

IN THE COURT OF THE MUNSIFF, KATTAPPANA		
PRESENT: FELIX JOHN, MUNSIFF		
Saturday the 21 st day of February, 2026 /2 nd day of Phalguna,1947		
IA1/2026 in OS379/2024		
Petitioner/ Defendant D2	:	Abraham P Joseph, S/o Joseph, aged 64 years, Pannakkal House, Manganam P.O, Kottayam 686018.
		By Adv:Kuriakose A.C
Respondents/ Plaintiff/Defendants D1, D3 and D4	1	Molly Thomas aged 68 years, Kunnappilly house, Thovarayar P.O, Kattappana Village, Idukki District, PIN-685511.
	2	John Joseph @ Reji, aged 78 years, S/o Joseph, Pannakkal House, Thovarayar P.O, Kattappana Village, Idukki District, PIN-685511.
	3	Bobby Joseph, aged 65 years, S/o Joseph, Pannakkal House, Thovarayar P.O, Kattappana Village, Idukki District, PIN-685511.
	4	Cherian Joseph, aged 62 years, S/o Joseph, Pannakkal House, Thovarayar P.O, Kattappana Village, Idukki District, PIN-685511.
		By Adv. M.T. Thariyachan for R1, Adv.Melbin Jose for R2. Adv. K.V. Mathew for R3 and R4

The petition is filed under Section 39 of the Bharatiya Sakshya Adhiniyam, 2023 R/W Section 151 of the Civil Procedure Code and coming before me for hearing on 21-02-2026 in the presence of the above counsel and the Court on the same day passed the following :

ORDER

This is a petition filed under section 39 of the Bharatiya Sakshya Adhiniyam 2023 r/w Section 151 of CPC.

2. **Petition averments are as follows:** Petitioner is the 2nd defendant in the above suit. The above suit is for partition. The above case is pending and listed on 16.02.2026 for adducing evidence. The respondent/plaintiff has produced a document styled as a Will, allegedly executed by petitioner's deceased brother Kora Joseph, and is attempting to derive exclusive rights over the plaint schedule property, solely on the strength of the said document. The petitioner/defendant categorically denies the execution, validity and genuineness of the alleged Will. The document is highly suspicious, unnatural and appears to be a forged and fabricated one, created with the sole intention of defeating the lawful rights of the petitioners/defendants.

3. A bare perusal of the Will would clearly reveal visible overwriting, corrections, erasures and interpolations in material portions of the document. The said alterations are not attested, nor explained, and directly affect the disposition of property, thereby rendering the document suspicious on the face of it.

4. The alleged signature of the testator found in the Will is also seriously disputed. The same does not tally with the admitted signature of the testator available in genuine contemporaneous documents. The respondent/plaintiff submits that the law relating to proof of Wills is well settled. The propounder of a Will carries a heavy burden to dispel all suspicious circumstances surrounding its execution. In the present case, the suspicious features such as overwriting, unexplained alterations and disputed signature strike at the very root of the Will. Without a scientific forensic examination, the truth cannot be unearthed and the suit cannot be adjudicated fairly. As per Section 41 of the Bharatiya Sakshya Adhiniyam, 2023, the opinion of

handwriting and forensic experts is a relevant fact. Hence, sending the disputed Will for forensic examination is not only permissible but absolutely essential in the interest of justice. No prejudice will be caused to the respondent/plaintiff if the document is subjected to forensic examination before evidence. On the contrary, grave and irreparable prejudice will be caused to the petitioners/defendants if a prima facie forged Will is allowed to be relied upon without expert scrutiny.

5. Hence court may be pleased to send the disputed Will produced by the respondent/plaintiff to a competent Forensic Science Laboratory /Handwriting Expert preferably police Forensic Science Laboratory Thiruvananthapuram for examination to ascertain the genuineness of the signature, existence and nature of overwriting, alterations or interpolations, whether the ink and writings are contemporaneous and to remove the case from the list till the result is received. Hence the petition.

