

IN THE COURT OF THE SUB JUDGE, MELUR

Present: Thiru. S. Ganesan, B.Sc., M.A., B.L.,

Sub Judge, Melur.

Monday, the 24th day of July 2023

I.A.No.4/2023

in

O.S.No.457/2019

Perumal Petitioner/plaintiff

Vs.

1. Moovendiran

2. Renugadevi

3. Chellameena

.....

1,3,4 respondents/

1,3,4 2.defendants

This petition coming for final hearing before me on 21.07.2023 in the presence of Thiru.B.Stalin, Advocate for the petitioner/plaintiff and of Thiru.S.Manimaran and Selvi.M.Gnanalakshmi, Advocates for the 1,3,4 respondents/1,3,4 defendants and upon hearing the arguments on both sides, on perusal of the records and having stood over for consideration till this day, this court delivers the following:-

ORDER.

1. This is a petition under and 151 of Code of Civil Procedure to reopen the petitioner/plaintiff side evidence (PW1).

2. The petition averments :-

3. The petitioner herein is the plaintiff in the main suit. The petitioner filing the main suit for seeking Amin and hand over the possession against respondent/defendant, the petitioner craves leave of this court to read the plaint as part and parcel of this affidavit.

4. On 1.6.2023, the main case was posted for cross examination of DW1. On the part of the plaintiff, the plaintiff has to file a copy of the order of the District Registrar cancelling deed of the respondent. Hence, the petitioner is filing this petition for recall the PW1, if the petition is not allowed, the petitioner will be put into heavy and irreparable loss and hardship. Hence prayed to reopen the petitioner/plaintiff side evidence(PW1) chief examination. Hence prayed to allow this petition.

5. **The 1st respondent/1st defendant filed counter statement refuting the averments of the petition affidavit :-**

6. The petition is false, frivolous, vexatious and not maintainable according to the law and on facts. The respondents admitted averments hereunder, all the other averments are denied and the petitioner is put to strict proof of the same.

7. After the completion of the plaintiff's side evidence and after examination of 1st defendant as DW1 and posted for cross examination, at this stage this petition has been filed. Hence, liable to dismissed by out set. Further more, the plaintiff averred that the sale deed was cancelled by the District Registrar. The order has to be marked on the side of the PW1. Further as against the order of the District Registrar, the respondent has filed appeal to the I.G registration chennai. Further, the District Registrar order is not attained finality. Only the order passed by the I.G registration, Chennai in the appeal will be final. Therefore for marking of the order of the District Registrar, PW1 need not be recalled or PW1 side reopened. There is no acceptable reasons for allowing this petition. Hence, prayed to dismiss the petition with costs.

8. The point for consideration aroused is that

Whether the petition has to be allowed or not?

9. Point.

10. Heard both sides. Upon perusal of records, documents averments and hearing the submissions of the both side counsels, admittedly this petition is filed for reopen the petitioner/plaintiff side (PW1) chief examination for marking of documents of order passed by the District Registrar.

11. The reason assigned by the petitioner is that after the filing of the suit, the District Registrar has cancelled the deed of the respondent. It has to be marked as the side of the plaintiff.

12. On the other hand, the respondent vehemently contended that as against the order of the District Registrar, the respondent has preferred appeal to the I.G registration, Chennai. Moreover, only for the marking of the documents, there is no need to reopen the PW1 chief examination that too at this stage of the DW1 cross examination without filing the document.

13. Considering the rival contentions, to prove the correlation and contention of the plaintiff, this petition has been filed. Admittedly, there is no pleadings about the filing of the petition for cancellation of the sale deed in the plaint. Further, there is no such document has been produced for the cancellation of the sale deed. There is no iota single whisper about the alleged order anywhere in the plaint pleadings. While so, the plaintiff cannot file a petition recalling or reopen the PW1 without production of the alleged sale cancellation order by the District Registrar.

14. The petitioner didn't file the copy of the order along with the petition. Further more, the petitioner didn't file any reception of additional documents petition without which, this petition is not at all maintainable one.

15. It is well settled that in the absence of pleadings, evidence, if any, produced by the parties, the petition cannot be considered. It is also equally settled that no party should be permitted to travel beyond its pleading and that all necessary and material facts should be pleaded by the party in support of the case set up by it. The object and purpose of pleading is to enable the adversary party to know the case it has to meet. In order to have a fair trial it is imperative that the party should state the essential material facts so that other party may not be taken by surprise.

16. This court is of the opinion that making an interlocutory application to recalling /reopen the PW1 chief examination when the case is posted for cross of DW1 is not warranted without pleadings and document. Since the case is posted for cross of the DW1, the plaintiff is not entitled to recall himself to fill up the lacuna by filing reopen petition. Further without filing the document, the petitioner is not entitled to maintain reopen and recall petition at this stage.

17. Moreover it is left for the plaintiff counsel to mention the same and produce the document in cross examination of DW1, as the defendant has raised the fact in the cross examination of PW1. Therefore allowing of this petition will be prejudice to the defendants and also to the facts of this case in the circumstances of this case. It is also pertinent to note that this suit is directed to be disposed with September month as per the direction of Hon'ble Madurai Bench of Madras High Court in 22.09.2023. Hence this petition is filed only to delay on drag on the proceedings. Further, the civil court is the deciding authority in transfer of title of a property. Therefore the production or non production of the order of District Registrar will no way hinder the verdict of civil court. Hence, this court is not inclined to allow this petition as it is devoid of any merits. Accordingly, the point is answered.

In the result, this petition is hereby dismissed with costs.

Directly typed by me in my laptop, corrected and pronounced in open court on this 24th day of July 2023.

Sd/-
Sub Judge,
Melur.

Petitioner's side Exhibits and witnesses :-- Nil
Respondents side Exhibits and witnesses:-- Nil

Sd/-
Sub Judge,
Melur.

Draft/Fair Order
in
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in
O.S.No.457/2019
Dated: 24.07.2023
Sub Court, Melur.