

IN THE COURT OF THE MUNSIFF-MAGISTRATE, PATTAMBI

Present:- Smt.Neema Noor Mohamed, Munsiff-Magistrate

Tuesday, the 03rd day of March, 2026/12th Phalguna, 1947 S.E.

I A. 02/2026 IN

O S 155/2017

Between:-

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| 1. Balakrishnan, Aged-61 years,
S/o. Kathiruth Late. Parameswaran,
Anakkara Village, Koodallur Desom,
Manniyam Perumbalam Post,
Pattambi Taluk, Palakkad District. | : <u>Petitioners</u>
1,2 Defendants |
| 2. Mohandas, Aged-51 years,
S/o. Kathiruth Late. Parameswaran,
Anakkara Village, Koodallur Desom,
Manniyam Perumbalam Post,
Pattambi Taluk, Palakkad District. | |

And :-

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| 1. Geethakumari, Aged-66 years,
W/o. Naduvalappil Vasudevan,
Manniyam Perumbalam Post,
Koodallur.
D/o. Kathiruth Late. Parameswaran,
Anakkara Village, Koodallur Desom,
Pattambi Taluk, Palakkad District. | : <u>Respondents</u>
Plaintiffs |
| 2. Jayanthi Prakash, Aged-47 years,
Thalekkara House, Kallurma Post,
South Nannammukku, Malappuram. | |

This petition is coming on this day for final hearing before me in the presence of Sri. K.V.Manoj, Advocate for the petitioners and of Sri.K.T.Krishnadas and Sri.T.V.Ali, Advocate for the respondents and this court on the same day passed the following.

ORDER

This application is filed by the second defendant at the stage when the suit was posted in the ready list. The prayer in the application is to withhold the examination of the witnesses summoned from the Sub Registrar Office, Thrithala and Sub Registrar Office, Kumaranallur, the Sub Registrars, who have appeared before this Court with the filing sheets relating to disputed wills.

2. The contention of the petitioner/defendant is that the plaintiff is attempting to mark the filing sheets relating to disputed wills through the above witnesses in order to prove the alleged will relied on by the plaintiff. According to the petitioner, such an attempt is legally impermissible and contrary to the requirements of proof of a will. It is contended that proof of a will is governed by the mandatory provisions relating to attestation and proof, and that the attempt to mark such documents through the Sub Registrar officials would offend the law relating to admissibility. Therefore, it is prayed that the examination of the said witnesses be withheld.

3. The plaintiff/respondent opposed the application contending that the same is only a dilatory tactic intended to protract the proceedings. It is submitted that the plaintiff was granted opportunity by this Court to summon the documents from the Sub Registrar Office and the witnesses have been brought before Court after taking steps and paying the necessary process fee. According to the plaintiff, at this stage the defendants cannot prevent the plaintiff from adducing evidence. It is further contended that the question regarding admissibility or evidentiary value of the documents can be considered at the appropriate stage and that the present application is devoid of merit.

4. Heard both sides.

5. A careful perusal of the case records shows that the suit has been pending for considerable time and that evidence had commenced long ago. The matter was listed on 02-12-2024, on which date the learned counsel for the plaintiff submitted that there was no oral evidence from the side of the plaintiff at that stage and only documentary evidence was produced. Thereafter the matter was posted for defendant's evidence on 03-12-2024. On that day the defendants raised a contention that additional issues had not been framed. Considering the said submission and subsequent pleadings in the suit, additional issues were framed and the matter was again posted for defendant's evidence on 13-12-2024.

6. Subsequently the defendants sought clarification regarding the issues and the matter was adjourned. Defendant's evidence was thereafter recorded on later postings. In the meantime, I.A. No. 66/2024 was filed for receiving additional

documents and summoning witnesses from the side of the defendants, which was allowed and the defendants were afforded opportunity to adduce evidence. After examination and cross-examination of the witnesses from the side of the defendants, the evidence of the defendants was closed.

7. Thereafter the plaintiff filed applications seeking to summon certain documents from the Sub Registrar Office. Those applications were initially dismissed, but on review they were allowed by a common order and the plaintiff was permitted to summon the concerned documents through competent witnesses. Pursuant to the said order, the matter was removed from the list on 29-03-2025 and subsequently an attempt for mediation was made, which did not succeed. Thereafter opportunity was again granted to the plaintiff to take steps in terms of the reviewed order in I.A. No. 359/2025. The plaintiff accordingly took steps and the concerned witnesses were summoned. In pursuance of the summons issued by this Court, the officials from the Sub Registrar Offices have appeared before the Court with the relevant records.

8. It is at this juncture that the present application has been filed by the defendants seeking to withhold the examination of the said witnesses.

9. The principal contention raised by the defendants relates to the admissibility of the documents sought to be marked and the mode of proof of the alleged will. The question whether a will has been proved in accordance with law is a matter that falls for consideration while appreciating evidence in the light of the provisions governing proof of documents. The admissibility or evidentiary value of any document sought to be marked can be considered at the appropriate stage when the evidence is evaluated.

10. At this stage, when the witnesses have already appeared before Court pursuant to summons issued on the basis of orders passed by this Court, there is no justification to withhold their examination. Preventing the plaintiff from examining the summoned witnesses would amount to denying the plaintiff an opportunity to adduce evidence which this Court has already permitted by a judicial order.

11. The objection raised by the defendants essentially pertains to the admissibility and probative value of the documents sought to be marked. Such objections can very well be recorded and considered at the time of marking of the documents and while deciding the suit on merits. The mere possibility of an objection regarding admissibility cannot be a ground to prevent a party from examining a witness who has been summoned in accordance with law.

12. Having considered the entire circumstances and the stage of the proceedings, this Court finds that the present application is devoid of merit.

In the result

This I.A. is dismissed. The witnesses who have appeared pursuant to summons shall be examined and the objections, if any, regarding admissibility of the documents shall be considered at the appropriate stage.

Pronounced by me in open court, this the 03rd day of March, 2026.

Sd/-
Munsiff

Witness examined and exhibits marked on both sides : Nil

Sd/-
Munsiff

Copied by : Sulochana.M
Compared by: Sivadasan.M.V.

(True copy)

Munsiff

Fair/Copy of Order in
IA. 02/2026
in OS.155/2017
Dated: 03-03-2026.