

The defendant No.7 and 11 have filed an application under Order XVI Rule 1 of C.P.C. praying to issue summons to the below mentioned witness to give evidence in the ends of justice and equity.

It is submitted in the affidavit that the attesting witness to the registered Will dated 21.05.1992 has to be summoned in order to prove the Will propounded by defendant No.7 and 11.

On the other hand objections came to be filed and it is submitted that only to delay the proceedings the said application is being filed and defendant No.2 and 5 also filed their statement of objections submits that the proposed witness is a stranger does not have any knowledge about the properties and he does not have knowledge of this case. Therefore prays to dismiss the application.

After hearing from both sides, this court is of the opinion that, the defendant No.11 in his written statement para No.3 has stated the due execution of the Will by Radhamma Shedthi. So therefore, quite natural that in order to prove the Will summons will have to be issued to the witness, because it is settled position of law that, the propounder of the Will has to prove the Will by

examining attesting witness before the court in accordance with law. Therefore, this court proceeds to pass the following :

ORDER

The application filed under Order XVI Rule 1 of C.P.C. is hereby allowed.

Issue witness summons to the witness as mentioned in the list if P.F. paid as per law.

(Santosh Srivastava)

Addl. Senior Civil Judge and A.C.J.M.,
Udupi.