

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 07.08.2020

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THE HONOURABLE Ms. JUSTICE P.T. ASHA

A.No.8138 of 2019

in

A.No.2998 of 2019

in

T.O.S.No.26 of 2014

1. Sutha Devi

2. Banasankari

...Applicants

Vs.

1. Karthik Meyyappan

2. Ranjini Murugan

3. Mrs. Latha

4. Ramadevi

5. K. Rajendran

6. Vishnu Rajendran

7. Vinyak Rajendran

8. Vikram Rajendran

...Respondents

Prayer :- Application filed under Order XIV Rule 8 of OS Rules r/w Order 16 Rule 10(3) of C.P.C. praying to order arrest of the Subpoena witness, Mr.K.Raghavendiran, residing at First Floor, Flat No.1, Marudham Flats, No.8/16, United India Colon, 4th Cross Street, Kodambakkam, Chennai- 24 and to produce before this Hon'ble Court on the day fixed for deposing evidence in Court.

For Applicants : Mrs. Chitra Sampath, Senior Counsel
for Mr. T.S. Baskaran

For Respondents : Mr. K. V. Babu

ORDER

The above application has been filed by the plaintiffs to order arrest of the Subpoena witness, Mr. K. Raghavendiran, residing at First Floor, Flat No.1, Marudham Flats, No.8/16, United India Colony, 4th Cross Street, Kodambakkam, Chennai- 24 and to produce him before this Court on the day fixed for deposing evidence in Court.

2. The brief facts preceeding the filing of the above application are as follows:

The plaintiffs had filed a Petition for grant of Letters of administration of the Will dated 24.11.2008. The said Will was executed by A.V.M. Murugan and the Will was attested by witnesses and registered as Document No.135 of 2008 on the file of SRO, Kodambakkam, Chennai. After summons was taken to the respondents, in view of the objections taken by them, the Petition was converted into a Testamentary Original Suit. Trial has also commenced in the above Testamentary Suit and the first plaintiff was examined as PW1. Though both the attesting witnesses of the Will namely Mr.S.Rajasekar and Mr.K. Raghavendiran were alive, they failed to file an affidavit in the proceedings. Therefore the plaintiffs had taken out an application for issuing summons to these subpoena witnesses for their presence before the Court for adducing witnesses. These applications were allowed by orders of this Court dated 12.04.2019 and notice was directed to the subpoena witnesses namely Mr.S.Rajasekar and Mr.K. Raghavendiran to appear before the learned Additional Master III and steps were taken to serve the witnesses. The notice sent to subpoena witness S.Rajasekar was returned with the endorsement "unserved", however notice which was sent to subpoena witness

K.Raghavendiran was served on him through Court as well as privately. The bailiff report dated 23.07.2019 would clearly show that the subpoena witness has personally received the notice and had made an endorsement thereon. However, the witness, despite being directed to appear before the Court on 05.08.2019 had deliberately failed to appear before this Court. Therefore the plaintiffs have taken out the above application.

3. Mrs. Chitra Sampath, learned Senior Counsel appearing on behalf of Mr. T.S.Baskaran, learned counsel for the plaintiffs would submit that as per the provisions of Order XVI Rule 13, Rules of the High Court, Madras, Original Side 1994 (hereinafter referred to as O.S. Rules), the failure on the part of the witness to answer the summons issued without a lawful excuse has made the witness liable to being issued with a warrant to enforce his presence before the Court for adducing evidence.

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4. Mr. K.V. Babu, Learned Counsel appearing on behalf of the defendants has contested the said application and would contend that the

Original Side Rules cannot be looked into since the Judge's Summons has been only filed under the Provisions of Order XIV Rule 8 of the O.S.Rules read with Order XVI Rule 10 (3) of the Code of Civil Procedure (hereinafter called the code) and therefore the provisions of the Code above should be strictly followed. Therefore a proclamation should preceed the warrant. The reference to Order XVI Rule 13 of the High Court Madras, Original Side Rules 1994 is superfluous.

5. Heard the counsels.

6. Before proceeding to discuss the issue on hand, it is necessary to extract the provisions of both Order XVI Rule 13 of the O.S. Rules and Order XVI Rule 10 (3) of the code.

Order XVI Rule 13, Rules of the High Court, Madras, Original Side 1994 is extracted hereunder:

"Order XVI Rule 13: When the court sees reasons to believe that a person to whom a summons has been issued either to attend to give evidence or to produce a document, has without lawful excuse, failed

to attend, or produce the document in compliance with such summons or has intentionally avoided service, it may issue a proclamation requiring him to attend to give evidence or to produce the document at the time and place to be named therein; and a copy of such proclamation shall be affixed on the outer door or other conspicuous part of the house in which he ordinarily resides.

