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OSA.Nos.182 & 183/2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 30.09.2024

CORAM :

THE HONOURABLE MR. JUSTICE S.S. SUNDAR

AND

THE HONOURABLE DR. JUSTICE A.D.MARIA CLETE

OSA.Nos.182 & 183/2024

P.Balasubramanyam

... Appellant in both
Appeals

Vs.

1.Gopalan

2.G.Vidya

... Respondents in both
Appeals

Common Prayer : Original Side Appeal filed under Order 36 Rule 1 of Original Side Rules read with Clause 15 of Letters Patent against the order dated 28.03.2024 passed in Application Nos.1357 & 1356/2024 in TOS.Nos.38/2021 [OP.No.994/2019].

For Appellant : Ms.G.Sumitha



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COMMON JUDGMENT

[Judgment of the Court was delivered by S.S.SUNDAR, J.,]

- (1)The above appeals are directed against the common order of the learned Single Judge dated 28.03.2024 made in A.Nos.1357 & 1356/2024 in TOS.No.38/2021.
- (2)Since the above appeals are directed against the common order, the appeals are disposed of by this common judgment.
- (3)Heard the learned counsel for the appellant and perused the records.
- (4)Brief facts that are necessary for the disposal of these appeals are as follows:
- (5)The appellant, as petitioner, filed OP.No.994/2019 for grant of Probate of a Will dated 12.05.2009 alleged to have been executed by one K.Atmaraman and his wife K.Kamala. Since respondents disputed the Will, the said OP was converted into TOS.No.38/2021. After examination of the first witness on the side of the respondents, who had disputed the Will, the respondents filed applications in A.Nos.1356 and 1357/2024 to reopen chief examination of DW1 to receive the Death Summary of the



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Testator as well as the consent for investigative procedure and to receive those documents for the purpose of marking those documents.

(6)The said applications were opposed by the appellant mainly on the ground that the documents are only photocopies and therefore, they are unauthenticated documents. It is also stated that the respondents herein have not explained the custody of the originals of the documents which are sought to be produced as additional evidence. The grievance of the appellant is that the learned Single Judge allowed both the applications without considering the objections of the appellant. Since the respondents are not the author of documents, it is contended by the appellant that the respondents without an explanation as to how they could get those documents, cannot be permitted to mark the documents.

(7)This Court having regard to the nature of dispute, is unable to countenance the submissions of the learned counsel for the appellant for the following reasons.

(8)Even the Xerox copies of the documents can be marked subject to objections and valid explanation for non production of original documents. The question raised is whether the respondents have satisfied



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the Court to mark secondary evidence. Secondary evidence can be let in subject to satisfying Section 65 of Evidence Act. A photocopy of Xerox copy can be permitted to be secondary evidence when non production of the original is accounted for. This Court by permitting the respondents to reopen the chief examination to mark the document does not dispense with any statutory requirement. Therefore, the learned Judge while allowing the applications to reopen chief examination of DW1 for the purpose of marking additional documents, did not entertain the arguments regarding admissibility of the documents. On the basis of objection, the Court may decide as to the admissibility while marking document. Without prejudice to the rights of the appellant and subject to admissibility or relevance, documents can be permitted to be marked. The learned Judge has in fact, preserved the right of appellant to cross-examine the witnesses.

(9) Therefore, this Court, at this stage, having regard to the peculiar circumstances, is not inclined to go into the admissibility of the document. However, it is open to the appellant to raise all his objections as to the admissibility or any other grounds that are available to him. This Court



OSA.Nos.182 & 183/2024

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finds no serious prejudice that is likely to be caused to the appellant at this stage to allow the applications for reception of additional documents as well as to reopen the chief examination of DW1 for the purpose of marking the additional documents. This Court is of the view that the learned Judge has exercised his discretion judiciously and hence, no interference is called for.

(10) In view of the aforesaid reasons, the Original Side Appeals stand **dismissed**. No costs.

[S.S.S.R., J.] [A.D.M.C., J.]
30.09.2024

AP

Internet : Yes



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