



WEB COPY



A.No.358 of 2023 and A.No.359 of 2023
and A.No.4666 of 22011
and C.S.No.296 of 2011
and T.O.S.No.32 of 2011

N. SESHASAYEE, J.

The Civil Suit for partition in C.S.No.296 of 2011 is being resisted with a Testamentary Original Suit in T.O.S.No.32 of 2011. These suits are now under trial. Evidence is being recorded in the Testamentary Original Suit. For all practical purposes, the trial is taking place jointly in both the suits but it appears that as per direction of this Court, evidence is now being recorded in T.O.S.No.32 of 2011.

2.A.No.359 of 2023 is taken out by the defendants in the testamentary suit to pass a formal order for joint trial. It is now allowed. Turning to A.No.358 of 2023 is concerned, this is filed for reception of documents as additional documents in C.S.No.296 of 2011. This was objected to by the learned counsel for the defendants where the list of the documents now sought to be produced discloses an earlier testimony of the plaintiff in O.S.No.13276 of 2010.



N. SESHASAYEE, J.

mps

WEB COPY

3. Wherein the testamentary suit filed in T.O.S.No.32 of 2011 in O.S.No.13276 of 2010 is concerned, it is not a case that may fall within the ambit of Sec.33 of the Evidence Act, and if at all the defendants in T.O.S.No.32 of 2011 require to make use of any such statement made by the plaintiff in his deposition in O.S.No.13276 of 2010, then the defendant ought to have confronted the statement when he was in the witness box. But that has to be done separately. Insofar as the rest of the documents are concerned, they are allowed subject to proof, relevancy and admissibility.

The matter is directed to be posted before the learned Additional Master No.III for resumption of trial on 15.02.2023.

30.01.2023

mps

A.No.358 of 2023 &
A.No.359 of 2023 &
A.No.4666 of 22011
& C.S.No.296 of 2011&
and T.O.S.No.32 of 2011