6. **The respondent filed counter affidavit averring as follows:** The respondent submit that he is suffering from cancer and undergoing chemotherapy at Regional Cancer Centre, Trivandrum. It is humbly submitted that respondent's health keeps deteriorating day by day because of the illness/disease and the treatment he is subjected to as a consequence thereto. The respondent reasonably suspect that he would not be recovered from this illness due to severity of this illness.

7. The petition is highly belated and intended to protract and hold up the proceedings. The case belongs to the year 2024 and sufficient opportunity

has given to the second defendant to take pre-trial steps before listing the case for trial. The petitioner/ 2nd Defendant was intentionally protracting the matter from the beginning of the suit. Respondent/plaintiff submits that this petition is a misuse of the process of law and an afterthought to thwart the administration of justice. The petition is frivolous, vexatious and without bonafides. The petitioner/ 2nd defendant denies the execution, validity and genuineness of the Will in this petition. But he has not denied the genuineness of the Will by denying the signature of the testator in the written statement except a bald allegation that deceased Korah Joseph died intestate.

8. There is nothing pleaded in the written statement that there are over writings, corrections erasures, and interpolations in the Will. Evidence is adduced to the pleadings of the parties. The petitioner/ 2nd defendant baldly stated in the petition alone that there are over writings, corrections erasures, and interpolations in the Will. The writings in the Will are the outcome of poor drafting, clumsy writings and of clerical errors. There is no material alteration in the Will.

9. The petitioner/2nd defendant stated in the petition that the signature of the testator is not tally with the admitted signature of testator. He has not raised any such plea in his written statement. Moreover, he has not stated or produced the admitted contemporaneous document for obtaining the specimen signature for comparison. Sending unreliable and inadmissible signatures for comparison to forensic sciences lab will not fetch prudential results.

10. Hence in the light of above submissions, it is humbly submitted that the petition may be dismissed with compensatory costs to the respondent/plaintiff and the respondent may be permitted to adduce evidence by mounting the witness box failing which she will suffer irreparable injury, hardship and loss, not commensurable by cost.

11. Heard both sides.

12. This is a petition filed by the 2nd defendant in the case to send the disputed will for forensic examination. It is alleged that the document is highly suspicious and unnatural and appears to be a forged and fabricated one. It is also alleged that the Will clearly reveals visible over writing, corrections, erasures, and interpolations in material portions of the document. It is also alleged that the signature of the testator found in the Will is not that of the testator. The plaintiff filed counter affidavit and stated that petition is highly belated as it was filed after the suit was listed for trial. It is also contended that the second defendant in his written statement has not raised the contentions now raised in the petition.

13. I have considered the arguments of both sides. The suit is of the year 2024. This court had given ample opportunities to the defendants to take pre-trial steps before listing the matter on 05.01.2026 to 16.02.2026. In the meantime on 28.01.2026, the second defendant has filed this petition to send the disputed Will for forensic examination. Hence it can be seen that the petition is filed after the suit was listed for trial and is highly belated. I had perused the written statement filed by the 2nd defendant in the case. In the written statement, 2nd defendant has just pleaded that the testator had not executed any Will in his

lifetime and the alleged Will is a forged, fabricated and concocted document. No other pleading is seen in the written statement with regard to the signature of the testator or the alleged corrections, erasures, and interpolations in material portions of the document. The petitioner appears to bring up altogether a new case which was not pleaded in the written statement. Further, the petitioner has not mentioned the concerned contemporaneous document, which contains the admitted signature of the testator. He has also not produced any contemporaneous document which contains the admitted signature of the testator. Considering all the above aspects, I am of the finding that there is no merit in the petition and the same is liable to be dismissed.

In the result,

The petition is dismissed. There will be no order as to costs.

Dictated to the Confidential Assistant, typed by her, corrected by me and pronounced in the open court on this the 21st day of February 2026.

**FELIX JOHN
MUNSIFF, KATTAPPANA**

APPENDIX : NIL

MUNSIFF

Typed by: Simi
Compd. By: Lekha

**FAIR ORDER IN
IA1/2026 in OS379/2024
DATED:21-02-2026**