

IN THE COURT OF THE DISTRICT MUNSIF, PONNERI.

PRESENT: Tmt. R.M. Subathra, B.A.B.L(Hons.), M.L.(IPR),

District Munsif, Ponneri.

Monday, the 22nd day of February 2021

I.A.2/2020 and I.A.3/2020

in

OS.14/2013

I.A.2/2020...

1. P. Dilli Babu
2. E. Ponnurangam
3. K. Jayaraman (died)
4. J. Sathish
5. Gnanasekaran
6. E. Selvam
7. Partheeban
8. Vinayagam

...Petitioners/Defendants

-Vs-

Sri Echchiyamman Parameshwari Aalayam
Represented by its Founder President K. Durai
and

...Respondent/Plaintiff

I.A.3/2020...

1. P. Dilli Babu
2. E. Ponnurangam
3. K. Jayaraman (died)
4. J. Sathish
5. Gnanasekaran
6. E. Selvam
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...Petitioners/Defendants

-Vs-

Sri Echchiyamman Parameshwari Aalayam
Represented by its Founder President K. Durai

...Respondent/Plaintiff

22/02
District Munsif,

This petition having been finally heard on 08.02.2021, in the presence of Mr. G. Nanthagopal, the learned counsel for the petitioners / defendants. Mr. R. Kalamegam, the learned counsel for the respondent/plaintiff and upon hearing the arguments of both sides and after perusal of the entire records and having stood over for my consideration till this day, this court delivers the following:

COMMON ORDER

These are petitions filed under Sec.151 and Order XVIII Rule 17 of Civil Procedure Code seeking to reopen and recall PW2 for the purpose of cross examination.

2. The averments set out in the two petition affidavit filed by the petitioner is as follows:

- a) The petitioner is the 4th defendant in the suit. The suit has been filed for the relief of permanent injunction against petitioner/defendant from interfering with the plaintiff's possession and enjoyment of the suit property.
- b) Further, the petitioner had filed the present applications to reopen the plaintiff side evidence to recall the PW2 for cross continuation in the case. The plaintiff was examined as PW1. Subsequently one Nagaraj appeared as PW2 on behalf of plaintiff side witness and deposed the evidence. The PW1 filed marked document as Ex.A14 as if it was a receipt issued by PW2 in the name plaintiff in respect of construction work and its expenses. The alleged document is forged one created by the Durai colluding with the PW2 for the purpose of this suit. In the suit property there was no temple situated in the name and style of "SRI ECHCHIYAMMAN PARAMESHWAR AALAYAM" as stated by the plaintiff. The PW2 was entrusted from 2013 onwards to construct and renovate the temple of " Arulmigu Sri Echiyamman Thirukoil", which is otherwise called as " Grama Devathai Koil" in the suit village. Therefore, the alleged receipt marked as exhibit A.14 was created one by

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District Munsif,

the plaintiff in the name of "SRI ECHCHIYAMMAN PARAMESHWARI AALAYAM" with the help of PW2. The temple situated in the suit property is within the in the maintenance and management of the defendant's trust with the welfare of worshipers and devotees with the help of Bandikavanoor villagers by providing necessary Annadhanam and other activates.

c) It is further submitted that the PW2 namely Sthapathy Nagaraj, from the defendants Trust, received necessary payments for renovation and construction of the Temple and he only completed the painting work of the " Arulmigu Sri Echiyamman Thirukoil" situated in the suit property. The defendants having necessary documents to substantiate their version in respect of the payments made to the PW2 on behalf of temple. The above documents only to be shown to the witness namely PW2 to contradict or corroborate the version of the PW2. Therefore in respect of the forged document which was marked as Ex.A14 and documents relating to the payment made to PW2 in respect of temple situated in suit property ought to be examined in the above suit through PW2. At the time of cross examination of PW2 necessary vital and important questions are omitted. Recently, petitioner met with his advocate to prepare proof affidavit then only we noticed the above facts and immediately instructed to file necessary application to recall the PW2 for cross examination and subsequently the plaintiff side evidence was closed on 02.01.2020 and the above case is today posted for defendants side evidence. The non examination of PW2 is neither willful nor wanton. The non examination some vital questions at the time of PW2 is neither willful nor wanton.

d) It is most necessary to cross examine PW2 to bring light the truth before this court and to adjudicate properly by recalling and reopening PW2. Without further cross examination of PW2, petitioners will not be able to disprove the plaintiff's case and to prove petitioner case.

