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T.O.S.No.6 of 2018
and C.S.No.376 of 2017

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N.SESHASAYEE, J.,

This testamentary suit which is being tried along with a civil suit for partition, is midway through the trial. The evidence is being adduced by the plaintiff in the testamentary suit and the subject is proving the Will through the attesting witness. One of the attesting witness was a certain R.H.Joseph, and he has passed away. To prove his signature in the Will, this Court has directed the production of marriage register of the plaintiff and her husband, wherein R.H.Joseph has signed as an attesting witness.

2. The plaintiff has taken out summons for the production of the marriage register and it was brought to the Court also. But, it was objected to by the defendant on the ground that the other witness namely Thiru.Jagannathan is alive.

3. Principally, the choice of examining the witness belongs to the plaintiff and the consequence of not examining the best evidence or such evidence which law mandates will have to be faced by the party who so strategises. However, in the testamentary jurisdiction, the Court is the conscience-keeper of the testator and therefore, this Court has suggested the counsel for the plaintiff to



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take out necessary steps to examine Thiru.Jagannathan.

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N.SESHASAYEE.J.,

ds

4. The learned counsel submitted that Thiru.Jagannathan has been an advocate and now he is ailing and bedridden. This Court for the present is concerned about the ability of the witness concerned to depose. Atleast his health condition and his ability to speak, may have to be ascertained before other alternatives are explored. This however, does not bar the plaintiff from evolving his own strategies in this litigation.

5. For the present, the issues now raised before the Court is kept pending. Post the matter on 23.01.2023.

15.12.2022

ds

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