocates
D.2,3, 6 to 10, 13 to 15 -Exparte)

RANK OF THE PARTIES ON I.A.NO.24 & 25

Applicant / Defendant No.4 : Kumarswamy

Vs.

Opponents/ Plaintiffs : Sharadamma & others

i	Provision under which the applications are filed	U/S 151 of CPC U/O XVI Rule 1 & 2 of R/W Sec.151
ii	Relief sought for	Reopen the case and condone the delay in fining the witness
iii	The date on which the applications are filed	01.08.2025
iv	Number of the application	24 & 25
v	The date on which the objections are filed by different opponent	07.08`.2025

ORDERS ON I.A.NO. 24 & 25

The defendant No.4 filed IA No.24 u/S 151 of CPC and prays to reopen the case for the purpose of further evidence and filed IA No.25 under Order XVI Rule 1 & 2 R/W Sec.151 of CPC and prays to condone the delay in filing the witness list.

2. In support of the application, defendant no.4 filed affidavit and stated as follows:

One Sri Kariyamma had executed the registered Will on 23.11.1982 as per Exhibit D3 and bequeathed the scheduled property 1 and 2 in favour of K. Veerappa. After the death of Kariyamma, the defendant no.1 acquired the suit Item Nos. 1 and 2 and he was in possession of the same as per the will. At the time of executing the Will dated 23.11.1982, one S. Lingareddy, M Rajasekharaiah and Shantaveeraiah were the witnesses to the said will. After enquiry he came to know that S. Lingareddy, M Rajasekharaiah and Shantaveeraiah were expired very long back.

Recently he came to know that one Yogesh is the son of S. Lingareddy of Metikurke Village and he is in position to identify the signature of his father S. Lingareddy. In order to identify the signature of S. Lingareddy, the examination of the said witnesses is very much necessary. Hence prays to reopen the case for the purpose of further evidence and permitted him to file additional list of witness.

3. Per contra, the plaintiff filed objections and stated that, the applicant is filed this application with an intention to drag

on the proceedings already matter was heard and the witnesses shown in the list is not a competent and material witness to prove their defense and they are created the will and it was not executed by Kariyamma and he has no personal knowledge about the alleged Will. Witness shown in the list is not an legal heir of attesting witness. Hence prayed to reject the application.

4. Heard from both side and perused the records. The point that arises for consideration is as follows:-

1. Whether the defendant No.4 / Applicant made out sufficient ground to reopen the case and condone the delay in filing the witness list as reason stated in the I.A.No.24 & 25 ?

5. The finding on the above point is in the affirmative for the following:-

REASONS

6. Point No.1: As per the contention of the defendant, the said S.Lingareddy is no more and the witness mentioned in the application is the son of said S.Lingareddy. In the affidavit, the applicant stated that at the time of executing the WILL on 23.11.1982, Sri.Lingareddy was the witnesses to the said will and he is no more and one Yogesh is the son of S. Lingareddy of Metikurke Village and he is in position to identify the signature of his father S. Lingareddy.

7. As per Section 68 of Indian Evidence Act, if a document is required by law to be attested, it shall not be used as evidence until one attesting witness at least has been called for the purpose of proving its execution. If there be an attesting witness alive, and subject to the process of the court and capable of giving provided. As per Section 69 of Indian Evidence Act if no such attesting witness can be found, or if the document purports to have been executed in the United Kingdom, it must be proved that the attestation of one attesting witness at least is in his handwriting and that the signature of the person executing the document is in the handwriting of that person. As per the contention of the defendant, the witness mentioned in the application is identified the handwriting of the attesting witness.

8. The will is got marked at Ex.D-3. In order to prove the will, it is just necessary to examine the witness mentioned in the application. Admittedly, it is the trial court being a court, it is just a necessary to reopen the case and give opportunity to the defendant No.4 to lead further evidence. However, matter is from the year of 2014. Hence, considering the fact and circumstances, it is a good case to allow the application with cost of Rs.300/-. Accordingly, proceed to pass the following :

ORDER

The IA.No.24 filed by the defendant No.4
u/S 151 of CPC & IA .No.25 u/O XVI Rule 1 &
2 R/W Sec.151 of CPC are hereby allowed with
costs of ₹ 300/-.

(Dictated to the Stenographer directly on computer, corrected, initialed and pronounced by me in the open court on this the 11th day of September-2025).

Senior Civil Judge & JMFC.,
Hiriyur.