

IN THE COURT OF THE PRINCIPAL MUNSIF, CHERTHALA

Present: Sri. Rovin Rodrigues, Principal Munsiff

Friday, the 05th day of December 2025/ 05th Karthikam, 1947

IA 03/2024 in O. S. No. 229/2022

(Filed on 25.03.2024)

Petitioner/Plaintiff:-

Sreedharan, Nilavussery, Ezhupunna Village,

Eramalooore Muri, Cherthala, (died),

Sunilkumar, S/o. Sreedharan, aged 47,

Nilavussery, Ezhupunna Village,

Eramalooore Muri, Cherthala,

By Adv. M.M. Vinod.

Cr. Petitioners/Defendants:-

1. Sreekala, aged 60, W/o. Shaji, Nilavussery,
Ezhupunna Village, Eramaloor Muri, Cherthala.
2. Sreejith, S/o. Shaji, aged 27, - do -
3. Sreeja, D/o. Shaji, aged 28, - do -

By Adv. Sabu Dineesh,

This petition having been heard on 05.12.2025 and the Court on the same day passed the following:-

ORDER

This petition is filed by the 2nd plaintiff under Order XXII Rule 2 of the Code of Civil Procedure, seeking issuance of summons to the attesting witnesses of Will No. 17/2018, registered before the SRO, Kuthiyathodu, for the limited purpose of proving the said Will in accordance with Section 68 of the Indian Evidence Act, and for recording the death of the 1st plaintiff and the consequent devolution of interest.

2. The petition averments are: The suit is one for fixation of boundary. The 1st plaintiff had executed his last Will in favour of the petitioner in respect of the plaint A schedule property. The Will was duly registered as Document No. 17/2018 and came into operation upon the death of the 1st plaintiff on 05-07-2023. By virtue of the said Will, the petitioner has acquired absolute ownership over the plaint A schedule property and the right to continue the suit proceedings. To prove the Will as required under Section 68 of the Evidence Act, it is necessary to examine the attesting witnesses, failing which serious prejudice would be caused to the petitioner.

3. The 3rd respondent/defendant filed an objection with the following contentions: The petition is not maintainable. The Will set up by the petitioner is fabricated and obtained by coercion and undue influence. All

legal heirs of the deceased 1st plaintiff have rights in the property and are necessary parties. The validity or genuineness of the Will can be considered only during a full-fledged trial. There is no urgency in examining any witness at this stage and that allowing the petition would cause prejudice to the defendants.

4. Heard both sides. Perused the records

5. The plaintiffs specifically pleaded the existence of Will No. 17/2018 in their plaint. But the defendants did not dispute its existence or validity in their written statement. The validity and genuineness of the will can be adjudicated only during the evidence at trial. The objections of the respondents regarding alleged coercion, fabrication, or undue influence cannot be adjudicated at this stage. At this interlocutory stage, there is no reason to deny the petitioner the opportunity to take steps to prove their will in accordance with the law. Under Order XXII Rule 2 CPC, the surviving plaintiff can proceed with the suit. As per Section 68 of the Indian Evidence Act, a will must be proved by examining at least one attesting witness. The petitioner has requested permission solely to summon the attesting witnesses, as this is an essential step for using the will in evidence. The respondents will not be prejudiced by allowing such examination, as they will have full

opportunity to cross-examine the witnesses and contest the will during trial.

In the above circumstances, I find that the petition deserves to be allowed.

As a result, the petition is allowed. No costs.

(Dictated to the Confidential Assistant, transcribed and typed by her, corrected by me and pronounced in the open Court on this the 5th day of December, 2025)

Sd/-

Rovin Rodrigues

Principal Munsiff

Appendix: - Nil

Sd/-

Principal Munsiff

/True Copy/

Principal Munsiff

*Typed by :jc
Comp by :ra*

*Fair Copy of Order in
IA No.03/24 in O.S..229/2022
Dated: 05.12.2025*