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A.No. 4729 of 2023

in
TOS No. 11 of 2003

RESERVED ON : 23.11.2023

PRONOUNCED ON :14.03.2024

A.A.NAKKIRAN, J.

ORDER

1. This application has been filed by the Plaintiff to permit to file the death certificate of S.Srikanthan and Shyama Krishnan dated 08.08.2014 and 05.08.2010 respectively.

2. The case of the Applicant is that the above suit was filed for grant of probate of the Will dated 08.12.2000. The said Will was executed by the mother-in-law late.Vijayamma. The Will was executed in the presence of two witnesses, namely S.Srikanthan and Shyama Krishnan, who died on 08.08.2014 and 05.08.2010 respectively and permit her to file their death certificate. When the applicant came to know that they had passed away, immediately, he took steps to produce their death certificates, to prove the will by other modes mentioned under the Indian Evidence Act. As these documents are crucial to decide the suit and there will not be any prejudice caused to either parties, these documents may be permitted to be adduced. In view of the same, the applicant is seeking for the permission for to produce the death



certificate of the witnesses.

3. Counter affidavit has been filed by the 3rd respondent stating that the Will dated 08.12.2000 executed by the Late Vijayamma W/o Vasudevan is forged and fabricated document which is not sustainable in the eye of law and the alleged Will cannot be relied by this Court for deciding the suit. The said Will has not been marked as exhibit. The Will has not duly executed by Late Vijayamma with her free consent and knowledge and the Will was fabricated for the purpose of the OP proceedings and the same was converted into the present TOS No. 11 of 2003. After a lapse of 22 years, the applicant/plaintiff seeks permission of this Court to file the death certificate of attesting witnesses. The applicant/plaintiff has not produced the death certificates from the filing of OP or converting it into the TOS. The alleged will itself not marked as an exhibit for the past 22 years from the filing of the suit. Therefore, those documents are irrelevant and immaterial for deciding the main suit. The applicant has not stated in the affidavit that those documents are intended to be filed when already PW1 and PW2 were examined three years back. The present application is one of the delaying tactics of the applicant/plaintiff without any merits. Hence, the 3rd respondent prays to dismiss the above application.

4. Heard both sides and perused the materials available on record.



5. On perusal of the records, it is seen that the plaintiff and the plaintiff's daughter were examined as PW1 and PW2. It is contended by the learned counsel for the plaintiff that they were unaware about the demise of the attesting witnesses. During the cross examination only, they came to know that both attesting witnesses died and seeks this Court to prove their Will under the Indian Evidence Act, as the documents are vital and crucial for deciding the above suit. Even though the defendants contended that the Will is fabricated one, it is to be decided by this Court only. Hence, if these documents are permitted to produce before this Court, no prejudice would be caused to the defendants. Hence, this Court is inclined to allow the above application.

6. In the result, the application is allowed. No costs.

14.03.2024

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Lbm/MSM

Pre-Delivery Judgment in
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