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A. No.4142 of 2025
in
C.S. No.806 of 2018

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 19.09.2025

CORAM :

THE HONOURABLE MR.JUSTICE P.DHANABAL

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in C.S. No.806 of 2018

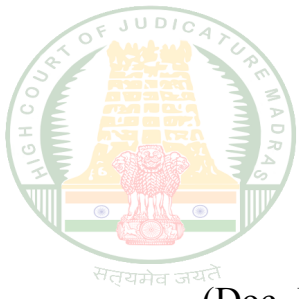
Dr. Regina Blossom Sam W/o. K.P. Thooyamani ... Applicant / Defendant

Vs.

1. C. Jerone Ceaser Shroffe
S/o. S.P. Prabhakaran

2. Betsy Veronica
W/o. Judson and daughter of S.P. Prabhakaran ... Respondents / Plaintiffs

PRAYER: This application has been filed under Order XIV Rule 8 read with Section 151 of Civil Procedure Code to eschew the evidence of plaintiff in so far as the original documents which were the subject matters in Application No.3780 of 2021 in C.S. No.806 of 2018, i.e., original Will dated 04.06.1992, settlement deed dated 08.12.2006 (Doc No.2974), and Deed of cancellation



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(Doc. No.36 of 2008) dated 08.01.2008 which have been inserted to marked

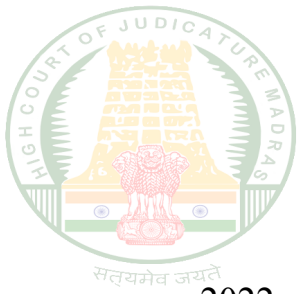
exhibits P3, P11 and P12 without leave of this Court.

For Applicant : Mr. P. Subba Reddy
For Respondents : Mr. R. Thiagarajan

ORDER

This application has been filed by the applicant to eschew the evidence of the plaintiff in so far as the original documents which were subject matter in Application No.3780 of 2021 in C.S. No.806 of 2018, i.e., originals of Will dated 04.06.1992, settlement deed dated 08.12.2006 (Doc No.2974), Deed of cancellation (Doc. No.36 of 2008) dated 08.01.2008 which have been inserted to marked exhibits P3, P11 and P12 without leave of this Court.

2. According to the applicant, she is the defendant in the Suit and the Suit is at the stage of trial. The 2nd respondent was examined as PW1 and marked Ex.P.1 to Ex.P.18. The fundamental document for the Suit is Ex.P.3, an unregistered Will and after completion of examination of PW1, in the year



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2022, the Plaintiff sought for receiving the original document by way of application in A. No.3780 of 2021, which came to be allowed on 01.01.2021.

The Plaintiff has not filed any application to reopen the case or recall the Plaintiffs' side witness. In the absence of petitions for re-opening the Plaintiffs' side evidence and recalling the Plaintiffs' side witnesses, the originals which were the subject matter of application have been added along with the photocopy with the same exhibit number and there is no specific order of the Court to allow such addition to the exhibits marked. Therefore the Plaintiffs played fraud on the Court. There is no permission granted by the Court to the Plaintiffs to substitute or add the original document in the place of a marked exhibit, which is a photocopy. Therefore, those documents have to be eschewed from evidence. Already the defendant was examined as DW1 and after cross examination, the matter was sent back for final arguments on 07.03.2024. The applicant has denied the execution of cancellation of settlement deed. Therefore, the documents inserted without

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any order of the Court have to be eschewed from the evidence of PW1.

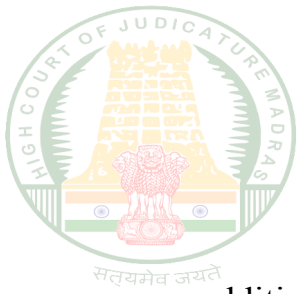
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3. The learned counsel appearing for the respondents / Plaintiffs would submit that the respondents had examined the Plaintiffs' side witnesses and as per the order passed by this Court in Application No.3780 of 2021, the documents have been marked as exhibits and there is no any insertion made as alleged by the applicant and evidence of PW1 cannot be eschewed and the application is not maintainable at this stage and it is a matter of arguments. After final arguments, the Court has to decide about the eschew of evidence. Therefore, this application is liable to be dismissed.

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

5. The grievance of the applicant is that already PW1 was examined and marked Ex.P.1 to Ex.P.18. After completion of Plaintiffs' side evidence, the Plaintiff has filed an application in A. No.3780 of 2021 to receive the

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additional documents and the same was allowed on 01.11.2021 by granting leave to file those additional documents subject to proof, relevancy and admissibility. But without filing any application for reopening the Plaintiffs' side evidence or recalling of PW1, those documents had been inserted. Those documents have been marked as Ex.P.3, Ex.P.11 and Ex.P.12 without any leave of the Court. Therefore, those documents have to be eschewed from the Plaintiff's side evidence.

6. As far as eschew of evidence is concerned, once the parties examined as witnesses on oath, the evidence cannot be eschewed and at the time of final hearing, the Court has to verify the evidence and the probative value of evidence has to be tested. According to the applicant, already the Plaintiffs have marked the copies of the documents and thereafter filed petition to receive the additional documents in A. No.3780 of 2021 and the same was allowed. Thereafter, without filing any petition to reopen the

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Plaintiffs' side evidence and without recalling PW1, the documents filed along with A. No.3780 of 2021 were inserted in the case records and marked as Ex.P3, Ex.P11 and Ex.P.12. It is an admitted fact that already both sides' evidences were closed and the case is posted for arguments, therefore, the said grievance of the applicant can be considered at the time of final adjudication of the case. At the time of final hearing, the Court has to verify that whether the allegation of the applicant / defendant is true and the evidence can be taken into account or not. The grievance of the applicant can be addressed during the final arguments and this Court can pass appropriate orders at the time of passing final order in respect of eschewing of evidence.

7. At this juncture, it is relevant to refer the judgment of this Court in ***D.F. Phillips vs. Damayanthi Kailasam and others reported in 2009 MLJ 6 Page 677 and S. Nirmala vs. Shanthi Harikrishnan in O.S.A. No.187 of 2024 and C.M.P. No.20346 to 22377 of 2024***, wherein this Court held that

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there is no provision for eschewing the evidence that has been recorded on oath on Court; instead of eschewing the evidence, the Court may consider at the time of final hearing of the case and the Court, at the time of adjudication, shall assess the probative value of the evidence sought to be eschewed.

8. Therefore, at this stage, this application is not maintainable. However, the applicant is at liberty to convince the Court at the time of final arguments in respect of the alleged insertion of documents without leave of the Court.

9. In view of the above discussions, this Court is of the opinion that this application has no merits and deserves to be dismissed.

10. Accordingly, this application is *dismissed*.



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