



O.S.A. No.306 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 05.12.2022

CORAM

THE HONOURABLE MR.JUSTICE **S.VAIDYANATHAN**
and
THE NONOURABLE MR.JUSTICE **MOHAMMED SHAFFIQ**

O.S.A. No.306 of 2022 and
C.M.P. No.20920 of 2022

G.Ramkumar

.. Petitioner

Vs.

M.S.Rama Mohana Rao

.. Respondent

* * *

Prayer : Original Side Appeal filed under Section 36 Rule 9 of O.S. Rules r/w Clause 15 of the Letters Patent against the order of the learned single judge dated 26.09.2022 made in A. No.3622 of 2022 in TOS No.21 of 2020.

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For Appellant : Ms.Vedhashri Narasa

For Respondent : Mr.T.Karunakaran



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J U D G M E N T

S.VAIDYANATHAN, J.
AND
MOHAMMED SHAFFIQ, J.

The present original side appeal has been preferred against the order of the learned single judge dated 26.09.2022 made in A. No.3622 of 2022 in TOS No.21 of 2020.

2. The case of the appellant is that an application has been filed in A. No.3622 of 2022 in T.O.S. No.21 of 2020 for examination of PW2 through video conference, which was accepted and allowed by this court on 26.09.2022.

3. The main objection of the appellant before the learned single Judge was that the witness is a healthy person and he can come and appear in person to adduce evidence and there is no need to video conferencing. Before this Bench, the learned counsel appearing for the appellant submitted that there is a possibility of tutoring the witness.

4. The respondent entered appearance in the admission stage and submitted that the witness's father was an attester to the will in question



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in the testamentary original suit and he has nothing to do with the will and he is going to adduce evidence with regard to the signature of his father and the affidavit of the attesting witness, for which there is no need for his physical appearance. It is further submitted that the witness's father is no more and that there is no possibility of PW2 giving evidence with regard to the contents of the will or on the merits of the issue that is pending in the testamentary original suit.

5. Heard the learned counsel appearing for both sides and perused the materials available on record.

6. We are not inclined to accept the contention of the learned counsel appearing for the appellant, as the purpose of video conferencing itself would be defeated. The contention, more particularly, in the present case on hand that the witness would be tutored, cannot be accepted, as the witness is going to identify only the signature of his father in the will and the affidavit of the attesting witness and nothing else. Hence we find that there is no error in the order of the learned single Judge dated 26.09.2022 made in A. No.3622 of 2022 in TOS No.21 of 2020 and the same does not warrant any interference in this original side appeal.



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7. Accordingly, the original side appeal is dismissed. However, there is no order as to costs. Consequently, the connected civil miscellaneous petition is closed.

8. The learned Additional Master is expected to record the evidence of PW2 at the earliest and the parties are directed to appear through video conference on 16.12.2022.

[S.V.N., J.] [M.S.Q., J.]

05.12.2022

Asr

Copy to:

The Additional Master, High Court, Madras

Note:

Issue judgment copy on 06.12.2022



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asr

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