



A.Nos.5261 of 2022, A.No.2575 of 2013
and O.A.No.450 of 2013 in C.S.No.252 of 1996

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N.SESHASAYEE.J.,

Learned counsel appearing for the defendants 10 to 13 in C.S.No.252 of 1996 states that the defendants 10 to 13, have taken out an application in A.No.5261 of 2022 for producing two documents in evidence in support of their case.

2. Learned counsel for the plaintiffs have no objection. Some of the co-defendants viz. Defendants 3, 5 to 7, represented by Mr.R.Thiagarajan, opposes this application.

3. Heard both sides.

4. One of the documents to be produced is a testimony of a certain witness, who is now dead. On enquiry, this Court understands that the witness was fully cross-examined in an earlier proceedings and that testimony is now sought to be produced in this case. A testimony of a dead person who was fully cross-examined is relevant under Section 33 of the Indian Evidence Act, 1872. However its impact on the



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cause of action is another matter, and that has to be tested only during final arguments.

5. Learned counsel submitted that there are three conditions attached for receiving the earlier testimony of a witness before the court and third of the three conditions is not available. The third condition says "*that the questions in issue were substantially the same in the first as in the second proceeding*". This objection, the learned counsel is permitted to take before the Master at the time when the document is introduced in evidence, and but its merit will be adjudicated at the time of final arguments in the suit.

6. Therefore, subject to proof, relevancy and admissibility and subject to what is herein above stated, the application is allowed, and if any secondary documents are sought to be produced, then the witness is required to explain why the primary evidence is not produced. All objections relating to the same will be considered during final arguments in that suit. The party, who opposes the production of the documents on any of the grounds, is required to make a candid statement as to the very nature of objection, and the same is required to be recorded by the learned



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Master in order to facilitate this Court for appreciating any argument based on proof, relevancy and admissibility of the documents.

7. All those defendants, who support the plaintiffs, are to be examined first in the order the defendants choose before the contesting defendants enters the box.

8. Registry is now directed to place C.S. No.252 of 1996 before the learned Additional Master -IV for resumption of trial on **31.01.2023**.

11.01.2023

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