



A.Nos.1419 & 1420 of 2024

A.Nos.1419 & 1420 of 2024

in

TOS.No.18 of 2008

WEB COPY

C.V.KARTHIKEYAN, J.

Application No.1419 of 2024 has been filed seeking permission to the petitioners/plaintiffs to file two further documents as additional document namely the death certificate of Late C.Kannaih and certified copy of Will dated 24.05.2002 executed Late C.Kanniah.

2.The plaintiffs had filed O.P.No.775 of 2007 seeking grant of Letters of Administration Will annexed with respect to estate of Late. Rachaveti.Soundari @ Jayalakshmi, who died on 01.01.2007. She had, according to the plaintiffs, executed a Will dated 25.02.1999 registered as Document No 20 of 1999 in office of the Sub Registrar, T.Nagar. Since the respondents had contested grant of Letters of Administration to the said Will, the original petition was converted as TOS.No.18 of 2008. Trial is in progress. The Witness for the plaintiffs is in the witness box. One of the attesting witness, to the said Will was one C.Kanniah. At the time of filing the original petition, his daughter had filed an affidavit relating to knowledge about his signature. Unfortunately, during the proceedings which had been pending before this Court for quite some years, she died. It is under this circumstance, these two applications had been filed seeking to produce two documents namely the death certificate of the C.Kannaih, attesting witness and the certified copy of a Will dated



A.Nos.1419 & 1420 of 2024

24.05.2002 executed by said C.Kanniah. These two documents are proposed to be put forth in evidence by Vishnu Mohan, the son of C.Kanniah. At the time of filing the original petition, he was not in India and his sister had filed an affidavit. But now, it is stated by the learned counsel for the plaintiffs that he is prepared to depose and tender evidence.

3.Application No.1420 of 2024 had been filed seeking permission to examine him as further witness. A counter has been filed stating that Applications have been filed at the time when witnesses were in the witness box and had been filed belatedly.

4.But taking into consideration all the factors, particularly, the provision under Section 69 of Indian Evidence Act, which makes it clear that if the attesting witnesses are not available to prove the Will, anybody who is familiar with the signature of an attesting witness could be examined as a witness, the Application No.1420 of 2024 stands allowed.

5.However, with respect to the two documents mentioned in Application No.1419 of 2024, the death certificate of C.Kanniah is a directly relevant document and this document would provide necessary reason as to why, he was not examined



A.Nos.1419 & 1420 of 2024

as a witness. Sofar as the 2nd document is concerned, such document namely the Will of C.Kanniah, was sought to be produced only to show the normal signature of C.Kanniah. But the normal signature of C.Kanniah as an attesting witness in the Will, which is the subject matter of the proceedings alone will have to be identified by the witness. He has to speak whether the signature of his father found in the Will is the signature of his father or not.

6.The Court cannot embark into examining other documents and compare the same with the signature of the attesting witness, as found in the Will and give findings. The findings will have to be given only on the basis of the evidence let in by Vishnu Mohan, the witness who had been now permitted to depose. If he is confronted during the course of cross examination that he does not know the normal signature of his father, then, to clarify, the Will executed by C.Kanniah can be produced as a further document but not otherwise. With that observations, Application No.1419 of 2024 is ordered.

08.04.2024

gd



WEB COPY



A.Nos.1419 & 1420 of 2024

gd

A.Nos.1419 & 1420 of 2024

08.04.2024