

**IN THE COURT OF THE ADDITIONAL DISTRICT JUDGE
CHENGALPATTU**

Present: **Tmt.K.Kayathri, M.A.B.L.**
Additional District Judge,
Chengalpattu.

Thursday, the 5th day of September 2024
I.A.No.9/2024 and IA.No.10/2024
in O.S.No.449/2021

CNR No:TNKP01-005325-2021

M/s. Ruby Builders & Promoters,
Rep. by its Partner R.Manoharan

...Petitioner/ 1st Defendant

-Vs-

1. S. Janaki

2. S. Suganthi

....Respondents 1 and 2/Plaintiffs

3. S. Venugopal

4. S. Durai

5. The Tahsildar, Tambaram Taluk,
Tambaram, Chennai 600 045.

6. The Assistant Commissioner (Land Reforms),
Villupuram, now represented by
The Revenue Divisional Officer, Tambaram,
Chennai 600 045.

7. Chennai Metropolitan Development,
...Represented by its Member Secretary,
Egmore, Chennai 600 008.

8. The President, Subham Apartments,
(Regd. No.592/2018), Alapakkam, Mappedu Main Road,
Chennai 600 126. ...Respondents 3 to 8/Defendants 2 to 7

Both the petitions came on 29.8.2024 for final hearing before this court in the presence of M/s.Venkataswamy Babu and others, Counsels for the petitioner/ 1st defendant and Thiru.V.Kannanh, Counsel for the Respondents 1 and 2/plaintiffs and Thiru.Prasanna, Counsel for the 4th Respondent/ 5th defendant and subsequently

counter not filed and set exparte and Respondents 3,5 to 8 remained exparte in the suit and upon hearing the arguments on both sides and upon perusing records and having stood over for consideration till this date, this court made the following:

COMMON ORDER

I.A.No.9/2024 in OS.449/2021

This petition filed Under Section 151 of CPC to reopen the Evidence of PW1 which was closed on 8.11.2023 by this court.

I.A.No.10/2024 in OS.449/2021

This petition filed Under Order 18, rule 17 of CPC to recall PW1 for the purpose of further cross-examination by the petitioner/ 1st defendant.

2. Brief averments of the petition/affidavit filed in both the petitions are as follows:

The petitioner is the partner of 1st Defendant Company. When the suit was posted for cross-examination of PW1 on 08.11.2023, the Junior counsel of petitioner's counsel represented this court in the Morning Session and took Pass over and again the suit was called at 02.45 P.M and the Junior counsel had represented that the Senior Counsel from High Court, Chennai was on the way and reach the Court around 03.30 P.M and sought for Short Pass over. Taking the condition of PW1 who was on Wheel Chair and Senior Citizen, this court took the matter around 03.00 P.M. and closed the Evidence of PW1 and posted the matter for further PW's on

08.12.2023. The petitioner's Senior counsel from Chennai reached around 03.30 P.M on 08.11.2023 and represented before this court. But this Court informed that since the PW1 was a Senior Citizen and was on Wheel Chair, she cannot be made to wait for a long and therefore PW1's evidence was closed. Hence, the petitioner has filed these petitions to re-open the evidence of PW1 and to recall and the petitioner undertake to cross-examine PW1 (who is a Senior Citizen and using Wheel Chair) at the Morning Session on any day fixed by this court and he would not seek for any adjournment to Cross-examine the PW1.Hence the petitions.

3. Brief averments of the common counter filed by respondents 1 and 2 /plaintiffs in both the IAs. are as follows:

The 1st Respondent is the 1st plaintiff in the above suit and has filed this counter on behalf of his daughter, the 2nd Respondent herein. The respondents have filed the suit for declaration to declare 1st respondent's title to the suit property and also to declare that the registered sale deed dated 04.06.2019 in Document No. 5794 of 2019 registered as null and void and for consequential permanent injunction. The 1st defendant and other defendants 2, 4 to 7 failed to file written statement even after several adjournments given and they were set exparte. The 1st respondent was examined as PW1 on 12.04.2023 and Exhibits A-1 to A-40 were marked on 27.04.2023 and the case was about to be decreed and at that time the petitioner has filed petition to set aside the exparte order along with written statement on 15.06.2023 and in view of endorsement made

by this respondent as to no objection, the said petition was allowed. Since the 1st respondent is a senior citizen and aged about 77 years, she was unable to walk without wheel chair and wants to complete the evidence during her life time and also have been spending huge amount towards conveyance, attender and other expenses.