In lieu of or at the time of issuing the proclamation, or any time afterwards, the court may, in its discretion, issue a warrant either with or without bail for the arrest of such person and may make an order for the attachment of his property to such amount as it thinks fit. "

Order XVI Rule 10 (3) of the Code of Civil Procedure is extracted hereunder:

"Order XVI Rule 10 (3): In lieu of or at the time of issuing such proclamation, or at any time afterwards, the court may, in its discretion, issue a warrant, either with or without bail, for the arrest of such person, and may make an order for the

attachment of his property to such amount as it thinks fit, not exceeding the amount of the costs of attachment and of any fine which may be imposed under Rule 12 "

The provisions of Order XVI of the Code of Civil Procedure deals with summoning and attendance of witnesses. Likewise Order XVI of the OS Rules also provide for summoning and attendance of witness. Sub-Section 10 of Order XVI of the Code talks about the procedure that has to be followed in the event a witness fails to comply with the summons and in the case of the O.S Rules, Rule 13 deals with consequences of witness not appearing pursuant to receipt of summons. In fact a reading of Sub Rule 10 (2) and (3) of the Code and reading of Rule 13 of the OS Rules would clearly show that the two procedures are *in pari materia*.

7. Be that as it may, considering the fact that the proceedings are now pending on the Original Side of this Court, it is needless to state that it is only the Original Side Rules that would comply and therefore the

procedure of Order XVI Rule 13 of the O.S Rules would apply to the instant case.

8. Admittedly the second attesting witness, Mr. K.Raghavendiran has been served with a copy of the subpoena in person by the bailiff and necessary endorsement to that effect is also noted in the subpoena copy. Despite receiving the same, the said witness has deliberately/intentionally avoided to appear before the Court. Therefore applying the Provisions of Order XVI Rule 13, this application is allowed and a warrant is directed to be issued to the said K.Raghavendiran residing at First Floor, Flat No.1, Marudham Flats, No.8/16, United India Colon, 4th Cross Street, Kodambakkam, Chennai- 24. However, considering the present lockdown on account of the Covid 19 the date on which the witness has to be produced upon warrant before Court would be decided on 17.09.2020.

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9. In the result, the application is ordered as prayed for and the matter is directed to be listed on 17.09.2020.

07.08.2020

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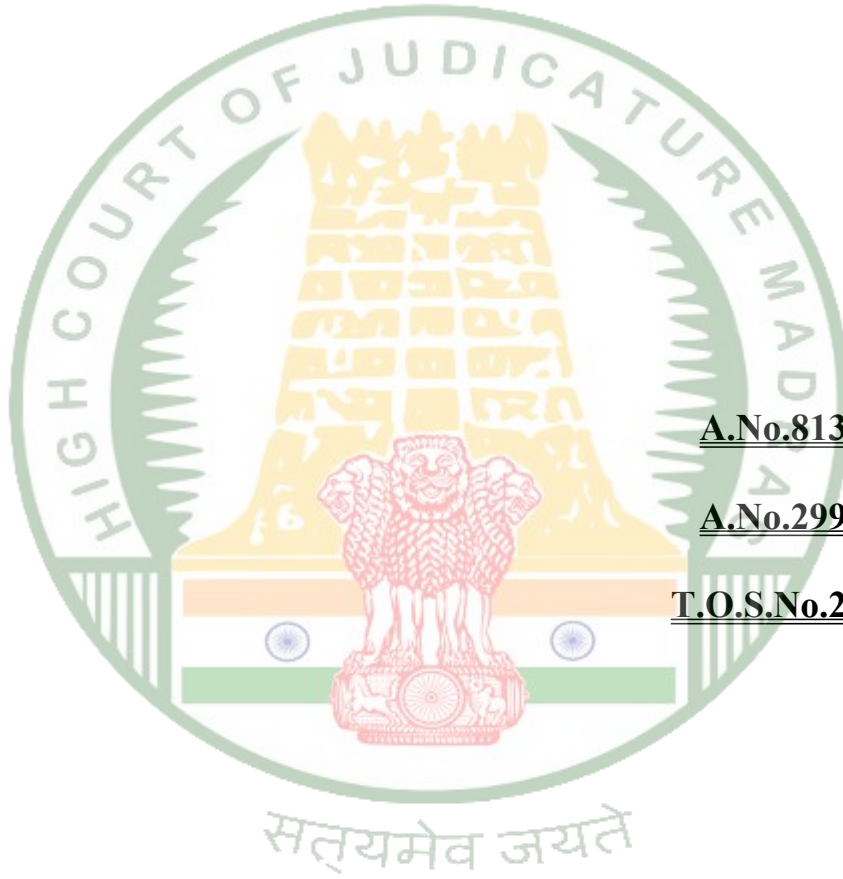


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