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A.Nos.888 & 889 of 2024

in

TOS.No.16 of 2023

A.A.NAKKIRAN, J.

A.No.888 of 2024 has been filed to direct the 2nd respondent/2nd plaintiff to produce the Health Report of Canagarajah deceased the plaintiff/respondent in the above suit.

A.No.889 of 2024 has been filed to stay all further proceedings in the above suit till the disposal of the A.D.No.6873 of 2024.

2. Party-in-person/applicant and the learned counsel for the respondents are present.

3. Heard both sides.

4. The learned counsel for the applicant has submitted that the applicant's eldest sister Smt.Sarada Canaga Rajah is the wife of the 1st respondent and she died in Paris on 05.11.2018. He further submitted that the 1st respondent is the retired UN official and was staying in an old age home at Malaysia. He had mental and physical problem for quite some time that he could not do the last rites of his wife. He further submitted that Medical

Report in Annexure Doc.No.1 and E-mail sent to old age home and police



station in Annexure Doc.No.2 and written statement in the suit in Annexure Doc.No.3 are the supporting documents produced on his part. He seeks to direct the 2nd respondent to submit the medical records of the deceased 1st respondent before this court for three years prior to his death to prove that the 1st respondent had executed the Will dated 12.06.2019 when he was in sound and disposing state of mind since his medical report is vital in the suit.

5. The brief facts of the common counter affidavit filed by the 2nd respondent are as follows:

The present proceedings have been filed pursuant to the Probate order granted by a competent court in Malaysia. The decree/judgment of a competent court is presumed to be binding in terms of Section 14 of CPC and it is not open to the defendant to challenge the same and the said decree has not been disputed by the defendant. Further the genuineness of the Will proved before the competent foreign court cannot be made the subject matter of dispute before this court. The document dated 17.11.2018 given by the Pro Care Centre would reveal that though he had age related problems, he was fully conscious with a good mental condition. Hence, there is no reason to suspect the health condition relating to the execution of the Will. Further staying the proceedings at the stage of trial is not maintainable in law.

6. In this case, the burden of proof lies on the 2nd respondent/2nd



plaintiff. The applicant/defendant alone has to take necessary steps to cause production of relevant documents before this court. It seems that the applicant has filed this application to protract the proceedings. Hence, this application is liable to be dismissed.

7. In the light of the above discussion, the A.No.888 of 2024 is dismissed and the A.No.889 of 2024 is closed.

8. At request, for taking out an application, post the main suit on 27.03.2024.

13.03.2024

Gv



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gv

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