The Petitioner herein has not shown interest in cross-examining the 1st respondent and complete the trial in time and the petitioner wants to drag the case for ever and on 29.09.2023 & 5.10.2023 there was no representation for the petitioner and the case was posted to 16.10.2023 for cross-examination of 1st respondent and on that day the petitioner got adjournment to 8.11.2023 and once again on that day since no representation on the petitioner's side, the cross-examination of PW1 was closed by this court. Suppressing all these facts, the petitioner has filed these petitions by making false statement only to drag the proceedings further. The petitioner is a sitting M.L.A. and would like to drag the case from 2021 by submitting petition under frivolous grounds and with an ulterior motive to cause inconvenience to the respondents. Under the above said circumstances, the petitions are liable to be dismissed.

4. The points for Consideration:-

1. Whether the petitions are to be allowed or not?

5. Points:-

Heard on both sides. Admittedly, the suit has been filed by the plaintiffs for the relief of declarations and for consequential permanent injunction. The suit is of the year 2021 and is pending for

further plaintiff's side witness, if any. At this juncture, the present petitions were filed. According to petitioner, since their Senior Counsel from Chennai could not reach the court in time and unable to cross-examine the PW1. In the meantime, the PW1's evidence was closed on 08.11.2023. Further the petitioner contended that he undertakes to cross-examine PW1 (who is a Senior Citizen and using Wheel Chair) at the Morning Session on any day fixed by this court and he would not seek for any adjournment to cross-examine the PW1 and prays to allow the petitions.

6. Per contra, the respondents 1 and 2 contended that since the 1st respondent is a senior citizen and aged about 77 years, she was unable to walk without wheel chair and wants to complete the evidence during her life time and also have been spending huge amount towards conveyance, attender and other expenses. It is the main contention of the respondents 1 and 2 that the petitioner herein has not shown interest in cross-examining the 1st respondent and complete the trial in time and drag on the proceedings.

7. When such rival contentions have been raised by either side, from the facts set out in the petition-affidavit and the counter averments, it is evident that the 1st respondent is a Senior Citizen and using Wheel Chair for her appearance before this court. The reason stated by the petitioner is that since their Senior Counsel from Chennai came to this court at 3.30 p.m., he could not cross-examine PW1. In the meantime, the PW1's cross-examination was closed and prays

to grant one more opportunity to cross-examine PW1. Hence, in such circumstances, even though the respondents 1 and 2 objected these petitions, considering the entire facts and circumstances of the case and considering the nature of dispute involved in the suit, in order to ensure fair trial and to arrive right conclusion of the case, and to give one more last opportunity to the petitioner to put forth his case and also in the interest of justice, this court is inclined to allow the petitions on terms.

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In the result, this petition is allowed and the petitioner is directed to pay a sum of Rs.2500/- to the Respondents 1 and 2 on or before 21.10.2024 and the petitioner is directed to commence the cross-examination on the day of appearance of PW1, failing which these petitions shall stand dismissed automatically. Call on : 22.10.2024.

IA.No.10/2024 in OS.449/2021

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

Dictated to the Shorthand writer and computerized by her and corrected and pronounced by me in open Court, this the **5th day of September.2024.**

sd/-K.Kayathri

Additional District & Sessions Judge
Chengalpattu.

Both side Witnesses And Exhibits : NIL

sd/-K.Kayathri

Additional District & Sessions Judge
Chengalpattu.

**Fair/Draft Order
COMMON ORDER
I.A.No.9/2024 and IA.No.10/2024
in O.S.No.449/2021
Dt: 5.9.2024
ADJ/CPT**

IA.No.9/2024 in OS.449/2021

Dated: 5.9.2024

Order Passed

In the result, this petition is allowed and the petitioner is directed to pay a sum of Rs.2500/- to the Respondents 1 and 2 on or before 21.10.2024 and the petitioner is directed to commence the cross-examination on the day of appearance of PW1, failing which these petitions shall stand dismissed automatically. Call on : 22.10.2024.

ADJ/CPT

IA.No.10/2024 in OS.449/2021

Dated: 5.9.2024

Order Passed

**In the result, the petition
is allowed. No costs.**

ADJ/CPT

