

BEFORE THE COURT OF THE DISTRICT MUNSIF AT
VANIYAMBADI, TIRUPATTUR DISTRICT

Present: Thiru V.ESHWAR, B.E.,LL.B.,
DISTRICT MUNSIF, VANIYAMBADI

Thursday, the 6th day of November, 2025

I.A. No. 7/2025
in
O.S. No. 100/2003

J.S.T. Nallappa

... Petitioner / Defendant

Vs.

C. Mahendiran

... Respondent / Plaintiff

This petition coming on this day for final orders before me in the presence of learned counsel Mr.A.C.Devakumar for the petitioner and learned counsel Mr.K.Umar for the respondent, upon perusing the petition, affidavit, counter-affidavit, and other material records in this case, this Court doth pass the following:

ORDER

1. This Interlocutory Application has been filed by the petitioner, who is the defendant in the main suit, under Order 16, Rule 1(2) read with Section 151

of the Code of Civil Procedure, 1908. The petitioner seeks a direction from this Court to issue summons to the Sub-Registrar, Vaniyambadi, compelling his attendance to produce certain documents, namely the record pertaining to Document No. 57/1984 from Book III, and to give evidence concerning the registration of a Will dated 19.09.1984, which has been marked as Ex.B4 in the suit.

Case Overview

2. The main suit, O.S. No. 100/2003, is a civil action pending before this Court. The present petitioner is the defendant, and the respondent is the plaintiff. The pleadings in the main suit relate to disputed claims of title and rights, wherein the defendant (petitioner herein) relies upon a Will dated 19.09.1984, purportedly executed by his father, which has been marked as Ex.B4. The suit is currently posted for the adducing of further evidence on behalf of the defendant. At this juncture, the defendant has moved the present application to summon an official witness.

Brief of Petitioner's Averments

3. The sum and substance of the affidavit filed in support of this petition is that the suit is at the stage of defendant's evidence. The petitioner avers that

the Will of his father, dated 19.09.1984 (Ex.B4), is a registered document. In order to formally establish the fact of its registration, the petitioner contends that it is essential to examine the concerned Sub-Registrar from the Vaniyambadi Sub-Registrar's Office. The relief sought is specific: to summon the said official to produce the records pertaining to Document No. 57/1984, which is stated to be recorded in Book III, and to depose regarding the fact of registration of Ex.B4. The petitioner submits that this evidence is crucial for a final and just adjudication of the suit and that a failure to permit the same would result in irreparable loss and hardship to him.

Brief of Respondent's Counter-Averments

4. The respondent/plaintiff has filed a detailed counter, vehemently resisting the application. The primary contentions of the respondent are that the petition is not maintainable either in law or on facts. That the petitioner's attempt to "prove the Will" by examining the Sub-Registrar is unknown to law. It is contended that a Will, being a document required by law to be attested, must be proved by calling at least one of the attesting witnesses as mandated by Section 68 of the Indian Evidence Act, 1872. The respondent argues that the Sub-Registrar is not an attesting witness, and his evidence cannot substitute for the

mandatory statutory proof. It is further averred that the production of Book III, as sought, cannot substantiate the petitioner's pleadings. Consequently, the respondent prays for the dismissal of this petition.

Evidence on Record and Arguments

5. No oral or documentary evidence was adduced by either party specifically for this interlocutory application; the Court's consideration is based on the petition, the supporting affidavit, and the counter.

6. The learned counsel for the petitioner/defendant, in his arguments, reiterated the stand taken in the affidavit. It was further submitted that the attestors to the said Will (Ex.B4) are no longer alive, and that the Sub-Registering Officer who originally registered the document is also deceased. It was therefore argued that in these circumstances, it is necessary to examine the office of the Sub-Registrar to determine whether the Will was, in fact, registered.

7. Conversely, the learned counsel for the respondent/plaintiff forcefully argued for the dismissal of the petition. It was contended that the Will is not in dispute in the manner alleged, and more importantly, that the defendant himself, during his own deposition, has admitted that he has not enforced the Will, It was

further argued that the law mandates the examination of attestors to prove a Will, and this petition is a legally untenable attempt to circumvent that procedure.

Point for Determination

8. Upon a careful perusal of the pleadings filed by both parties and having given due consideration to the oral submissions advanced by both learned counsels, the sole point that arises for determination by this Court is:

“Whether the petitioner/defendant ought to be granted leave under Order 16, Rule 1(2) of the C.P.C. to summon the Sub-Registrar, Vaniyambadi, for the purpose of producing records and deposing as to the registration of the document marked as Ex.B4?”

Discussion and Analysis

9. This Court has meticulously analysed the rival contentions. The petition is filed under Order 16, Rule 1(2) of the C.P.C., which confers discretion upon the Court to permit a party to summon a witness. The suit is admittedly at the stage of defendant's evidence, making the application procedurally tenable in terms of timing.

10. However, the petition must be tested on the touchstone of necessity, relevancy, and the established principles of the law of evidence. The respondent's objection is founded upon Section 68 of the Indian Evidence Act, 1872, read with Section 63 of the Indian Succession Act, 1925. Section 68 mandates that a document required by law to be attested (such as a Will) shall not be used as evidence until at least one attesting witness has been called to prove its execution.

11. The learned counsel for the petitioner submits that the attestors are deceased. This circumstance does not automatically render the evidence of the Sub-Registrar admissible as primary proof. The petitioner's contention brings into play Section 69 of the Indian Evidence Act, which provides that if no attesting witness can be found, it must be proved that the attestation of at least one attesting witness is in his handwriting, and that the signature of the testator is in his handwriting. The evidence of the current Sub-Registrar, or the production of Book III, does not and cannot satisfy the mandatory requirements of Section 69. Such evidence would only speak to the fact of registration, not to the authenticity of the attestor's or testator's signatures, which is the specific proof required by the statute when attestors are unavailable.

12. The most formidable objection raised by the respondent's counsel regarding the petitioner's own deposition. It is contended that the petitioner (defendant), as DW1, has himself admitted in his testimony that he has not "enforced the will".

13. The relevancy of any evidence sought to be adduced must be weighed against the case set up by the party. When the petitioner himself has stated that he has not acted upon or given legal effect to the Will (Ex.B4), his present endeavour to adduce further evidence by summoning a public official to prove a collateral fact its registration becomes an exercise in futility. The evidence sought to be adduced is rendered irrelevant. The Court cannot permit its process, and the time of a public official, to be expended on adducing evidence that has no bearing on the petitioner's own established case, especially when the said evidence is not the legally prescribed method for proving the document in question. The petition is therefore devoid of merits.

14. Based on the foregoing analysis, this Court is of the considered opinion that the evidence sought to be adduced by summoning the Sub-Registrar is neither the sufficient and proper method for proving the Will under Section 68 or Section 69 of the Indian Evidence Act, nor is it relevant in light of the

petitioner's own admission on record that he has not enforced the said Will. The petition is therefore liable to be dismissed.

Result

15. In the result, this Interlocutory Application is **dismissed**. There shall be no order as to costs in this application.

Directly typed by me in my official laptop, corrected and pronounced by me in the Open Court, this the 6th day of November 2025.

**DISTRICT MUNSIF,
VANIYAMBADI.**

ANNEXURE

List of witnesses examined and Documents marked
on the side of Petitioner and Respondents :NIL

**DISTRICT MUNSIF,
VANIYAMBADI.**