

KAYG030010352011



IN THE COURT OF PRL CIVIL JUDGE AND JMFC., AT YADGIRI

PRESENT

**Sri. Arun Chougule,
B.A.LL.B.[Hons.]**

Prl. Civil Judge and J.M.F.C,

Dated this the 22nd day of September-2025

ORIGINAL SUIT NO.28/2011

<u>PLAINTIFF/S:-</u>	Pramila D/o Shivaramsingh Tiwari, aged about: 40 years, Occ: Agriculturist & household, R/o: Gadi Mohall, Gurumitkal Tq: & Dist: Yadgiri.
	(By Sri. Y.V.V Advocate)
	-V/S-
<u>DEFENDANT/S:-</u>	Lachiram S/o Shivaramsingh Tiwari, aged about: 42 years, Occ: Agriculturist & household, R/o: Gadi Mohall, Gurumitkal Tq: & Dist: Yadgiri.
	(By Sri.N.R.K Advocate)

IN I.A.No.12

<u>Applicants/ plaintiff/s :</u>	Pramila D/o Shivaramsingh Tiwari,
	-V/S-
<u>Opponents/ defendants :</u>	Lachiram S/o Shivaramsingh Tiwari.

i.	<i>Provision under which the application is filed</i>	Order 16 Rule 6 R/w Section 151 Of CPC.
----	---	---

KAYG030010352011



ii.	<i>Relief sought for</i>	<i>Seeking to summon witness to produce documents and to give evidence</i>
Iii	<i>The date on which the application is filed</i>	<i>05-08-2025</i>
iv.	<i>Number of the application</i>	<i>IA No.12</i>
v.	<i>The date on which the objections are filed by different opponents</i>	
vi.	<i>The date on which the orders were passed on the said application.</i>	<i>22-09-2025</i>

**ORDER ON I.A.NO.12 FILED BY THE PLAINTIFF
UNDER ORDER 16 RULE 6 R/W SECTION 151 OF CPC.**

The plaintiff has filed the present application seeking to summon her sister Smt.Umadevi W/o Bhagatsingh Hareri, produce the registered Wills dated 29.11.2001 executed by her deceased mother Amruthabai and deceased sister Jugnabai and to give evidence in the matter.

2. The plaintiff has sworn to an affidavit in support of the application stating that, she has filed the suit seeking the relief of declaration of title on the basis of Wills executed by her deceased mother and deceased sister with consequential relief of permanent injunction. That, the plaintiff's sister

KAYG030010352011



Smt.Umadevi telephonically informed her that recently while cleaning the house she found the original Wills executed by her deceased mother and sister. That, the plaintiff asked her sister for the documents, who is said to have stated that she would submit the same to the Court. That, the Wills which are in the custody of the plaintiff's sister are very much necessary for deciding the matter on hand. Hence, the plaintiff prays to allow the application.

3. Learned counsel for the defendant submitted that he has no objections to the application.

4. I have heard arguments of learned counsel for the plaintiff and perused the records.

5. After hearing the arguments and perusal of pleading and records, the following points arise for my consideration.

1. Whether the application deserves to allowed?

2. What order?

6. My findings on the above points are as under;

Point No.1 : In the Affirmative

KAYG030010352011



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

REASONS

7. **POINT NO.1:** The plaintiff has filed the present suit seeking the relief of declaration of title and permanent injunction restraining the defendant from dispossessing her from the suit lands.

8. The case of the plaintiff is that herself and the defendant are brother and sister and they are members of Hindu divided family. That, all the family properties were divided in a family oral partition held on the day of Ugadi in the year 1982 and thereafter, the terms of partition were reduced in the writing in form of a memorandum of partition on 03.05.1993. Since the date of partition, the plaintiff and the defendant are in lawful possession and enjoyment of the properties fallen to their respective shares. That, the suit schedule properties and non-suit schedule residential house were fallen to the joint share of the plaintiff, her deceased mother Amruthabai and her deceased sister Jugunabai. After the partition, the suit lands except suit item No.6 were mutated in the name of plaintiff's mother. Thereafter, the plaintiff's sister died on 19.09.2003 and her mother died on 03.11.2008. After

KAYG030010352011

the death of her mother and sister, the plaintiff having become the absolute owner is in possession and enjoyment of the suit land. It is alleged that the defendant having no manner of right, title or interest over the suit properties is denying the plaintiff's title over the suit properties and trying to dispossess her from the possession thereof. Hence, plaintiff was constrained to file the present suit.

