

IN THE COURT OF THE PRINCIPAL DISTRICT JUDGE, KARUR

PRESENT:- THIRU R. SHANMUGASUNDARAM, B.Com., L.L.B.,

PRINCIPAL DISTRICT JUDGE.

Wednesday, the 10th day of July 2024

I.A.No.17/2024 in O.S.No.33/2014

and

I.A.No.18/2024 in O.S.No.33/2014

Kamatchi Periyasamy @ Gokul

...Petitioner/Plaintiff

vs.

Natarajan

...Respondent/Defendant

The abovesaid two petitions are coming before me for final hearing on 25.06.2024 in the presence of Thiru S. Chandrasekar, advocate for the petitioner and Thiru.V. Prakash, advocate for the respondent and upon hearing the arguments on both sides and having stood for consideration till this day, this Court passed the following

COMMON ORDER :-

The Petitioner/Plaintiff has filed this petition in I.A.No.17/2024 seeking to reopen the plaintiff side evidence in O.S.No.33/2014 for filing additional documents which was already closed by the Court and the petition filed by the petitioner/plaintiff in I.A.No.18/2024 in O.S.No.33/2014 seeking to mark the listed documents as Ex.No.7 to 9.

2) Brief averments of the affidavit filed by the petitioner/plaintiff in I.A.No.17/2024 in I.A.No.18/2024 in O.S.No.33/2014 is as follows:-

The petitioner is the plaintiff in the above suit. He has filed the above suit for the relief of cancellation of alleged and fraudulent suit sale deeds and other reliefs as

against the defendant. He submits that the he has already marked six documents in his support during the evidence of his side. He wants to submit few more documents in his support which are recently received from the Criminal trial in C.C.No.195/2020 pending before the Judicial Magistrate No.I, Karur against the respondent. This Criminal case is initiated on the FIR No.31/2011 filed by the District Crime Branch, Karur on his complaint against the respondent which is marked as Ex.No.A6 in O.S.No.33/2011. The additional documents of his side are very important and relevant to this case. If they are not marked by allowing this petition , he will be put to irreparable loss and prejudice, which cannot be compensated by any other means. Further, he submits that he has fair chance to success in this suit. Hence, prays to allow this petition. In I.A.No.18/2024 the affidavit filed by the petitioner stated that the respondent and other his henchmen were charged u/s147,120(b),365,346,420 and 506(ii) of IPC for fraudulent registration of the suit sale deeds in which the respondent and 4 other accused were granted conditional bail in CrI.M.P.No.1453/2011 on 29.09.2011 by Sessions Court, Karur. Two important and exclusive conditions for their bails are 1) deposit of three original alleged sale deeds with the Judicial Magistrate No.II, Karur and 2) Submission of affidavit they would produce all relevant documents before the investigating officer including acknowledge for payment for the sale deeds, for which the respondent filed separate permission. It is very pertinent to note that the respondent at his cross examination answered that there was no such condition imposed on bail and he did not submit the alleged sale deeds with the court. Through this petition all the related documents in surrendering the original sale deeds, 1) Order Copy of CrI.M.P.No.1453/2011 dated 29.09.2011, 2) Order copies in time extension petitions with CrI.M.P.No.1475/2011 dated 30.09.2011, CrI.M.P.No.1653/2011 dated 03.11.2011, CrI.M.P.No.1837/2011 dated 29.11.2011, 1456/2011 dated 29.10.2011 and 4) Memo to surrender another sale deed with doc.no.6610/2011 dated 02.12.2011 are filed in a single document as Ex.No.7 series in this case. In the bail petition, all the ten sureties were from Rameshwarapatti village, which is the native village of former Minister

Mr.Senthilbalaji. All the certificates were issued on the same date on 21.09.2011. It also creates strong suspicion about the involvement of the minister in this fraudulent registration of the alleged suit sale deeds. Hence, the certificates given by the VAO, Rameshwarapatti are the relevant and important documents in proving the involvement of the minister in this fraudulent sale deeds and mentioned in Ex.No.8 series in this case. During the investigation on the complaint given by him, the prosecution arranged for recording of statement from him before the Judicial Magistrate No.I, Karur u/s 165 (5) of Cr.P.C. The Judicial Magistrate No.II, Karur permitted the prosecution to the said statement as additional documents in the criminal trial by order in C.M.P.No.285/2013 in C.C.No.10/2012 dated 10.05.2013 and marked as Ex.No.9 in this case. Hence, prays to receive the additional documents Ex.No.7 to9 in O.S.No.33/2014.

