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IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated :25.11.2024

THE HON'BLE MR.JUSTICE A.A.NAKKIRAN

A.Nos.4536 & 4537 of 2024

in

CS.No.639 of 2012

COMMON ORDER

These applications are filed (i) to recall D.W.1 and (ii) to reopen the evidence of D.W.1 in C.S.No.639 of 2012 for the purpose of cross-examination.

2. The learned counsel for the applicant has submitted that earlier counsel had not asked any question on the proof affidavit filed by DW1 and failed to ask the material questions. Resultantly, the proof affidavit of DW1 goes un-assailed. The applicant has filed number of documents before the Appellate court in O.S.A.89/2024 as per the direction of the Appellate Court. It is just and necessary to be permitted to produce the said documents filed herein to mark as exhibits on behalf of the applicant. The attesting witness Mr.C.R.Thomas has not filed the proof



affidavit nor entered the witness box.

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3.It has been further submitted that DW1-Mrs.Pameela Thomas has admitted in her cross examination that she was not aware of the facts of the case prior to the appointment of herself as one of the guardian. On the Contrary, if the said documents are not allowed to be produced and marked as exhibits and if the DWI is not recalled and cross examine, the applicant will be put into irreparable loss and great hardship. Thus, he prayed to recall and reopen the evidence of DWI for cross examination.

4.The Learned counsel for the respondent has submitted that the two applications have been filed but four prayers have been sought therein. Initially, two groups of advocates had entered appearance for the Plaintiff. The present third counsel is attempting to redo the entire case with the intention to harass and prolong proceedings without any legal basis, knowing fully well that he has no case. The evidence let in already speaks volumes. C.R.Thomas is to be summoned as a witness, which is neither the prayer in these applications nor has the Plaintiff succeeded in even establishing that C.R. Thomas was present or a witness to the agreement.

5. It has been further submitted that Re-opening of the



defendants evidence and cross examination of the guardian on the ground that the previous counsel has not asked all the questions is not a legal ground. He had several legal opportunities and the rights accrued to the defendant cannot be defeated and harassment of the defendants ought not to be permitted. The Plaintiff wants to file additional documents without even filing a petition to reopen his evidence. The Plaintiff's only intention is to harass the defendant. Hence, he prays to dismiss the applications with costs.

6. Heard both side and perused the materials available on record.

7. On perusal of records, it is seen that the previously two counsels were appearing for the present suit on the side of applicant/plaintiff. As per the order dated 08.01.2024 passed by the Master, it is seen that evidence of DW1 was examined in full and completed which was also endorsed by both side counsels. Thereafter, the suit has been listed to the regular Court for final arguments on 07.02.2024. However, the plaintiff was getting adjournments from 07.02.2024 for his argument. Further, this Court by order dated 26.07.2024, the case was ordered to be



listed “for arguments on the side of plaintiff finally on 01.08.2024”.

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8.While being so, on 14.08.2024, a new counsel appeared for the plaintiff and filed the change of Vakalat at the final stage of arguments in the suit which is pending more than 6 months. At this stage, the new counsel has filed the present applications seeking to recall and reopen DW1 evidence, it seems to be protracted the suit proceedings which is filed in the year 2012. During the Trial, even the plaintiff completed the evidence of DW1 in full and final on his side and the same was endorsed before the Master, now the applicant has come forward to recall the evidence of DW1, it seems to prolong the suit proceeding at the final stage. Hence, this Court is not inclined to entertain the applications which are liable to be dismissed.

9.In the result, both applications stand dismissed. No costs.

25.11.2024

Index:Yes/No

Web:Yes/No

Speaking/Non Speaking



A.A.NAKKIRAN, J.

lbm

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