



*A.Nos.1951 of 2023 & 3714 & 3715 of 2024
in C.S.No.777 of 2018*

Orders Reserved on 27.08.2024	Orders Pronounced on 03.9.2024
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All the three applications have been taken up and arguments were heard together. Hence, a common order is passed.

2. One Mr.P.Thiyagarajan filed the suit in C.S.No.777 of 2018 for partition of the scheduled property against the defendant's, who are none other than his sister and father respectively. Pending the suit, the second defendant died leaving behind the plaintiff and the first defendant, for which, a memo dated 13.12.2021 was filed and the same was taken on record on 05.4.2022 and accordingly, the cause title stood amended.

3. Initially, the learned Master completed the evidence and posted the matter before this Court on 30.8.2022. On 11.10.2022, after hearing the parties, a learned Single Judge of this Court found that the evidence was



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insufficient to decide the issues framed in the suit. Therefore, the matter was reverted back to learned Additional Master-II giving an opportunity to the plaintiff to lead further evidence. At that juncture, these three applications were filed by both the plaintiff and the surviving sole defendant.

4. A.No.1951 of 2023 has been filed by the plaintiff under Order XIV Rule 8 of the Original Side Rules read with Order XXVI Rule 1 of the Civil Procedure Code (CPC) seeking for appointment of an advocate commissioner to examine a witness – one Mr.S.Rajan Babu, S/O T.Santhana Krishnan, at flat No.B2, Sam Tower, Raji Street, Ayanavaram, Chennai-23 in his residence.

5. A.No.3714 of 2024 has been filed by the defendant under Order XIV Rule 8 of the Original Side Rules read with Order VII Rule 14(3) of the CPC seeking to receive certain documents filed along with the Judges summons, in which, a counter and a re-joinder have also been filed. Pursuant to that, a reply to the re-joinder has been filed.

6. A.No.3715 of 2024 has been filed by the defendant seeking to



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permit to appear before this Court through hybrid mode as she is medically unwell, could not move around and is moving only with a wheel chair.

7. For the sake of convenience, the parties will be referred to as the plaintiff and the defendant in this common order.

8. After hearing the parties, this Court finds that C.S.No.777 of 2018 has been filed by the plaintiff seeking for partition of the suit schedule property, to appoint an advocate commissioner to inspect and divide the suit schedule property and allot one third (1/3) share to the plaintiff, to declare the two settlement deeds dated 20.6.2013 and 10.2.2016 as null and void and not binding upon the plaintiff and for a permanent injunction restraining the defendant from alienating the suit schedule property.

9. While he was alive, the second defendant filed a written statement on 11.12.2018. However, he died pending trial. After his demise, since his son and daughter are the only legal heirs and they are already on record, a memo was filed to that effect and it was recorded.



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10. The chief examination of PW1 was over. When the matter was posted for cross examination of PW1, none appeared on behalf of the sole defendant and hence, the learned Master posted the matter before this Court. A learned Single Judge of this Court found that the evidence already recorded was insufficient to decide the issues and posted the matter once again before Additional Master -II for recording the evidence of further witness.

11. At this juncture, the plaintiff filed A.No.1951 of 2023 seeking to to examine one of the witnesses in the settlement deeds respectively dated 20.6.2013 and 10.2.2016 - the said Mr.S. Rajan Babu, who is residing at Flat No.B.2, Sam Tower, Raji Street, Ayanavaram in Chennai Jurisdiction on the ground that he is an aged and sick person and could not come and attend the court and due to his immobility, the plaintiff sought for appoint of an advocate commissioner to be appointed for examining him.

12. The learned counsel appearing for the defendant would contend



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that such a practice should not be adopted.

13. Heard the learned counsel for the plaintiff and the learned counsel appearing for the defendant.

14. This Court carefully considered the submissions of the learned counsel on either side and perused the materials available on record.

15. Taking note of the provisions of the CPC for recording the evidence by an Advocate Commissioner as amended in the year 2022, having satisfied with the reason assigned by the plaintiff to appoint an advocate commissioner to examine the said Mr.S.Rajan Babu, who is one of witnesses in the said two settlement deeds and taking note of the nature of the prayer sought for in the suit, this Court finds that no prejudice would be caused to the defendant if A.No.1951 of 2023 is allowed.

16. Accordingly, A.No.1951 of 2023 is allowed and Ms. K. Aswini Devi, Advocate Enroll.No.1049 of 2009, at No.5 Law Chambers, High



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Court Buildings, Chennai – 104, (Mobile Nos. 98405 63483 & 63819 66596) is appointed as the advocate commissioner to examine the said Mr.S.Rajan Babu, residing at Flat No.B.2, Sam Tower, Raji Street, Ayanavaram, Chennai–23 at his residence. The cross examination on the side of the defendant shall be completed within three sittings. The initial remuneration for the Advocate Commissioner is fixed of Rs.25,000/- to be paid by the applicant/plaintiff.

17. In A.No.3715 of 2024 filed by the defendant, who is aged about 70 years, she seeks to appear through the hybrid mode, stating as follows:

“I am facing many medical complications. I had faced Covid two times and Influenza and recovered twice from ventilator and month long intermittent oxygen. I have been facing several health issues that along with my growing age have limited my mobility almost crippling me. I am unable to neither walk short distance nor stand for few minutes. I have been suffering from Pituitary Micro adenoma, PTA, cardiac, Diabetic, hypertension. The twice Covid infection worsened my status causing muscular wasting of my lower limb and pelvic muscles. At present I am completely wheel chair bound and taking medicines on regular basis.



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“.....I need assistants along with me to move from one place to another and can only travel through plan surface with the wheel chair. I am unable to sit more than two hours continuously and so it is unable to come personally before this Hon'ble Court to give my evidence. My present physical conditions not allow me to be continued to be in the Court Hall more than two hours.”

18. Taking note of the reasons assigned by the defendant, this Court is inclined to allow the defendant to appear before this Court through hybrid mode as and when required before this Court as well as before the Master Court. It is, however, made clear that the defendant shall appear as and when required either before this Court or before the Master Court and for the purpose of recording evidence on her side, if she has difficulties, she is at liberty to has take out necessary application in this regard.

19. With this observation, A.No.3715 of 2024 is allowed to the extent indicated above.

20. A.No.3714 of 2024 has been filed by the defendant to receive the



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list of documents.

21. The learned counsel for the plaintiff is raising objections to mark doc.Nos.5, 6, 8, 9, 10, 12, 16, 18, 20, 23, 27, 31, 36 and 37.

22. After perusing those documents, this Court finds that the defendant is a doctor by profession and the documents pertain to the educational qualifications and the services rendered by her to the society. Hence, the objections raised by the counsel for the plaintiff appear to be for the sake of raising. The documents produced by the defendant have a bearing on the issues to be decided so as to exhibit the character and the lifestyle of the defendant in the partition suit.

23. Accordingly, A.No.3714 of 2024 stands allowed and Doc.Nos.1 to 38 are directed to be marked subject to proof of relevancy and genuineness during the course of trial.



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Pre-Delivery Common Order in
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03.09.2024