



A.No.649 of 2023
in T.O.S.No.23 of 2019

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N.SESHASAYEE.J.,

The plaintiff's son has died leaving behind a Will and it is now the subject matter of this testamentary original suit. The defendant is his son, born to the testator through his divorced wife. This application is taken out by the defendant to examine certain G.Natarajan, aged about 94 years on his side, and seeks his examination before commencement of trial. As the witness is about 94 years now, he also seeks appointment of a Commissioner for examination of this witness.

2.The plaintiff has filed her counter, wherein she contends that the testator and the defendant's mother have dissolved their marriage by mutual consent and as a package, the testator had paid a sum of some Rs.25,00,000/-. Another objection was that the witness has little to do with the cause of action in the suit. After all, at the end of the day, the burden is entirely on the plaintiff to prove the genuineness of the Will, and the role of the witness now proposed to be examined by the defendant is wrapped in mystery, submitted the counsel.

3.After weighing the rival submissions, this Court considers not to interfere with the defendant's right to examine the witness of his choice. After all, once the



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plaintiff has done with examining the witnesses on her side, the defendant would still have the right to lead in rebuttal evidence for tilting the probability against the plaintiff. When procedure recognizes the right of the defendant to lead in evidence, this Court cannot anticipate what the witness might speak at this point of time.

4.This Court, therefore allows this application and, this Court also appoints Ms.T.G.Niranjana, Phone:9487554819, as an Advocate Commissioner to examine Mr.G.Natarajan and her remuneration is fixed at Rs.30,000/- (Rupees Thirty Thousand only), which the defendant shall pay.

5.The Registry is directed to issue warrant to the Advocate Commissioner appointed by this Court.

08.02.2023
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