

IN THE COURT OF THE SPECIAL SUBORDINATE JUDGE FOR
L.A.O.P. CASES, ARAKKONAM, RANIPET DISTRICT.

PRESENT : **THIRU. G. YUVARAJ, M.A., M.L.,**
SPECIAL SUBORDINATE JUDGE,
SPECIAL SUB COURT FOR L.A.O.P. CASES,
ARAKKONAM.

Monday, 16th day of December 2024

I.A. No. 1 of 2024 and I.A. No. 2 of 2024

in

O.S. No. 207 of 2019

(CNR No. TN-RP-000-408-2019)

S. Poongkodi .. Petitioner / 1st Defendant

Vs.

1. E. Manoharan .. 1st Respondent / Plaintiff
2. E. Everest
3. E. Ashok Kumar
4. S. Poonguzhali
5. R. Bagyarathi
6. S. Sirekha .. Respondents / Defendants 2 to 6

(Parties are same in both the petitions)

These petitions came up for final hearing before me on 09.12.2024 in the presence of Thiru. P. Haroon Rasheeth, Advocate for the Petitioner / 1st Defendant, and Thiru. S.R. Karthikeyan, Advocate for the 1st Respondent / 1st Defendant, and the Respondents / 2 to 6 / Defendants 2 to 6 already set ex-parte in suit, and upon hearing the arguments on the side of the Petitioner and 1st

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Respondent / Plaintiff and upon perusing the materials records, and having stood over till this day for consideration, this date, this court delivers the following;

COMMON ORDER

I.A. No. 1 of 2024 : The Petitioner / 1st Defendant had filed this petition u/s. 151 CPC praying to reopen the case for cross examination of P.W.1.

2. **I.A. No. 2 of 2024 :** The Petitioner / 1st Defendant had filed this petition u/o. 18, Rule 17 and u/s. 151 CPC praying to recall the P.W.1 for further cross examination.

3. **Brief averments made in the petition and affidavit in both the petitions :** The Petitioner / 1st Defendant in her affidavits had stated that, the Respondent / Plaintiff had filed the suit for partition and this court posted the above suit for P.W.1 cross on 19.07.2022 and since she fell ill health and bedridden due to orthopedic decease and hence she was unable to contact her counsel to give instructions to cross examine the P.W.1 and hence the court suo-moto closed the cross of P.W.1 and posted for further P.W.s on 08.02.2023 and Plaintiff side closed their evidence on 18.09.2024 and posted the case for defense side evidence. The Plaintiff has come forward with false case and the Petitioner / 1st Defendant has got good defense and valid grounds to disprove the case and hence filed these petitions to reopen the case and to recall the P.W.1 for cross examination.

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4. **Brief averments made in the common counter filed by the 1st Respondent / 1st Defendant in both the petitions :** The 1st Respondent / Plaintiff denies entire averments made in the affidavit and put the Petitioner to strict proof of the same. The 1st Respondent filed the above suit for declaration of his 1/6th share over the suit property along with partition and to declare the sale deed in favour of the Petitioner and the lease agreement in favour of the 6th Respondent as null and void and the suit was posted on 19.07.2022 for cross examination of P.W.1 and the same was adjourned for 13 times on 19.07.2022, 02.08.2022, 26.08.2022, 12.09.2022, 22.09.2022, 13.10.2022, 10.11.2022, 01.12.2022, 15.12.2022, 05.01.2023, 12.01.2023, 23.01.2023 and 08.02.2023. It is further stated in the counter that, since sufficient opportunities were not utilized by the Defendants, the cross of P.W.1 closed on 08.02.2023 and in the meanwhile on 10.11.2022, the counsel for the Petitioner / 1st Defendant made a false representation before this court that stay was granted by the Hon'ble High Court of Madras in pending W.P. with regard to the report of the RDO which is being marked as Ex.A5 and the suit was adjourned to 01.12.2022 for filing order copy of the same and since it is absolutely false submission, the 1st Respondent filed case status of the Writ Petition downloaded from the official website of the Hon'ble High Court to prove that no stay was granted. It is further stated that, though the Petitioner's counsel was able to make such submission before this court, he did not mention earlier that he was not able to contact the 1st Defendant and no instruction was given by the 1st Defendant to him to cross examine the P.W.1. The 1st Respondent specifically denies that she was ill bedridden due to the orthopedic disease and thereby she

did not instruct her counsel for cross of P.W.1 and as the earlier false submission of “stay in W.P.” those reasons in her affidavit are false and in fact, there is no proof of the same and hence prayed to dismiss the petitions.

