

**In the Court of the Additional District & Sessions Judge,  
Srivilliputtur.**

**Present : Tmt. Gajara R. Jiji, M.A., LL.M.,  
Additional District Judge,  
Srivilliputtur.**

**Wednesday, the 29<sup>th</sup> day of November 2023**

**I.A.No. 6/2023**

**in**

**O.S. 72/2015**

.....

Muthuramalingam

... Petitioner / Plaintiff

/vs/

- 1) Muniyandi (Died)
- 2) Murugan
- 3) Kaleeswari
- 4) Annapoorani
- 5) Umadevi
- 6) Pandiaraj
- 7) Ramkumar
- 8) Muthulakshmi
- 9) Nithya
- 10) Nimala
- 11) Jothiprakash
- 12) Mariappan
- 13) Nadarajan

... Respondents / Defendants

This petition came before me for final hearing on 15.11.2023 in the presence of Thiru.S. Duraisaravanan, Advocate for the petitioner, and the respondents 2, 3, 11 and 13 are set exparte, and of Thiru. Pandian, Advocate for the respondents 4 to 7, and of Thiru. Kaliyappan, Advocate for the respondents 8 to 10, and of Thiru. S. Manikannan, Advocate for the 12<sup>th</sup> respondent, and upon hearing arguments on both side and perusing the case records, this Court passed the following

**ORDER**

This is a Petition under Order 26 Rule 9 and Section 151 CPC to appoint an Advocate Commissioner to examine the witness and to file his report along with the evidence recorded.

**1) Averments in the petition in brief are as follows:**

The petitioner is the plaintiff in the suit. The suit has been posted for examination of witnesses on the side of the 12<sup>th</sup> defendant. The suit 'A' schedule property has been allotted to the share of the plaintiff by way of an unregistered Will executed on 21.10.1988. Further the Will executed by the grandfather of the plaintiff namely Koodalinga Asari regarding given Rs.3000/- to the husband of the 4<sup>th</sup> defendant to start business at Sivakasi has been marked on the side of the plaintiff. But during cross-examination the 4<sup>th</sup> defendant has denied the Will. Hence it is necessary to prove the Will. The Scribe of the Will as well as the first witness is no more. The second witness in the Will is alive and he is unwell and due to old age residing at his daughter's house at Aruppukottai. It is necessary to examine the said witness of the Will on the side of the plaintiff. Hence prays to appoint an Advocate Commissioner to examine the witness and to file his report along with the evidence recorded. Hence prays to allow the petition.

**2) Averments in the counter statement filed by the respondents 4 to 7 in brief are as follows :-**

The Will stated by the petitioner dated 21.10.1988 is a forged document. The

Will has been marked with objections before many years. While so this petition has been filed after lapse of many years in order to delay the proceedings of the suit. The petition filed is highly belated. The petitioner has failed to file any medical documents to show that the alleged witness is not well. This itself would show that the averments in the petition regarding the health condition of the witness is not true. Hence prays to dismiss the petition.

**3) Averments in the counter statement filed by the 12<sup>th</sup> respondent in brief are as follows :-**

The petition has been filed only to delay the proceedings of the case. The evidence of the plaintiff was closed and the evidence of other defendants also closed and now the suit has been posted for the evidence of the 12<sup>th</sup> defendant. This petition has been filed only in order to harass the respondent. Hence prays to dismiss the petition.

**4) Points for Consideration**

1) Whether the petitioner has shown sufficient reasons to appoint an Advocate Commissioner to examine the witness stated in the petition?

2) Whether the petition is to be allowed or not?

**5)** No witnesses or documents were produced on either side. Heard both side. Records perused.

**6) Points and answer :-**

This petition has been filed to appoint an Advocate Commissioner to examine

the attesting witness of the Will. The evidence on the side of the plaintiff was closed on 03.03.2023. The evidence on the side of Defendants 4 to 7 has been let in and closed and evidence on the side of D8 to D10 also has been closed. The case stands posted for evidence on the side of the 12<sup>th</sup> Defendant. Now this petition has been filed to appoint an Advocate Commissioner to examine the attesting witness of the Will.

7) The petitioner / Plaintiff has stated that he has to examine the attestor of the Ex.A.13 Will as a witness in order to prove the Will. As rightly pointed out by the learned counsel for the petitioner, the 4<sup>th</sup> Defendant while deposing as DW1 had denied the Ex.A.13 Will as a forged document. Hence the contention of the learned counsel for the petitioner that he has to examine the witness of the Will is satisfactory. However, the petitioner has not provided any document to show that the said witness is so indisposed that he cannot appear before court. Moreover, the petitioner has not mentioned even the age of the witness. The petitioner has stated that the 2<sup>nd</sup> witness in the will is residing with his daughter at Aruppukottai. The address of the 2<sup>nd</sup> witness is shown as 72, RR Nagar, Rajapalayam in the Ex.A.13 Will. Since the petitioner is seeking examination of the witness by appointing an Advocate Commissioner, it is necessary to provide with sufficient evidence to prove the identity of such witness. But, the petitioner has failed to provide any documents to prove the identity of the witness. At the least, the petitioner has not even provided the address of the witness to be examined. As such the petition is bereft of particulars

and as such cannot be allowed. However, considering the facts and circumstances of the case this court is inclined to grant liberty to the petitioner to file fresh application with all the particulars and necessary documents.

In the result, this petition is dismissed with liberty to the petitioner to file fresh application with all the particulars and necessary documents. No costs.

Dictated to Steno Typist, typed by her in computer, then corrected and pronounced by me in open court, on this the 29<sup>th</sup> day of November 2023.

Additional District and Sessions Judge,  
Srivilliputtur.

Additional District & Sessions Court,  
Srivilliputtur,  
I.A. 6/2023 in O.S. No. 72/2015  
ORDER (Web copy)  
Date: 29.11.2023