

**IN THE COURT OF THE II ADDITIONAL DISTRICT MUNSIF,
NAGERCOIL.**

Present : Tmt. M.Alima, B.A., L.L.M.,
II Additional District Munsif, Nagercoil.(FAC)
Thursday, on the 21st day of November, 2024

I.A. Nos. 8 of 2024 & 9 of 2024

in

O.S. No. 67 of 2017

The Executive Officer, Kanyakumari

Town Panchayat

... Petitioner/5th Defendant

-vs-

1. M. Gopalakrishnan

2. M. Krishna Balan

3. L. Kumar

4. Wilson Selvaraj

5. Veeranathan

S/o. Murugan Chettiar

(For and behalf of the

Plot owners of R.S.No.537/2G

of Kanyakumari Village)

6. Addl. P2. Kadamban

7. Addl. P3. G.Karuppusamy

... Respondents/1 to 4 Defendants/
1 to Addl. 2 and 3 Plaintiffs

These petitions came before me on 06.11.2024 for a final hearing in the presence of Thiru. A. Gnana Sekar, Advocate for the Petitioner/5th Defendant and Thiru. V. Kumaran Nair, Advocate for the 5th Respondent / Plaintiff and 6th and 7th Respondent/Additional 2nd and 3rd plaintiffs and in the presence of

Thiru. N. Retnaswamy Advocate for the 1st Respondent and in the presence of Thiru. T. Felix, Advocate for the 2nd Respondent and Respondents 3, 4, set *exparte* in the suit and upon hearing both sides and upon perusing the case records and having stood over for consideration, till this day, this Court delivers the following:

COMMON ORDER

I.A.No.8/2024 Prayer

The petitioner had filed the above petition under Section 151 of the Code of Civil Procedure, seeking to reopen the suit for cross-examination of PW1 and thus render justice.

I.A.No.9/2024 Prayer

The petitioner had filed the above petition under Order XVIII Rule 17 and Section 151 of the Code of Civil Procedure, seeking to recall PW1 for the cross-examination and thus render justice.

1) Gist of Averments in the Petitioner's Petitions:

The petitioner is the 5th defendant in the suit, and the plaintiff had filed this suit for declaration, permanent injunction and other reliefs. The above suit stands posted today for 5th defendant's side evidence. On 11.07.2024, PW1 was not cross examined by petitioner's counsel. Since, the petitioner's advocate was not available in station on that day PW1 could not be cross examined on that

day. In the nature of the suit, cross examination of PW1 is highly essential. In the interest of justice, PW1 may be recalled for cross examination. Otherwise, the petitioner will be put into irreparable injury, loss and hardship. Hence, the petitions are to be allowed.

2. Gist of the Averments in the 5th Respondent/Plaintiff's Counter:

The 5th Respondent/Plaintiff filed an adoption memo stating that the 5th Respondent/Plaintiff's had filed a detailed counter in I.A. No. 8/2024 and prays the same may be treated as a counter in I.A.9/2024.

The 5th Respondent/Plaintiff had filed a counter stating that this case stands posted for the evidence of 5th defendant on 12.09.2024. On 20.09.2024, which was the next hearing, on the request of the 5th defendant the case was posted to 27.09.2024. Whereas, on 27.09.2024, the 5th defendant has come forward with two applications namely I.A.No.8/2024 and I.A.No.9/2024. Both these applications have been filed to recall PW1 and reopen the cross of PW1. The case was initially listed for cross-examination of PW1 on 09.02.2024, and the cross-examination was finally closed on 11.07.2024. Over a span of 154 days, the court provided 13 opportunities for the cross-examination of PW1. Despite the considerable time allotted, the 5th defendant failed to cross-examine PW1. Even after the evidence of PW1 was concluded on 11.07.2024, the 5th defendant did not approach the court for further cross-examination until now. At

this stage, when it is time for the 5th defendant to present their evidence, these applications have been filed purely as a tactic to delay the proceedings. The petitioner has presented these applications on baseless grounds with the sole intention of causing delay in the suit. There is no genuine reason for recalling PW1 at this late stage, particularly when ample opportunity was already provided. Hence, the respondents prayed to accept this counter and to dismiss these petitions.

3. The point for consideration is whether the above petitions have to be allowed or not.

4) Point:

Heard. Records perused. These petitions have been filed by the petitioner, while the original case has been adjourned for 5th defendant's side evidence. The petitioner had stated that on 11.07.2024, PW1 was not cross-examined by petitioner's counsel. Since the petitioner's advocate was not available in the station on that day, PW1 could not be cross-examined on that day. In the nature of the suit, cross-examination of PW1 is highly essential.

5) However, the petitioner had not provided adequate reasons for not filing these petitions in court as soon as possible. Therefore, the plea raised by the petitioner in these petitions is not acceptable to this Court.

6) However, for a complete judicial determination of the original case and to give the petitioner sufficient opportunity to prove the case, it is necessary to grant permission to the petitioner to cross-examine the PW1; hence, in the interest of justice, this Court is inclined to allow these petitions on conditional cost.

7) As a result,

I.A. No. 8 of 2024:

This petition is allowed, on the condition that the petitioner shall pay a sum of Rs.500/- to the 5th Respondent / Plaintiff on or before 28.11.2024., otherwise, this petition would be dismissed. Call on 28.11.2024.

I.A. No. 9 of 2024:

This petition is allowed, on the condition that the petitioner shall pay a sum of Rs.500/- to the 5th Respondent / Plaintiff on or before 28.11.2024., otherwise, this petition would be dismissed. Call on 28.11.2024.

Dictated to the Typist, and typed by her directly in the Computer, corrected and pronounced by me, in open court this, the 21st day of November, 2024.

sd/-

II Additional District Munsif, (FAC)
Nagercoil.

Petitioner side witnesses and documents : Nil.

Respondent side witnesses and documents : Nil.

sd/-

II Additional District Munsif (FAC)
Nagercoil.

Fair/ Draft common Order
I.A.No.8 of 2024 and
I.A.No.9 of 2024
in
O.S.No.67 of 2017
Date: 21.11.2024.
II ADM(FAC), Nagercoil.

I.A.No.8/2024 in O.S.No.67 of 2017

Common Order pronounced:

Dated:21.11.2024

This petition is allowed, on the condition that the petitioner shall pay a sum of Rs.500/- to the 5th Respondent / Plaintiff on or before 28.11.2024., otherwise, this petition would be dismissed.
Call on 28.11.2024.

II ADM (FAC)

