



A.No.534 of 2023
in C.S.No.720 of 2019

WEB COPY **K.KUMARESH BABU, J.**

This application has been filed seeking to reopen the evidence on the side of the plaintiff in C.S.No.720 of 2019 and allow the marking of plaint documents by consent or by the plaintiff entering the witness box as PW1.

2.Mr.B.Arvind Srevatsa, learned counsel for the applicant would submit that the suit had been filed for various relief including a preliminary decree of half share to the plaintiff in the plaint “C” schedule property based upon the Deed of Family Settlement dated 22.01.1987 which was relied upon as plaint document No.3. Since the said Deed of Family Settlement had been admitted by both the parties, the applicant had filed a memo that there is no oral evidence. Various documents relied upon by the plaintiff were also admitted by the defendant in the written statement. Therefore, the applicant was under the bonafide impression when the plaint documents have been admitted by both the parties it could be looked into for the purpose of deciding the issue. However, by a memo filed by the respondent/defendant a technical objection had been raised that no documents had been marked or exhibited. Hence, the present application had been filed so as to reopen the evidence on the side of the plaintiff permitted to oral evidence and mark documents in the above suit. He would submit that the original memo had been filed on the bonafide impression that since all the



documents had been admitted and that recording of evidence would consume sometime. Hence, he would seek the application be ordered as prayed for.

3.Mr.P.B.Ramanujam, learned counsel appearing for the respondent/defendant would submit that the present application has been filed with an intent to defeat the procedural right of the of the respondent/defendant to cross-examine the applicant/plaintiff. He would submit that it is the duty of the plaintiff to prove the relief sought for. What had been admitted by the respondent/defendant is the document and not the contents of the documents. He would further submit that if the applicant is permitted to reopen the evidence, the defendant's right to cross-examine and lead evidence should also be protected. Only because the applicant had filed a memo not to lead any evidence, the defendant had also forgone his rights. Therefore, he would submit that the defendant should also be permitted to lead in evidence.

4.I have considered the rival submissions made by the learned counsel appearing on either side and perused the materials available on record.

5.The only objection on behalf of the respondent/defendant seems to be that if the applicant's prayer to reopen his side of evidence alone would be permitted, it would defeat the rights of the respondent/defendant and the respondent/defendant has also independently to take out an application which



WEB COPY

may be opposed by the applicant/plaintiff. As pointed out by the learned counsel for the respondent/defendant, the respondent seems to have filed a memo indicating that there is no evidence based upon the memo filed by the applicant/plaintiff. Now what the applicant seeks to, is to undo the memo filed by him and let in evidence.

6.In such circumstances, I am of the view that the respondent/defendant will have not only the right to cross-examine the plaintiff but also the right to lead evidence on his side and by marking documents.

7.In view of the aforesaid reasons and findings, the applicant is permitted to reopen his evidence and mark the plaint documents relied upon by him in the plaint. The defendant is also permitted to cross-examine the plaintiff and lead evidence on his side.

8.With the above directions, the application is disposed of.

29.03.2023

pam



WEB COPY



pam

A.No.534 of 2023
in C.S.No.720 of 2019

29.03.2023