

IN THE COURT OF THE MUNSIFF OF PARAPPANANGADI

Present:- Smt. Aswani Nalin,LL.M, Munsiff

Thursday, the 28<sup>th</sup> day of November, 2024

the 7<sup>th</sup> day of Agrahayana, 1946

**INTERLOCUTORY APPLICATION NO. 11/2024, 12/2024 AND 13/2024**  
**IN ORIGINAL SUIT NO: 210 of 2017**

**IA 11/2024**

Between:-

1. Madhusoodanan, 65 years, residing at Pattayil Vallattayil`  
S/o Palayakkatta Kalarikkal Balakrishna Panicker
  2. Reeja Bhai, 55 years, 1<sup>st</sup> st plaintiff's wife Neelambath  
Thazhathil Krishna Panicker, P.O.Chelembra  
(Chelembra amsom desom, Kondotty Taluk)
- } Petitioners  
Plaintiffs

And:-

1. Pattayil Vallattayil Paramandhan, 49 years,  
S/o Chinnammu, P.O.Chelembra
  2. Prasi, 42 years, W/o Pattayil Vallattayil Paramandhan
  3. Chandrika, D/o Pattayil Vallattayil Chinnammu
  4. Kousalya, D/o Pattayil Vallattayil Chinnammu  
(Chelembra amsom desom, Kondotty Taluk)
- } Respondents  
Defendants

**IA 12/2024**

Between:-

1. Madhusoodanan, 65 years, residing at Pattayil Vallattayil`  
S/o Palayakkatta Kalarikkal Balakrishna Panicker
  2. Reeja Bhai, 55 years, 1<sup>st</sup> st plaintiff's wife Neelambath  
Thazhathil Krishna Panicker, P.O.Chelembra  
(Chelembra amsom desom, Kondotty Taluk)
- } Petitioners  
Plaintiffs

And:-

1. Pattayil Vallattayil Paramandhan, 49 years,  
S/o Chinnammu, P.O.Chelembra
  2. Prasi, 42 years, W/o Pattayil Vallattayil Paramandhan
  3. Chandrika, D/o Pattayil Vallattayil Chinnammu
  4. Kousalya, D/o Pattayil Vallattayil Chinnammu  
(Chelembra amsom desom, Kondotty Taluk)
- } Respondents  
Defendants

**IA 13/2024**

Between:-

1. Madhusoodanan, 65 years, residing at Pattayil Vallattayil`  
S/o Palayakkatta Kalarikkal Balakrishna Panicker
  2. Reeja Bhai, 55 years, 1<sup>st</sup> st plaintiff's wife Neelambath  
Thazhathil Krishna Panicker, P.O.Chelembra  
(Chelembra amsom desom, Kondotty Taluk)
- } Petitioners  
Plaintiffs

And:-

- |  |   |   |
|--|---|---|
| <ol style="list-style-type: none"> <li>1. Pattayil Vallattayil Paramandhan, 49 years,<br/>S/o Chinnammu, P.O.Chelembra</li> <li>2. Prasi, 42 years, W/o Pattayil Vallattayil Paramandhan</li> <li>3. Chandrika, D/o Pattayil Vallattayil Chinnammu</li> <li>4. Kousalya, D/o Pattayil Vallattayil Chinnammu<br/>(Chelembra amsom desom, Kondotty Taluk)</li> </ol> | } | <u>Respondents</u><br><u>Defendants</u> |
|--|---|---|

These petitions coming on this day for final hearing before me in the presence of Sri.T.Ramankutty Menon and Smt.Reshma.P, Advocates for the petitionerS and of Sri.P.Ajaykumar, Advocate for the respondents and the Court passed the following:-

### COMMON ORDER

IA11/2024 is filed by the petitioners to reopen evidence to examine the first defendant.

2. Petition averment in brief is as follows:-

The contention of the petitioners is that the plaintiff's evidence was closed and the matter was posted for defendants evidence on 12/11/2024. On the said day the defendants submitted that there is no oral evidence and Exhibits B1 and B2 were marked. The plaintiff did not get opportunity to cross-examine the defendant. Hence the petition to reopen the evidence of the plaintiffs. IA 12/2024 is filed by the petitioners to summon the first defendant in order to examine him. As the defendant counsel submitted that there is no oral evidence for the defendants and only Exhibits B1 and B2 were marked, the petitioner did not get opportunity to cross examine the defendant. Hence to summon the first defendant, this petition is filed. IA 13/2024 is filed by the petitioner to cross-examine the first defendant for the said same reasons.

3. The respondent filed counter statement in all the three petitions contending that the suit is filed for recovery of possession of plaint A schedule property on the strength of title of plaintiffs. The commissioner had inspected the property along with the assistance of surveyor and has reported that there is no such property as

shown as plaint A schedule and that it is only imaginary one. The advocate commissioner has inspected the property as per the documents furnished by the plaintiff. Moreover in the chief affidavit the plaintiff has contended that the commission report is not true and when the plaintiff was examined, the plaintiff himself has deposed before the court that the plaintiff is in possession of 6.1/4 cents of property. From the evidence of the plaintiff itself it is proved that the contentions of the plaintiffs are not maintainable. Therefore there is no need for the defendant to mount the witness box to give oral evidence. Thereafter this petition is filed to summon the first defendant to cross-examine him which is not maintainable. Hence the petition is to be dismissed with costs.

