

IN THE COURT OF THE ADDITIONAL DISTRICT JUDGE,
DINDIGUL.

PRESENT : **THIRU. A.K. MEHBUB ALI KHAN, B.L.M., LL.M.,**

PG.D.PM/IR.,

ADDITIONAL DISTRICT JUDGE, DINDIGUL.

Monday, the 20th Day of November 2023

I.A. No.5/2023

-in-

O.S. No. 304/2020

E. Dinesh Sriram

Petitioner/Plaintiff

-Vs-

K. Kavitha

Repondent/Defendant

This petition came on 15.11.2023 before me for hearing in the presence of Thiru. S. Kumaran Advocate for the petitioner and of Tvl. A.Selvam, A.Manimegalai, P.Prakash, M.Sivaperumal and M.Ramesh, M. Ponnar Advocates for the Respondent and after having heard the argument of both sides and on perusal of records, this Court delivers the following :

ORDER

1. Petition filed by the petitioner Under Order 18, Rule 17 C.P.C.,

2. **The contention of the petitioner:**

The plaintiff has filed this petition to recall PW1 and to mark certain documents. He has filed the suit for specific performance against the respondent / defendant. He was also examined as PW1 and he was cross examined by the defendant. During the cross examination, suggestions were made to the witness that he has no sufficient means to purchase the property. Therefore, it has become necessary for the plaintiff to establish and prove that he had sufficient means to purchase the property. So he has to be recalled and be permitted to let in evidence proving the same. He has also sought permission to produce documents relating to the sale of his other property so as to show that he had sufficient means at that time. Hence he has prayed to recall PW1 for being re-examined.

3. The respondent/defendant has stated that the petitioner has not given the details of the documents that are now claimed by him. He has also not filed the said documents along with the petition. He has not even stated in the plaint that he owns property and had money in his hand by selling the same. While so, the application is filed only by two fill up the lacuna created in the cross examination by the defendant. The petitioner cannot be permitted to let in evidence and mark documents that are not mentioned in the pleadings.

Therefore, he prays to dismiss the petition.

4. Point for consideration in this petition is, **Whether the petition be allowed ?**

5. Heard both side.

6. **POINT :**

The plaintiff was examined as PW1 and also was cross examined by the defendant. It is true that in cross examination suggestions were made that he had no sufficient source to purchase the property. Therefore, an opportunity must be given to the petitioner to establish that he had source to purchase the suit property. If he is not recalled to let in evidence regarding this, serious prejudice would be caused to the plaintiff. On the other hand, no serious prejudice would be caused to the respondent and he will get an opportunity to cross examine PW1 if he is recalled and examined. Further, the objections that there is no pleading can be considered even at the time of arguments of the suit.

7. Therefore interest of justice warrants that the petitioner be given an opportunity to let in further evidence by recalling PW1. As already pointed out, the defendant could cross examine PW1 after he is recalled and examined in chief. This point is decided accordingly.

In the result, this petition is allowed and PW1 is recalled.

Dictated to the stenographer, transcribed and typed by her in computer, corrected and pronounced by me in the Open Court on this the 20th day of November 2023.

Additional District Judge,
Dindigul.