

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

Thursday, the 07th day of March 2024

I.A.12/2024 IN O.S.No.33/2014

Kamatchi Periyasamy @ Gokul

... Petitioner/Plaintiff

vs.

Natarajan

...Respondent/defendant

This petition coming before me for final hearing on 02.03.2024 in the presence of Thiru S. Chandrasekar, advocate for the petitioner and upon hearing the arguments on the side of the petitioner and having stood for consideration till this day, this Court passed the following

ORDER:-

The Petitioner/Plaintiff has filed this petition seeking to issue warrant to the witness Nos.2 to 4 as plaintiff side witnesses in the above suit.

2) Brief averments of the affidavit filed by the petitioner/plaintiff is as follows:-

The petitioner is the plaintiff in the above suit. He has filed the above suit for the relief of declaration and other reliefs as against the defendant. He submits that the stage of the case is witness by his side. He has already filed witness summons to 9 witnesses, in which witness nos.1 and 5 appeared on 15.02.2024 and witness Nos.2 to 4 did not appear to give their evidence. He submits that they are the important witnesses for his side and if they give their evidence genuinely his case will be proved. He further submits that if they are not examined, he will be put to irreparable loss and prejudice, which cannot be compensated by any means and if this petition is allowed no prejudice would be caused to the other side. Further, he submits that he has fair chance to success in this suit. Hence, prays to allow this petition.

3) In this case, there is no representation on the side of the respondent/defendant.

4) The point for consideration is whether this petition has to be allowed or not?

ANSWER TO THE POINT:-

5) The petitioner is the plaintiff and the respondent is the defendant in the above suit. The petitioner/plaintiff has filed this present petition seeking to issue warrant to the witness Nos.2 to 4 as plaintiff side witnesses in the above suit.

6) This Court has heard the learned counsel for the petitioner/plaintiff. 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 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.08/2023 to reopen the case for adducing evidence. The said application was allowed on 03.01.2024 and the plaintiff's case was reopened and therefore, 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. According to the petitioner/plaintiff, witness Nos. 2 to 4 are the important witnesses and if they give their evidence, genuinely his case will be

proved. No other particulars were given by the petitioner/plaintiff to establish that the witnesses are material witnesses on his side.

7) Further, Order 16 Rule 10 of C.P.C speaks about issuance of warrant when the witnesses failed to comply with the summons.

Order 16 Rule 10 Sub-class (2) and (3) of C.P.C reads as follows:-

“(2) Where the Court sees reason to believe that such evidence or production is material, and that such person has, without lawful excuse, failed to attend or to produce the document in compliance with such summons or has intentionally avoided service, it may issue a proclamation requiring him to attend to give evidence or to produce the document at a time and place to be named therein; and a copy of such proclamation shall be affixed on the outer door or other conspicuous part of the house in which he ordinarily resides.

*(3) In view of or at the time of issuing such proclamation, or at any time afterwards, the Court may, in its discretion, issue a warrant, either with or without bail, for the arrest of such person, and may make an order for the attachment of his property to such amount as it thinks fit, not exceeding the amount of the costs of attachment and of any fine which may be imposed under [rule 12](#): **Provided** that no Court of Small Causes shall make an order for the attachment of immovable property.”*

Therefore, as per Order 16 Rule 10 Sub-class (2) of C.P.C, the petitioner should establish that the evidence is material and the witness has without lawful excuse, failed to attend or to produce the document in compliance with the summons or has intentionally avoided, the Court may issue proclamation requiring him to attend to give the evidence. The case in hand, the petitioner/plaintiff has not averred that the witness nos. 2 to 4 are the material witnesses and they have willfully failed to appear to give evidence. Neither the plaintiff in his plaint nor in his evidence disclose that the witnesses are the material witnesses. Further, the petitioner/plaintiff not even put any suggestion to the D.W.1 that the witness Nos. 2 to 4 are material witnesses to

prove his case. The case is in the year of 2014. Already the suit was dismissed for default on three times. Therefore, the conduct of the petitioner/plaintiff would clearly shows that he wants to delay the trial of the case. Further, the petitioner/plaintiff has not satisfied the requirement made under Order 16 Rule 10 Sub-class (2) of C.P.C. Therefore, in view of the above stated facts and circumstances, this Court is not inclined to allow this petition. Accordingly, this petition is dismissed.

In the result, this petition is dismissed. No costs.

Dictated to the Steno-typist, transcribed by him, corrected and pronounced by me in open Court on this the 07th day of March 2024.

PRINCIPAL DISTRICT JUDGE,
KARUR.