

ORDERS ON I.A.X

This IA has been filed by the 4th respondent, U/O 18 Rule 17 R/w Sec.151 of CPC seeking to recall PW-2 and 3 to adduce further evidence to mark the signature of PW-2 and 3 by contending that he has adduced his evidence as PW-1 to claim the Anjanappa's share to him because his deceased father executed registered will in favour of him. Hence, he has produced the Will and he adduced his evidence and has produced the witness in the said case, at the time of chief of PW-2 and 3, due to confusion and over-sight, the signature of the witnesses are not marked in the said will, hence, the identification of witnesses signature is very necessary. Hence, recall PW-2 and 3 to adduce further evidence to mark their signature in the documents. Accordingly, sought to allow the application.

2. The petitioner resisted the said application by contending that the application filed by the 4th respondent is not maintainable either in law or on facts. The counsel for the petitioner has already examined PW-2 and 3 and when the said witnesses have been cross-examined and the opportunity has been given to the respondent counsel to examine the said witnesses, the said witnesses have not chosen to get the witness signature marked on their side. Now the evidence has been closed, again this respondent filed this application to recall PW-2 and 3, hence, the said application is liable to be dismissed. While the affidavit filed by the respondent stated that due to confusion and oversight, signature of the witnesses are not marked in the will produced by the 4th respondent. The reasons assigned by the 4th respondent is bonafide as per him, but when the petitioner counsel has already closed the evidence and regarding objections of this petitioner with respect to the execution of the alleged will by the said Anjanappa is purely disputed, now if the annexed

application is allowed, it is this petitioner who will be put to untold hardship and injury. Accordingly, sought to dismiss the application.

3. Heard learned counsel for 4th respondent and petitioner. Perused the case records.

4. The following points that arise for consideration are;

1. Whether the applicant / 4th respondent has made out grounds to reopen the case to recall PW-2 and 3 for further evidence?

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:-** It is a matter of record that the 4th respondent is asserting his rights with respect to the share allotted in

favour of late Anjanappa under a registered will dated 15.06.2020. PW-2 and 3 have been examined as one of the attesting witnesses to the disputed will. Their cross-examination has also been concluded. Under this application, the 4th respondent has sought to recall PW-2 and 3 for recording further chief-examination in order to mark their respective signatures on the disputed will in question. The propounder of the will is required to establish the due execution of the will and for that matter the recalling of PW-2 and 3 is found to be necessary for identification of signatures. It is the contention of the 4th respondent that while examining the aforesaid witnesses by oversight their signatures could not get marked on the disputed will. Legality of the will is subject to its proof and on meticulous reference to the oral evidence of PW-2 and 3, the present application deserves to be allowed in the interest of justice and equity. Accordingly, **the point 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.No.X filed by the applicant / 4th respondent, U/O 18 Rule 17 R/w Sec.151 of CPC is allowed.

Stage is re-opened.

PW-2 and 3 is recalled.

For appearance of PW-2 and 3 for further chief-examination by: 15.06.2026.

(Dictated to the Stenographer on computer, corrected, initialed and then pronounced by me in open Court on this the 8th day of June , 2026)

(IRFAN)
Senior Civil Judge,
Kadur.