

I.A.No.10/2024
in
O.S.No.33/2021

D.D.18.06.2024:

Order Pronounced.

This application has been filed by the petitioner/12th defendant to examine the 1st defendant Habibunnisha as Dw1 by appointing an Advocate Commissioner. The suit is in a trial stage. But an application for amendment to correct the name of the petitioner/12th defendant is pending. The plaintiff has not so far taken steps to correct the name of the present petitioner/12th defendant. However, the said amendment is only a minor amendment and the name of the petitioner/12th defendant has to be corrected as Shamsulhudha Begam instead of Shamsulhudha. There is no alteration or amendment of the name altogether but only a portion of the name has to be corrected in the plaint. But during the pendency of the petition, this petition has been filed.

However before filing of this application, an application in I.A.No.9/2023 was filed by the same

petitioner/12th defendant to examine the 1st defendant as a witness on their side and the same was allowed by this Court as ex parte as the respondent did not file counter. After allowing of the said application, the petitioner/12th defendant had taken summon to the witness and thereafter even prior to the service of summons, the petitioner/12th defendant has now come forward with the present application to examine the 1st defendant as Dw1 through the Advocate Commissioner. The grounds alleged by the petitioner/12th defendant for examining the 1st defendant through the Advocate Commissioner is that due to her old age she was not able to come out the house and the 2nd defendant also threatened the 1st defendant not to go to the Court to give evidence. Therefore, she was not able to come to the Court to depose as a witness.

2. On the other hand, the respondent contended that the 1st

defendant and the 12th defendant colluded together to file application and the 1st and 12th defendants and other defendants have also colluded together and conduct the case. The suit is filed for partition and the petitioner/12th defendant filed counter claim claiming her 7/128th share. According to the respondent, the partition had already happened between the parties. The present petitioner/12th defendant and other defendants colluded together and burked the earlier partition and with a view to extract money from the 4th defendant and to defraud the 4th defendant, they have filed the present application.

3. However, when an application is filed by the petitioner/12th defendant to examine the 1st defendant as a witness at the earlier point of time due to the aging of the 1st defendant, the respondent did not file any counter and thereby the said application was allowed. Now the application is only to examine Dw1 through Commissioner by appointing an Advocate Commissioner to examine

Dw1 as a witness will not cause prejudice to the respondent. Although the suit has not commenced by examining the plaintiff as Pw1, but still when counter claimant alleges that his witness has to be examined at first due to some emergency situation and that application was also allowed without any objection by other side, examining the said witness by appointing an Advocate Commissioner will not cause any prejudice to the other side. Therefore, in the interest of justice, this Court considers that this application can be allowed.

4. In the result, this petition is allowed without cost. Mr.R.Balasubramanian, Advocate is appointed as Advocate Commissioner for the purpose of examining the 1st defendant as Dw1. The Advocate Commissioner has to follow the rules and examine the witness and submit the deposition along with report. The remuneration of the Advocate Commissioner is

fixed at Rs.10,000/- to be paid by the
petitioner/12th defendant. Report by
03.7.2024.

Principal District Judge,
Perambalur.