

IN THE COURT OF THE DISTRICT MUNSIF AT MADURANTAKAM

PRESENT: Tmt. V.Devapriya, B.Sc., M.L.,

District Munsif, Madurantakam

Monday, the 9th day of September, 2024

I.A.No.7/2024 and I.A.No.8/2024

in

O.S.No.33/2021

1. Punitha

2. Dilli Raja

...Petitioners/Defendants 1 and 2

-vs-

1. T.Pichanantham

...1st Respondent/Plaintiff

2.The Deputy Director,

Health Services, Chengalpattu.

3. The Special Officer cum Block Development Officer,

Madurantakam

4. The Secretary,

Saravambakkam Village Panchayath,

Saravambakkam Village. Madurantakam Taluk.

5. The District Collector,

Chengalpattu District.

...Respondents 2 to 5/Defendants 3 to 6

This petition coming up before me on 22.08.2024 for final hearing in the presence of, Thiruvalargal. K.Thilagaraj, K.Idayaraj and R.Rajaseelan, counsels for the Petitioners/Defendants 1 and 2 and Thiru.R.E.Charles, counsel for 1st Respondent/Plaintiff and Respondents 2 to 5/Defendants 3 to 6 having been set exparte in the main suit and after hearing the arguments on both sides and upon

perusing the materials placed on record, and having stood over for consideration till this day, this court delivers the following,

COMMON ORDER

I.A.No.7/2024

This petition has been filed by the Petitioners/Defendants 1 and 2 under Order XVIII and Rule 17 and section 151 of Code of Civil Procedure, to re-call the PW1 and PW2, for cross examination.

I.A.No.8/2024

This petition has been filed by the Petitioners/Defendants 1 and 2 under section 151 of Code of Civil Procedure, to re-open the Plaintiff side evidence.

2.The averments stated in the petition, in brief :-

The case was posted for 1st Respondent/Plaintiff side evidence and the 1st Respondent/Plaintiff was also examined as PW1 and one another witness was examined as PW2. At that time, due to covid-19 pandemic period, the counsel could not cross examine PW1 and PW2. Hence the cross examination of PW1 and PW2 was closed and the case was posted for Defendants side evidence. The Petitioners/Defendants 1 and 2 came to know that the cross examination of PW1 and PW2 is highly necessary to prove their case. Hence these petitions.

3. The averments stated in the objections filed by the 1st Respondent/Plaintiff,

in brief:

These petitions are not maintainable in law and on facts. The averments in the affidavit are false. The court granted several chances to the Petitioners/Defendants 1 and 2, for cross examination of PW1 and PW2 and inspite of the same, the Petitioners/Defendants 1 and 2 did not cross examine PW1 and PW2. Hence the Petitioners/Defendants 1 and 2 are not entitled to any relief. The court has granted several adjournments for months together for nearly 9 hearings for cross examine and 6 hearings for cross examination of PW2. There is no merits in these petitions. These petitions are filed only to drag on the proceedings. Hence these petitions are liable to be dismissed with costs.

4. The point for determination is whether this petition is to be allowed or not?
5. No Exhibits marked and no witnesses were examined on both sides.
6. Heard both sides and perused the records.
7. The Petitioners/Defendants 1 and 2 had filed these petitions to reopen the plaintiff side evidence and to recall PW1 and PW2 for cross examination. The 1st Respondent/Plaintiff resisted the petition stating that inspite of giving several chances, the Petitioners/Defendants 1 and 2 had not chose to cross examine PW1 and PW2.
8. The ground raised by the Petitioners/Defendants 1 and 2 is that due to covid-19

pandemic, their counsel could not cross examine the witnesses PW1 and PW2. Records reveal that the 1st Respondent/Plaintiff was examined in chief on 30.03.2022. In the meantime, the I.A.No.4 of 2021 was pending in the above suit, for filing of the report by the Advocate Commissioner. Thereafter, the said petition was closed on 17.02.2023, after the Advocate Commissioner had filed his report and the above suit was posted for marking of documents on the side of the 1st Respondent/Plaintiff.

9. The 1st Respondent/Plaintiff was present on 08.06.2023 and Exhibits A1 to A12 were marked. Thereafter, the above suit was posted for cross examination of PW1 on 15.06.2023 and the same was pending at the stage of cross examination of PW1 from 15.06.2023 to 02.11.2023. Finally, on 02.11.2023, the cross examination of PW1 was closed, since there was no representation on behalf of the Petitioners/Defendants 1 and 2 and the case was posted for plaintiff side further evidence.

10. Thereafter, the 1st Respondent/Plaintiff examined one Gangadurai as PW2 on 02.12.2023 and the case was posted for cross examination of PW2 on 15.12.2023. The above suit is at the same stage till 22.01.2024 and on the said date, the cross examination of PW2 was closed, due to failure on the part of Petitioners/Defendants 1 and 2 and the case was posted for plaintiff side further

evidence. At present, the above suit is in the stage of defendant side evidence.

11. The Petitioners/Defendants 1 and 2 had stated that due to covid-19 pandemic, their counsel could not cross examine PW1 and PW2. The well known fact is that the covid-19 pandemic was prevailing till 2021 and in the year 2022, the pandemic almost came to an end and courts started functioning in the regular manner. The first hearing for the cross examination of PW1 was posted on 15.06.2023 and the first hearing for cross examination of PW2 was posted on 15.12.2023, long after the end of the pandemic period. Therefore, the reason stated by the Petitioners/Defendants 1 and 2, is not sufficient.

12. The learned counsel for the 1st Respondent/Plaintiff had relied on the judgement, in the case of *Gayathri Vs. M.Girish [(2017) 2 Supreme Court Cases (Civ) 756]*, wherein the Hon'ble Supreme Court had observed that recording of evidence should be continuous, followed by arguements, without any gap and that the mischievious and frivolous petitions are liable to be rejected.

13. In spite of granting sufficient opportunities, the Petitioners/Defendants 1 and 2 had not cross examined the PW1 and PW2 and further the Petitioners/Defendants 1 and 2 had not stated sufficient reason for allowing these petitions. Hence, for the foregoing reasons, this court is not inclined to allow these petitions.

14. In the result, these petitions are dismissed. No costs.

Partly dictated to the Stenographer, typed by him and partly typed by me in my laptop, corrected and pronounced by me in open court on this the 9th day of September, 2024

District Munsif
Madurantakam

Petitioners side witnesses and documents:

Nil

Respondent side witnesses and documents:

Nil

District Munsif
Madurantakam