

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 18.04.2016

CORAM :

The Hon'ble MR.SANJAY KISHAN KAUL, CHIEF JUSTICE

AND

The Hon'ble MR.JUSTICE S.VAIDYANATHAN

O.S.A. No.103 of 2016

and C.M.P.No.6595 of 2016

K.Vinod Kumar

.. Appellant

-vs-

Mini R.C.

... Respondents

Appeal filed under Order XXXVI Rule 1 of O.S. Rules read with Clause 15 of Letters Patent against the order dated 17.02.2015 in A.No.7793 in T.O.S.No.39 of 2003 on the file of original side of this Court.

For Appellant : Mr.K.G.Vasudevan

For Respondents : M/s.P.T.Asha,
for M/s.Sarvabhauman Associates.

J U D G M E N T

(Judgement of the Court was delivered by The Hon'ble Chief Justice)

Admit. Learned counsel for the respondent accepts notice.

2.At request of learned counsel for parties, the appeal is taken up for final disposal.

3.In probate proceedings to a Will dated 14.09.1992, objections were filed by the appellant and thus, the proceedings were treated as T.O.S.No.39 of 2003. The original petition filed by the respondent was predicated on a belief that neither of the two attesting witnesses was alive.

5.On the objections being filed, it came to light that only one of the attesting witnesses was not alive while the other witness was alive. The respondent / plaintiff filed an application No.1063 of 2011 seeking to examine the said attesting witness. It may be noticed that prior to this, examination in chief and cross-examination of P.W.1 / the plaintiff, was over.

6.The request of the respondent / plaintiff was acceded to by the learned Single Judge vide order dated 12.02.2013. The appellant, aggrieved by this order, preferred O.S.A.No.307 of 2013, which was dismissed by the order dated 23.09.2013. While dismissing the appeal, it was observed thus:

'3. ... Therefore, in such view of the matter, the application was duly allowed. We do not find any error in the order passed by the learned Single Judge. It is well open to the appellant to cross-examine the Attestor as well as P.W.1 to substantiate his case. Accordingly, this appeal is dismissed giving liberty to the appellant to put forth all his contentions before the learned Single Judge. Consequently, M.P.No.1 of 2013 is dismissed.'

7.The attesting witness was produced to examine and cross-examine and thereafter, the appellant sought recall of P.W.1 by filing application Nos.7793 and 7794 of 2014 predicated on the leave granted by the Division Bench.

8.The applications, after recital of the facts, have sought for re-open and recall of the evidence of P.W.1 on the ground set out in para 6 of the affidavit, which reads as under:

'6.I submit that the respondent / plaintiff has filed a false affidavit before this Hon'ble Court in support of her application for reopening the respondent/plaintiff's evidence and for examining the attesting witnesses. In the cross-examination of the attesting witness, a deposition recorded in a different suit, which was filed in a Court at Kerala was filed. In order to elicit the conduct of the respondent / plaintiff in making repeated misrepresentations before this Hon'ble Court, it becomes necessary for me to seek reopening of the evidence of PW-1 in the above suit for further cross-examination.'

9.The learned Single Judge vide the impugned order dated 17.02.2015, has allowed the applications, but limited it for purposes of cross-examination of P.W.1 with reference to Ex.P-3.

10.On hearing the learned counsel for the parties, learned counsel for the respondent / plaintiff concedes that the cross-examination may be permitted to go beyond what is permitted by the learned Single Judge but confined to the prayer made vide para 6 of the applications under Order.

11.We take the said statement on record and believe that would be the correct course of action in any case to follow.

12.We, thus, modify the impugned order to the limited extent that while cross-examining P.W.1, the same is not necessarily

confined only to Ex.P-3, but to aspects as set out in para 6 of the applications filed by the respondent, as reproduced above.

13.Original Side Appeal is allowed to the extent aforesaid, leaving the parties to bear their own costs. Consequently, C.M.P.No.6595 of 2016 stands closed.

Sd/-
Asst.Registrar (CS VI)

/true copy/

Sub Asst. Registrar

sra

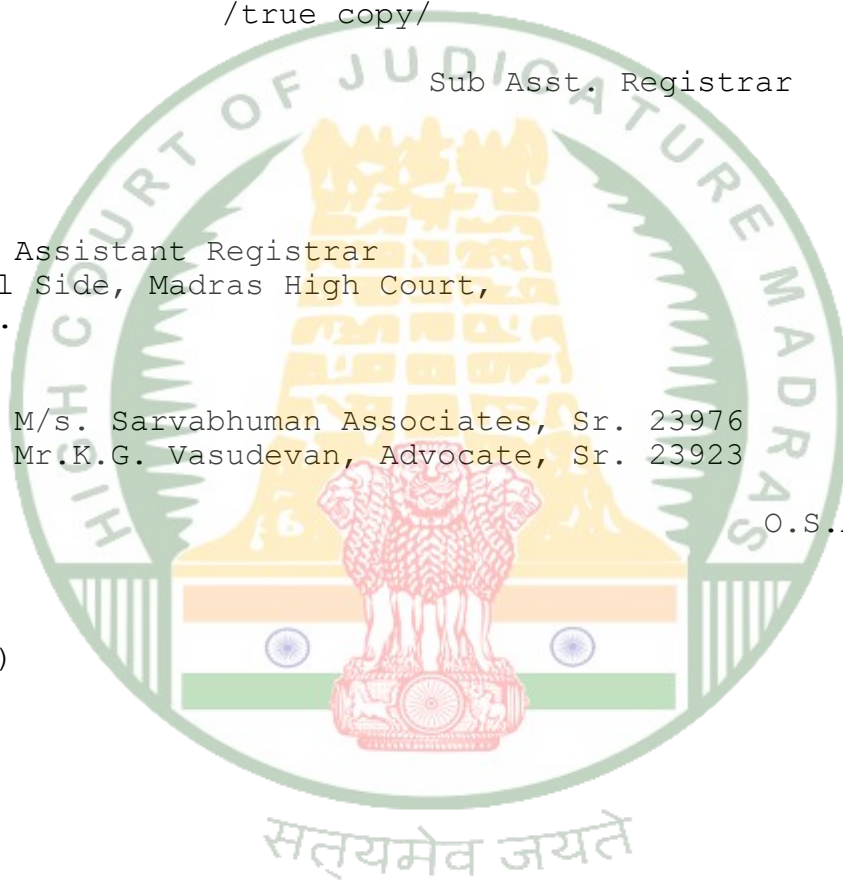
To

The Sub Assistant Registrar
Original Side, Madras High Court,
Chennai.

1 cc to M/s. Sarvabhuman Associates, Sr. 23976
1 cc to Mr.K.G. Vasudevan, Advocate, Sr. 23923

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TEJ (CO)
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