

EJECTMENT SUIT NO. 118 OF 2005

ORDER NO. 93 DATED 03.10.2018

Counsels for both sides are present on call.

The application of the plaintiffs permitting them to give evidence on the two newly framed preliminary issues is taken up for hearing.

By filing the instant application, the plaintiff prays for adducing evidence afresh on the two issued framed by this court on 02.05.2018.

Other side raised strong objection stating, inter alia, that there is no scope to do so at this stage.

Heard both sides. Perused the order of the Hon'ble Court passed in C.O. No. 253/2017 wherein the Hon'ble Court requested this Court to "decide first whether the suit is a Thika property and whether the suit is maintainable".

Accordingly, the Court framed the two preliminary issues as per the direction of the Hon'ble Court.

I am of the view that when two fresh preliminary issues have been framed by this Court to test the maintainability of the case, as per the direction of the Hon'ble Court, the Plaintiffs ought to get one opportunity to adduce fresh evidence in support of such issues in accordance with law. I do not find any merit or substance in the contention of the defendant.

Prayer of the plaintiff is allowed and the instant application is disposed of providing an opportunity to adduce fresh evidence in accordance with law.

Fix 17.12.2018 for evidence of P.W.1 in connection with the preliminary issues framed on 02.05.2018.

Dictated and corrected by me,

JUDGE

JUDGE
[5TH BENCH]