

**IN THE COURT OF 1<sup>st</sup> ADDL. SR. CIVIL JUDGE &  
JMFC., PUTTUR. D.K.,**

**DATED THIS THE 20<sup>th</sup> DAY OF FEBRUARY 2026**

**:PRESENT:**

**Sri.Devaraj.Y.H., B.A.L., L.L.B.,  
1<sup>st</sup> ADDL. SR. CIVIL JUDGE & JMFC.,  
PUTTUR.**

**OS.No. 12/2025**

|           |   |                                |
|-----------|---|--------------------------------|
| Plaintiff | : | <b>Kumari Sinchana</b>         |
|           |   | Vs.                            |
| Defendant | : | <b>Avinash Jain and Others</b> |

**IA no.6/2025**

|           |   |                                |
|-----------|---|--------------------------------|
| Applicant | : | <b>Kumari Sinchana</b>         |
|           |   | Vs.                            |
| Opponents | : | <b>Avinash Jain and Others</b> |

**ORDERS PASSED ON THE APPLICATION FILED BY THE  
PLAINTIFF UNDER ORDER XVI RULE 5 AND SECTION 151  
OF CPC**

The present IA filed by the plaintiff under Order XVI Rule 5 r/w Section 151 of CPC and prays to issue summons to the witness by name Niranjana Rai to produce the document i.e. original will dated 09.10.2000 allegedly executed by Smt. Nagarathnama, which is in his custody.

2. In support of the IA, plaintiff filed affidavit and stated that the present suit has been filed relying on the deed of will dated 09.10.2000 executed by her great grandmother by name Smt. Nagarathna. It has been stated that the said original will is now in the custody of the witness Niranjan Rai and this fact is clear from the judgment dated 20.12.2018 passed in OS No. 11/2015 on the file of Additional Civil Judge, Puttur, which was marked in the said suit as Exhibit P8. It is stated that the deed of original will which was produced to the court by the said witness was collected by him, as such, it is supposed to be in his custody. It is stated that one of the items of the schedule of the said Will happens to be the property delineated in the schedule of plaint schedule of this suit which is now owned by Niranjan Rai. It is stated that the claim of the plaintiff in this suit is fully based on the said original Deed of will dated 09.10.2000, hence, it is essential to issue summons to the Niranjan Rai, directing him to produce the said document in the interest of justice and equity.

3. On the contrary, counsel for the defendant no. 4 filed objections to the IA and contended that the IA filed by the plaintiff is not maintainable either in law or on facts. It is stated that Will executed by Smt. Nagarathna dated 25.10.2001 has been put forwarded by legal heirs of Nagarathna, as per revenue rule the title of the property transferred in the name of legal heirs as per Will dated 25.10.2001 and almost all legal heirs participated in the mutation proceedings to secure the right on the basis of will dated 25.10.2001. It is stated that once the Will dated 25.10.2001 is acted upon and no objections to the said Will so far is the same is questioned before any Court of law that itself shows that the Will dated 25.10.2001 is acted upon will lead to execution of several documents and the same is in force and in the hands of all the defendants and at this stage the clock cannot be set back to the original position which leads to legal disturbances of status in the hands of defendants.

4. It is stated that without questioning the Will dated 25.10.2001 in any Court or revenue Court the plaintiff has no locus-standi to call for production of another Will dated 09.10.2000 from Niranjana Rai as present custodian of will as alleged by the plaintiff.

5. It is stated that the Will is an instrument to be executed to determine the legal heirs and at the same time the Will has got power to cut the natural flow of succession. Once the Will is came to the public notice and the same is acted upon with related to the title of the property and suitable mutation documents effected, then that Will remains as final. It is stated that on the basis of acted Will and which was not opposed in time, then also limitation Act is very clear that the legal heirs cannot question the acted Will stating another Will is in existence which is not acted upon. It is stated that plaintiff is well aware about the facts that she is not having good case in her hand and now she intends to collect unwarranted documents to the Court only to create confusion

in the minds of the court and on the other way disturb peace of mind of the defendant to get some illegal benefits. Hence prays to dismiss the IA in the interest of justice and equity.

