

IN THE COURT OF THE SUBORDINATE JUDGE, THODUPUZHA

Present:- Sri. DEVAN K. MENON, SUB JUDGE

Wednesday, the 13th day of December, 2023/22nd day of Agrahayana, 1945

IA No.13/2023 in OS No.13/2021

Petitioner/Plaintiff:-

Irene Kuruvila, aged 32 years, W/o George Rajesh,
Pattalath House, Kattiparambu, Kannamaly P.O.,
Cochin-682008, re. by Power of Attorney Holder,
George Rajesh, Pattalath House, Kattiparambu,
Kannamaly P.O., Cochin-8, Ernakulam-682008.

By Advs. C.S Ajith Prakash, T.G Rajan and Nidhin Raj Vettikkadan

Respondent/Defendant:-

Ruby Kuruvila, aged 40 years, D/o Kuruvila Thomas,
Puthiyedath House, Chavarma, Alakkod Village,
Thodupuzha-685588.

By Adv. Sabu Jacob

This Petition is coming for final hearing on 13.12.2023 in the presence of the above counsel and the Court on the same day passed the following:

ORDER

1. This is an application filed by the plaintiff under Section 151 of Code of Civil Procedure to direct the defendant to mount the box first towards the compliance of Section 68 of Indian Evidence Act and to defer the evidence of the plaintiff until the completion of the evidence of the defendant.

2. The defendant filed objection. The defendant through objection, inter alia, challenged the power of the Power of Attorney Holder to institute the suit. Further, as per the defendant, the burden of proof in a suit or proceedings lies on that person who would fail if no evidence at all were given on either side. Moreover, there is no specific law enabling the petitioner to file this application. Hence this application is to be dismissed.

3. Heard both sides.

4. Here the suit is for partition. The suit is in the list for trial. On the date of list, the plaintiff filed the present application. The plaintiff and the defendant are sisters. As per written statement of the defendant, the father executed Will deed bearing No.277/III/2019 of SRO Karikodu on 25/11/2019 in favour of the defendant. The first issue is based on that Will and all other disputes are ancillary to it. As per Sec 101 of the Indian Evidence Act, 1872, whoever desires any Court to give judgment as to any legal right or liability dependent on the existence of facts which he asserts, must prove that those facts exist and when a person is bound to prove the existence of any fact, it is said that the burden of proof lies on that person. Here, by challenging the right of the plaintiff to

get partition, the defendant asserts the fact regarding the existence of a will deed executed in favour of the defendant. Obviously, the defendant being the propounder of the Will, the defendant owes the duty to prove the genuineness of the same. Hence the defendant required to adduce evidence first.

In the result, this application is allowed. The evidence of the plaintiff is deferred until the conclusion of the evidence of the defendant. No order as to costs.

Dictated to the Confl.Assistant, transcribed and typed by her, corrected by me and pronounced in open Court on this the 13th day of December, 2023.

Sd/-
DEVAN K. MENON
SUB JUDGE

APPENDIX:- Nil

Id/-
SUB JUDGE