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OSA.No.175 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 20.12.2023

CORAM :

**THE HONOURABLE MR.JUSTICE R.MAHADEVAN
and
THE HONOURABLE MR. JUSTICE MOHAMMED SHAFFIQ**

OSA.No.175 of 2023
and
CMP.No.21336 of 2023

1. T.Padma @ Pattu
2. P.Mythili
Appellants

..

Versus

P.Narayanan
Respondent

..

Original Side Appeal filed under Order 36, Rule 9 of Original Side Rules read with clause 15 of the Letters Patent, to set aside the order and decretal order dated 02.11.2022 made in A.No.4220 of 2022 in T.O.S.No.83 of 2013 passed by this Court and allow the Original Side Appeal.

For Appellants : M/s.B.Arvind Srevatsa
For Respondent : Mr. Surya Narayanan
for Mr.Rahul Balaji

JUDGMENT

(Judgment of the Court was delivered by R. MAHADEVAN, J.)

The present Original Side Appeal has been preferred by the appellants against the order dated 02.11.2022 passed by the learned Judge in A.No.4220



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of 2022 in T.O.S.No.83 of 2013.

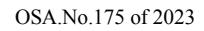
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2. The appellants are the defendants in the aforesaid suit and the respondent is the plaintiff.

3. At the outset, the necessary facts leading to the filing of this appeal, may be stated as under:

3.1. Originally, the respondent / plaintiff preferred a petition in O.P.No.4 of 2013 for grant of probate of the alleged Will dated 30.08.1999 executed by late Mr.R.Parthasarathy. Thereafter, the said original petition was converted into T.O.S.No.83 of 2013, in which, the appellants filed their written statement.

3.2. On the side of the plaintiff, he himself examined as P.W.1 and one R.Rajaram was examined as P.W.2. On the side of the defendants, the first appellant herein was examined as D.W.1 which was recorded by the Advocate Commissioner appointed by this Court. According to the appellants, the alleged Will of Late Mr.R.Parthasarathy is not true and genuine and the signatures found in Exhibit P-1 are not the signatures of the Testator; and that, in more specific, the signatures found in page numbers 1, 2 and 3 of Exhibit - P1 and the signatures found in Exhibits P2 to P11 are different, and hence, during the cross examination of PW1, a specific suggestion has been put that the



3.3. After the completion of cross examination of DW1, the appellant filed application Nos. 4040 to 4043 of 2021 for reopen and recall evidence of DW1, to grant leave to receive two Forensic reports dated 15.05.2019 and 16.02.2019 and to issue subpoena to the authors of the report to speak about the same. Thereafter, the respondent herein filed application Nos.4300 to 4302 of 2021 to reopen and recall evidence of PW1 and to receive additional documents.

3.4. By order dated 30.11.2021, A Nos. 4041 to 4043 of 2021 are closed; A. Nos.4300 to 4302 of 2021 are allowed; and A.No. 4040 of 2021 is allowed. Thereafter, the respondent herein filed application No.1378 of 2022 to receive additional documents, which was allowed by order dated 29.07.2022. Subsequently, the respondent filed another application No.4220 of 2022 to receive additional documents by stating the very same reason as stated in A.No.1378 of 2022 and the same was also allowed by order dated 02.11.2022. Aggrieved over the same, the appellants herein have preferred this original side appeal.

4. According to the learned counsel for the appellants, the conduct of the



respondent / plaintiff in the suit, needs to be taken into consideration. The learned counsel further submitted that the learned Judge though recorded the attitude of the respondent in filing repeated applications for the purpose of receiving additional documents, after filing an application for appointment of Advocate Commissioner, erred in granting the relief as sought in the present application. The learned counsel also submitted that the respondent has always given the very same reason i.e., the documents were found recently, pursuant to a search in the old house, which is in dilapidated condition and hence, the reason so stated is not tenable. It is also submitted that the appellants are aged persons and they are severely prejudiced by the conduct of the respondent in filing the application after application to protract the proceedings. Therefore, the learned counsel prayed for appropriate orders in this appeal.

5. On the other hand, the learned counsel submitted that considering the facts and circumstances of the case, the learned Judge allowed the application, by the order impugned herein, which does not require any interference by this court.

6. Heard the learned counsel appearing on either side and also perused the documents enclosed in the typed set of papers.



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7. Considering the facts and circumstances of the case, more particularly, the stage of the suit, and also as agreed by the learned counsel appearing for both sides, this court directs the court below to expedite the trial and dispose of the suit, on merits and in accordance with law, as expeditiously as possible. It is needless to state that the appellants will have the right to lead evidence as well as cross examine the witness(es), as per law.

8. Accordingly, this Original Side Appeal stands disposed of. No costs. Consequently, connected miscellaneous petition is closed.

[R.M.D., J.] [M.S.Q., J.]
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