



**IN THE COURT OF PRL. CIVIL JUDGE &
J.M.F.C. AT BELTHANGADY.**

Present:-

Sri. Sandesha.K.,MA.LLB
(Prl. Civil Judge & J.M.F.C., Belthangady)

Dated: 16th Day of October 2025

ORIGINAL SUIT NO.139/2021

Plaintiffs:

1. Sri. Shubhakara N.
S/o Late Padmayya Poojary,
Aged about 61 years,
2. Smt. Bhavani,
D/o Late Padmayya Poojary,
W/o Narayana
Aged about 59 years,
(D1 and 2 are R/at Himaradda House,
Thenkakrandoor Village & Post
Belthangady Taluk)
3. Smt. Thriveni.N
W/o Yathish D.
D/o Late Padmayya Poojary,
R/at Sourabha House,
Near Padavu, Megina Mane,
Opposite Babbu swamy Temple,
Kulashekhara Village & Post,
Mangalore Taluk.

(By: Sri. S.K., Adv.)

-.V/S:-

Defendants:

1. Smt. Malathi.
W/o Late Kunda Poojary,
Aged about 76 years,
R/at Pijakudange House,
Shirlal Village & Post,
Belthangady Taluk.

2. Smt. Kamala,
W/o Late Ramesh Bangera,
Aged about 65 years,
3. Smt. Prameela,
W/o Prabhakara ,
D/o Late Ramesh Bangera,
Aged about 35 years,
D2 and 3 are R/at Sharada Nagara,
Devigudi Post, Somanthadka,
Mundaje Village, Belthangady Taluk.
4. Sri. Sooraj Bangera,
S/o Pramod Bangera.
Aged about 31 years,
5. Sri. Pramod L. Bangera,
S/o Lakshmna Bangera,
Aged about 64 years,

D4 and 5 are R/at Kemana Bailu house,
Kapinadka, Thenkakarndoor village,
Belthangady Taluk.
6. Sri. Umesh Kannada,
S/o Veerappa Kannada,
Aged about 43 years,
R/at Yermadadda House,
Kapinadka ,
Thenkakarandoor Village & Post,
Belthangady Taluk.

(By: Sri. A.T.R. Adv. For D1 to 3)
(By: Sri.P.K.S. Adv. For D6)
(D4 and 5 are exparte)

1.	Provision under which application filed.	Under order 16 rule 7 and Section 151 of CPC
2.	Relief sought	Seeking issue summons to witness to give evidence regarding the Will executed by Puttamma which was registered on 27-09-1990.

3.	The date on which application filed.	05.04.2025
4.	Number of application	IA No.V
5.	The date of which the objection filed by the respondent /defendant	25.04.2025
6.	The date on which the order were passed on the said application	16.10.2025

**ORDER ON IA NO.V FILED BY THE
PLAINTIFF U/O 16 RULE 7 AND SECTION
151 OF CPC**

The Plaintiff has filed this suit against the defendants for the relief of declaration with regard to Will is genuine and valid and consequential relief of injunction and such other reliefs.

2. At the stage of further evidence of plaintiff, the learned Counsel for defendant has filed I.A.No.V U/o 16 Rule 7 and Section 151 of C.P.C., seeking issue summons to witness to give evidence regarding the Will executed by Puttamma which was registered on 27-09-1990.

3. In the affidavit filed in support of I.A.No.V, plaintiff has stated that, his grandmother Puttamma executed a Will in respect of plaint schedule property in favour of his father Padmayya Poojary. The Will was registered before the Sub-registrar, Belthangady. Said Will was prepared by John Wilton Muliya and the witness by name Ramesh Bangera and Ithappa Poojary, plaintiff grandmother Puttamma is no more. The proposed witness who presented before execution of Will are necessary to

examine and give evidence in order to prove the Will. If the witness is summoned, no harm will be caused to the defendants, hence this application.

4. The learned counsel for the defendant No.6 has filed objection to I.A No.V and stated that, the present witness summoned one Sri. Seetharam Bangera S/o Annu Poojary, Ujire village. How his evidence is relevant in the case is nowhere stated in the affidavit. So the application filed only to drag on the proceedings. Original Will is not produced before the court, the question of summoning the witness is only to abuse of process of court. The plaintiff has not filed any list of witness in proper time. Hence pray for dismiss the application with cost.

