

IN THE COURT OF THE DISTRICT MUNSIF, SULUR

Present : **Tmt.N.Renuga.**, B.A., B.L.,

District Munsif, Sulur

Monday the 20th day of January 2025

I.A.No.12/2025

in

O.S.No.937/2017

1. M/s.K.P.R.Cotton Mills Pvt.Ltd,
Rep by its Chairman K.P.Ramasamy

2. K.P.Ramasamy,

3. K.P.Deivasigamani,

4.P.Nataraj

...Petitioners /defendants

//VS//

1. Sri.Deivasigamani (died)

2. Sri.Subramani (died)

3. Smt.Rajamani

4. Sri.Shanmugasundaram

5. Sri.Senthil Prakash

6. Mrs.Maheswari

7. Nikila

8. Minor.Gowri

(Represented by her Guardian mother Maheswari)

...Respondents / Plaintiffs

This petition coming on 10.01.2025 for final hearing before me in the presence of Mr.S.Chandrasekaran, Advocate for the petitioners and of Mr.V.Raveendran, Advocate for the Respondents and upon hearing both sides arguments and having stood over for consideration till this day this court delivered the following.

ORDER

This petition filed by the petitioners under order 18 rule 17 and R/W section 151 of CPC to recall of PW.1. and DW.1 for the purpose of further examination.

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

1.1 The plaintiffs now claim the plaint schedule item No.1 as if they are owner of said extent and thereby to surrender the same. In fact, the boundaries of plaint schedule item No.1 set out by the plaintiffs by themselves ie., plaint is without any documentary proof. More so, the plaintiffs have suppressed the sub division number of plaint schedule item No.1 described by them, though the said lands were already sub divided as early in 1980's itself.

1.2. The re-settlement register of government revenue department shows the claim made by the plaintiffs as described in item No.1 of suit property situates in S.F.No.194/4. The earlier Advocate Commissioner's report would also disclose that the item No.1 of suit property was ear-marked on the Southern portion of S.F.No.194/4. On the other hand the said portion of the property were purchased by petitioners/defendants from its vendor Rathinam and Jaya Prakash under sale deed dated 07.07.2005 registered as doc.No.4121/2005 and the petitioners/defendants are in possession and enjoyment of the same.

1.3. Before sub division, the portion described in the plaint schedule item No.1 namely S.F.No.194/4 along with larger extent of 5.42 ½ acres was originally purchased by one Palani gounder from Rangasamy Asari under sale deed dated 29.04.1956 registered as doc.No.596/1956. Subsequently, the said Palani gounder

sold an extent of 2.71 ¼ acres on North and West (of one Rangammal's land who is none other than mother of 1st plaintiff's vendor Natarajan) to Rangasamy gounder, son of Thangagounder under sale deed dated 31.08.1966 registered as doc.No.1294/1966 at SRO, Sular for valid consideration. The plaintiffs' sale deed dco.No.552/1977 also disclose the said boundary as "South of Rangasamy Gounder's land". Thereafter, the said Rangasamy gounder settled the said extent to his daughter-in-law Rathinam and grand-son the then minor Jayaprakash with absolute right under settlement deed dated 10.07.1975 registered as doc.No.659/1975 which portion is sub divided as 194/4. Subsequently, the said Jayaprakash sold it to these defendants under sale deed dated 07.07.2005 registered as doc.No.4121/2005 and thereby the petitioners/defendants are in possession and enjoyment of the plaint item No.1 of suit property which fact was not brought to the light of this court by the previous counsel during the examination of witnesses. Hence, to recall PW.1 and DW.1 for their examination along with production of supportive documents to disprove the case of plaintiffs. Hence, the petition.

2. The brief averments of Counter statement filed by the 4th Respondent and adopted by the 3rd and 5th to 8th Respondents as follows:

2.1. The petition is false, frivolous and unsustainable one in law and on the facts of the case. The plaintiffs are the absolute owner of the Item – 1 of the suit property and they were in possession and enjoyment of the same till the petitioner occupied the same. The plaintiffs vendor were also enjoying the properties till they sold to the plaintiffs.

2.2. The defendants already exhausting the opportunities to produce the petition mentioned documents during the course of the evidence of the D.W.1. Now the petitioners come forward with the instant petition with irrelevant document in order to confuse and mislead the court. The documents are not necessary.

2.3. The PW.1 namely Deivasigamani was examined in chief and cross elaborately and the plaintiff side evidence was closed very earlier. Thereafter the PW.1 Deivasigamani was died on 05.10.2023. The defendant side D.W.1 and DW.2 has been examined in full. Therefore the petitioners claim of recall of PW.1 for further cross examination is not at all possible. Hence, the petition becomes infectious.

