

**IN THE COURT OF DISTRICT MUNSIF UTHANGARAI
KRISHNAGIRI DISTRICT**

**Present : Thiru. G. Amar Anand, B.A.LL.B (Hons), LL.M.
District Munsif, Uthangarai**

On this Tuesday, the 15th day of October 2024

I.A.No. 16 of 2024 in O.S.No. 50 of 2013

TNKI13-000008-2013

1. Santhagowri
2. Selvi
3. Chithra
4. Madhavan
5. Kalidhas

...Petitioners / Defendants 4 to 8

/versus/

Ramesh

...Respondent / Plaintiff

This interlocutory application came up before this Court on 15.10.2024 for final hearing in the presence of advocate Thiru. G. Vajjiravel, the learned counsel for the petitioner and advocate Thiru. S. Moorthi, the learned counsel for the respondent and upon hearing both sides and on perusal of records and having stood over for consideration till date, this Court delivers the following:

ORDER

The application has been filed under Order XVII Rule 18 of the Code of Civil Procedure, 1908 seeking to recall the witness to adduced evidence on the side of the defendants.

The averments of the petitioners in brief:

1. The petitioners herein are the defendants in the suit instituted by the respondents for partition and injunction and aver that the suit stood posted for cross-examination on 27.08.2024 for cross-examination, and hence, the petitioners not appear before the Court due to illness of the 7th defendant. The petitioners aver that



the defendants side witness was closed on 27.08.2024 and it is necessary to cross-examine the defendants side witness. Hence, the petitioners pray for allowing this application and seek to recall the witness to adduce evidence on the side of the defendants.

The averments of the respondent in brief:

2. The respondents deny the averments of the petitioners in toto and aver that the petitioners have been given multiple opportunities to adduce evidence and the respondents failed to let in evidence and have filed this application only to prolong proceedings. Hence, the respondents seek for dismissal of the application.

Point for consideration:

3. Whether this application is liable to be allowed?

Evidence:

4. Neither of the parties to this application has adduced any oral or documentary evidence.

Discussion:

5. This Court, having considered the arguments advanced on both sides and thoroughly examined the pertinent case records, proceeds to delineate its findings by the following discussion. This suit has been instituted for partition and perpetual injunction. This application has been filed along with application to receive documents on the side of the defendants and to re-open the defendants side witness. The petitioners have filed this application seeking to recall the witness to adduced evidence on the side of the defendants. A perusal of the case records would show that opportunities for defendant side evidence granted on 20.06.2024, 02.07.2024, 08.07.2024, 15.07.2024, 23.07.2024, 01.08.2024, 12.08.2024, 19.08.2024, 22.08.2024 and finally on 27.08.2024. As the defendants failed to adduce any evidence before this Court, the defendant side evidence was closed on 27.08.2024. It



is a settled position of law that Order XIII Rule 17 can be exercised to recall any witness who has been already examined. In the case at hand, the defendants have not examined any person as their witness. As such, Order XIII Rule 17 of the Code of Civil Procedure, 1908 is not applicable. However, this Court found that the defendants are entitled to adduce evidence for marking of the additional documents filed and allowed application in I.A.No. 14 of 2024 and I.A.No. 15 of 2024. Hence, this Court is of considered with that despite the lacuna, this application has to allowed in the interest of justice in order to avoid further delay and multiplicity of proceedings.

Result:

6. As a result, application is allowed under Order XVI Rule 1(2) of the Code of Civil Procedure, 1908 on condition that the witness shall be examined-in-chief through proof affidavit on 22.10.2024 without fail.

This order was dictated to the steno-typist and transcribed by her on computer and after rectification of mistakes, pronounced by me in open court on this 15th day of October 2024.

Sd/-
Thiru. G. Amar Anand, B.A.LL.B (Hons), LL.M.
District Munsif
Uthangarai

Annexure

Petitioner side evidence

Petitioner side Witnesses & Exhibits: Nil

Respondent side evidence

Respondent side Witnesses & Exhibits: Nil

Court Documents: Nil

Sd/-
Thiru. G. Amar Anand, B.A.LL.B (Hons), LL.M.
District Munsif
Uthangarai