

**RAMA RAO'S SOLUTION FOR AVOIDING ANY CHALLENGE TO THE EXECUTION OF A WILL, BY A SUIT FILED BY THE TESTATOR DURING HIS LIFE TIME.**

1. I have been a lawyer practicing in trial courts exclusively, for the last 54 years. I have conducted large number of cases relating to the proof of wills. The usual defense in order to defeat a will, are as under:
  - a. That the will is not duly attested and executed as required by section 63 of the Indian Succession Act
  - b. The testator is not in a sound disposing state of mind.
  - c. That the execution of the will is surrounded by suspicious circumstances.
2. I was thinking of finding a solution as to how a testator can avoid a situation of contest to his will, after his life time. My studies did not afford any solution for this problem, by reference to precedents.
3. Section 63 of the India Succession Act requires that the will has to be executed in the presence of two attestors. What is attestation of a will, is also defined in this section as follows :
  - i. *The testator shall sign or shall affix his mark to the Will, or it shall be signed by some other person in his presence and by his direction.*
  - ii. *The signature or mark of the testator, or the signature of the person signing for him, shall be so placed that it shall appear that it was intended thereby to give effect to the writing as a Will.*
  - iii. *The Will shall be attested by two or more witnesses, each of whom has seen the testator sign or affix his mark to the Will or has seen some other person sign the Will, in the presence and by the direction of the testator, or has received from the testator a personal acknowledgement of his signature or mark, or the signature of such other person; and each of the witnesses shall sign the Will in the presence of the testator, but it shall not be necessary that more than one witness be present at the same time, and no particular form of attestation shall be necessary.*
4. It is obvious that when a will is questioned in a court of law the executent is not alive to speak about its genuineness or validity. Further even if a will is admitted by the opposite party in contested proceedings, the same has to be proved in accordance with Section 63 of Evidence Act.

5. In my experience I have found, in many cases, proof of proper execution of a genuine will, as required by law, would not be possible in the following circumstances.
  - a. All the attestors and the scribe of the will may not even be identifiable for deposing before the court.
  - b. The attestors and the scribe could be won over by the opposite side.
  - c. In cases where the attestors are dead for application of section 68 *Bharathiya Sakshya Adhiniyam 2023*, any person who can identify the signature of one of the attestors and the executent, may not be traced.
  - d. Unrighteous demands are made by unscrupulous attestors for supporting the proof of will, depending on the value of the property.
  - e. The original of the will might have been lost and the courts often do not permit any secondary evidence in this regard for identifying the signatures, more so when the will in question is an unregistered document.
  - f. In some cases, I say with sense of regret the folly of the trial lawyers, in not correctly understanding the legal requirements of proof of will, while adducing evidence, in proof of the will.
6. I can say with confidence that lawyers who practice only at the High Court and Supreme Court level and the judges of these courts, including the legislators, have completely failed to understand and address to this problem.
7. In all such cases even an honest registered will, let alone an unregistered will, fail for not complying with the legal requirements of proof of wills. Thus the honest desire of the testator expressed through a genuine will, falls to the ground.
8. Even in cases where probate or letters of administration is applied for, all the aforesaid obstacles would come in the way of giving effect to an honest will.
9. Therefore I have thought of a solution which could be adopted by the testator, during his life time, for avoiding any frustration of the intentions expressed by him through his will. This we can probably overcome, by the testator, by filing a suit before a civil court, during

his life time, by recourse to Section 69 Bharatiya Sakshya Abhiniyam 2023, which reads as follows :

*“The admission of a party to an attested document of its execution by himself shall be sufficient proof of its execution as against him, though it be a document required by law to be attested.”*

A model plaint that could be filed for this purpose, is annexure A, herein. Further even in cases where proceedings are pending in court, the testator during his life time could make an application in this behalf, and a model form of this application is annexure B, herein.

10. There is no need for giving details of properties, which are the subject matter of the bequest, or producing a copy of the will. Therefore the secrecy of the will could be maintained.
11. As a declaration is sought only in respect of the admission of the execution of the will and as no declaration is sought in respect of the properties covered under the will, a notional valuation could be made, and court fee could be paid accordingly. Even a suit of a like nature could be filed before the Civil Judge, Junior Division, also by adopting a lesser notional valuation, under section 24 of the Karnataka Court Fees and Suits Valuation Act. As the plaintiff is not able to seek any other further relief and as there are no defendants in the suit, a bare suit for declaration without any consequential relief would be maintainable under section 34 of the Karnataka Court Fees and Suits Valuation Act. In such suits there is no need to issue summons to the defendant, as there is no defendant and further there is no need for any paper publication also as there is no other person interested in the proceedings except the plaintiff himself.
12. The cause of action for a suit of this nature, arises only on the date of declaration of admission of execution of the will. For this reason such declaration could be made any where in India and a suit of this nature could be filed in any civil court throughout the country, irrespective of the place of residence of the plaintiff, place of execution of the will and the situation of the properties bequeathed. Please note that the suggestions made in this article are no substitute, either for taking proceedings for grant of probate or letters of administration.
13. By adopting this inexpensive procedure as stated above, the following factors would automatically stand established beyond doubt.

