



A.No.1399 of 2023
in O.P.No.15 of 2023

K.KUMARESH BABU, J.

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This application is seeking for a permission to examine the third respondent herein and a third party as PW2 and PW3 to the Original Petition.

2.Learned counsel for the applicant would submit that the Will that is to be proved for grant of probate has been attested by two persons viz., Mr.V.S.Sivakumar and Mr.A.C.Selvaraju. According to him, Mr.V.S.Sivakumar is no more and he is also the son of the testatrix. Therefore to comply with the provisions of Section 69, he would seek permission of this Court to examine the third respondent herein to prove the attestation made by Mr.V.S.Sivakumar. He would further submit that as regards the second attesting witness whereabouts not known and therefore would seek to examine the third party Mr.M.Babu who is their neighbour also to identify the signature of the first attesting witness viz., Mr.V.S.Sivakumar.



3.Today, when the matter was taken up for hearing, an affidavit had been filed by the petitioner wherein he seek permission to examine the fifth respondent herein in stead of the third party, the fifth respondent is the wife of the Mr.V.S.Sivakumar, the brother of the petitioner as well as the son of the testatrix.

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 Will has also to be proved by examination of at least one of the attesting witnesses. In the present case, the first attesting witness is Mr.V.S.Sivakumar who is also the son of the testatrix. The third respondent who is sought to be examined to verify the signature of the said V.S.Sivakumar is none other than his brother. The fifth respondent who is sought to be again examined for the same reason is wife of the said V.S.Sivakumar. Hence without advertting to the merits of the case any further, I am of the view that the present application can be ordered.



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6. In fine, the application is ordered as prayed for.



14.03.2023



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