



IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 07.04.2025

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Coram:

The Honourable Mr.Justice C.SARAVANAN

**Application No.225 of 2025
in T.O.S.No.49 of 2013**

V.P.Rangaswamy

...Applicant

Versus

Mrs.Lakshmi Venakataramani

...Respondent

Prayer:

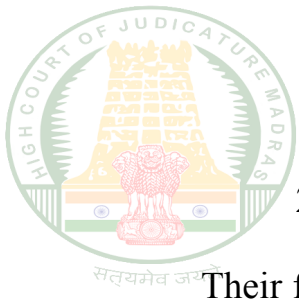
Application filed under Order XIV Rule 8 and Order XXVI Rule 1 of the O.S. Rules r/w. Order XVIII Rule 16 and Section 151 of C.P.C. praying to permit the 2nd attesting witness, Mr.S.Sridhar to be examined *de bene esse* as Plaintiff's witness viz., P.W.1 in the above captioned suit.

For Applicant : Ms.Rukmani
for Mr.P.B.Ramanujam

For Respondent : Ms.K.Annamma
for Mr.R.Kamesh Kumar

ORDER

This Application has been filed by the Applicant/Plaintiff praying to permit the 2nd attesting witness, Mr.S.Sridhar to be examined as *de bene esse* as Plaintiff's witness viz., P.W.1 in the above captioned suit.



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2. The Applicant/Plaintiff and the Respondent/Defendant are siblings.

Their father one Late V.R.Padmanabhan had executed a Will and Testament dated 12.05.1999 which was registered as Document No.58/3 on the file of Sub Registrar Office, Mylapore. The Testator Late V.R.Padmanabhan died on 11.09.2001 leaving behind his two sons and three daughters as his only legal heirs. The Applicant/Plaintiff is the 1st son of Late V.R.Padmanabhan and the Respondent/Defendant is the 1st daughter of Late V.R.Padmanabhan.

3. Earlier, the Applicant/Plaintiff had filed a petition in O.P.No.596 of 2008 under Section 232 & 276 of the Indian Succession Act, XXXIX of 1925 for the grant of Letters of Administration in respect of the Will and Testament dated 12.05.1999. As against the said O.P.No.596 of 2008, the Respondent/Defendant had filed a Caveat and supporting affidavit, pursuant to which, the said O.P.No.596 of 2008 was converted into T.O.S.No.49 of 2013.

4. The learned counsel for the Applicant/Plaintiff submitted that the Late V.R.Padmanabhan, Testator had executed the subject Will in the presence of two attesting witnesses viz., Late M.Krishnamurthy and



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Mr.S.Sridhar. It is also submitted that one of the two attesting witnesses of the Will viz., M.Krishnamurthy had passed away in the year 2008 and the other attesting witness of the Will viz., Mr.S.Sridhar, aged about 72 years old is suffering from age related issues. Therefore, the learned counsel for the Applicant/Plaintiff prayed this Court to permit the 2nd attesting witness of the Will to be examined *de bene esse* as P.W.1 in the present suit.

5. The learned counsel for the Respondent/Defendant submitted that at the time of execution of the subject Will, Late V.R.Padmanabhan, Testator of the Will was not in a sound and disposing state of mind. Hence, the Applicant/Plaintiff and the Respondent/Defendant took advantage of the Testator's health condition and created the said Will. The learned counsel further submitted that the examination of attesting witness is not necessary and vital for proving the genuineness of the Will. It is also submitted that the 2nd attesting witness of the Will is now aged about 72 years old and is having age related issues and hence, the 2nd attesting witness may not be in a position to depose evidence. That apart, it is submitted that the 2nd attesting witness of the Will is the brother-in-law of the Applicant's/Plaintiff's friend and hence, the 2nd attesting witness may not depose an unbiased evidence.



Therefore, the learned counsel prayed this Court to dismiss this Application.

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6. I have heard the learned counsel on either side and I have also perused the affidavit filed by the Applicant/Plaintiff and counter affidavit filed by the Respondent/Defendant.

7. I do find any merit in the objections raised by the learned counsel appeared on behalf of the Respondent/Defendant to this Application being allowed. In my opinion, permitting the 2nd attesting witness to be examined *de bene esse* as Plaintiff's side witness in the suit would not cause any prejudice to the Respondent/Defendant. Therefore, this Application deserves to be allowed. Accordingly, this Application is allowed.

07.04.2025

mrr

Index : Yes/No

Speaking Order (or) Non Speaking Order



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C.SARAVANAN, J.

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