

IN THE COURT OF THE DISTRICT MUNSIF, SANKARI

Presence: Thiru. R. Radhakrishnan, B.A., B.L.,
District Munsif, Sankari.

13th day of September, 2023, Wednesday

திருவள்ளூர்வராண்டு 2054, சோபகிருது வருடம், ஆவணி திங்கள் 27 ம் நாள் புதன்கிழமை

I.A. 6/2023 in O.S.57/2013

1. Siddhapillai (Died)
2. Chandra
3. Karthikeyan
4. Arasiyarku Arasi
5. Tharaheswari

... Petitioners/ Plaintiffs

//Versus//

1. Manoranjitham
2. Kanagasabapathi
3. Shanthi
4. Arun
5. Saranya @ Anbukarasi
6. Sundaram
7. Mohan
8. S. Prakash

... Respondents / Defendants

This petition taken to file on 03.01.2023 and coming on this day for hearing on 01.09.2023 before me in the presence of Tr. N. Rajagopalan Advocate for Petitioners, and of Tr. S. Christopher, Advocate for Respondents No.1,2,8 and R3 to R7 were called absent and set exparte and after perusing the Petition, Counter and on hearing both side and this Court passed the following,

ORDER

The petitioners have filed this petition under Order 8 Rule 9 and Section 151 of C.P.C. to receive the Reply Statement.

2) The gists of the Petition :-

The petitioner has averred that, he is the 5th plaintiff in the suit. The petitioner filing this affidavit for himself and on behalf of other petitioners also. The above suit posted for cross examination of DW1. While preparing for cross examination of DW1, the petitioner came to understand that for the defense raised in the written statement of 8th defendant. The petitioner have to counter it by way of filing a reply statement with necessary pleadings. Even otherwise in law the plaintiffs should be given an opportunity for statement of 8th defendant

who came into the picture very late after revision was allowed by the Honourable High Court. So, the petitioner filing his detailed reply statement in order to give a reply to the grounds urged in the written statement by the respondents/defendants. It is settled law at any stage of the suit, the parties go in for cross examination of DW1 they must given enough opportunity to meet out the 8th defendant's case by way of filing necessary pleadings in the reply statement. Unless the reply statement is received, the plaintiffs will be put to irreparable loss and hardship. Therefore, prays for allowing the petition.

3) **The gists of the Counter filed by the 8th Respondent and adopted by the Respondents 1,2:-**

The respondent averred that, the petition filed by the petitioner is false, frivolous, vexatious and unsustainable in law on facts. It is true that the Will dated 17.01.2007 is false, created and fabricated one of the witness signed in the Will namely Pachiammal was not alive on that day of execution of will. The rest of the petition avernments are false. Originally the said Will dated 17.01.2007 is a false document and it was fabricated for the purpose of getting unlawful gain. The plaintiff has created the said Will by putting thumb impression of some other lady and stated in that Will that it was the right hand thumb impression of Ponnammal. In the recitals of the Will, it is alleged that the said Ponnammal was having injury in her left hand and hence right hand thumb impression was obtained in the alleged will. One of the witnesses of the alleged Will namely Pachiammal was not alive on that day of execution of Will. The plaintiff has not obtained any doctor's certificate pertaining to injury in left hand thumb for getting right hand thumb impression. The alleged Will was not a registered one. If actually the said Ponnammal had executed the Will means, it would have been definitely brought to the knowledge of the defendants 1,4 and 5 as soon as the death of the said Ponnammal. The plaintiff issued notice through a counsel Mr.R. Vadivel, Advocate on 18.08.2016. The plaintiff has sent that notice to one Selvam and the Sub Registrar of Magudanchavadi. If such a Will was actually executed by the said Ponnammal the plaintiff would have told about the

same in his notice itself. It is clearly shows that to grab the suit property and the shares of other co-sharers namely the defendants 1,4 and 5, the plaintiff has created the alleged Will and come forward with this suit with false claim. The above suit was filed on 02.01.2017. Now, the plaintiff has come forward with this petition for filing reply statement at a highly belated stage. The defendants had filed their written statement on 18.04.2017. If the plaintiff is aggrieved of the contents of the written statement, he ought to have filed this reply statement within 30 days of filing of the written statement of the defendants. But, the plaintiff has come forward with reply statement at the trial stage, with the intention of prolonging the trial of the suit. The plaintiff failed to say that Pachiammal wife of Mari died on 16.09.2008 in the plaint and now it has been purposely included in the reply statement. The death of the witness of the alleged Will on 16.09.2008 was not mentioned in the plaint. The plaintiff is now mentioning the date of death of Pachiammal in his reply statement which shows his negligence in filing the case which was filed falsely. There is no cause of action for this petition. The petitioner's main intention is dragging on the matter as long as possible. The petitioner has not come with clean hands. The petitioner is not entitled for any relief in this petition. Therefore, prays for dismissal of petition.

