

A.No.2208 of 2021
in
TOS.No.26 of 2015

R.SUBRAMANIAN, J.

This application has been filed seeking direction to the plaintiff in TOS.No.26 of 2015 to commence the evidence.

2. It is seen from the records that CS.No.415 of 2014 has been filed seeking partition of the estate of Ananda Sourubhi Rathinam claiming that she died intestate on 23.09.2012. The 2nd defendant in the said suit/ son of late Tmt.Ananda Sourubhi Rathinam had filed a original petition in O.P.No.673 of 2014 seeking Probate for the last Will and Testament said to have been executed by his mother on 21.09.1988. The said original petition has been converted into testamentary original suit and numbered as TOS.No.26 of 2015 on caveat being filed by the plaintiffs in the partition suit. A joint trial has been ordered.

3. Mrs.R.T.Shyamala, learned counsel appearing for the plaintiffs in the partition suit would contend that it is for the plaintiff in the testamentary original suit to prove the Will first and therefore, he should be

directed to enter the box.

4. Opposing the said claim, Mr.L.Damodaran, learned counsel appearing for the respondent in this application and the plaintiff in testamentary original suit would contend that the partition suit includes other properties also and therefore the plaintiffs in the partition suit has to let in evidence first.

5. I have considered the rival submissions.

6. The fact that the properties subject matter of the partition suit were owned by late Tmt.Ananda Sourubhi Rathinam is not in dispute. The only defence that is projected in the partition suit is the Will said to have been executed by her which is subject matter of the TOS.No.26 of 2015.

7. In the above circumstances, I am of the considered opinion that the plaintiff in the testamentary original suit shall let in evidence first to establish the Will. If he succeeds in establishing the Will, the partition suit

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will have to be decided after excluding the properties covered by the Will.
Therefore, it will be in the fitness of things that the plaintiff in the
testamentary original suit leads evidence first.

8. Hence, this application is **allowed**. The plaintiff in the
testamentary original suit to lead evidence in TOS.No.26 of 2015 first.

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