

IN THE COURT OF THE DISTRICT MUNSIF, SULUR

Present : **Tmt.N.Renuga., B.A., B.L.,**
 District Munsif, Sulur
 Thursday the 23rd day of November 2023
IA.16/2023
in
O.S.No. 334/2017

1. Subramaniam
 2. Dharmaraj

...Petitioners/Defendants

/VS/

1. Mandiriappan
 2. Nachimuthu
 3. Thangavelsamy

...Respondents/Plaintiffs

This petition is coming on 03.11.2023 for final hearing before me in the presence of Thiru.K.Gopalakrishnan, Advocate for the Petitioners and M/s.R.Krishnaveni, Advocate for the Respondents and upon perusing the records, and this court made the following:

ORDERS:

Petition filed by the petitioners under order 8 rule 1A (3) and section 151 of CPC to receive and mark the documents as listed in the petition, on the defendants side by condoning the delay.

1. The brief averments of the affidavit filed by the petitioners as follows:-

1.1. The 2nd petitioner is 1st petitioner's brother. The main suit have deposed evidence in chief and filing some of the documents on the defendants side as Ex.B.1 to B.6. Thereafter the suit was posted today for the cross examination of petitioners self by the plaintiffs.

1.2. At the time of filing the proof affidavit for the chief examination and at the earlier dates, the documents listed in the petition are left over petitioner custody. Therefore the petitioners was not able to produce the same in the court. The above documents are available to petitioners very recently. The delay in producing the above documents are not due to negligence and wanton. It is only because of the

above said bonafide reasons. Hence, the petition.

2). The brief averments of the counter statement filed by the respondents as follows:-

2.1. The petition is false, frivolous and unsustainable in law and on facts. The case was posted for arguments, the petitioners have filed an application to reopen their side for examination of witnesses. Now, after the examination of DW.1 the petitioners want to recall the PW.1 for marking of further documents. Right from the eve of January 2023, the case was prolonged by the petitioner for examination of his side witnesses. The petitioners have invoked may of the provisions contemplated under the Civil Procedure code and Civil Rules of Practice to prolong the case.

2.2. It is settled law that without specific pleadings no evidence can be let in. hence, the petitioners cannot ask for marking the said document by recalling the DW.1. In the given situation, if the application is allowed and the DW.1 is recalled for marking of documents, it will only defeat the right of the respondents. Therefore, the application to recall the DW.1 for marking of the documents cannot be maintained at this belated stage.

2.3. Order XVIII Rule 17 of CPC not intended for parties to recall witness for re examination. It enables court to recall witness to clarify issues. Order XVIII Rule 17 CPC is to be exercised sparingly. The petitioners have not stated any acceptable reasons to receive the documents that too after 22 years. The petitioner is highly belated and motivated one. The only intention of the petitioners is to drag on the proceedings of the case, endlessly. Hence, the petition ought to be dismissed.

3. Point for consideration:-

Whether the petition under order 8 rule 1A (3) and section 151 of CPC to receive and mark the documents is to be allowed?

4. Points:-

4.1. Heard the counsels for both the parties. The petitioners/defendants filed this petition to receive to recall DW.1 chief examination for the purpose of marking the petition mentioned documents which is the death certificate and legal heirship

certificate of Palanisamy. The suit in the year of 2001 and now the case is pending in the stage of defence side evidence cross examination of DW.1. The documents filed along with the petition it can be receive with subject to proof relevancy and admissibility.

In the result this petition is allowed. No cost.

Dictated to the Steno-typist and directly typed by her in computer, corrected and pronounced by me in open court this the 23rd day of November 2023.

District Munsif,
Sulur.

List of witnesses and documents on petitioner side:

Nil

List of witnesses and documents on Respondents side:-

Nil

District Munsif,
Sulur.

Draft/ Fair Order
I.A.No.16/2023 in
O.S.No.334/2017
Dated : 23.11.2023
DMC, Sulur.