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A.No.4967 of 2023
in OP.No.580 of 2022

N.SATHISH KUMAR, J.

This application is filed seeking permission to examine the person, who has acquaintance with the attesting witness.

2. When the matter is taken up for hearing, this Court posed a specific question as to whether such permission is required. It is the contention of the learned counsel for the petitioner that it is only the learned Master who has insisted such permission.

3. This Court is of the view that the mode of proof of a Will is provided under Sections 68 and 69 of the Indian Evidence Act. Section 68 deals with the examination of one of the attesting witness. In the absence of both the attesting witness, their whereabouts are not known, and they are not alive, then the mode of proof of a Will be by way of Section 69 of the Act.



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4. By invoking Section 69 of the Act, any person who is acquainted with the signature of the attesting witness can be examined as a witness.

When such being the position, the evidence of such a person cannot be treated as secondary evidence. Therefore, the learned Master is directed to allow the third parties to prove the Will whenever it is established that the attesting witnesses are not available or dead or their whereabouts are not known. It is relevant to note that those facts have to be proved before allowing third party to prove the signature of the attesting witness.

5. With the above directions, this petition is allowed.

6. Post the matter before the learned Master on 05.10.2023.

pvs

03.10.2023



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