

IN THE COURT OF THE PRINCIPAL DISTRICT JUDGE, COIMBATORE

Present: **Tmt. G. VIJAYA, B.A., M.L., PGDCFS**
Principal District Judge, Coimbatore.

Tuesday, this the 14th day of October 2025

I.A.No.4/2025
&
I.A.No.5/2025
in
O.S.No.49/2023

D.Vignesh

... Petitioner/Plaintiff

/vs/

1. Saraswathi
2. M/s.Sri Abirami Real Estate
Promoters, represented by its
Manager
3. M/s.State Bank of India
Race Course road branch, Coimbatore
represented by its Manager
4. M/s.Canara Bank
Trichy Road branch, Coimbatore
represented by its Manager
5. M/s.Kotak Mahindra Bank Limited,
Nava India represented by its Branch
Manager
6. M/s.Sakthi Finance Limited
Coimbatore, represented by its Branch
Manager

... Respondents/Defendants

These petitions came before me for final hearing on 10-10-2025 in the presence of **Thiru.P.Venkitapathy**, Advocate for the Petitioner/Plaintiff, and **Thiru.S.Manikandan**, Advocate for the Respondent No.1/Defendant No.1 and the Respondents 2 to 6 remained exparte in the main suit and upon perusing the records and hearing arguments of both sides and having stood over for consideration till this day, this Court passed the following

COMMON ORDER

These petitions have been filed by the Petitioner/Plaintiff under Section 151 of CPC and order XVIII Rule 17 and Section 151 of CPC to reopen the case and recall DW1 for further cross examination on the side of the Plaintiff.

2. Averments contained in the petitions :

i. The Petitioner herein is the Plaintiff in the above suit. He has filed the above case against the Respondents herein for Partition, Permanent Injunction and other reliefs. The contentions raised in the plaint may be read as part and parcel of this affidavit at the time of disposal of the same. The 1st Respondent herein, has also filed a Probate OP No.11 of 2022 against the Petitioner alone, before this Court alleging to probate the alleged Will dated 15.04.2021 said to be allegedly executed by his deceased father D.Dhanabal. The Petitioner has filed a detailed Counter statement in the said

case and the same may be read as part and parcel of this affidavit at the time of disposal of the same.

ii. The Petitioner has filed the above case against the Respondents, seeking partition of the immovable properties mentioned in the Item Nos.1 to 3 and movables such as amounts given for booking sites, amounts in the Saving Bank account and Fixed deposit amount in the hands of the Defendants 2 to 6, Maruthi Swift Desire car mentioned as Item No.4 property in the plaint, which are the self acquired properties of his father and obtained by Will from her maternal aunt Angathal. In the above case, both the suit and the Probate OP has been taken for joint trial as per orders in TROP No.407 of 2023 and the evidence were recorded in the above suit. The 1st Defendant herein, has let in evidence first in the above case and Defendant side evidence has been closed with DW3 and presently posted for his side evidence.

iii. Earlier he has filed the above suit on 09.07.2022 after issuing legal notice to the 1st Respondent on 21.12.2021. At that time he sought the relief of partition and permanent injunction only with costs. Later on only he came to have knowledge of the O.P.No.11 of 2022 filed by the 1st Respondent before this Court as he received notice from this Court in the said O.P. and after receiving the copies of the petition on 31.07.2022. Thereafter he filed counter statement in the above OP on 28.04.2023

and at that time only he came to have knowledge of the alleged Will dated 15-04-2021 said to be allegedly executed by his father Dhanabal.

iv. Now only at the time of preparing for the proof affidavit to be filed in the above case, he came to know that in the above suit, he has sought only the prayer for partition and permanent injunction alone in the plaint and amended the plaint and included the prayer of declaration as per the orders in I.A.No.3/2025 dated 09-07-2025 and carried out the amendment in the last hearing on 20-08-2025.

v. The above case is posted today for adducing his side evidence. In the above case, earlier on the side of the 1st Respondent/1st Defendant, she was examined as DW1 and she was cross examined on his behalf also. After the amendment of the plaint, after adding the prayer of declaration, she has to be cross examined in that aspect in the interest of justice on his side. Only at the time of preparing for his side evidence, recently he traced out some of the vital and important documents and he came to know that some of the vital and important points and questions have been omitted to be asked in the cross examination of DW1. The same are very much vital and important to substantiate his case. He has a valid defense in the above case and he may be permitted to further cross examination of DW1 by recalling her (DW1) in the interest of justice. He was neither negligent nor careless in conducting the case and

only due to the reasons said supra and it is just and necessary to recall DW1 for further cross examination of DW1 on his side.

vi. For recalling of DW1, it is necessary to re-open the 1st Respondent/1st Defendant's side evidence in the above case and therefore he filed an application to re-open the case. Hence, he has come forward with this application to re-open the 1st Respondent/1st Defendant's side evidence in the above case, for recalling of DW1 for further cross examination of DW1 on his side, in the interest of justice.

viii. Unless in the above case, the 1st Respondent/ 1st Defendant's side evidence is re-opened for recalling DW1 for further cross examination on his side, he will be put to great loss and much hardship. It is therefore just, proper and necessary to order to re-open the 1st Respondent/1st Defendant's side evidence in the above case, to recall of DW1 for further cross examination of her on his side and to substantiate his case in the interest of justice and pass suitable orders and thus render justice.

