

IN THE HIGH COURT OF JUDICATURE AT MADRAS

(ORDINARY ORIGINAL CIVIL JURISDICTION)

MONDAY, THE 26TH DAY OF NOVEMBER 2018

THE HON'BLE MR. JUSTICE C.V.KARTHIKEYAN

A.Nos.5512 and 5513 of 2017

in

C.S.No.401 Of 2010

1.B.S.Krishnamurthy
S/o.Late B.K.Sankar
New No.21 (Old No.28)
Temple Avenue
Srinagar Colony
Saidapet, Chennai 600 015.

...Plaintiff/Applicant

-vs-

Mr.S.Sreenivasamurthy
S/o.Late B.K.Sankar
New No.21 (Old No.28)
Temple Avenue
Srinagar Colony
Saidapet, Chennai 600 015.

...Defendant/Respondent

(Both Application Nos.5512
and 5513 of 2017)

A.No.5512 of 2017:

Application praying that this Hon'ble Court be pleased to re-call the witness which was closed on 16.06.2017.

A.No.5513 of 2017:

Application praying that this Hon'ble Court be pleased to reopen the evidence of Plaintiff which was closed on 16.06.2017.

This application coming on this day before this court for hearing, the court made the following order:

These two applications have been filed by the plaintiff in the suit, seeking permission to reopen the evidence of PW-2, which was closed on 16.06.2017 and to recall PW-2 and also to grant permission to mark additional documents.

2. Along with the proof affidavit of PW-2, three documents had been filed. Documents two and three were objected. In this connection A.No.5605 of 2016 had been filed. That application came up for consideration and a detailed order had been passed by this Court on 15.11.2016. This Court allowed the said application.

3. The two documents which were objected were photographs taken at Varnasi and photographs of the suit property to show that physical partition of the property had been made between 2002 and 2003 by the defendant in the absence of the plaintiff when he was in UAE, Sharjah. This Court had stated that the documents may permitted to be taken on file subject to the objections which are raised. The matter was then referred to the learned Additional Master No.II, who was in the process of recording evidence. When the matter came up before the learned Additional Master No.II, to actually record the evidence, once again objections were raised regarding marking of the photographs, in view of the fact that they are electronic evidence and certificate under Section 65-B of the Indian Evidence Act was not produced. The matter was

referred to this Court once again. On 24.02.2017, there is a noting on the notes file that the said documents sought to be marked are inadmissible in evidence and that certificate under Section 65-B of the Indian Evidence Act has to be produced.

4. Thereafter the plaintiff has obtained a certificate under Section 65-B of the Indian Evidence Act and they have filed the present applications seeking permission to reopen the evidence and recall the witnesses for marking the said documents. In the notes dated 24.02.2017, it was also stated that a detailed separate order had been passed. However, a perusal of the records reveal that a separate order was not available in the Court bundle. Consequently, when these two applications were filed, they had been posted by the Honourable Chief Justice before this Court to examine the issues again. I had an opportunity to examine the entire Court bundle. The order in A.No.5605 of 2016 dated 15.11.2016 has clarified that two documents namely, photographs taken at Varnasi and of the suit property may be marked subject to objections.

5. Unfortunately, the number in the application in the order was given as A.No.4605 of 2016. Therefore, there were some difficulty in co-relating the order with the application. In the face of this order, the noting that the documents are not admissible in the notings dated 24.02.2017 is obviously not correct. The further noting

that a separate detailed order had been passed is also not correct. Consequently, entire noting dated 24.02.2017 is recalled.

6. In A.Nos.5512 and 5513 of 2017, the deponent of the affidavit had stated that he had now produced certificates under Section 65-B of the Indian Evidence Act, and consequently, seeks opportunity to produce them along with the photographs which had been permitted to be marked in A.No.5605 of 2016. Accordingly, the applications are allowed, and the evidence of PW-2 is reopened and the plaintiff is permitted to recall PW-2 for further evidence in Chief to mark the said photographs along with certificate under Section 65-B of the Indian Evidence Act. If there are any objections to the same, the learned Additional Master No.II may note down the objections and proceed further. Cross examination may also be done on the witnesses regarding the objections raised and also on other aspects of the documents. The objections whether the doubts are admissible, relevant and proved in manner known to law can be raised in detail during the arguments of the suit after evidence has been recorded and will have to be answered in the course of the main judgment. Needless to say, strict compliance of Section 65 B of the Indian Evidence Act would be examined before the documents can be considered to render any finding on the issues at which the parties are at lis.

7.The matter is now posted before the learned Additional Master-II on 04.12.2018 for the limited purpose of marking the two additional documents namely photographs taken at Varnasi and photographs of the suit property along with the certificate under Section 65-B of the Indian Evidence Act.

8. The Honourable Chief Justice had posted the matter before this Court only for the limited purposes of examining. A.Nos.5512 and 5513 of 2017. Since orders are now passed in the said applications, the suit may posted before the regular Judge in the original side of the High Court who is in-charge of examining suits of the year 2010 after getting necessary orders from the Honourable Chief Justice. The learned Additional Master No.II, may continue recording the evidence on the side of the defendant and thereafter post the suit before the Court on the Original Side for arguments.

9. Applications are allowed with the above observations.

Sd/.C.V.K.J

26.11.2018.

//Certified to be a true copy//

Dated this the th day of 2018.

DL/27.11.2018

COURT OFFICER

From 25.09.2008 the Registry is issuing certified copies of the Order/Judgment Decree in this format.