

In the Court of the Principal District Judge, Madurai
Present: Thiru. S. Sivakadatcham, B.Sc., M.L.,
Principal District Judge, Madurai

Tuesday, this the 26th day of September, 2023

I.A.No.906/2021

In

O.S.No.28/2019

1. T. Kala
2. T. Rajarajeswari

...Petitioners/Defendants 2 & 3

/vs/

1. A. Rajeshkumar
2. A. Karthikeyan
3. M. Anitha

...Respondents/Plaintiffs 1 & 3
and 1st Defendant

This petition coming on today for hearing before me in the presence of Thiru G.Balasubramanian, Advocate for the petitioners and of Thiru M.R.Murugesan, Advocate for the respondents 1 and 2 and of Thiru S. Raja Shanmugam, Advocate for the 3rd respondent and upon hearing both sides and having stood over for consideration till this day, this court delivered the following:-

ORDER

The petitioners have filed this petition under Order 8 Rule 1(3) of CPC to receive the petition mentioned documents on the side of the petitioners/defendants 2 and 3.

2. The averments set out in the affidavit filed along with petition are briefly as follows:-

The petitioners are defendants 2 and 3 in the main suit. The petitioners explained their case to their previous counsel. The counsel then told that they would file written statement with certain facts and thereafter, they could file additional written statement. Now, the petitioners have engaged the present counsel by obtaining 'no objection' from previous counsel. All the defence has not been stated in the earlier written statement and the details of their side documents. So, the petitioners want to file documents mentioned in the petition. The petition mentioned documents are necessary and vital to decide the case. There will be no prejudice to the other side. So, the petitioners have filed this petition to receive the documents mentioned in the petition. The petition may be allowed.

3 The averments set out in the counter affidavit filed by the respondents 1 and 2 and adopted by the 3rd respondent are briefly stated as follows:-

The petition is not maintainable in law and on facts. The petitioners have falsely averred in the affidavit that the previous counsel of the petitioners had stated that first they would file written statement with certain facts and thereafter they would file additional written statement with full facts. The petitioners wanted to defend with additional new facts to the facts and documents which are not sustainable in law. The documents filed along with petition are not acceptable in

law. The petitioners have to prove their genuineness at the time of marking. They are created for the purpose of the case. So, the petitions are liable to be dismissed.

5. The point for determination:-

Whether this petition is allowable or not?

6. Both sides have not adduced either oral evidence or documentary evidence. Heard both sides.

7. Point:

The petitioners have filed this petition for seeking permission to receive the petition mentioned documents. The learned petitioners' counsel argued that at the advice of the previous counsel they have filed written statement with certain facts and documents and now they want to file the documents mentioned in the petition to prove their case. Though the respondents filed counter, but there is no serious objection except the documents are legally not acceptable and subject to the genuineness. But, the learned respondents counsel during the course of arguments contended that since the documents are photocopies, the same may be received subject to production originals.

8. Records perused. The respondents 1 and 2 have filed the main suit for partition of $\frac{1}{2}$ share in the item No.1 to 6 of the suit properties and $\frac{3}{4}$ share in item No.7 of the suit properties. The 3rd respondent, who is 1st defendant in the main suit, has filed written statement-cum-counter claim seeking for $\frac{1}{2}$ share in item Nos.1 to 6 and $\frac{1}{4}$ th share in item no.7 of the suit properties. The respondents 1 to 3 claimed that they are children of one Thangaraja. The 1st petitioner claims that she

is wife of the said Thagaraja and the 2nd petitioner born through him and so, the petitioners contested the case and filed written statement with certain facts and documents as advised by their previous counsel. The suit is pending for trial. At this stage, now the petitioners want to file petition mentioned documents. On perusal of petition mentioned documents, they are all photo copies. The respondents have not stated serious objections in their counter except the documents may be accepted subject to genuineness. Therefore, in the interest of justice and in order to avoid multiplicity of proceedings and also the petitioner states that the documents are filed to prove their case, this court is inclined to allow this petition subject to relevancy and proof on production of originals. There will be no prejudice to other side and also the respondents are having opportunity to object for marking during examination of witness. Hence, this petition is to be allowed subject to relevancy and proof and production of original.

9. In the result, this petition is allowed. The petition mentioned documents are ordered to be received subject to relevancy and proof and on production of original. No cost.

Dictated to the stenographer, transcribed by him, corrected and pronounced by me in open court this the 26th day of September, 2023.

Principal District Judge,
Madurai.

List of witnesses examined:-

Petitioners side – Nil
Respondents side – Nil

List of documents marked:-

Petitioners side – Nil

Respondents side - Nil

Principal District Judge,
Madurai