3) Brief averments of the Objection filed by the Respondent/Defendant in I.A.No.17/2024 in I.A.No.18/2024 in O.S.No.33/2014 is as follows:-

The averments in the affidavit are all denied as false. The abovesaid case was posted on 21.03.2018 for trial and on that date, the petitioner called absent and the suit was dismissed and the petitioner filed restoration and the same was allowed by this Court. Again the suit was posted for trial on 17.12.2011 and on that date no representation sufficient time given, hence the suit is dismissed for default and the petitioner again filed an application to restore the suit and the petition was allowed. Again, the suit is dismissed for default and again the the petitioner filed a restoration petition and the same was allowed. In the main case, Pws and Dws evidence already closed and the said case posted for arguments on the appointed date, the petitioner filed this petition to reopen the case. The alleged FIR has been registered in the year 2011 as against this respondent. The petitioner specifically reason to delay for production of the said Criminal case. Now the case is posted for arguments. With the malafide intention to drag on the proceedings. The petitioner has not stated any

valid, legal and acceptable reasons to reopen the case. In the suit, evidence of both side is closed, documents were marked, parties were subject to cross examination in full and now the case stands posted for arguments. The petitioner has not given any valid and acceptable grounds to reopen the case for non production of the documents at the earlier stage. Again the suit posted for trial on 28.10.2022 , and the petitioner called absent and the suit is dismissed for default , again the petitioner filed a restoration petition and the same was allowed. The petitioner has not pleaded any exceptional case or circumstance to reopen the case. He is not entitled to file additional documents and let in further evidence to fill up the lacuna. The petitioner has not stated what are the new facts has been discovered subsequently, which necessiated for him to file this application. Hence, both the petitions have to be dismissed with costs.

4) This Court considered the rival submissions on both sides.

5) The question before this Court is whether the petition has to be allowed or not?

ANSWER TO THE POINT:-

6) The petitioner is the plaintiff and the respondent is the defendant in the above suit. The petitioner has filed the I.A.No.17/2024 petition seeking to reopen the plaintiff side evidence in O.S.No.33/2014 for filing additional documents which was already closed by the Court and the petition in I.A.No.18/2024 in O.S.No.33/2014 filed by the petitioner/plaintiff in seeking to receive the additional documents and mark the listed documents as Ex.No.7 to 9.

7) The petitioner/plaintiff has filed the above suit for the relief of declaration and other reliefs. The plaintiff in his plaint has averred that the defendant is an influenced person and further he stated that he was taken to Joint No.2 Sub-Registrar Office, Karur on 08.07.2011 by the defendant and their henchmen and without his

knowledge and consent of the plaintiff, three sale deeds were obtained and further, it was averted that the plaintiff was not intended to execute such sale deeds. The above said sale deeds were obtained fraudulently while the plaintiff was under the influence of alcohol and the sale deeds were not supported by consideration. According to the plaintiff, the above said sale deeds are void in the eye of law. Further, the plaintiff in his plaint has stated that the defendant is an influenced person. The above said suit was filed on 30.06.2014. The defendant appeared through his counsel and filed his written statement and this Court has framed three issues on 12.03.2018. The issues are 1) Whether the sale deeds (Doc.No.1456,6610 and 6611) dated 08.07.2011 are void for the reason that the defendant obtained the consent of the plaintiff by exercising undue influence and by coercion and by fraud? 2) If so whether the sale deeds should be cancelled? 3) To what relief is the plaintiff entitled? Further, the case was posted for trial in the list on 21.03.2018. On that day, the plaintiff's counsel reported no instructions. Therefore, he was called absent and the suit was dismissed for default with costs. Thereafter, the plaintiff has filed a petition in I.A.No.375/2018 to restore the suit. The above said I.A was allowed on 04.11.2019 and the suit was restored into the file. Thereafter, the suit was posted for trial as NFA on 17.12.2019. On 17.12.2019, there was not representation on the side of the plaintiff and hence, again the suit was dismissed for default. Thereafter, the plaintiff has filed a petition in I.A.No.02/2021 to restore the suit and the above said petition was allowed on 04.03.2022 and again the suit was restored to the file. Further, the plaintiff was examined as P.W.1 on 25.03.2022. In the mean time, one Deivanai has filed a petition in I.A.No.03/2022, seeking to implead herself as 2nd defendant in the suit and the same was dismissed on 21.07.2022 and thereafter, the case was adjourned to 04.08.2022 for the presence of P.W.1 and cross. The plaintiff was continuously absent on 04.08.2022, 18.08.2022, 01.09.2022, 22.09.2022, 28.09.2022, 20.10.2022, 27.10.2022 and 28.10.2022. Therefore, on 28.10.2022, again the suit was dismissed for default for the 3rd time. Further, the above suit was restored as per the order passed in I.A.No.06/2023 dated 11.07.2023. Thereafter, the trial was commenced and