3. Averments contained in the counter statements :

i. The petition is false frivolous, vexatious and not maintainable both in law and as well as facts. The Petitioner is put to strict proof of at the those averments made in the petition except that those are admitted the Respondent herein.

ii. The averments made in Para Nos.1 to 3 are herein admitted by the Respondent herein and the averments made in para No.4 to the effect that the Petitioner at the

time of filing of the proof affidavit only came to know that they have filed the suit only for the relief of partition and permanent injunction is utter false. They have knowledge of the suit from the beginning of the filing of the suit but in order to drag on the case they have filed the petition at the time of the case was posted for Plaintiff side evidence. The above said suit was posted for evidence of Plaintiff on 16.06.2025, 19.06.2025, 27.06.2025 and the Petitioner has not adduced evidence in all those days and in order to drag on the suit they have filed the petition under Order 6 Rule 17 of C.P.C to amend the plaint for the relief of declaration and the Respondent herein has not filed any counter in the above and amendment petition in I.A.No.3/2025 and also the Respondent herein has not filed any additional written statement in the main suit also while that being so mere stating of unworthy reason of that the amendment of the plaint, after adding the prayer of declaration, she has to be cross examined in that aspect in the interest of justice is not a valid reason to reopen the case and the Respondent herein has not filed any counter in the amendment petition and also has not filled any additional written statement while that being so there is no necessary to reopen the Defendant side evidence. The averments made in Para No-5 to the effect that the Petitioner has traced vital and important documents without mentioning what kind of the documents the Petitioner is going to produce and if the Petitioner found any vital and important document which can be marked

through his evidence for that there is no necessary to reopen the evidence of Respondent herein.

iii. The amendment of the plaint itself not necessary to seek the relief of declaration of the Will is not valid, hence the Respondent herein already has filed the Probate Original Petition to Probate the Will executed by the deceased Dhanapal, hence there is no necessary to amend the prayer seeking the relief of declaration prayer and if this Court allowed the Probate OP then Probate OP is going to be dismissed while that being so the petition filed by the Petitioner to call the witness by stating the reason of that the plaint has to be amended, hence the Petitioner need to cross examine the Respondent herein is not sustainable. The Petitioner has filed the present petition to drag on the case and also there is no valid reason in the petition for reopen the witness of the Respondent herein. The Petitioner is trying to fill the lacuna in the earlier cross examination hence the present petition should be dismissed in limine. The present petition does not deserve any merits hence the present petition should be dismissed.

4. The point for consideration :

Whether it is necessary to reopen the evidence of DWI for further cross examination on the side of the Plaintiff or not? is the point for consideration.

Point :

5. Heard and perused the records. The Petitioner is the Plaintiff in the main suit

which was filed for partition, declaration and permanent injunction and other reliefs. As per the order of this Court dated 19-03-2025 to begin the trial first by the 1st Defendant, the 1st Defendant commenced the trial and she examined herself as DW1 and on her side, DW2 and DW3 were also examined and closed her side evidence and thereafter the case was posted for adducing Plaintiff side evidence. Now the Petitioner has come forward with these petitions for reopen the case and recall DW1 for further cross examination on his side.

6. The learned counsel for the Petitioner contended that, the Petitioner herein has filed the main suit seeking partition, declaration and permanent injunction and other reliefs and the 1st Respondent/1st Defendant herein, has also filed Probate OP No.11/2022 against her before this Court and both the suit and the Probate OP have been taken for joint trial as per the order of this Court and the 1st Respondent/1st Defendant has let in evidence first in the above case and defendant side evidence has been closed with DW3 and the case is posted for adducing the Plaintiff side evidence and the Petitioner herein has amended the plaint as per the orders in I.A.No.3/2025 dated 09-07-2025 and after the amendment and after adding the prayer of the declaration, the DW1 has to be cross examined in that aspect in the interest of justice on the side of the Plaintiff and since some of the vital and important points and questions have been omitted to be asked in the cross examination of DW1 and the

same are very much vital and important to substantiate his case and hence it is just and necessary to recall DW1 for further cross examination and prays to allow the petition.

7. Per contra, the learned counsel for the 1st Respondent/1st Defendant contended that, in order to drag on the case, the Petitioner has filed the petition at the time of the case which is posted for Plaintiff side evidence and there is necessary to reopen the Defendant side evidence and the Petitioner has filed this petition to fill up the lacuna in the earlier cross examination and prays to dismiss the petition.

8. This Court has given its anxious consideration on the rival submissions of both the parties. On perusal of the records, it reveals that the Plaintiff filed the suit for the reliefs of partition, declaration and permanent injunction and the 1st Defendant also filed a Probate OP No.11/2022 and both the suit and the said Probate Original Petition have been taken for joint trial and the 1st Defendant has let in evidence first and she examined herself as DW1 and also examined DW2 and DW3 on her side and after closure of the Defendant side evidence, the case is now posted for adducing evidence on the side of the Plaintiff. On perusal of the records, it further reveals that, the plaint has been amended by the Plaintiff/Petitioner as per the order in I.A.No.3/2025 dated 09-07-2025 adding the prayer of declaration. The Petitioner/Plaintiff claims that after amendment of the plaint, the DW1 has to be cross examined in that aspect in the interest of justice on his side. In

such circumstances, no prejudice would be caused to the 1st Respondent/1st Defendant if the 1st Defendant/DW1 is recalled. Therefore, in the interest of Justice, this court is inclined to allow the petition.

In the result, this petition is allowed.

Dictated to the Steno-typist and transcribed and typed by her in the computer, corrected and pronounced by me in the open court, this the 14th day of October 2025.

PRINCIPAL DISTRICT JUDGE,
COIMBATORE

Principal District Court,
Coimbatore
I.A.No.4/2025
&
I.A.No.5/2025
in
O.S.No.49/2023
Dt : 14-10-2025
Draft/Fair Order