



A.No.4543 of 2023 in T.O.S No.5 of 2021

A.A.NAKKIRAN, J.

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This application has been filed by the applicant/defendant to direct the respondent/plaintiff to produce the documents as mentioned in the Judge's summons.

2. The learned counsel for the applicant/defendant submitted that in paragraph 6 of the original petition, the respondent/plaintiff has stated that the Testator and his family members disposed the properties at Koilur Road, Tirupattur, North Arcot District and a Plot of land at A.G.S Colony now called Karunanidhi Nagar, Madipakkam Village, Alandur, Chennai and the said properties are mentioned as Item No.2 and 3 in schedule II of the alleged Will. In the cross examination of the respondent/plaintiff herein (PW2) has deposed that she has obtained no objection certificate from her children and sold the properties, but nothing has been mentioned about the alleged Will, which is the subject matter of the suit. Hence, it is just and necessary to produce the sale deeds pertaining to the properties situated at Madipakkam and Thirupattur. The respondent/plaintiff along with the defendant's brother purchased several properties in their names out of the sale proceeds received from the disposal of the aforesaid properties that are mentioned as Item No.3 in the schedule I and Item Nos.2 and 3 in schedule II left by the defendant's father Late Munusamy Sundara Raj also including the funds received after the demise of the defendant's father such as GPF, Gratuity, Pension, Salary and other allowances and the final settlement. The Respondent in her cross examination admitted that she had



purchased the properties along with her son in T.Nagar, Chella Mall and she had purchased the property at Nelson Manickam Road in her name and the said properties were purchased out of her own jewels and LIC funds, but the same were purchased out of the sale proceeds of the properties situated at Madipakkam and Thirupattur and also funds derived from late Munusamy Sundara Raj. The applicant/defendant explicitly raised this as defense in the written statement. Since the documents relating to the aforesaid transactions were not produced before this Court, the applicant/defendant caused a notice to the plaintiff on 20.06.2023 to the respondent/plaintiff to produce the documents viz., i) sale deed pertaining to the property which was sold and situated at Koilur Road, Thirupattur, North Arcot District, Tamil Nadu, ii) sale deed pertaining to the property which was sold and situated AGS Colony, now called Karunanidhi Nagar, Madipakkam Village, Alandur, Madras, iii) sale deed pertaining to the property situated at Nelson Tower, Nelson Manickam Road, Aminjikarai, Chennai, iv) sale deed pertaining to the property situated at Challa Mall, Pondy Bazaar, T.Nagar, Chennai and v) copy of income tax returns filed by the respondent during the period of said sale and purchase of above mentioned properties. The respondent/plaintiff has not even furnished the details of properties situated at Madipakkam and Thirupattur Village so as to enable the applicant to obtain certified copies from the concerned Sub Registrar Offices. The documents sought for are necessary for fair disposal of the suit. Hence, he prays to allow this application.



3. The learned counsel for the respondent/plaintiff submitted that the documents sought for by the applicant/defendant are not available with the plaintiff and they are not relevant to the suit and in order to protract the proceedings, the present applicant has been filed. Hence, he strongly opposed to allow this application.

4. It is the prime duty of the respondent/plaintiff to substantiate their case with relevant documents. The burden of proof lies on the respondent/plaintiff by way of oral and documentary evidence. Hence, this Court is not inclined to allow this application.

5. Accordingly, this application is dismissed.

6. Registry is directed to post the matter before the Master Court for recording evidence on 04.12.2023, and the same shall be completed within a period of one month.

20.11.2023

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