the plaintiff was cross examined and when the case was posted on 17.08.2023 for plaintiff's side further evidence, there was no representation on the side of the plaintiff and therefore, the plaintiff side evidence was closed on 17.08.2023. Thereafter, the defendant examined himself as D.W.1 and defendant's side evidence was closed on 12.12.2023 and the case was posted for arguments. Further, the plaintiff has filed I.A.No.10/2024 to reopen the case for adducing evidence. The said application was allowed on 03.01.2024 and the plaintiff's case was reopened and thereafter, plaintiff paid witness batta to as many as six witnesses viz.1) Karuppanan, 2) Mohanraj, 3) Selvaraj, 4) R.M.Kandasamy, 5) Muthusamy and 6) Natarajan. Summons to the above said witnesses No.1 to 5 were served and summons to the witness No.6 was returned along with death certificate of the said Natarajan. On 15.02.2024, the witnesses Nos. 1 and 5 alone were appeared before this Court and they were examined as P.W.2 and P.W.3. Further, witness Nos. 2 to 4 were called absent. Therefore, the case was adjourned to 23.02.2024 for steps to witness Nos. 2 to 4. Hence, the petitioner has filed I.A.No.12/2024 seeking to issue warrant to the above said witnesses in I.A. No.12/2024. The above said I.A was dismissed on merits on 07.03.2024. Thereafter, the main case adjourned on 14.03.2024 for arguments on 14.03.2024. The petitioner has come forward with these two petitions seeking in the prayer stated above. Therefore, the petitioner has filed the petition to reopen the plaintiff's case and to issue summon in I.A.No.13/2024 and I.A.No.14/2024. The abovesaid I.A.Nos.13/2024 and 14/2024 were dismissed on merit on 17.04.2024 and the case was adjourned to 25.04.2024 for arguments. On that day, the petitioner has filed the stay petition stating that he is intending to file revision the case. The order passed in I.A.No.12/2024 on the same day, the respondent/defendant filed the petition to reopen the case adducing further evidence in I.A.No.17/2024. On 06.06.2024, I.A.No.15/2024 was allowed and witness batta was paid to summon given to the Inspector of Police on 20.06.2024 and witness was present and he was examined as DW2 and defendant's side evidence DW2. On that day, the petitioner has filed the present these petitions to reopen the plaintiff's case to

mark to additional documents for the purpose in I.A.No.18/2024. The petitioner in I.A.No.18/2024 has filed the three additional documents and prays to receive them are as follows: 1) Order Copy of CrI.M.P.No.1453/2011 dated 29.09.2011, 2) Certified copy of valuation certificate issued by VAO, 3) Order copies in time extension petitions with CrI.M.P.No.1475/2011 dated 30.09.2011, CrI.M.P.No.1653/2011 dated 03.11.2011, CrI.M.P.No.1837/2011 dated 29.11.2011, 1456/2011 dated 29.10.2011.

8) The case of the petitioner is that he has given a complaint before the Town Police station, Karur in respect of the impugned sale deed and the same was registered as Cr.No.31/2011 on the file of District Crime Branch, Karur. The abovesaid FIR in the abovesaid Crime No.31/2011 has been marked as Ex.A6 on the side of petitioner/plaintiff. The present documents are bails petitions on the file of Sessions Judge, Karur. In the abovesaid case and valuation certificate produced by the accused in this court before the Magistrate Court and the doc.6 is the order passed by the Learned Judicial Magistrate to record the statement of the petitioner u/s 164 of CrPC. The petitioner in affidavit filed alongwith the petition in I.A.No.18/2024, that questioning the conditions imposed by the Sessions Judge, Karur in granting and further he has raised suspicion on the sureties. Therefore, the abovesaid documents are no way helpful to decide the issues in this case. Since the abovesaid documents are relating to the order passed in bail applications, sureties, certificate and order permitting the prosecution to record the statement of witnesses u/s 164 of Cr.PC. Therefore, the petitioners have failed to establish that the documents filed alongwith I.A.No.18/2024 are vital to prove the same. On the other hand, the conduct of the petitioner reveal that he wants to drag on the trial. Already the petitioner has filed three reopen petitions. The conduct of petitioner would clearly establish that he wants to keep the suit on pending and he does not want to conclude the trial of the case for the reasons best known to him. The conduct of the petitioner would clearly show that he wants to delay the trial of the case as well. Therefore, the petitioners

have not stated sufficient reason for non-examination of the witnesses on earlier point of time. Therefore, both side witnesses were already closed and the petitioner was given one more chance to reopen the case and examined PW2 and PW3. Now, when the case is posted for arguments in order to fill up the lacunae. Therefore, the petitioner has filed these petitions without any valid reasons. Therefore, this Court is not inclined to allow these petitions. Accordingly, these petitions are dismissed.

In the result, both the petitions are dismissed. No costs.

Dictated to the steno-typist, transcribed by her corrected and pronounced by me in open Court on this the 10th day of July 2024.

PRINCIPAL DISTRICT JUDGE,
KARUR.