

IN THE COURT OF THE DISTRICT MUNSIF, MELUR.

Present: Thiru.S.MUTHUKRISHNA MURALIDAS, M.A.M.L.,

DISTRICT MUNSIF, MELUR

Wednesday, the 28th day of August 2024

I.A No. 5/2024

in

O.S No. 156/2019

M. Pandi Asari

... Petitioner / Plaintiff

.Vs.

1. E.M. Gopalakrishna Kone Trust

Represented through its Trustee

Mrs. E.M.G.Indrani.

2. E.M.G.S. Arun Pothiraj

... Respondents/Defendants

This petition has been coming before this court for final hearing on 28.08.2024 in the presence of Thiru. A.Haja Mohideen, Advocate for the Petitioner/Plaintiff and Thiru. M. Jeyaraman, Advocate for the Respondents/Defendants and upon hearing the argument on both side and having stood over for consideration till this date, this court delivered the following...

ORDER

1. This petition is filed under Order XVI Rule 1 of the Civil Procedure Code, to summon the Officer of the North Joint Sub-Registrar, Madurai and the officer of Madurai North Taluk to give evidence in order to Prove the genuineness of the documents produced by the I.A.No.5/2024 in O.S.No.156/2019.

petitioner/plaintiff.

2. The petitioner is the plaintiff in the main suit filed for the relief of bare injunction simpliciter. The case of the petitioner is that the suit property originally belonged to EM Gopalakrishna kone trust and they have obtained prior permission form the court alienated the properties in Survey No.169/1, 169/2 by converting into several plots and he has purchased one among the plot which is shown as the suit property. The defendants strenuously agitated that no such alienation was made by EMG Soundarrajan. Therefore the petitioner wants to summon the revenue officials and the officials from Registration department to give evidence regarding the sub-division made by them and the registration of documents made by them.

3. The respondent has raised an objection that Mr. E.M.G. Soundarajan did not executed any document as alleged by the petitioner with respect to the suit properties. All the sale deeds, Power of Attorney alleged to have executed by the said Mr.E.M.G. Soundarajan is stoutly denied by the respondents. The petitioner instead of taking necessary to prove the genuiness of the alleged signature of E.M.G. Soundarajan in the Power of Attorney dated 11.09.1997 and alleged sale deed dated 20.04.1996, seeking permission to examine the revenue officials regarding the survey made by them without giving notice tot he respondents is untenable. It is the duty of the petitioner to prove his possession in the suit property by cogent evidence. But the petitioner wants to summon the officer of concerned Registrar office is unwarranted which would cause considerable delay in case proceedings. Hence this petition is liable to be dismissed.

4. Heard both side and perused entire records.
I.A.No.5/2024 in O.S.No.156/2019.

5. Now the point to be considered is whether this petition is to be allowed or not?

6. This petitioner has filed main suit for bare injunction. Now the matter is posted for further witness on the plaintiff side. There is no list of witness produced on the plaintiff side. At this juncture, it apposite to refer Order XVI Rule 1 CPC which runs as follows:

(1) On or before such date as the Court may appoint, and not later than fifteen days after the date on which the issues are settled, the parties shall present in Court a list of witnesses whom they propose to call either to give evidence or to produce documents and obtain summonses to such persons for their attendance in Court.

(2) A party desirous of obtaining any summons for the attendance of any person shall file in Court an application stating therein the purpose for which the witness is proposed to be summoned.

(3) The Court may, for reasons to be recorded, permit a party to call, whether by summoning through Court or otherwise, any witness, other than those whose names appear in the list referred to in sub-rule (1), if such party shows sufficient cause for the omission to mention the name of such witness in the said list.

(4) Subject to the provisions of sub-rule (2), summonses referred to in this rule may be obtained by the parties on an application to the Court or to such officer as may be appointed by the Court in this behalf within five days of presenting the list of witnesses under sub-rule (1).

7. The principles enunciated by the Hon'ble *Apex Court in Kailash Vs. Nanhku & Ors.*, the court held that "*even if the Respondents/plaintiffs have failed to show or plead any cause for omission of the names of said two witness in the list of witness which I.A.No.5/2024 in O.S.No.156/2019.*

ought to have been filed under the provisions of sub rule 1 of Rule 1 of Order XVI of the CPC, that alone cannot be a reason for rejecting the Respondents/Plaintiffs request for examination of said two witness. This is particularly true when this court has already arrived at a finding that the examination of the said two witness appears to be necessary for the purpose of determining the real controversy between the parties”.

8. In the present case, this petitioner/plaintiff has not filed any list of witness whom he wants to examine on his side. However as pronounced in *Kailash case supra*, mere non-disclosure of witness name in the list of witness alone not a ground to reject the petitioner’s plea. However this court has to ascertain the relevancy of the proposed witness to decide the real dispute between the parties. As such this petitioner wants to summon the taluk officials to adduce evidence regarding sub-division made in the properties in S. No. 169/1, 169/2 and to produce an extract of “A” registers for the same. Likewise, the documents of petitioners alleged predecessor in title has been produced and the same is stoutly denied by the respondent. So to prove the said documents it is necessary for them to examine the officials where the said documents have been said to have registered.

9. Therefore, from the above circumstances, in order to provide fair opportunity to substantiate the case of the plaintiff, this court is inclined to grant permission to summon the petition mentioned witness as prayed by this petitioner and thus this petition is allowed. No cost.

This order is typed by me and corrected and pronounced by me in open court, this the 28th day of August 2024.

District Munsif
Melur.

List of Witnessess on the side of Petitioner : Nil

List of Documents on the side of Petitioner: Nil

List of Witnessess on the side of Respondent : Nil

List of Documents on the side of Respondent: Nil

District Munsif
Melur.

IA No.5/2024

in

OS. No.156/2019

Fair/Draft Order ,

Date: 28.08.2024