

RCS No.230/1998
Devai Vs. Rajendra
CNR No.MHSO170000071998

Order Below Exh. 249

The present application is filed by Defendant No. 1C for issuing witness summons to the witnesses No. 1 to 6 stated in the application.

02. It is the contention of the defendant that, witness No. 1 is Executive Engineer and Witness No. 2 to 6 are witnesses on alleged Will Deed which is challenged by plaintiff in the suit. Despite opportunity, say not filed by plaintiff.

03. Heard Ld. Advocate for Defendant No.1C. Perused record.

04. On perusal of record it appears that, plaintiff filed suit for seeking relief of permanent injunction and declaration in respect of alleged Will Deed in respect of suit property is not binding on her share. The plaintiff is not claiming possession of suit property. On perusal of this application it appears that, defendant intends to examine witness namely Executive Officer of “*Ujani Dharan Vyavasthapan Vibhag*” on the point to show that the said defendant taking water from said office with permission. However, on going through the pleadings of parties it appears that, this is not the subject matter and dispute between the parties.

05. Further, defendant wants to examine witnesses No. 2 to 6 on the point to prove genuineness of alleged Will. Upon said contentions, it is relevant to note here that, already alleged Will is exhibited at Exhibit No. 241. The said witnesses are individual witnesses. As per issues below Exh. 46 dated 14/02/2003 it appears that, the burden is on plaintiff to prove that

the said alleged Will is false, void and not binding on the share of plaintiff. Therefore, it is obligatory on the part of plaintiff to prove the same and not on the defendant to disprove the same.

06. It further appears that, the addresses of witnesses No. 2 to 6 mentioned in the application are not detail addresses. The addresses are seen to be vague in nature. The address of witnesses on alleged Will Exh. 241 is also seen to be vague in nature which shows that, witness summons through court would not serve on them. If the summons issued on such address then there is possibility that summons may not be served and this matter which is more than 25 years old keep pending for indefinite period. If the said individual witnesses are in favour to give evidence in support to the Defendant No.1C then it is obligatory on the part of Defendant No. 1C to bring them before the court to lead evidence. In view of this and considering old age of matter, issuing witness summons to the witness i.e. Executive Officer who is not relevant to the case and to the witnesses who are individuals and their addresses are not seen to be traceable is not appropriate. Considering this, application deserves to be rejected. Hence, following order -

ORDER

Application is rejected.

Date - 21/07/2026

(Anay D. Kulkarni)
2nd Jt. C.J.J.D., Madha

<u>CERTIFICATE</u>		
I affirm that, the contents of this P.D.F. file Order/Judgment is same word to word, as per the original order/judgment.		
Name of Stenographer	:	M.P.Dixit Grade-3
Court Name	:	2 nd Jt. C.J.J.D. & J.M.F.C., Madha.
Order/Judgment signed by the Presiding Officer on	:	21/07/2026
Order/Judgment uploaded on	:	21/07/2026