

In the Court of the District and Sessions Judge,
District and Sessions Court No.II, Kancheepuram.

PRESENT: **J. CHANDRAN**,
District and Sessions Judge,
District and Sessions Court No.2,
Kanchipuram.

This Thursday the 20th day of February 2020

I.A.NOs. 660/2019 & 661/2019 in OS. No. 21/2015

1. S.Agalyabai.
2. Anandhi.
3. Premavathi.
4. Shanthi.

Petitioners/Defendants 1 to 4
in both petitions

//Vs//

1. S.Meganathan.
- 2, S.Yuvaraj.

Respondents/plaintiff /
5th Defendant in both
petitions

These petitions are coming on 12.02.2020 for final hearing before me in the presence of M/s V.S.Ramesh Kumar, G.Vasudevan, D.Madhusudan, R.Parthiban, T.K.Prabhakar, Advocates for petitioners/Defendants 1 to 4 in both petitions and of M/s G.Hayachandran & V.Mohan, Advocates for Respondents/Plaintiffs, upon hearing the arguments from both sides, upon perusal of records and having stood

over for my consideration till this day, this court passed the following

COMMON ORDER

These petitions have been filed by the petitioners/ defendants 1 to 4 to reopen the plaintiffs side evidence and to recall the P.W.1 for the purpose of cross examination by the counsel for the petitioners under Order 18 Rule 17 of CPC, and u/s.151 of CPC respectively.

2) **The averments found in both the petitions are as follows:-**

The first respondent/plaintiff has adduced evidence and the counsel for the petitioners had cross examined partly on various dates and the above case was posted for continuation of cross examination on 04.06.2019. During the month of May 2019 negotiations were made by the counsel for the petitioners for settlement and there was more than five sittings among the parties and there was an agreement reached between the plaintiff and the defendants. The counsel for petitioners had dictated the terms of the agreement to the plaintiff which was written by the plaintiff himself on his own handwriting and the original was retained by him and the xerox copy of the same was handed over to the petitioners. The plaintiff sought time to consult his advocate for the terms of the compromise and requested the counsel for the petitioners not to cross examine him until then. Hence, the counsel for the petitioners did not

appear and did not finish the cross examination of P.W.1 on 04.06.2019 and unfortunately the cross examination of PW1 was closed on 04.06.2019. The counsel for the petitioners and the petitioners had firmly believed that the plaintiff would have settle the case as per the agreement reached out of the court, but the plaintiff was gaining time under some pretext or other. This petitioner was not well in the month of September to November 2019 and he was under continuous treatment for all these time and hence, he was not in a postition to either give advice to his counsel or appear before this court. Hence, the defendants side evidence was closed on 30-10-2019 and the suit was posted for arguments on 06.11.2019 and 18.11.2019. The petitioners will be seriously prejudiced and put to irreparable loss if they are not allowed to cross examine P.W.1 fully, otherwise the evidence of the petitioners will go in vein. The petitioners who necessarily contest the case and P.W.1 should be fully cross examined by the counsel for the petitioners to prove their defence and hence, he prays for allowing the petitions.

3) The averments found in the common counter statement filed by the respondent are as follows:-

The petitioners had adopted all delay tactics and purposely failed and neglected to file the written statement and hence, they were set ex parte by an order dated 30.06.2017 after a period of nearly 20 months from the date of plaint. The cross examination of P.W.1 has been

commenced only after failure of the settlement talks between the petitioners and the respondent which was held on 15.12.2018. P.W.1 was cross examined on 01.02.2019, again after a period of three months he was further cross examined on 09.04.2019. They took adjournment for further cross examination under the guise of insisting the respondent to produce certain documents and after those documents were produced the petitioners took further time for further cross examination. The only intention to squat the ancestral properties without sharing any rental income, the petitioners herein dragging the matter as they do not have valid defence to defend the suit for partition. The petitioners and their counsels remained absent when the matter was called for further cross examination, though sufficient time were given. Without any option this court was pleased to close the cross examination of P.W.1. The averments made in the petition are purely false. These petitions have been filed only with a sole intention to drag the proceedings as much as possible and hence, he prays for dismissal of the petitions.

4) The points for consideration arise in both the petitions:-

Whether the petitions filed to reopen and recall P.W.1 for further cross examination are to be allowed or not are the questions to be decided in these petitions?

