

ORDERS ON I.A.NO.VI FILED BY THE
PLAINTIFF

I.A.No.VI filed by plaintiff U/o XVI rule 6 R/w Sec. 151 of CPC for cause production of Will executed by Bommaiah, S/o. Byraiah.

2. In the affidavit annexed to the application plaintiff stated that he has filed suit for declaration and cancellation of Will. Plaintiff further stated that defendant executed Will from Bommaiah S/o. Byraiah pertaining to the B schedule property. Plaintiff further stated that to obtain the certified copy of the Will when he approached to the sub-register office, Mudigere they have insisted to furnish the copy of the Will. But he has not possessed copy of the said Will. Plaintiff further stated that with regard to the effort made by him to obtain the copy of the Will from sub-register office he has not stated anything in the plaint. Plaintiff stated that the production of the Will is very much necessary to

prove his case. Plaintiff further stated that there will be a chance of execute Will in favour of defendant in the year 2001. Hence he prays to direct the defendant to produce the said Will. If the said Will is not produced by defendant plaintiff unable to obtain any relief pertaining to B schedule property. Hence plaintiff prays to direct the defendant to produce the Will.

3. On the other hand the counsel for the defendant filed objection to the application by stating that the application filed by plaintiff is not maintainable under law and deserves to be rejected. In the objection defendant further stated that Sri. Bommaiah has executed a Will on 14/12/1999 as per S.R.No.39/1999-2000 pertaining to one acres of land in Sy.No.173/P of Joganakere Village. Defendant further stated that after the death of Bommaiah the Khatha of the said property has been mutated in the name of defendant as per M.R.No.39/2001-2002. The

defendant has stated the above facts in para number 16 of his written statement. Defendant further stated that he is ready to produce the said Will at the time of his evidence and plaintiff has every right to cross examine the witness on the said Will. Hence defendant prays to dismiss the application.

4. Heard both side and perused the materials on record.

5. The following points arises for my consideration.

1) Whether the plaintiff has made out grounds to allow IA No.VI?

2) What order?

6. My findings on the above points are as follows:

Point No. 1 : In the Negative

Point No. 2 : As for the following:

REASONS

7. **Point No. 1:** Plaintiff has filed the suit for declaration that he is the absolute owner of plaintiff schedule property and for possession of plaintiff A and B schedule property from defendant and for declaring that the Will dated 23/12/2012 as null and void. When the matter is posted for evidence of plaintiff, the counsel for plaintiff came up with the present application to cause production of Will executed by Bommaiah, S/o. Byraiah. According to plaintiff, the said document is registered document. If the Will is registered document he can obtain the certified copy of the said Will from the sub-register office. He cannot compel defendant to produce the Will. It is up to the parties to prove their case by producing document. Since the plaintiff filed suit for declaration that he is the absolute owner of the plaintiff schedule property, it is the duty of plaintiff to prove his case by producing the document relating to his title to the plaintiff schedule property. He cannot

depend on the documents pertaining to the title of defendant. If defendant has title to the suit schedule property then he has to prove his title to the suit schedule property. Therefore plaintiff cannot compel the defendant to produce the Will executed by Bommaiah S/o. Byraiah. The plaintiff has not produced any documents to show that he has made an attempt to obtain the certified copy of the said document from the sub-register office, Mudigere. Though the plaintiff stated that he has applied for certified copy of the document, but he has not produced any document in this regard. The plaintiff has every opportunity to obtain the document from the sub-register office, Mudigere by filing necessary application. If the sub-register failed to furnish the document then he can summon the said document from the sub-register office, Mudigere. But no such attempt has been made by plaintiff to obtain the said Will.

8. It is not the case of plaintiff that, even after filing application, the sub-register not furnished the said document. If the sub-register is refused to furnish the copy of the document specifically stated in the application, then it is proper to summon the document through Court. Therefore, no grounds are made out by plaintiff to allow the application. In view of my above discussion I answer point No.1 in the Negative.

9. **Point No. 2:** In view of my findings on point No.1 I proceed to pass the following:

ORDER

IA No. VI filed by the plaintiff
U/o XVI rule 6 R/w sec. 151 of CPC is
hereby rejected.

Case posted for plaintiff evidence.

Call on : 13/06/2025.

**SENIOR CIVIL JUDGE AND JMFC.
MUDIGERE.**

O.S.54/2023