5. For disposal I.A. No.V following points arise for consideration:

1. Whether the plaintiff has made out sufficient grounds to summoning the witnesses by allowing IA No.V?

2. What Order?

6. Court findings to the above points are as under.

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

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

REASONS

7. Point No.1:- The plaintiff has filed present suit against the defendants for the relief of declaration in respect of Will and consequential relief of injunction. After the institution of suit as contemplated under law, suit

summons to come to be issued to the defendants. In pursuance of suit summons defendants are appeared before the court through their counsel and defendant No.6 has filed his written statement. Based on the pleading issues are framed, thereafter evidence of the plaintiff is completed and case is posted for further evidence of plaintiff, at this stage plaintiff has filed this application for summoning the witnesses to prove the execution of Will.

8. Ld. counsel for the defendant No.6 argued before this court that, plaintiff has not filed list of witness in proper time and stage provided to that effect. Application is filed to drag on the proceedings. Plaintiff has not produced original Will before the court. Unless and until the original Will is not produced before the court, the question of summoning the witness is only to abuse the process of the court. Hence pray for dismiss the application with cost.

9. Per contra, Ld counsel for the plaintiff argued before this court that, grandmother of the plaintiff by name Puttamma executed a Will in respect of plaint schedule property in favour of his father Padmayya Poojary. Puttamma is no more. In order to prove the execution of Will, it is necessary to examine the witness. If the witness is summoned to give evidence, no harm will be caused to the defendants, hence pray for allow the application.

10. The object of sub Rule (2) of Rule (1) of order 16 of CPC is that a party desirous of obtaining any summons

from the attends of any person shall file in court an application stating there in the purpose for which the witnesses is proposed to be summonsed. The object disclosing such a purpose is to enable the court to decide as to whether the examination of such witnesses is of a material benefit to decide the dispute. A duty is therefore to cost on the court consider whether the purpose of siting party as a witnesses speak of any material of fact.

11. In the present case on hand, plaintiff has filed this application to summoning the witnesses to prove the execution of Will by his grandmother in favour of his father namely Padmayya Poojary.

12. In his objection defendant No.6 counsel stated that, plaintiff has not produced original Will. Unless and until the original Will is not produced before the court, the question of summoning the witness only to abuse the process of court. It is settled principle of law that, Will has to produce through witness. Without giving an opportunity to the plaintiff to produce the document, application cannot be rejected. Plaintiff may produce the Will through witness. Hence objection raised by the defendant No.6 is not sustained. When the petitioner is propounded a Will, he has to prove the Will in accordance with section 68 of Indian Evidence Act. If the witness of the Will is not found, petitioner has to be prove the Will in accordance with section 69 of Indian Evidence Act. In this case in order to prove the execution of Will by his grandmother Puttamma, it is necessary to examine witness cited in the application. If the plaintiff is not

produce original Will, through witness copy of the Will cannot be marked. As already stated above, it is mandatory requirement of law that, Will has to be proved by examine any one attesting witness as per section 68 of Indian Evidence Act. Hence opportunity has to given to the plaintiff to prove the execution of Will. Hence objection raised by the defendant No.6 is not tenable. If the applications is allowed no hardship and injury cause to the defendant No.6. Moreover defendant No.6 has got opportunity to cross examine the witnesses to testify the veracity of the Will. Accordingly in the above said discussion, this court answered point No.1 in the **Affirmative**

13. Point No.2: In the result, this court proceed to pass the following:

ORDER

I.A.V filed by the defendant under order 16 rule 7 and sec 151 of CPC is hereby allowed subject to cost Rs.500/-.

Issue summons to witnesses as mentioned in the IA No.V to give evidence.

(Dictated to the stenographer, transcribed by him corrected and signed by me and then pronounced in the Open Court on this 16th day of October 2025)

(Sandesha K.)
Prl. Civil Judge & JMFC.,
Belthangady.