5. ***Now the points for consideration are ; whether the petitions filed by the Petitioner / 1st Defendant to reopen the case and to recall the P.W.1 for cross examination are to be allowed or not?***

6. No oral evidence have been adduced on either side in both the petitions.

7. On the side of the Petitioner / 1st Defendant, Ex.P1 to P3 marked. On the side of the 1st Respondent / Plaintiff, Ex.R1 and R2 marked.

8. The learned counsel for the Petitioner / 1st Defendant contended by reiterating the averments made in the affidavit. The learned counsel for the Petitioner has also relied on the Ex.P1 to P3 documents to prove that during the dates when the case was posted for cross of P.W.1., the Petitioner was suffering from *‘bilateral osteoarthritis of knee’* problem and taking treatment for the same and hence prayed to allow the petition.

9. Per contra, the learned counsel for the 1st Respondent / Plaintiff contended by reiterating the averments made in the counter. The learned counsel for the Respondent has also relied on the Ex.R1 and R2, wherein the Petitioner had made false representations before the court to get adjournments and hence prayed to dismiss the petition.

10. Heard both. Perused the records carefully. On perusal of the records, it comes to know that the 1st Respondent / Plaintiff has filed the above suit against the Petitioner herein and Respondents 2 to 6 for the relief of partition and for declaration of sale deed and lease deed as null and void. In the suit, the trial was commenced and on 09.06.2022, the 1st Respondent / Plaintiff had been examined in chief as P.W.1 and Ex.A1 to A11 were marked and posted the case for P.W.1 chief continuation. On 08.07.2022, it has been represented that no further marking of documents and hence the suit was adjourned to 19.07.2022 for cross of P.W.1. On 19.07.2022, P.W.1 was not cross examined and adjourned to 02.08.2022, 26.08.2022, 12.09.2022, 22.09.2022, 13.10.2022, 10.11.2022, 01.12.2022, 15.12.2022, 05.01.2023, 12.01.2023, 23.01.2023 and 08.02.2023.

11. The suit adjudication papers clearly discloses that, the P.W.1 was present in all these 13 hearings. Out of 13 hearings, the then Presiding Officer was on leave for two hearings and both counsels were absent for one hearing. In the remaining 10 hearings, though the P.W.1 was very well present before this court, he has not been cross examined by the Petitioner / 1st Defendant side.

12. It is the contention of the learned counsel for the Petitioner that, since the Petitioner / 1st Defendant fell ill and bedridden due to orthopedic decease, she could not able to appear before the court and to give instructions to him and thereby, the P.W.1 could not be cross examined. In order to prove that the Petitioner was taking treatment during the relevant period, i.e., from 19.07.2022 to 08.02.2023, when the suit was posted for cross of P.W.1., Ex.P1 to P3 medical records are marked.

13. On perusal of the Ex.P1 medical records, it comes to know that the Petitioner had taken treatment in ACL Clinic, Chennai from 07.04.2022 for her knee problem. Ex.P2 also discloses that, the Petitioner had been admitted in 'Rela Hospital, Chennai' with complaints of bilateral knee pain and deformity and also undergone surgery in the said hospital on 28.08.2023. Ex.P3 is the web copy of the order passed dt. 21.11.2023, by the Hon'ble High Court, Madras, in W.P. No. 21.11.2023. To decide this petition, the Ex.P3 is not relevant at this point of time. However, Ex.P1 and P2 proves that the Petitioner had some health issues at the relevant point of time and she had been taking treatments.