2.4. The respondents have filed the suit in O.S.No.17/2010 on the file of the Hon'ble District Munsif of Palladam for the relief of recovery of possession in respect of the Item – 1 of the suit property and for other reliefs. Further the respondent filed an application in IA.No.58/2010 for appointment of Advocate Commissioner to visit and measure the suit property. The Hon'ble District Munsif of Palladam was pleased to allow the application at the earlier. Thereafter the Advocate commissioner P.P.R.Subash Chandar given notice to the petitioner counsel with date and time intending to visit the suit property. The petitioner counsel endorsed that “the petitioner preferred to file revision against the order passed int eh commission application in IA.No.58/2010”. Therefore wither the petitioner or his counsel are not cooperating with the commissioner for the measurement of the suit property with the assistant of Taluk Surveyor. Further the petitioner and his counsel are absent at the time of commissioners visit and measuring the suit properties.

2.5. The commissioner has visited the suit property on 25.03.2012 and filed his report at the earlier in the year 2012 itself. The petitioner/defendant absolutely failed to file any objection for the commissioner's report so far. Further the petitioner/ defendant absolutely failed to file any revision petitioner before the Hon'ble High Court of Judicature Chennai against the fair and final order in IA.No.58/2010.

2.6. Due to the bifurcation of the district, the Suler Taluk was belonged to the Coimbatore District. Therefore the above suit was transferred to Coimbatore District

Munsif court in O.S.No.2824/2012. After few years the above bundle was transferred to this court after establishment in O.S.No.937/2017. In the above court the defendant purposely and wantonly allowed the suit to set exparte and the exparte decree was passed on 24.11.2017. Thereafter the plaintiff filed an execution petition in E.P.No.9/2018 for delivery of possession. The notice in the above said E.P was served to the defendant. Thereafter the defendant entered into appearance in the above E.P and got adjournment for counter statement. Thereafter the defendant filed an application under section 5 of Limitation act and another application to set aside expart decree. After the enquiry the above two applications were allowed by the court. The defendant already protracted the trial proceedings for more than 14 years.

2.7. After closing the plaintiff side evidence and the defendant side evidence, the petitioners/defendants come forward with the vexatious application only with intent to protract the trial of the suit. The petitioners/defendant already filed the application for measure the properties in I.A.No.10/2024 and the above application was dismissed by this court on 22.11.2024. There is no merit or substance in the above application. The petition is purely abuse of process of law and court. Hence, the petition ought to be dismissed.

3. Points for Consideration:-

Whether the petition filed by the Petitioner under order 18 rule 17 R/W section 151 of CPC to recall of PW.1 and DW.1 is to be allowed?

4. Points:-

4.1. The respondents/ plaintiffs filed main case for declaration, permanent injunction and mandatory injunction. The main suit posted for further defendants side evidence on 28.11.2024 , 03.12.2024. 09.12.2024 and 06.01.2025. On 06.01.2025 defendants filed petitions to recall the PW.1 and DW.1 along with production of supportive documents to disprove the case of plaintiffs. The

respondents/ plaintiffs objected that after closing the plaintiff side evidence and the defendant side evidence, the petitioners/defendants come forward with the vexatious application only with intent to protract the trial of the suit.

4.2. On perusal of record the 1st plaintiff Deivasigamani examined as PW.1 and he was died on 05.10.2023 hence the PW.1 could not be recalled. This being trial court, it is necessary to given opportunity to both side to adduce their side oral and documentary evidence to get a fair trial of this case. Hence in the interest of justice this court allowed this application by recalling the DW.1 and marking of documents to prove their case. But the delay should be compensated by way of cost.

In the result this petition is to be allowed on payment of cost of Rs.2000/- to be paid to the Respondents/ Plaintiffs on or before 24.01.2025 on failure this petition stands dismissed automatically. For compliance Call on 24.01.2025.

Dictated to the Steno typist and directly typed by her in computer, corrected and pronounced by me in open court this the 20th day of January 2025.

Sd/N.Renuga
District Munsif,
Sulur.

List of witnesses and documents on petitioners side:-

Nil

List of witnesses and documents on Respondents side:-

Nil

Sd/N.Renuga
District Munsif,
Sulur.

24.01.2025

This petition coming again on this day for final hearing before me in the presence of Mr.S.Chandrasekaran, Advocate for the petitioners and of Mr.V.Raveendran, Advocate for the Respondents and upon hearing both sides arguments and having stood over for consideration till this day this court delivered the following.

ORDER

Cost of Rs.2000/- paid memo recorded, this petition is allowed.

Pronounced by me in open court this the 24th day of January 2025.

Sd/N.Renuga
District Munsif,
Sulur.

Draft/ Fair Order
I.A.No.12/2025 in
O.S.No.937/2017
Dated: 24.01.2025
DMC, Sulur