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District Munsif,

e) To bring the real facts to the court **notice only** by way to further cross examination of PW2 by recalling him through court **permission**, so to settle the issue for effective and proper adjudication of the dispute **pertaining** to the suit claim, the PW2 ought to be further cross examined on defendants **side in** the above suit. The court may recall any witness already examined exercising **its inherent** powers to serve ends of justice. Hence, the petitions.

3. The averments set out in the common counter filed by the respondent is as follows:

a) The suit property there was no temple situated in the name and style of SRI ECHCHIYAMMAN PARAMESHWARI AALAYAM and that the PW2 was entrusted from 2013 onwards to construct and renovate the temple of Arulmigu Sri Echiyamman Parameshwari Thirukoil and that the alleged receipt marked as Ex.A14 was created one by the plaintiff in the name of Sri Echiyamman Parameshwari Aalayam with the help of PW2 and that the temple is withing maintenance and management of the defendants trust with the welfare of worshippers and devotees with the help of Bandikavanoor villagers by providing necessary Annadhanam and other activities and the petitioners are put to strict proof of the same.

b) The PW2 27.09.2019, PW3 11.12.2019 examined in full and cross examination was completed by the petitioners/defendants counsel and the evidence of the plaintiffs side was closed on 02.01.2020 and now the case is posted for defendants side evidence. The respondent states that only to protract the proceedings the petitioners/defendants have filed this application with false and frivolous averments with concocted story.

c) The petitioners/defendants have fully cross examined the PW2 already, and now only to protract the case proceedings, the applications are being filed without any iota

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District Munsif,

of truth and hence the applications has got to be dismissed inlimine. Hence, the petitions are to be dismissed.

4. Now the point for consideration is whether the petitioners are entitled to get the relief as prayed for?

5. On both sides no oral and documentary evidence was let in.

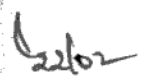
6. These are petitions filed under Sec.151 and Or.XVIII Rule 17 of the code seeking to reopen and recall of PW2 for the purpose of cross examination.

7. It is stated in the petition that Ex.A14 was marked by PW1 as if it was a receipt issued by PW2 in respect of construction work and that the document is forged one by plaintiff colluding with PW2 and the same was found at the time of preparing proof of the defendant. It was the case of the petitioner that question relating to vital documents were omitted to be asked to PW2.

8. In the counter filed it is only stated that the petition is to prolong the case and with flimsy grounds.

9. The court feels that the trial court should provide opportunity for the parties to put forth their case. It is clearly mentioned as to the aspects now sought to be questioned. Also no great prejudice would be caused to the respondents and on the other hand the petitioner would be prejudiced if not give a chance to elicit true fact before the court of law. Hence, in the interest of justice the court feels that the petitions are liable to be allowed. But the fact that the suit is pending since 2013 is pertinent. Hence, the petitioner is required to cross examine the PW2 without fail on the date of hearing of the suit. Petitions allowed.

I.A.2/2020, In the result, this petition is allowed. No costs.


District Munsif,

I.A.3/2020, In the result, this petition is allowed. No costs.

Orders directly dictated to Steno-Typist, typed by him, corrected and pronounced by me in the Open Court on this, the 22nd day of February 2021.


22/02/2021
District Munsif,
Ponneri.

List of witnesses on the side of the petitioners

NIL

List of documents on the side of the Petitioners

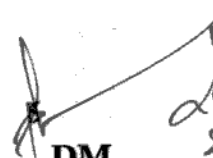
NIL

List of witnesses on the side of the respondent

NIL

List of documents on the side of the respondent

NIL


22/02/2021
DM,
PNI.

District Munsif,

District Munsif,
Pune

For the purpose of this order, the following is to be taken into consideration:

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Common Fair/ Draft Order
I.A.No.2,3/2020
O.S.No.14/2013
Date:22.02.2021
DMC,PNI.

District Munsif,