

ORDER ON DOCUMENT

This suit is filed by plaintiffs seeking declaration of their title to the suit properties with consequential relief of perpetual injunction. According to the plaintiffs, the suit properties were acquired by their mother Muniyamma @ Akkamma under a registered Will dated 16.11.1961 and after the death of their mother, they have succeeded to the suit properties. The plaintiffs have claimed that they do not have original Will dated 16.11.1961 with them but they have certified copy of the same and as such, they intend to produce the same and get it marked in the evidence. Accordingly, the plaintiffs have sought permission to get the certified copy of the Will marked in the evidence.

The defendants have objected for marking of the certified copy of the Will on the ground that a certified copy of the Will cannot be marked but original is required to be produced. They have also contended that a Will can only be marked through its attesting witnesses and not through any other person.

There is no doubt about the above contentions of the defendants but in this case, the plaintiffs have claimed that they

do not have original Will with them and as such, under Section 65 of Indian Evidence Act, they can very well be permitted to produce certified copy of the Will because without production of the Will, they would be unable to prove their case. Similarly, since the plaintiffs have further claimed that the attesting witnesses to the Will are not alive, they can also be permitted to get the Will marked in evidence through them.

It may be noted that this court is not deciding the validity of the Will in question nor giving finding on the admissibility of the evidence in law but it is merely permitting the plaintiffs to get the document marked. Even if the document is marked, the same would not automatically amount to proof of the document. The defendants can very well cross examine the witnesses of the plaintiffs on the document to disprove the same and prove their case. The plaintiffs cannot be denied opportunity to prove their case on technicalities.

Though the counsel for the defendants relied upon a ruling of the Hon'ble High Court of Karnataka reported in 2018(1) KCCR 406 in the case of Rajendra @ Deendhar V/s Smt. Ningawwa and Others, the same is not helpful for the defendants

because the said ruling also, it has been held that though Section 65 of the Indian Evidence Act contemplates the cases in which secondary evidence relating to documents may be given, as regards the Will, it has to be read along with Section 68 of the Act. As already observed above, this court is merely considering the question of marking of the document at this stage and not the admissibility or proof of the said document.

Therefore, the above reasons, I am of the opinion that there is no impediment to allow the plaintiffs to produce certified copy of the Will dated 16.11.1961 and get it marked in the evidence subject to its proof. Accordingly, the plaintiffs are permitted to get the Will marked through them.

For further chief of P.W.1.

Call on 20.01.2026.

Sd/-

I Addl. Sr. Civil Judge and JMFC,
K.G.F. Itinerary at Bangarpet.