4. Heard both sides.

5. From the rival contentions of both parties, the following points arise for consideration.

1. Whether the petition is allowable?

2. Relief and costs.

6. **Point No.1 &2** :-The relief sought for in the petition is to reopen the petitioner evidence and to issue summons to the first defendant for the petitioners to cross-examine him. It is pertinent to note that this is a suit for recovery of possession on the strength of title. It is a settled position of law that in a suit for recovery of possession it is upon the plaintiff to plead and prove his case on the strength of his title and the plaintiff cannot depend on the weakness of the defendant to obtain a favourable decree. In **R.V.E. Venkatachala Gounder v. Arulmigu Viswesa Raswami and V.P Temple and Another (AIR 2003 SC 4548)** Hon'ble Supreme Court held that "in a suit for recovery of possession based on title it is for the plaintiff to prove his title and satisfy the court that he, in law, is entitled to dispossess the defendant from his possession over the suit property and for the possession to be restored with him."In the case in hand the plaintiff's evidence was already closed and the matter was posted for defendant's evidence on 12/11/2024 and on 12/11/2024 the defendants submitted that there is no oral

evidence from their side and Exhibits B1 and B2 were marked. Certified copy of documents were marked as Exhibit B1 and B2 from the side of the defendants. Here it is pertinent to note that it is settled position that the plaintiffs cannot have defendants examined as witness as a matter of right. In **Narayana Pillai v. Kalliyani Amma (reported in 1963 KLT 537)** it was held “*that the practice of a party causing his opponent to be summoned as a witness was disapproved.*” In **Ebrahim Kunju Muhammed Kunju v. Shahabudeen & others (reported in 1969 KLT 170)** it was held that “*the practice of a party causing his opponent to be summoned as a witness has to be disapproved. As a matter of right a party cannot have the opposite party examined as a witness.*” Further in **Kaumudi Madhavan v. State Election Commissioner (reported in 2004 KHC 608)** it was held that “*party to the proceedings has no right to compel the presence of another party to the suit for giving evidence. If the court ultimately finds that such examination is required for a proper adjudication, it has power to do so. Panchayat Raj Act, 1994( Kerala) S.94.*”

7. Again in **Kalliyara Estates Pvt.Ltd., Padinjaremuri v. State of Kerala and Others 2012 (3) KLJ 552**, it has been held that “summoning the opposite party as a witness is deprecated by this court in various decisions. [see—**Jortin Anotny v. S.P.D Marthanda Varma, -2000 KHC 426:2000(2) KLT 680:2000 (2) KLJ 297:ILR 2000(3) Ker.255:AIR 2000Ker. 369;Naravana Pillai V.Kalliyani Amma, -1963 KHC 143:1963 KLT537: Muhammed Kunju v. Shahabudeen, -1969KHC 43:1969KLT 170:1969 KLR 360:ILR 1969 (1)Ker.382;Syed Mohammed v. Aziz, -1990 KHC 504:1990(2) KLT 952:ILR 1991 (1) Ker. 477 and Mary Francis v. Kesavan, -1993 KHC 2:1993 (1) KLT 4.** A party to the suit is entitled to examine himself and give evidence. He is also entitled to adduce such other relevant evidence by examining other witnesses. The court has power to summon any witness whose evidence appears to be relevant. S.30(b) of the Code of Civil Procedure confers vast powers on the Civil Court to issue summons to persons whose attendance is required either to give evidence or to produce documents or

such other objects as mentioned in clause (a). The power vested in a court under S. 30 is subject to such contentions and limitations as may be prescribed. The power under S.30 can be exercised either on its own motion or on the application of any party. The conditions and limitations prescribed occur in O.16 of the code of Civil Procedure. No right is vested in a party to summon the opposite party as a witness. The court is entitled to ascertain whether the purpose of summoning witnesses is for adducing relevant evidence or whether it is an attempt to cause inconvenience and embarrassment to the opposite party. It is not the absolute right of a party to summon any person as a witness or to examine any number of witnesses. The court is not powerless in the matter of regulating the proceedings for taking evidence in the cause". So, in a given case, if circumstances so warrant, court may direct any party to a suit to adduce evidence for clarification for the purpose of just disposal of the case.

8. Therefore, the point to be considered is whether it is required to reopen the evidence of plaintiff and to sent summons to D1 to appear for adducing evidence. Most importantly in this petition no details as to the facts which should be brought out by the examination of D1 are not stated. So, even what is the purpose for which D1 has to be summoned is not clear from the petition. Examination of a party in a suit as a court witness can only be done sparingly. It is right of a party to decide whether he should mount the witnesses box or not. Unless and until there is a compelling reason, a court cannot direct a party to a suit to mount the witness box. No such compelling reason is established by the plaintiff for the examination of D1. It is settled by **AIR 1969 SC 1034 (Hussain Khan v.S.Neja lingappa)** that there should be a compelling reason to examining a party to a suit as a court witness. Moreover this petition is filed U/s. 151. I do not find any situation that warrants this court to invoke Section 151 and I have not seen any reason to summon D1 for adducing evidence as a court witness or a witness of the plaintiff. So petition is liable is to be dismissed.

In the result, the petition is dismissed. No costs.

(Dictated to the Confidential Assistant, transcribed by her corrected and pronounced by me in open court to on this the 28<sup>th</sup> day of November, 2024.)

Munsiff