

IN THE COURT OF THE ADDITIONAL DISTRICT JUDGE, DHARMAPURI.

Present: Tmt.U.Monica,M.L.,
Additional District Judge,
Dharmapuri.

Wednesday, this the 12th day of April 2023.

I.A.No.2/2023
in
O.S.No.47/2014

P.G.Murugesan

...Petitioner/plaintiff

/versus/

1. G.L.Muniraj
2. G.L.Venkatachalam
3. G.L.Asaithambi
4. G.L.Srinivasan
5. G.L.Thiruvalluvan
6. G.L.Alagusingam

...Respondents/defendants

This petition is coming on 6.4.2023 for final hearing before me in the presence of Thiru.T.Nehru, Advocate the Petitioner and Thiru.A.Kannadasan, Advocate for the first respondent and Thiru.R.Ravindran, Advocate for the respondents 2 to 6 and upon hearing the arguments of both side and on perusal of the case records and having stood over till this day, this court pronounced the following:

ORDER

This petition has been filed under Sec.151 C.P.C. to reopen the case.

2. The averments in the petition in brief is as follows:

According to the petitioner, PW.1 to PW.5 were examined on the plaintiff side and DW.1 to DW.5 were examined on the defendants side. When the case was posted for

cross examination of DW.5 the petitioner counsel had gone out of station to attend another case. Hence DW.5 could not be cross examined. Only if DW.5 is cross examined by the plaintiff he will be able to prove his case. Hence the case has to be reopened for cross examination of DW.5.

3. The averments in the counter filed by the first respondent in brief is as follows:

i) The first respondent resisted the petition by contending that the chief affidavit of DW.5 was filed on 6.10.2017 and the evidence of DW.5 was closed on 10.11.2017 as the plaintiff did not choose to cross examine DW.5 inspite of sufficient opportunities given. I.A.No.136/2017 and I.A.No.137/2017 were allowed to reopen the case and recall DW.5, but inspite of sufficient opportunities given DW.5 was not cross examined and the plaintiff obtained time by stating that the matter is likely to be settled. The evidence of DW.5 was closed as the plaintiff did not choose to cross examine DW.5 and plaintiff side was heard. When the case was posted for judgment on 31.7.2019 the plaintiff filed the petition stating that he has filing revision before the Honourable Madras High Court. Only to protract the proceedings the petition has been filed and the petition is not maintainable.

4. The point for consideration:

Whether the petition is to be allowed or not?

5. Heard. No oral or documentary evidence have been adduced on either side.

6. Heard. Records perused.

7. **Point:**

a) According to the petitioner/plaintiff, DW.5 was not cross examined by his counsel as his counsel went out of station to attend another case.

b) The first defendant alleges that inspite of sufficient opportunities given DW.5 was not cross examined by the plaintiff and the petition has been filed only to protract the proceedings.

c) The defendants 2 to 6 have made endorsement to the effect that the petition may be allowed on terms and conditions and with cost.

d) The petitioner alleges that only if DW.5 is permitted to cross examine he will be able to prove his case. On the contrary, the first respondent alleges that there is no merits in the petition as sufficient opportunities given DW.5 was not cross examined. Hence the petition has to be dismissed.

e) The respondents 2 to 6 on behalf of them DW.5 has been examined and they have no objection for allowed this petition on cost. Only the the first respondent is opposing the petition.

f) This court is of view that in the interest of justice, to provide the petitioner an opportunity to prove his case and to prevent multiplicity of proceedings and for proper adjudication of the case this petition has to be allowed on cost.

In the result, the petition is allowed on payment of cost of Rs.4000/- to respondents 2 to 6 and Rs.1000/- to first respondent and on condition that DW.5 should be cross examined on 18.4.2023 and the cost should be paid on or before 18.4.2023, failing which the petition stands dismissed. Call on 18.4.2023.

Dictated by me, typed by the Steno-typist, corrected and pronounced by me in Open Court on this the 12th day of April 2023.

Additional Sessions Judge,
Dharmapuri.

Both Side Evidence, Exhibits: Nil.

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Additional Sessions Judge,
Dharmapuri.

Fair Order

I.A.No.1/2023 in

O.S.No.47/2014

Dated:12.4.2023

