

IN THE COURT OF THE DISTRICT JUDGE, KARUR
PRESENT:- THIRU R. SHANMUGASUNDARAM, B.Com., L.L.B.,
PRINCIPAL DISTRICT JUDGE.

Wednesday, the 17th day of April 2024

I.A.No.13/2024 in O.S.No.33/2014

and

I.A.No.14/2024 in O.S.No.33/2014

Kamatchi Periyasamy @ Gokul

...Petitioner/Plaintiff

vs.

Natarajan

...Respondent/Defendant

This petition coming on before me for hearing on 19.03.2024 in the presence of Thiru S. Chandrasekar, advocate for the petitioner/plaintiff and Thiru. K. Velusamy advocate for the respondent/defendant and upon hearing the arguments on both sides and having stood over for consideration till this day, this Court passed the following

COMMON ORDERS:-

This petition was filed by the petitioner/plaintiff in I.A.No.13/2024 in O.S.No.33/2014 seeking to permit the petitioner to call by summoning through Court to the witnesses listed separately for the plaintiff side witness and the petition filed by the petitioner/plaintiff in I.A.No.14/2024 in O.S.No.33/2014 seeking to reopen the plaintiff side evidence in O.S. No.33/2022, which was already closed on 07.03.2024 and thus render justice.

2) Brief averments of the affidavit filed by the petitioner/plaintiff in I.A.No.13/2024 in I.A.No.14/2024 in O.S.No.33/2014 is as follows:-

The petitioner is the plaintiff in the above suit. He submits that he filed the above suit against the respondent/defendant for the relief of cancellation of three sale

deeds fraudulently registered. Further, he submits that he already filed witness summons to eight witnesses to give their evidence, now he arranged other two witnesses and he was not able to approach the present new witnesses at the time of preparing the above said list of 8 witnesses. He also mentioned one of the witnesses named R. Balasubramanian @ Sengal Balu signed as 1st witness in the alleged and forged three suit sale deeds and who witnessed all the fraudulent acts of the defendant during the time of its registration and he witnessed that there was no transaction of sale consideration of Rs.2,00,00,000/- as stated by the defendant in this case. Hence, he submits that this witness is very important witness in his side and he also enclosed separate witness summon for R. Balasubramanian @ Sengal Balu. He submits that another witness Dhanumoorthy was working as a Sub-Registrar at Mela Karur SRO when the fraudulent registered the sale deeds in Doc. No.6610/2011 and Doc. No.6611/2011 were registered. At the time of registration, SRO did not follow any statutory requirements in registration of sale deed and he did not peruse any parent documents and its originals and he did not enquire whether the transaction sale consideration of Rs.2,00,00,000/- was completed or not by the defendant. Moreover, this witness was highly influenced financially and politically by the defendant and recently he was trapped by the anti corruption wing for his highly corrupted service. Further, the defendant already filed witness summon to this witness but they did not bring the witness to Court. Hence, he need to summon him to give his evidence to this case which will appantly expose the fraudulent transaction of the alleged sale deeds by the defendant. Therefore, he filed a separate permission petition to produce the present two witnesses. Hence, he prays to reopen the evidence of his side in O.S. No.33/2014, which was already closed on 07.03.2024. Hence, prays to allow this petition.

3) Brief averments of the Objection filed by the Respondent/Defendant in I.A.No.13/2024 in I.A.No.14/2024 in O.S.No.33/2014 is as follows:-

The respondent is the defendant in the above suit. He submits that 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. It is submitted that the petitioner with intention to drag on the trial of the suit has filed these petitions. There is no merits in this petition. Hence, prays to dismiss this petition 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 these petitions seeking to issue witness summons to the witness in the listed separately and to reopen the plaintiff side evidence. The petitioner has filed this I.A.No.14/2024 to reopen the plaintiff case for the purpose of adducing further evidence and I.A.No.13/2024 for seeking permission to issue witness summons through Court to the witness listed separately. 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 plaintiff was taken to Joint No.2 Sub-Registrar Office, Karur on 08.07.2011 by the defendant and their henchmen and without the knowledge and consent of the plaintiff, three sale deeds were obtained and further, it was averred 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 now the case is 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)Karuppannan, 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 suit was adjourned to 14.03.2024 for arguments. On 14.03.2024, the petitioner has come forward with these two petitions seeking in the prayer stated above. Now, the petitioner wants to reopen his case for the purpose of adducing further evidence on his side by summoning witnesses. Those witnesses are one R. Balasubramanian @ Sengal Balu attestor to the impugned three sale deeds and the another witness Dhanumoorthy who worked as a Sub-Regsitrar at Mela Karur, SRO and registered the impugned sale deeds.

The present suit is in the year of 2018 and already the suit was dismissed for default on three times and the trial of this case has been commenced on 25.03.2022. The plaintiff side evidence was closed on 17.08.2023. Thereafter, the defendant examined himself as DW1 and closed his evidence on 12.12.2023 and when the case was posted for arguments on 21.12.2023 the petitioner filed I.A.No.08/2023, I.A.No.09/2023, I.A.No.10/2023 to reopen the defendant case, and to recall DW1. I.A.No.08/2023 and I.A.No.09/2023 were allowed on 03.01.2024 thereby the case was reopened and DW1 was recalled for further cross examination on the side of the plaintiff. On 11.01.2024 DW1 was present and he was further cross examined by the plaintiff side and the case was adjourned to 18.01.2024 for arguments. In the mean time, the reopen petition filed by the petitioner in I.A. No.10/2024 to reopen the plaintiff case for adducing further, the case was allowed on 24.01.2024. Thereafter, the plaintiff has paid witness batta to issue witness summons to six witnesses. Out of six witnesses two of them were appeared and they were examined. At that time of

paying witness batta to the said six witnesses the petitioner for the reason best known to him has not paid witnesses batta to issue witness summons to the present witnesses namely R. Balasubramanian @ Sengal Balu and Dhanumoorthy. This Court has already given chance to the petitioner/plaintiff to reopen his case for examination of plaintiff side further witnesses in I.A. No.10/2024 and the plaintiff has also examined summoned six witnesses and examined two additional witnesses as PW2 and PW3. Thereafter, this case was posted for arguments. Again the petitioner has filed the two reopen petition to examine the witnesses. The petitioner has not stated any reason for the non-examination of the witnesses at the earlier point of time. The conduct of the petitioner would clearly establish that the petitioner wants to keep this suit on pending for the reason best known to him and he doesn't want to conclude the trial of this case and further the conduct of the petitioner would clearly shows that he want to delay the trial of the case as well. The petitioner has not stated sufficient reason for non-examination of the witnesses at earlier point of time. After closure of both side witnesses the petitioner was given one more chance to reopen the case and he has examined PW2 and PW3. Now, when the case is posted for arguments in order to fill up the lacunae, the petitioner has filed these petitions without any valid reasons. Therefore, this Court is not inclined to allow these petitions. Accordingly, the petitions are dismissed.

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

Dictated to the steno-typist, transcribed by her corrected and pronounced by me in open Court on this the 17th day of April 2024.

PRINCIPAL DISTRICT JUDGE,
KARUR.