

KACM200004932019



IN THE COURT OF SENIOR CIVIL JUDGE,
AT: KADUR

Present:- Sri. IRFAN.
B.A., LL.B.,
Senior Civil Judge & JMFC,
Kadur, Chikkamagaluru District.

Dated: this the 6th day of June – 2026.

O.S. No. 99/2019

Plaintiffs : Smt. Chandrakala & others.
(By: Smt. B.R.R., Advocate)

-V/s-

Defendants: Sri. Panchakshari & others.
(Defendants No.1 & 2 by: Sri. S.N.A. Advocate)
(Defendants No.3 & 4 by: Sri. B.M.P. Advocate)

RANK OF THE PARTIES ON I.A.NO.14

Applicant/
4th defendant: Sri. Ravikumar.

V/s

Opponents/
Plaintiffs. : Smt. Chandrakala & others.



i	<i>Provision under which the application is filed</i>	<i>U/O 16 Rule 1 and 2 R/w Sec.151 of CPC</i>
ii	<i>Relief sought for</i>	<i>Permit the 4th defendant to file witness list by condoning the delay.</i>
iii	<i>The date on which the application is filed</i>	<i>13.02.2026.</i>
iv	<i>Number of the application</i>	<i>14</i>
v	<i>The date on which the objections are filed by different opponent</i>	<i>18.02.2026.</i>
vi	<i>The date on which the orders were passed on the said application</i>	<i>06.06.2026.</i>

When the case is posted for additional evidence of defendants if any, the 4th defendant has filed this application.

ORDERS ON I.A.14

This interim application has been filed by the 4th defendant, U/O 16 Rule 1 and 2 R/w Sec.151 of CPC seeking leave of the court to condone the delay in filing witness list and to permit him to file the same by contending that suit schedule item No.7 and 8 properties are originally belonged to one Hanumanthappa. Said Hanumanthappa died testate the aforesaid properties by executing the registered will in favour of 4th defendant on 19.12.1978 and he is become the lawful owner and in possession over the said properties. In the said Will, one B.H. Kariyappa had signed as a attesting witness and said Kariyappa



died leaving behind his son B.K. Thammaiah, the proposed witness. In order to prove the said will as well as signature of the said B.H. Kariyappa, the examination of witness – Sri. Thammaiah is necessary. If the application is not allowed, then he will be put to irreparable loss and injury. On the other hand, if the application is allowed, there is no any injury or cause to the other side.

2. The plaintiff resisted the said application by contending that the alleged registered will as stated by the 4th defendant himself, pertains to the year 19.12.1978 and as on the said day of alleged will, the special power of attorney holder has not taken birth and thereby he cannot file such application to prove the execution of will, which is not in his knowledge and even the recent judgment rendered by the Hon'ble High Court also states that the person who is having the personal knowledge is the only person who can lead evidence as the power of attorney. In the present case, the special power of attorney holder is not having knowledge of the alleged will and thereby, he cannot file such application seeking permission to file the witness list.



Moreover, the witness by name B.K. Thammayya stated in the annexed application is noway connected to the alleged will and as per the affidavit averments filed by the 4th defendant states that alleged witness is the legal heir of B.K. Thammayya, but the alleged witness cannot state regarding the attestation of the will and by examining the said witness, the 4th defendant is trying to fill the lacuna regarding proving of alleged will and thereby, the said application has to be dismissed in limine. The reasons assigned by the 4th defendant are that if the annexed application is not allowed, the causing of loss and damage to the plaintiff, who are legally deprived to their joint family share and income, whereas, the defendants who are enjoying the property by having wrongful katha are trying to have wrongful gain. Accordingly, sought to dismiss the application with exemplary costs.

3. Heard both side. Perused the case records.

4. The following points that arise for consideration are;

1. Whether the applications filed by the 4th defendant is deserves to be allowed?



2. What order?

5. Answers to the above points are as under;

Point No.1 : In the Affirmative;

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

REASONS

6. **Point No.1 :-** The present suit is one for the relief of partition and separate possession. On reference to the issues, it is noticed that the burden is casted upon the 4th defendant to establish the alleged will dated 19.12.1978 in dispute. It is contended by the power of attorney holder of 4th defendant under this application that one B.H. Kariyappa was one of the attesting witnesses to the alleged will and it is stated that since said B.H. Kariyappa is no more, he intended to examine the son of B.H. Kariyappa namely B.K. Thammayya, who is the application schedule witness. There is an established procedure provided under the Evidence Act regarding proof of will when the attesting witnesses are not available. By considering the said aspect, it is for the 4th defendant to establish that the alleged attesting witnesses are not available / not subject to process and therefore, he is examining the



application schedule witness in order to prove the alleged will in question. In the objections, the plaintiffs have taken the contentions that power of attorney holder of 4th defendant had no personal knowledge regarding the will and he cannot maintain the present application on behalf of 4th defendant. The said objections are unsustainable and however, the plaintiffs can very well establish their contentions during trial. Thus, by considering the fact that the burden is casted upon the 4th defendant to establish the alleged will, the present application deserves to be allowed in the interest of justice and equity. Thus, the delay in filing the witness list is necessary to be condoned by imposing costs. Accordingly, the **point No.1 under consideration is answered in the Affirmative.**

7. **Point No.2** :- In view of the discussion in the foregoing point, the following;

ORDER

I.A.14 filed by the 4th
defendant, under Order 16
Rule 1 and 2 R/w Sec.151 of



CPC is allowed with costs of
Rs.500/-.

The witness list is taken
on record.

(Dictated to the Stenographer on computer, corrected, initialed and then pronounced by
me in open Court on this the 6th day of June, 2026)

Sd/-

(IRFAN)
Senior Civil Judge,
Kadur.