

IN THE II ADDITIONAL CITY CIVIL COURT, CHENNAI

Present: Thiru. D.V. Aanand, M.A., B.L.,
III Additional Judge

(FAC) II Additional City Civil Court, Chennai

Monday, the 16th day of October 2023

I.A.No. 3 of 2023 and I.A.No. 4 of 2023
in

O.S.No. 10751 of 2010

Mr.Narayan @ Rose,
S/o.Radhakrishnan Yadev
Plot No.2, 1st Street, Vadivel Nagar
Ponneri Taluk, Tiruvallur District
Pincode 600 082.

.....Petitioner/Plaintiff

-Vs-

Mr.A.Thammeem Ansari
S/o. N.Ahamed
Door No.205, 3rd Street,
Sastri Nagar, Anna Salai
Chennai-600 039.

.....Respondent/Defendant

These petitions having come up on 12.10.2023 for final hearing before me in the presence of M/s.K.Mohanamurali, M.Kaushikkrishna, V.Ananthi and D.Santhosh Bharath, Counsels for petitioner/Plaintiff, and of M/s.A.Abdul Ravoof and K.Abdul Owais, Counsels for Respondent/Defendant, and upon perusing the petitions, common counter and other connected records and after hearing arguments of both sides having stood over for consideration till this day, this court delivered the following:

COMMON ORDER**I.A.No.3 of 2023**

This petition is filed by the petitioner to reopen the plaintiff side evidence in O.S.No. 10751/2010.

I.A.No.4 of 2022:

This petition is filed by the petitioner to Recall the plaintiff side evidence in O.S.No. 10751/2010.

2. The affidavits filed in support of the petitions in short as follows:

The petitioner is the plaintiff. The petitioner has filed the suit for specific performance, declaration, Permanent injunction and for other reliefs. The petitioner was examined as PW1 and marked 15 documents. The petitioner was cross examined in detail. Later, the case was posted for defendant side evidence. The defendant was examined as DW1 and 6 documents were marked. The defendant is attempting to disprove the agreement. In order to prove the agreement, it becomes necessary to examine the witness R.Prabakaran, who was attested the sale agreement dated 10.08.2004. The other witnesses who signed along with Prabakaran are one Mr.Ahmed who is the father of the defendant and Ravia Behum, who is the wife of the defendant. The only option available to the petitioner to examine the independent witness Prabakaran on his side to substantiate his contention. It is therefore prayed to reopen and permit the plaintiff to adduce evidence.

3. The counter filed by the respondent in short as follows:-

The petition is not maintainable. The petition is liable to be dismissed. The suit is pending for the past 13 years. The respondent is running a Mutton and Chicken shop. The respondent was indebted to various persons. He was in need of Rs.5,00,000/-. The respondent came to know about the petitioner. He approached the petitioner for a loan. The petitioner insisted upon to give security. The respondent executed a registered mortgage deed. At the time the respondent has signed in various blank papers. The petitioner has utilised the signed papers and has file the suit on various grounds. The petitioner want to grab the property from the respondent. The present petition has been filed to drag the case.

4. The point for consideration:-

1. Whether the petitioner/plaintiff's case has to be reopened and witness to be examined?

5.POINT:

7.1.The suit was filed on 27.08.2010. Initially, the respondent remained exparte. Hence, the case was posted for Exparte evidence since the respondent did not file written statement. Thereafter, the respondent filed petition to setaside the exparte order and it was allowed on 09.07.2012. Thereafter, issues were framed and case was posted for trial on 11.03.2013. PW1 was examined in chief on 17.07.2013. Thereafter, the case was posted for cross examination. For various reasons the case

was adjourned and PW1 was not cross examined. Finally, the evidence of the plaintiff was closed and the case was posted for further plaintiffs evidence. Thereafter, I.A. 2131/2015 was filed and was pending till 18.01.2017. The petition was allowed and the case was posted for further examination of PW1. Again the case was posted for further examination of PW1 for several times, and finally he was cross examined on 09.08.2018. The case was posted for further plaintiffs evidence. The case was adjourned to several times for plaintiffs further evidence. The plaintiff filed an application to receive documents and the same was allowed. Again the plaintiff has filed additional proof affidavit and later Ex.A16 and Ex.A17 were marked. On 15.10.2019, PW1 was cross examined in full and the petitioner has stated that he has no further evidence on his side. Thereafter, the case was posted for examination of the defendant side witness from 15.10.2019. The case was adjourned several times for recording the evidence of DW1. In the meanwhile, Covid 19 intervened. On 03.07.2020, IA.2/2019 was allowed and DW1 chief examination was recorded on 04.11.2020. Thereafter, the case was adjourned to various dates for DW1 Cross examination. On perusal of the notes paper the plaintiff was not diligent to prosecuting the case. As observed above the case was pending from 2013 till 2019, for the plaintiffs evidence. The reason stated by the petitioner is that due to intervene of Covid 19, he was unable to examine witness. The contention of the petitioner is not true. The Covid 19 started on 15.03.2020 and continued till 28.02.2021. The PW1 has endorsed 'no further evidence' even on 15.10.2019 which

prior to start of covid. Therefore, there is no merits in this petition. The petitioner did not utilize the opportunity provided to him. The law will not assist one who slept over his rights. Despite sufficient time granted the petitioner did not choose to examine the witness to the agreement of sale. Therefore, the case of the petitioner/plaintiff shall not be reopened and the petitioner/plaintiff shall not be permitted to adduce evidence. The points are answered accordingly.

I.A.No.3 of 2023

In the result this petition is dismissed. No cost.

I.A.No.4 of 2023

In the result this petition is dismissed. No cost.

Dictated by me to the Steno-Typist, which was computerized by her, after making corrections pronounced by me in Open Court the 16th day of October, 2023.

III Additional Judge.
(FAC) II Additional City Civil Court,
Chennai.

Petitioner side witness and Exhibits :-Nil
Respondent side witness and Exhibits:- Nil

III Additional Judge.
(FAC) II Additional City Civil Court,
Chennai.

Draft/Fair order
I.A.No.3/23 and 4/23
in
O.S.No.10751/2010
Dated: 16.10.2023
II Additional Court.