6. Perused the IA and objections as well the other material particulars available on record. Below mentioned points arisen for my consideration.

### **POINTS**

1. Whether the plaintiff made out grounds to consider the IA filed under Order 16 Rule 5 and Section 151 of CPC and grant the relief as prayed for ?

2. What order?

7. Heard counsel for both parties. Perused the IA, objections and other relevant material particulars available on record, My findings to the above points is as hereunder.,

**Point No.1:** In the Affirmative.

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

### **REASONS**

**8. Point No.1:** The present IA has been filed by the counsel for the plaintiff and prays to direct the witness Niranjan Rai to

produce the original Will dated 09.10.2000 alleged to be executed by Smt. Nagarathna, which was registered under Document No. 98/2000-01 before the Sub-Registrar Office of Puttur.

9. It has been contended by the Counsel for defendant No. 4 that the document which sought to be produced through the witness by name Niranjan Rai is unwarranted to the present case and based on the said document plaintiff cannot assert her right with respect to the plaint schedule properties. Hence prays to dismiss the IA.

10. Admittedly this suit has been filed by the plaintiff against the defendants seeking for the relief of partition and separate possession with respect to the Plaint Schedule Properties. The specific case of the plaintiff is that the properties delineated in the plaint schedule were absolutely owned by maternal great grandmother of the plaintiff by name Smt. Nagarathna. It has been pleaded in the plaint that Smt. Nagarathna effected a bequest of the scheduled property

creating legacy jointly to the plaintiff and her mother. i.e. Defendant no. 5 by means of registered Will dated 09.10.2000, while the Testator was sound and in disposing state of mind. It has been contended that the Testator executed the deed of Will on her own volition and she died in the year 21.11.2001 without revoking the Will and as such the plaintiff under Defendant No. 5 as legetees jointly inherited the right over the scheduled properties, hence plaintiff is having half right.

11. On perusal of the pleadings of the plaint, it depicts that the claim of the plaintiff is based on the Will dated 09.10.2000. It has been pleaded in the plaint pleadings that the said original Will was produced by the defendants in OS No. 11/2015, on the file of Additional Civil Judge, Puttur, which was marked as Exhibit D8.

12. It has been stated by the Counsel for the plaintiff that the said original Will is now with the custody of Niranjan Rai who has been mentioned in the IA, as such it is essential to

direct the said Niranjana Rai to produce the said document in order to prove the case put forth by the plaintiff.

13. On the contrary, it is the contention raised by the defendants that subsequent to the said Will, another Will was executed by Smt. Nagarathna on 25.10.2001 and the said Will was acted upon, as such based on the Will which is earlier to 25.10.2001 plaintiff cannot assert her right with respect to the properties mentioned in the plaint schedule. Whether the plaintiff has got the right over the plaint schedule property based on the Will dated 09.10.2000 or not ?, Whether the Will dated 25.10.2001 has been acted upon or not?, that has to be considered only on merits of the case after the full-fledged trial in this case. At this stage, this Court opines that plaintiff made out grounds to consider the IA and grant relief as prayed for and it is essential to issue direction to the witness as mentioned in IA No. 6 to produce the original Will which is alleged to be in his custody. If the application is allowed no harm or injustice is going to be caused to the defendants. On

the other hand, if the IA is rejected, it is going to cause loss and injury to the plaintiff. With all these discussions, I proceed to answer point number 1 in the affirmative.

14. **Point No.2:** As discussed above in point No.1, I proceed to pass the following.,

**ORDER**

IA No. 6 filed by the plaintiff under Order XVI Rule 5 and Section 151 of CPC is hereby allowed.

Issue direction To the witness Niranjana Rai as mentioned in IA No. 6 to produce the original Will dated 09.10.2000 which was allegedly executed by Smt. Nagarathna which is in his custody if PF paid.

(Dictated to the Stenographer directly on the computer, typed by her, print out taken by her, corrected, signed and then the Order pronounced in the open court this the 20<sup>th</sup> Day of February 2026)

**(Devaraj Y.H.)**  
1<sup>st</sup> Addl. Sr. Civil Judge &  
JMFC.,Puttur, D.K.