9. The defendant having appeared through his counsel filed written statement denying the case of the plaintiff including the alleged oral partition claimed by the plaintiff. The defendant contended that his father Shivaramsingh Tiwari was the owner of the suit properties and other non-suit schedule house and shops situated at Gurumitkal Town. The father of the defendant died in the year 1977 leaving behind his widow Amruthabai, two sons by names Gopalsingh (died in the year 1985) and Lachiramasingh (defendant), and three daughters by names Radhabai, Umabai and Pramila (plaintiff). It is contended that, after the death of elder son Gopal Singh in the year 1985 the family met into division wherein the defendant's mother Amruthabai had voluntarily taken an open plot situated near bus stand, a shop bearing No.1-7-56, lands bearing Sy.Nos.135/A and 135/2-A along with southern $\frac{1}{2}$ portion of

KAYG030010352011

the house for her share. That, the plaintiff is getting rent of Rs.2,000/- per month from the shop and yield from land bearing Sy.No.135/A and 135/2-A and she is residing in the southern $\frac{1}{2}$ portion of the house. The plaintiff and her mother used to reside in their portion of the house and they were leading life out of the income received from the above two lands and the rent. That, the plot fallen to their share has been sold by the plaintiff and her mother. After the death of their mother, the plaintiff is residing alone and she is receiving rent and yield from the lands. However, the plaintiff has filed false suit on the instigation of her sister Radhabai's husband Premprasad with an intention to cause loss to the defendant. On these grounds, the defendant sought to dismiss the suit.

10. Having regard to pleadings of the parties, this Court framed necessary issues and recorded evidence of both parties. Thereafter, the suit was decreed by judgment dated 26.03.2015. Aggrieved by the same, the defendant filed appeal before Hon'ble Court of Senior Civil Judge, Yadgiri in RA No.19/2015, which came to be allowed and the decree passed by this Court in favour of the plaintiff was set aside. Thereafter, the plaintiff filed appeal before Hon'ble High Court of Karnataka in RSA No.200120/2016 and filed an interim application before the

KAYG030010352011

Hon'ble High Court under Order 41 Rule 27 of CPC seeking permission to produce the will deeds said to have been executed by her deceased mother and sister bequeathing their shares in the suit properties and non-schedule properties in her favour. The Hon'ble High Court allowed the appeal by judgment dated 15.09.2021 and remanded the matter to this Court with a direction to receive additional documents and provide opportunities to the parties to adduce evidence on the additional documents and to hear the matter and pass judgment in accordance with law. As per judgment of Hon'ble High Court, the matter was restored by this Court to it's original number. Thereafter, plaintiff filed IA No.8 U/o 6 Rule 17 of CPC seeking permission to amend the plaint to incorporate pleadings regarding execution of Will by her deceased mother and sister and additional relief of declaration based on Will. The said application, after contest, was partly allowed by this Court by an order dated 05.12.2024. Thereafter, the defendant filed additional written statement and this Court has framed additional issues. When the matter was posted for further evidence of the plaintiff on additional issues, she filed the present application seeking to summon the witness to produce documents and to give evidence.

KAYG030010352011



11. The plaintiff had initially filed the present suit seeking the relief of declaration of title with consequential relief of injunction claiming title over the suit properties on the ground that the same were allotted to the joint share of the plaintiff, and her deceased mother and deceased sister in an oral partition held in the year 1992. Thereafter, the plaintiff having got the plaint amended is seeking the relief of declaration of title over the suit properties on the basis of registered Wills said to have been executed by her deceased mother and sister on 29.11.2001. This Court has also framed additional issues No.1 and 2 casting burden upon the plaintiff to prove the execution Will by her deceased mother and sister. Now the plaintiff is seeking to summon her sister Smt.Umabai to produce the original registered Wills dated 29.11.2001. It is stated that the Wills are in the custody of the plaintiff's sister and she is said to have stated that she would submit the same to the Court. Admittedly, the Will deeds are essential documents to decide the matter on hand. As such, it is just and necessary to summon documents and the witness to give evidence in the matter. Accordingly, point No.1 is answered in the Affirmative.

12. **POINT NO.2:** In view of the above discussion, the following;

KAYG030010352011

**ORDER**

IA No.12 filed by the plaintiff under Order 16 Rule 6 R/w Section 151 of CPC is hereby allowed.

Office to issue witness summons to Smt.Umadevi W/o Bhagatsingh Hajeri, Age: 55 years, Occ: House hold work, R/o Rajpoot Galli, Talikoti of Vijayapur District to produce registered will dated 29.11.2001 executed by Amruthabai and registered will dated 29.11.2001 executed by Jugnabai, and to give evidence in the matter.

No orders as to costs.

(Dictated to the stenographer, transcribed by him, transcript corrected by me and then pronounced on this the **22nd day of September, 2025.**)

(ARUN CHOUGULE)
PRL.CIVIL JUDGE & JMFC,
YADGIRI.