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A.No.3526 of 2022
in
C.S.No.134 of 2021

N.SATHISH KUMAR.J.,

This application has been filed seeking appointment of Advocate Commissioner with a direction to Advocate Commissioner to record the evidence of the applicant as P.W.1 by following the procedure contemplated under the Code of Civil Procedure, 1908 and the Indian Evidence Act, 1872.

2. Heard both sides.

3. The learned counsel for the applicant submitted that the applicant is aged 84 years and is medically unfit to move about due to illness and as such, she could not be produced before the Court for examination. Therefore, he prayed for appointment of advocate commissioner for the examination of the plaintiff as P.W.1 at her residence.

4. The learned senior counsel for the 1st respondent though opposed appointment of advocate commissioner, the only apprehension expressed on behalf of the 1st respondent is that the applicant is being taken care of by her 4th daughter and therefore, she is under the influence and control of her 4th daughter

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and if the evidence of the applicant is directed to be recorded at the residence of the 4th daughter of the applicant, there is likelihood of influencing the applicant by the 4th daughter of the applicant and the other inmates of the house.

5. In reply, the learned counsel for the applicant submitted that if this is the only apprehension of the other side, he would undertake to ensure that the 4th daughter of the applicant or any other inmates will not be present at the time of recording evidence of the applicant.

6. At this juncture, the learned senior counsel submitted that if the court proceeds to appoint an Advocate Commissioner, evidence of the plaintiff may be directed to be recorded on holidays, preferably on Saturdays so that the profession of the Advocates and the Advocate Commissioner may not get affected.

7. When this court posed a question to the learned Senior Counsel for the 1st respondent that how long would he take for the cross examination of P.W.1, he submitted that he would take atleast three hours for the cross examination of P.W.1.



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8. Considering the facts and circumstances of the case, more particularly, ailment of the applicant and her old age, and the submissions made on either side, this court in order to meet the ends of justice is inclined to appoint Mr.K.V.Babu, a practising Advocate of High Court of Madras as Advocate Commissioner for recording evidence of the applicant as P.W.1 at No.185, East Coast Road, Akkarai, Chennai, on the following terms:-

(i) Mr.K.V.Babu, Advocate, F-101, 1st Floor, Subiksha Trinity, No.9/14, 4th Street, Bakthavatsalam Nagar, Adayar, Chennai 600 020 (Mobile 98400 75917) is hereby appointed as Advocate Commissioner to examine the applicant who is the plaintiff in the suit as P.W.1 in chief and cross.

(ii) The Advocate Commissioner shall record the evidence of P.W.1 at No.185, East Coast Road, Akkarai, Chennai.

(iii) The Advocate Commissioner shall ensure that 4th daughter of the applicant is not present near the applicant and she is preferably away from her residential premises throughout the proceedings of recording of evidence of P.W.1.



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The learned counsel for the applicant and the 4th daughter of the applicant are expected to cooperate the Advocate Commissioner in this regard.

(iv) The Advocate Commissioner shall fix the date and time of recording of evidence of P.W.1 on consensus of the counsel on either side preferably on any Saturday.

(v) The Registry is directed to hand over the documents filed by the plaintiff for the purpose of marking them during trial to the Advocate Commissioner under due acknowledgement.

(vi) The evidence of P.W.1 both chief and cross shall be completed on or before 19.11.2023.

(vii) Report of the Advocate Commissioner along with the evidence and documents marked during examination of P.W.1 shall reach the office on or before 20.11.2023.

Considering the fact that the Advocate who has been appointed as Advocate Commissioner is a senior member of the Bar and also the nature of the proceedings assigned and also the status of the applicant, this court is of the view



that fixing a sum of Rs.40,000/- (Rupees Forty Thousand only) as remuneration would be just and appropriate. Accordingly, the learned counsel for the applicant is directed to instruct the applicant to pay a sum of Rs.40,000/- (Rupees Forty Thousand only) as remuneration directly to the learned Advocate Commissioner through cash, cheque or demand draft or any one of the electronic modes convenient to her.

This Application is ordered accordingly with the above directions.

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Note: (i) The Registry is directed to issue Warrant of Commission on or before 19.10.2023.

(ii) Post the Original Suit on 20.11.2023.



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