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O.P.No.557 of 2022

**O.P.No.557 of 2022
and
A.No.5531 of 2024**

Dr.G.JAYACHANDRAN,J.

This petition is filed seeking Probate of the Will purported to have been executed by one R.Saraswathi, D/o.Ramarao.

2. The petitioner is one of the beneficiaries under the Will along with other siblings, she has been given 50% share in the property of the deceased Saraswathi. It is stated that the Will was registered at Sub Registrar Office, Thiyyaraya Nagar on 20.04.2006. While examining the petitioner, the learned Master has found that the Original Will produced by the petitioner is a truncated document, the last page of the Will not available. Therefore, he has remitted the matter back to the Court for proper appreciation of the fact and consideration. Thereafter, the applicant/petitioner has now taken out an application seeking permission of this Court to permit her to bring the attesting witness for further evidence .

3. According to the learned counsel appearing for the applicant/



petitioner after observing that the Original Will does not contain the last page of the Will declined to accept the certified copy of the Will, the learned Master has closed the evidence of P.W.1, and recorded no Cross.

4. Having filed an affidavit about the truncated status of the Original Will and to consider the certified copy of the Will, the learned Master declined to accept the certified copy of the Will and directed to file an application to re-open for examining P.W.1.

5. Contending that filing an application to re-open is a meaningless exercise and she may be permitted to close P.W.1's evidence and bring the attesting witness as witness for the petitioner, the petitioner has filed an application in A.No.5531 of 2024.

6. When the matter came up for consideration on 14.11.2024, the learned Counsel for the petitioner seeks time to verify how this petition is maintainable and on his request, the matter was adjourned to 28.11.2024.

7. The learned counsel appearing for the applicant/petitioner



submitted that the Original Will of R.Saraswathi found to be truncated one in view of the missing of last page. Being a registered Will, law permits secondary evidence is admissible, if the party satisfactorily explained about the non-availability/incomplete original document.

8. The learned Master therefore ought to have admitted this secondary evidence namely, the certified copy of the document and should have proceeded further. Since he has disinclined to do so, the present application is filed to close the evidence of P.W.1 and permit the petitioner to bring the attesting witness for further evidence. Original Petition is filed for grant of Letters of Administration. In the petition, it is stated that Saraswathi has appointed the petitioner as Executor under the Will. The last page of the Will is misplaced and hence, the certified copy is enclosed.

9. Perusal of the certified copy reveals that the document contains ten sheets and even the certified copy does not contain the tenth sheet which will bear the sign of the attesting witness. Under Section 68 of the Indian Evidence Act, analogous provision under the BSI Act, Section 67 mandates a document which requires attestation, to prove the document, the Attestor



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must be examined.

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10. In the absence of details about the attesting witness in the document, the learned Master has rightly declined to proceed further. Surprisingly, neither in main petition nor in the present application seeking permission to let in additional evidence, the details of the attesting witness are not furnished. Naturally, the petitioner cannot furnish the details of the attesting witness, because the document namely the Will relied upon does not provide that information. Hence, Original Petition is dismissed.

11. However, if the petitioner in future is able to produce the Original Will or able to get a complete certified copy of Original Will, he can file a petition for Letters of Administration or Probate as the case may be.

28.11.2024

Vv



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