



WEB COPY



A.Nos.1196 & 1197 of 2023 in
TOS No.31 of 2013 &
C.S.No.551 of 2012

R.N.MANJULA,J.

These applications have been filed by the plaintiff who is alleged to be the executor of the Will dated 18.08.1994, said to have been executed by Late Mr.S.Doss and Late Tmt.Ponnatchi Ammal, to re-open the evidence in TOS No.31 of 2013 and to re-call one Mrs.J.Kanchana who is the witness on the side of the plaintiff.

2. The learned counsel for the applicant / plaintiff submitted that even though the chief affidavit has been filed long back, she is not able to present before this Court due to health reasons. He further submitted that the said witness was suffering from Cancer and she could not appear before this Court to depose evidence.

3. The same was vehemently opposed by the learned counsel for the respondents and he submitted that despite the copy of the chief affidavit of Mrs.J.Kanchana has been furnished to him in the year 2012,



so far the witness was not brought to Court and subjected for cross examination.

4. The said witness by name Mrs.J.Kanchana is the attesting witness for the alleged Will dated 18.08.1994 and now whose cross examination is vital for the respondents as well. Though the reasons stated by the plaintiff for the delay in recalling the witness is not acceptable, in view of the time that has been lapsed from the date of filing of her chief affidavit, taking into consideration of the issues involved in this matter and the importance of the evidence of the witness, I feel in the interest of justice, these applications should be considered favourably. However, for causing delay and thereby putting the respondents / defendants into hardship, the applicant / plaintiff is liable to pay cost.

5. In the result, these applications are allowed subject to payment of cost of Rs.5,000/- (Rupees Five Thousand only) to the respondents / defendants by the applicant / plaintiff.



6. The records are ordered to be sent to the Master Court for continuing recording of evidence. The witness and the parties are directed to appear before the Additional Master - IV on 11.04.2023, failing which, the benefit of this order will be forfeited.

17.03.2023

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