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A.No.2455 of 2024
in TOS.No.35 of 2017
and C.S.No.201 of 2023
C.V.KARTHIKEYAN, J.

Originally O.P.No.190 of 2017 had been filed seeking Letters of Administration relating to a Will executed by A.Ranganathan. This Original Petition had been filed by R.Santhanam against N.Malleshwari and R.Vasanthi Manokaran. Subsequently, consequent to a caveat filed by R.Vasanthi Manokaran, O.P.No.190 of 2017 had been converted as T.O.S.No.35 of 2017. The plaintiff was only R.Santhanam and the defendant was only R.Vasanthi Manokaran. Since the first respondent in the Original Petition, N.Malleshwari, had not contested the Original Petition, she was not included as a defendant in T.O.S.No.35 of 2017. The plaintiff, R.Santhanam, had grazed the witness box and was examined as P.W.1. He had also marked necessary documents. Thereafter, the cross examination had commenced and at that stage, the matter came to a stand still.

2. Simultaneously, R.Vasanthi Manoharan, had filed O.S.No.1506 of 2021 against R.Santhanam and 6 others seeking partition and separate possession of the suit schedule properties mentioned in the schedule to the plaint. Since the properties overlapped, after an application had been filed before this Court, the suit has been transferred and re-numbered as Tr.C.S.No.201 of 2023. Since the suit had been transferred, the plaintiff in T.O.S.No.35 of 2017, filed application No.615 of 2024 seeking permission to mark further documents. Those documents related to the flow of title and the right of the Testator to execute



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a Will. It also included the documents relating to the death of N.Malleshwari and about her legal representatives.

3.In T.O.S.No.35 of 2017, even though one of the contention raised by the defendant would be the right of the Testator to execute the Will, still, the plaintiff always has a burden to prove execution. In Tr.C.S.No.201 of 2023, the issue directly involved would be whether the property is available for partition and it is partitionable. In that particular suit, the documents relating to the flow of title have to be necessarily marked. The trial has to be conducted simultaneously. The arguments would also be advanced simultaneously. The Court can always examine the records filed in either one of the two suits as reference to examine the issues in the other suit.

4.Therefore, no prejudice would be caused if the documents relating to the title of the property are marked in Tr.C.S.No.201 of 2023. So far as the documents relating to the death of N.Malleshwari is concerned, she is not a party/defendant in T.O.S.No.35 of 2017 but a party/defendant in Tr.C.S.No.201 of 2023 and in that suit, those documents would be required. However, an order had already been passed in A.No.615 of 2024 which had been filed in T.O.S.No.35 of 2017, permitting the applicant/plaintiff to produce additional documents.

5.It is now clarified that though an application has been filed in T.O.S.No.35 of 2017, it would only be appropriate that the said documents are taken on record in Tr.C.S.No.201 of 2023 wherein trial has been directed to be conducted simultaneously along with T.O.S.No.35 of 2017.



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6. In view of that particular clarification, A.No.2455 of 2014 which had been filed to reopen the chief examination of P.W.1 to mark the additional documents in T.O.S.No.35 of 2017 has become otiose and it is not required and hence, the said Application is closed.

7. Both the suits are referred back to the learned Additional Master No.I, who may conduct the trial simultaneously in both T.O.S.No.35 of 2017 and in Tr.C.S.No.201 of 2023.

8. List the matter before the learned Additional Master No.I, on 18.07.2024 for recording of further evidence.

01.07.2024

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