

IN THE COURT OF THE MUNSIFF, KAYAMKULAM

Present: Smt. Aneesa.A, Munsiff

Tuesday the 28th day of October, 2025/6th Karthika,1947

IA.22/2025 in OS.65/2023

(Filed on 21.10.2025)

Petitioner:

Abdul Wahid, S/o.Koyakutty,
Kottappurathu Veedu,
Kayamkulam Muri,
Kayamkulam Village.

(By Adv.G.Ashok kumar)

Respondents:

1. Liyakhath Kutty,
S/o.Koyakkutty,
Kottappurathu Veedu,
Kayamkulam Muri,
Kayamkulam Village.
2. Asya Beevi, D/o.Koyakkutty,
Alumoottil, Near Mini Civil Station,
Harippad P.O.
3. Noorjahan, D/o.Koyakkutty,
Panippurayil Veedu,
Kayamkulam Muri,
Kayamkulam Village.

4. Adabiya Beevi,
W/o.Shahul Hameed,
Kumbalathu Veedu,
Medamukku,
Kayamkulam Muri,
Kayamkulam Village.

5. Shabeer Muhammad,
S/o.Shahul Hameed,
Kumbalathu Veedu,
Medamukku,
Kayamkulam Muri,
Kayamkulam Village.

6. Sabeena, D/o.Shahul Hameed,
Kumbalathu Veedu,
Medamukku,
Kayamkulam Muri,
Kayamkulam Village.

(D1 by Adv.C.D.Anil)

(D2 to D6 by Adv.M.R.Salim)

This petition is coming on for hearing on 28.10.2025 and the court of the same day passed the following.

ORDER

This is a petition filed under XVI Rule 1 and Section 151 of Civil Procedure Code, 1908 for accepting the witness schedule and to issue summons for producing documents.

2. The gist of averments in the petition are as follows:-

Petitioner is the plaintiff in the above case. The suit is filed for partitioning the plaint scheduled property by metes and bounds, the separation of the share of plaintiff and permanent prohibitory injunction. This case is posted for evidence by including in the special list. In this case, the plaintiff gave a statement that the 1st defendant produced a document called Will deed which was written by the plaintiff's mother Alima Umma to the 1st defendant and Alima Umma did not write such a document and this document is a forged one. The plaintiff also stated that the signatures and thumb impressions in this document is not that of Alima Umma. The 1st defendant created such a document with an intention of denying the share of petitioner and other defendant in the plaint scheduled item nos. 1 and 2 properties. Hence it is necessary to prove that the said Will deed is forged, a scientific proof is essential. The petitioner filed another petition to compare the signatures of Smt. Alima Umma seen in forged Will deed

with the signatures and thumb impressions seen in Sale deed no.1332/2005 and with the signatures in filing sheet No.399 to 402, volume 1229 and endorsement register containing the signatures and thumb impressions of Alima Umma. Since the Sub Registrar, Kayamkulam is the custodian of the above documents, it is possible only if the court directs to make the S.R.O, Kayamkulam as a witness and directs the plaintiff to produce the above documents in this case. The plaintiff has submitted additional witness list in this case by including S.R.O, Kayamkulam as a witness. Therefore, the witness in the additional list should be summoned and the above documents should be produced before the court. Otherwise, it will not be possible to produce an expert opinion in this case and the plaintiff's evidence will not be complete. Thus, the petition.

3. The respondent/1st defendant filed objection contending inter alia as follows:- The petition is not maintainable either in laws or on facts. Ext.B2 is admitted in evidence subject proof. The burden of proof to prove a Will deed is upon the legatee, the 1st defendant. Here, the burden of proof is on the 1st defendant and only if the burden of proof is shifted to the plaintiff, he has the duty to prove the

same. At the time of execution of Ext.B2, the mother of plaintiff and defendants was healthy and capable for executing such a document. With a sound mind, she executed Ext.B2 with respect to the plaint scheduled properties. The averments in the paragraphs No.2 and 3 of the affidavit are false and hence denied. The averment that Alima Umma had not been executed such a Will deed and the signatures seen in Ext.B2 is a forged one and not that of the mother of the plaintiff is false and hence denied. The Ext.B2 is legally executed before the S.R.O, Kayamkulam and the signatures and thumb impressions were affixed by Alima Umma. It is false to say that Ext.B2 document was prepared without the consent of Alima Umma or in her presence. Thus the petition is not maintainable and it is to be dismissed.

4. The following points are formulated for consideration:-

1. Whether the petition is allowable?
2. Reliefs and costs?

5. Heard both sides.

6. **Point No.1**:- This suit is filed for partitioning the plaint scheduled property by metes and bounds and for separating the share

of plaintiff and for permanent prohibitory injunction. The 1st defendant/respondent contended that with respect to plaintiff scheduled item Nos.1 and 2 properties, his mother executed Ext.B2 Will deed in the year 2003. Thus he has the sole right over the said property. But the petitioner denied the signatures of Smt.Alima Umma in Ext.B2 Will deed. According to the petitioners, the signatures and thumb impressions seen in Ext.B2 is fraudulently created by the 1st defendant and his mother Alima Umma was not in a fit mental and physical condition at the time of execution of Ext.B2. Both sides admitted the signatures and thumb impressions of Alima Umma seen in sale deed No.1332/2005 of Kayamkulam S.R.O. Thus I.A.21/2025 filed for sending the said documents to FSL allowed and in order to produce the necessary documents to FSL, the examination of the witness mentioned in the additional witness schedule is highly necessary and this I.A. also allowed and witness schedule accepted. Therefore, the prayer is allowable and point No.1 is found in favour of the petitioner.

7. **Point No.2**:- On point No.1, it is found that the prayer in the I.A is allowable. Considering the facts and circumstances of the case, no order as to costs.

In the result, I.A. is allowed. The petitioner is directed to take steps to issue summons to the witness. No order as to costs.

(Dictated to the confidential assistant, typed by her, corrected and pronounced by me in open court on 28th day of October, 2025)

Sd/-
ANEESA.A,
MUNSIFF

APPENDIX - Nil.

Sd/- MUNSIFF

// True copy //

MUNSIFF

Typed by:Shafeek
Compd.by