



A.No.2298 to 2300 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

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Reserved on : 16.06.2023

Delivered on : 23.06.2023

CORAM

THE HONOURABLE Ms. JUSTICE R.N.MANJULA

A.Nos.2298 to 2300 of 2023

in

T.O.S. No.26 of 2014

1.Sri Sutha Devi

2.Banasankari ...Applicants in all Applications.

Vs.

1.Karthik Meiyappan

2.Rajini Murugan

3.Latha

4.Ramadevi

5.K.Rajendran

6.Vishnu Rajendran

7.Vinayak Rajendran

8.Vikram Rajendran ...Respondents in all Applications.



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Prayer in A.No.2298 of 2023: Judge's Summons Filed under Order XIV Rule 8 of O.S. Rules read with Order VII Rule 14 (3) of CPC to permit the petitioner / plaintiff to file the following documents: (i)Certified copy of the will executed by Mrs.Vimala dated 05.04.1994 in O.P.No.569 of 1995 in favour of Mr.A.V.M.Murugan. (ii)Certified copy of the probate order dated 06.02.1996 passed in O.P.No.569 of 1995. (iii)Certified copies of the petition filed in O.P.No.569 of 1995 by the executor of the will dated 05.04.1994 and (iv)Certified copy of application No.5088 of 2018 filed by the D.W.1 seeking for the copy of will and probate order passed in O.P.No.569 of 1995.

Prayer in A.No.2299 of 2023: Judge's Summons Filed under Order XIV Rule 8 of O.S. Rules read with Section 151 of CPC to reopen the evidence of defendant in T.O.S.No.26 of 2014.

Prayer in A.No.2300 of 2023: Judge's Summons Filed under Order XIV Rule 8 of O.S. Rules read with Order 18 Rule 17 of CPC to recall DW1 for further cross examination to mark documents.



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For Applicants : Mr. T.Karthikeyan

For Respondents : Mr. K.V.Babu.

JUDGMENT

The applicants are the plaintiffs. The applications have been filed to receive an additional documents; to re-open the evidence of defendant and to re-call D.W.1 for further cross examination.

Averments in the applications in brief:

2. During the cross examination of D.W.1 certain facts were revealed; the certified copies of some of the documents which are relevant to the case have also been obtained by the plaintiff; those documents have to be marked by re-calling D.W.1; it is just and necessary to re-open and re-call D.W.1 and also to receive the additional documents.



Common Counter filed by the respondents in brief:

3. The applications filed by the plaintiffs are not maintainable; the plaintiffs have filed the original petition for the grant of letter of administration in respect of the will dated 24.11.2008 executed by one A.V.M.Murugan; since serious objections were raised, the Original Petition came to be converted into Testamentary Original Suit; after filing the written statement issues were framed and the 1st applicant was examined as P.W.1 and one Ragvendran as C.W.1; thereafter, the 1st defendant was examined as D.W.1 and he was cross examined extensively; the Trial got concluded and the suit was ripened for arguments from 20.03.2023; the documents now sought to be produced are in no way relevant to the matter in issue; D.W.1 was cross examined on all the issues touching the documents while he was in box; the applications have been filed just to drag the proceedings by attempting to file certain documents which are not relevant to the case.



WEB COM **Discussion:**

4. The applicants / plaintiffs have filed the application to receive the following documents as additional evidence:

(i) Certified copy of the will executed by Mrs.Vimala dated 05.04.1994 in O.P.No.569 of 1995 in favour of Mr.A.V.M.Murugan.

(ii) Certified copy of the probate order dated 06.02.1996 passed in O.P.No.569 of 1995.

(iii) Certified copies of the petition filed in O.P.No.569 of 1995 by the executor of the will dated 05.04.1994 and

(iv) Certified copy of application No.5088 of 2018 filed by the D.W.1 seeking for the copy of will and probate order passed in O.P.No.569 of 1995.



5. These documents have been produced by the plaintiffs themselves. In that case it is possible for the plaintiffs to get into the box and mark these documents. After the cross examination of D.W.1, now these applications have been filed to reopen the evidence of the defendant and to re-call D.W.1 to mark the documents sought to be produced on the side of the plaintiff. The intention of the plaintiffs to recall D.W.1 for marking plaintiffs' side documents, cannot be appreciated.

6. Though the application has been filed to receive the additional documents at a belated stage, in the interest of justice, this Court deems it fit that the documents can be received subject to proof and relevancy. However, it is for the plaintiffs to get into the box to mark the documents and the plaintiffs cannot compel the defendant to come to box in order to mark the documents produced by him.



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7. In view of the above observations, this Court is of the view that the additional documents can be received subject to proof and relevancy and the applications filed to reopen the evidence of defendant and to recall D.W.1 should be dismissed with liberty given to the applicant to file a fresh application to recall P.W.1.

8. In the result, A.No.2298 of 2023 is allowed. A.Nos.2299 & 2300 of 2023 are dismissed.

23.06.2023

Internet : Yes/No
Index : Yes/No
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R.N.MANJULA. J,

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Pre-delivery Order in
A.Nos.2298 to 2300 of 2023

23.06.2023