

IN THE COURT OF THE PRINCIPAL DISTRICT JUDGE,
PERAMBALUR.

Present: Tmt.A.Balkis, B.L.,
Principal District Judge.

Friday, the 2nd day of September, 2022.

I.A.No.04/2022
in
O.S.No.18/2017

Ganapathi, 60/22,
S/o. Govinda Poosari,
Karuppattankurichi Village,
Kunnam Taluk,
Perambalur District.

--- Petitioner/1st Defendant.

-Vs-

1. Sellammal, 50/22,
W/o. Palanimuthu,
Karuppattankurichi Village,
Kunnam Taluk,
Perambalur District.

2. Chithra, 40/22,
W/o. Chithravelu,
Velluvadi Village,
Veppanthattai Taluk,
Perambalur District.

--- Respondents/Plaintiffs.

This petition is coming up before me for final hearing in the presence of Thiru.K.Sanjeevirajan, Advocate for the petitioner and Thiru.G.Subramanian, Advocate for the respondents, upon perusing the petition, counter and other relevant records, this Court has passed the following:

ORDER

This petition is filed under Order 18 Rule 17 of Code of Civil Procedure to recall Pw1 and Pw2 for further cross examination.

2. The brief averments made in the petition are as follows:-

The case of the petitioner is that the petitioner is the 2nd defendant and the 3rd defendant is the son and the plaintiffs are the own sisters of the petitioner. The

plaintiffs have filed the above suit for partition. Pw1 was examined and the case was posted for defendant's side evidence on 05.07.2022. Some of the defendants obtained sale from the mother of the petitioner/1st defendant and the petitioner/1st defendant. But they were remained *exparte* and were not contest the case. The petitioner/1st defendant further stated that under the impression, they were appear and contest the case. But they have not done so. Therefore, he was not able to file documents relating to the sale executed between his mother and this petitioner/1st defendant and they have also again sold the property to the third parties. The same was not mentioned in the written statement and those documents were also not filed by the petitioner/1st defendant at the time of filing the written statement. The reason alleged for non filing of those documents earlier is that the petitioner/1st defendant was employed in abroad and therefore, he was not able to secure those documents and produced before the Court. For avoiding irreparable loss and hardship to this petitioner/plaintiff, this Court may be pleased to allow the application praying for re-calling Pw1 and Pw2 for further cross examination. Hence this petition.

3. The brief averments made in the counter filed by the 1st respondent/1st plaintiff and adopted by the 2nd respondent/2nd plaintiff is as follows:-

All the allegations stated in the affidavit and petition are specifically and emphatically denied as false, frivolous and vexatious except those that are specifically admitted herein as true and the petitioner is put to strict proof of remaining allegations. The petition is filed too belatedly, with false particulars. The evidence of plaintiffs side was taken and was cross examined in full at this stage, the petitioner has come forward with this application to re-call Pw1 and Pw2 for further cross examination. The petition is filed only to fill up the gaps in the defendants case. The petitioner/1st defendant cannot conduct the case on behalf of other defendants. Hence the petition may be dismissed with cost of the respondents.

4. Point for consideration is:

Whether the I.A.No.04/2022 has to be allowed or not?

Point:-

5. This petition has been filed to re-call Pw1 and Pw2 for further cross examination. According to the petitioner/1st defendant, Pw1 was examined and the case was posted for defendant's side evidence. Some of the defendants obtained sale from the mother of the petitioner/1st defendant. But they were remained exparte and were not contest the case. The petitioner/1st defendant further stated that under the impression, they were appear and contest the case. But they have not done so. Therefore, he was not able to file documents relating to the sale executed between his mother and this petitioner/1st defendant and they have also again sold the property to the third parties. Those documents were also not filed by the petitioner/1st defendant. Therefore, the petitioner/1st defendant seeks relief to this Court to re-call Pw1 and Pw2 for further cross examination. The reason alleged for non filing of those documents earlier is that the petitioner/1st defendant was employed in abroad and therefore, he was not able to secure those documents and produced before the Court. The respondents contend that the reason alleged by the petitioner is false and untenable. The application is filed to fill up the gaps in the defendants case. The suit is in part heard and the evidence of Pw1 was taken and was cross examined in full at this stage, the petitioner has come forward with this application. The reason alleged by the petitioner for delay is that he was employed in abroad. But the reason is not satisfactory and the petitioner/1st defendant cannot conduct the case on behalf of other defendants if at all he is having a documents which he can himself he can do so. Therefore, the petition is filed at this belated stage will cause prejudice to the respondents/plaintiffs and therefore, this point is answered as against the petitioner.

6. In the result, this petition is dismissed. No cost.

Dictated to the Executive Assistant, transcribed and typed by her in computer, corrected and pronounced by me in open Court, this the 2nd day of September, 2022.

(Sd/-). A. Balkis,

Principal District Judge,
Perambalur.

Fair/Draft Order
I.A.No.04/2022
in
O.S.No.18/2017
D.D: 02.09.2022.