- i. As the plaintiff enters witness box in open court and admits the execution of the will, the will gets proved beyond doubt.
  - ii. As the plaintiff admits the execution of the will by himself in court, there would be no need to prove due attestation of the will.
  - iii. The sound disposing state of mind of the plaintiff is also established, by the allegations made in the plaint and also by his examination in court.
14. We are aware that one of the prime reasons for clogging the justice delivery system, by reason of docket explosion, right from the lowest to the highest echelons of the judiciary, both relating to poor and ultra rich litigants, relates to the validity of the wills. A legislative intervention in this regard is long overdue and requires immediate attention.
15. The aforesaid solution would avoid civil litigation substantially and would reduce the time of the court in deciding disputes regarding the validity of the wills. In many cases even a lawyer's folly, could defeat the will, and this can also be avoided.
16. Sri. S.Rama Rao is my father. He was only a non graduate pleader. His pleadings were always terse and to the point. He had an excellent knowledge of the fundamentals of law and his english was without blemish. He was my friend, guru, mentor and everything in my life and therefore I have penned this article in his memory and have titled this article as Rama Rao's solution.

Chickballapur  
Date 20/09/2025

S.R.Suryanarayana Rao  
Advocate  
Chickballapur  
Mobile : 9448435761

**Annexure A**

**IN THE COURT OF THE CIVIL JUDGE, SENIOR DIVISION,  
CHICKBALLAPUR**

**O.S. No.\_\_\_\_ /2025**

**Plaintiff** : **Sri. S.R.Suryanarayana Rao**  
Advocate  
Aged about 76 years  
R/at No.263, Subbarayanapaete,  
Chickballapur

V/s

**Defendant** : **NIL**

**Under Order VII rule 1 CPC, the plaintiff respectfully submits as follows**

1. The address of the plaintiff is correctly mentioned in the cause title. The address of the plaintiff for purposes of this suit is also that of his advocate Sri. D.L.Prasad, Advocate Chintamani.
2. The plaintiff is a practicing advocate at Chickballapur. Though he is presently 76 years of age, he is still in active practice and is attending the courts. The plaintiff is therefore in a sound disposing state of mind.
3. The plaintiff has executed a registered will dated \_\_\_\_\_ bearing Reg. \_\_\_\_\_ registered in the sub-Registrar, Chickballapur.  
[If the will is unregistered, the same can be correctly reflected in the plaint. If the will is kept in sealed cover in the office of the Sub-Registrar or if the same is kept in the custody of any other person or with himself, the same could be mentioned].
4. The will aforesaid is drafted by the plaintiff himself. [If a different person has drafted the will, the particulars of the same be given]. This will is attested in the presence of the plaintiff by the following two attestors by name Sri. \_\_\_\_\_ and 2) Sri. \_\_\_\_\_, who are known to the plaintiff. The attestors have also signed this will

in the presence of the plaintiff. The plaintiff wants admission of due execution of the will, to be recorded by the court, so that proof of execution of the will by examining the attestors of the will is dispensed with, if this will is questioned in a court of law, after the life time of the plaintiff, in view of section 69 of the Bharatiya Sakshya Adhiniyam 2023.

5. The deposition of the plaintiff, in support of the allegations made in the plaint may kindly be recorded in open court.
6. The cause of action for the suit has arisen on this day    /    /  
at Chickballapur, where the plaintiff has made a declaration within the jurisdiction of this Hon'ble court.
7. The value of the suit for purposes of court fee and jurisdiction is Rs.10,00,000/- and a court fee of Rs.    /- is paid on the plaint.
8. Wherefore the plaintiff prays for a decree declaring that the plaintiff has by himself admitted the due execution of the registered will dated \_\_\_\_\_referred to in para 3 of the plaint, in order to meet the ends of justice.

Chickballapur

Date :

Plaintiff

Advocate for the plaintiff

### **VERIFICATION**

What is stated above is true to the best of our knowledge, information and belief.

Chickballapur

Date:

Plaintiff

Annexure B

**IN THE COURT OF THE CIVIL JUDGE, SENIOR DIVISION,  
CHICKBALLAPUR**

**O.S. No.\_\_\_\_ /2025**

Plaintiff :

V/s

Defendant :

**Application under Section 151 filed on behalf of the plaintiff /defendant.**

For the reasons mentioned in the accompanying affidavit, the plaintiff / defendant humbly prays that the registered / unregistered will dated \_\_\_\_\_, executed by plaintiff / defendant, a copy of which is herewith produced, be recorded in order to meet the ends of justice.

Chickballapur

Date:

Plaintiff / defendant

Advocate for plaintiff / defendant

**IN THE COURT OF THE CIVIL JUDGE, SENIOR DIVISION,  
CHICKBALLAPUR**

**O.S. No.\_\_\_\_ /2025**

Plaintiff :

V/s

Defendant :

**AFFIDAVIT**

I, \_\_\_\_\_, the plaintiff / defendant, herein solemnly affirm and state on oath as follows :-

1. I am plaintiff / defendant in this case.
2. I have executed a registered / unregistered will in respect of the properties belonging to me on \_\_\_\_\_, which is registered in the office of the Senior Sub-Registrar, \_\_\_\_\_, as document no. \_\_\_\_\_, stored in CD No. \_\_\_\_\_. I have herewith produced a copy of this will.
3. I have executed the aforesaid will voluntarily without any compulsion from anybody. I am presently in a sound disposing state of mind. I have got the draft of this will prepared by Sri. \_\_\_\_\_ and I have affixed my signature to this document in presence of the arrestors by names \_\_\_\_\_ and \_\_\_\_\_. All the attestors are known to me and have also affixed their signature to this document in my presence.
4. I have executed this will with the object of avoiding any disputes in regard to my properties after my life time and also in view of the pendency of this suit. As I do not want the will executed by me to be disputed after my life time, I have filed this application, so that the execution of this will be recorded by the court and no dispute in this regard is entertained.
5. WHEREFORE, I humbly pray that the admission of the execution of the registered / unregistered will dated \_\_\_\_\_ may kindly be recorded in order to meet the ends of justice.

Chickballapur

Date:

DEPONENT

Identified by me

Advocate