14. It is the contention of the learned counsel for the 1st Respondent / Plaintiff that, only on the instructions of the Petitioner / 1st Defendant, on 10.11.2022, it has been represented before this court that the Hon'ble High Court granted stay in respect of the RDO enquiry report and in the subsequent date, i.e., on 01.12.2022, it has been represented before this court with web copy that no stay is pending in W.P. 9251/2018. In order to prove these two aspects, adjudication dt. 10.11.2022 and 01.12.2022 of this court in this case are marked as Ex.R1 and R2. On perusal of the Ex.R1 and adjudication papers of this case are discloses that, on 10.11.2022, it has been orally represented that, Hon'ble High Court granted stay in the pending W.P. However, on the said date, the Petitioner / 1st Defendant has not appeared before this court.

15. This court cannot reject the contention of the learned counsel for the Petitioner / 1st Defendant, that, to cross examine the P.W.1., clear instructions from the Petitioner / 1st Defendant is necessary and since she had been taking

treatment, she could not able to appear physically and thereby, the P.W.1 could not be cross examined. But, the Petitioner / 1st Defendant has not sought adjournments by stating that the Petitioner was taking orthopedic treatment and thereby she could not able to appear before the court.

16. The case records would further disclose that, on 18.09.2024, Plaintiff side evidence was closed and when the case was posted for Defendants side evidence on 23.10.2024, these petitions have been filed. Further, under Order 18, Rule 17, the court may at any stage of the proceedings, recall any witness who has been already examined. However, such power of the court is only a discretionary power and cannot be used arbitrarily. Therefore, considering the age and ailments of the Petitioner / 1st Defendant and also the fact that the suit had been filed for the comprehensive reliefs of declarations and partition and if the suit is not decided on merits, the judgment will be only a ex-parte judgment, which would otherwise pave way for filing petitions to set-aside such ex-parte decree, this court is inclined to allow these petitions to proceed with the suit on merits, however, considering the fact that the 1st Respondent / Plaintiff / P.W.1 had appeared before this court on all the 13 hearings and also considering the age of the P.W.1., these petitions will be allowed on the following stringent terms;

17. IN THE RESULT, common order is passed as follows;

1) that the petition filed by the Petitioner / 1st Defendant in I.A. No. 1/2024 to reopen the case will be allowed on payment of cost of a sum of Rs.1,000/- to the 1st Respondent / Plaintiff; and

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2) the petition filed by the Petitioner / 1st Defendant in I.A. No. 2/2024 to recall the P.W.1 for cross examination will be allowed on payment of cost of a sum of Rs.2,000/- to the 1st Respondent / Plaintiff; and

3) it is also made clear that, on payment of the aforesaid cost, the P.W.1 shall be cross examined on the date when he is present in the court, failing which, no other opportunities will be given to the Petitioner / 1st Defendant.

4) for payment of cost. Call on 04.01.2025.

This order is directly typed by me in my Laptop, corrected and pronounced by me in the open court on this the 16th day of December 2024.

Special Subordinate Judge,
Special Sub Court for L.A.O.P. Cases,
Arakkonam.

Annexure :

Petitioner's side witnesses : Nil

Respondent's side witnesses : Nil

Petitioner's side exhibits :

Ex.P1 Copy of the medical records (Compared with original)

Ex.P2 Copy of the Discharge Summary issued by Rela Hospital, Chennai.
(Compared with original)

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Ex.P3 Online copy of the order dt. 21.11.2023, passed in W.P. No.
9251/2018 by the Hon'ble Madras High Court.

Respondents' side exhibits :

Ex. R1 Adjudication of this court in this case on 10.11.2022.

Ex. R2 Adjudication of this court in this case on 01.12.2022.

Special Subordinate Judge,
Special Sub Court for L.A.O.P. Cases,
Arakkonam.

S.S.C. (L.A.O.P.), ARAKKONAM,
COMMON DRAFT / FAIR ORDER
in I.A. No. 1/2024 and I.A. No. 2/2024,
in O.S. No. 207/2019,
Dated : 16.12.2024.