5) **To the Point:-**

It is an admitted fact that these petitions have been filed to reopen the evidence of plaintiff and to recall P.W.1 for further cross examination on the side of the petitioners/defendants. It is an admitted fact that the main suit has been filed in the year 2015 and the trial of this case has been commenced as early as on 25-07-2018. It is also an admitted fact that the suit has been filed only for partition. The petitioners/defendants had entered in to an appearance firstly on 06.06.2015 and as they have not filed written statement, they were set ex parte on 08.06.2016. Subsequently, another advocate has filed vakalath for Defendants 1, 2 and 5 and the ex parte decree was set aside on 19.04.2018 after the ex parte decree was passed. Subsequently, the plaintiff was examined on 25.07.2018 and the documents were marked on 23.08.2018. The respondent No.1/PW1 was cross examined by the learned counsel for the petitioners/defendants firstly on 01.02.2019 and the portion of cross examination are running to 4 full pages and subsequently, P.W.1 was cross examined in another part on 09.04.2019 by the learned counsel for the petitioners/defendants which are running to further three pages.

6) It is to be pointed out that on perusal of the recores it could be seen that the petitioners/defendants have not chosen to cross examine the witness then and there. On 23.01.2019 the cross examiantion of P.W.1 was adjourned only on the request of the learned

counsel for the defendants on payment of costs of Rs.500/- Subsequently, on 03.04.2019 though P.W.1 was present neither the defendant was present nor his counsel has made any representation and consequently the case was adjourned to 09.04.2019 with a direction to pay the day cost of Rs.1,000/- to P.W.1. After the payment of cost in both the occasions alone P.W.1 was cross examined by the learned counsel for the petitioners/defendants and the second portion of cross examination was completed on 09-04-2019. The learned counsel for the petitioners prays further time for the further cross examination of P.W.1 and the same was granted by this court and consequently the case was adjourned to 25.04.2019, 04.06.2019, 10.06.2019 and 19.06.2019 but he has not chosen to cross examine PW1 on those hearings. The plaintiffs side evidence was hence closed on 19.06.2019 by this court. Subsequently, the case was posted for defendants side evidence from 26.06.2019 till 30.10.2019 and in all those hearings the defendants were called absent and in some of the hearings not only the defendants were called absent but also there was no representation on the side of the defendants and hence, at last, the defendants side evidence was closed as they have not shown any interest in let in evidence on their side on 30.10.2019. After the case was posted for arguments these petitions have been filed by the petitioners.

7) Sufficient opportunities were given by this court to cross examine the plaintiff. Though the P.W.1's chief examination was closed

on 25.07.2018, the plaintiffs side evidence was closed only on 19.06.2019 and hence, nearly one year time has been granted to the petitioners only to cross examine P.W.1. As such the defendants cannot said that sufficient opportunities have not been given for them to cross examine the witness. Though the defendants side evidence was also closed by this court as the defendants have not shown any interest in adducing their side evidence, they have not filed any petition to reopen the defendants side evidence enable them to adduce evidence. On the other hand, they have filed this petition only to reopen and to recall P.W.1 for the purpose of further cross examination. The conduct on the part of the petitioners/ deendants would clearly shows that they have filed these petitions only to protract the trial of the case further and make the court to keep on pending the suit without allowing to see the end of the game in the trial.

8) Though the first petitioner/first defendant alone has swear this affidavit stating that she was not feeling well, she has not produced any documentary evidence to prove her ill health. She has not stated any reasons in the petitions for the absence of other four defendants including the petitioners No. 2 to 4 to appear before the court, either to give instruction or to give advice to their counsel for further cross examination of P.W.1 and to adduce evidence on their side. What prevented the other four defendants to co-operate for the trial of the case by assisting their counsel has not been explained by the petitioners in any

manner. The reasons given by the petitioners in their petitions are not supported by any kind of evidence. Vague and bald averments alone were being made in the petitions.

9) The petitioners have not shown any sufficient cause for their inordinate delay and their long absence and they have not shown any reason for non cross examination of P.W.1 though sufficient opportunities were given. In a mere partition suit the learned counsel for the defendants had cross examined the witness is PW1 in a lengthy manner which are running to seven full pages covering all aspects raised in their written statements what are all the points omitted to be put in the cross examination of PW1 and on what aspects the petitioners had failed to put questions to PW1 during the coruse of his cross examination has not at all been explained by the petitioners in their petitions. Considering the above stated circumstances and in the interest of justice this court finds that these petitions are liable to be dismissed and the points arise in those petitions are decided accordingly.

10) In the result, both the petitions are dismissed. The parties are directed to bear their own costs.

//This order has been dictated by me to the Stenographer, taken down, transcribed and typed by her in the computer, corrected

and pronounced by me in the open Court on this Thursday the 20th day of February 2020.//

Sd/- J.Chandran
District and Sessions Judge,
District and Sessions Court – II,
Kanchipuram.

**Exhibits and Witnesses on
both sides:**

-- Nil --

Sd/-J.Chandran
District and Sessions Judge,
District and Sessions Court – II,
Kanchipuram.

Draft/Fair Common Order
I.A.Nos.660/2019 & 661/2019
O.S.No. 21/2015
Dt.20.02.2020
District & Sessions Court No.II,
Kanchipuram.