4) **Point for consideration:-**

Whether the petitioner is entitled for the relief as prayed for?

5) Both side heard. Records has been perused. This petition has been filed under Order VIII Rule 9 and Section 151 of C.P.C. to receive the Reply Statement.

6) On the side of the petitioners it is pleaded that, the above suit posted for cross examination of DW1. While preparing for cross examination of DW1, the petitioner came to understand that for the defense raised in the written statement of 8th defendant. The petitioner have to counter it by way of filing a reply statement with necessary pleadings. Even otherwise in law the plaintiffs should be given an opportunity for statement of 8th defendant who came into the

picture very late after revision was allowed by the Honourable High Court. So, the petitioner filing his detailed reply statement in order to give a reply to the grounds urged in the written statement by the respondents/defendants. It is settled law at any stage of the suit, the parties go in for cross examination of DW1 they must given enough opportunity to meet out the 8th defendant's case by way of filing necessary pleadings in the reply statement. Unless the reply statement is received, the plaintiffs will be put to irreparable loss and hardship. Therefore, prays for allowing the petition.

7) On the side of the respondent averred and contended that, the petition filed by the petitioner is frivolous, vexatious and unsustainable in law and facts as well. It is true that the Will dated 17.01.2007 is fabricated one. One of the witness signed in the Will namely Pachiammal was not alive on that day of execution of will. Originally, the said Will dated 17.01.2007 is a false document and it was fabricated for the purpose of getting unlawful gain. The plaintiff has created the said Will by putting thumb impression of some other lady and stated in that Will that it is right hand thumb impression of Ponnammal. In the recitals of the Will, it is alleged that the said Ponnammal was having injury in her left hand and hence right hand thumb impression was obtained in the alleged will. One of the witnesses of the alleged Will namely Pachiammal was not alive on that day of execution of Will. The plaintiff has not obtained any doctor's certificate pertaining to injury in left hand thumb for getting right hand thumb impression. The alleged Will was not a registered one. If actually the said Ponnammal had executed the Will, it would have been definitely brought to the knowledge of the defendants 1,4 and 5 as soon as the death of the said Ponnammal. The plaintiff issued notice through a counsel Mr.R. Vadivel, Advocate on 18.08.2016. The plaintiff has sent that notice to one Selvam and the Sub Registrar of Magudanchavadi. If such a Will was actually executed by the said Ponnammal the plaintiff would have told about the same in his notice itself. It is clearly shows that to grab the suit property and the shares of other co-sharers

namely the defendants 1,4 and 5, the plaintiff has created the alleged Will and come forward with this suit with false claim. The above suit was filed on 02.01.2017. Now, the plaintiff has come forward with this petition for filing reply statement at a highly belated stage. The defendants had filed their written statement on 18.04.2017. If the plaintiff is aggrieved of the contents of the written statement, he ought to have filed this reply statement within 30 days of filing of the written statement of the defendants. But, the plaintiff has come forward with reply statement at the trial stage, with the intention of prolonging the trial of the suit. The plaintiff failed to say that Pachiammal wife of Mari died on 16.09.2008 in the plaint and now it has been purposely included in the reply statement. The death of the witness of the alleged Will on 16.09.2008 was not mentioned in the plaint. The plaintiff is now mentioning the date of death of Pachiammal in his reply statement which shows his negligence in filing the case which was filed falsely. There is no cause of action for this petition. The petitioner's main intention is dragging on the matter as long as possible. The petitioner has not come with clean hands. The petitioner is not entitled for any relief in this petition. Therefore, prays for dismissal of petition.

8) On the perusal of suit records it could be seen that, the suit has been filed for the relief of declaration and consequential injunction. The suit has been pending at the stage of cross of DW-1 by the plaintiff side. At the stage this petition has been filed. The main contention on the side of the petitioners is that, the 8th defendant who impleaded into suit very recently after revision was allowed by the Honourable High Court. The 8th defendant has filed his written statement on 20.09.2012. The petitioners have to counter it by way of filing a reply statement with necessary pleadings. Even otherwise in law the plaintiffs should be given an opportunity for filing his reply statement. Hence, it is necessary for the petitioners filing his detailed reply statement in order to give a reply to the grounds urged in the written statement by the respondents/defendants. It is settled law at any stage of the suit. The parties are going for cross examination of DW1

thus, they ought to be given enough opportunity to meet out the 8th defendant's case by way of filing necessary pleadings in the reply statement.

9) On considering the submission of both sides and records, it could be seen that the petitioners are the plaintiffs in the suit and the main suit has been filed seeking relief of Declaration and consequential permanent injunction. The suit is in the stage of cross of DW-1. In the above said circumstances, this court is of the view that the petitioners are being the plaintiffs, they shall be given sufficient opportunity to give reply to the contentions raised by the 8th defendant in his written statement. Moreover, no prejudice would be caused to the respondents herein in allowing this application. On the otherhand, while considering the hardships caused to the respondent by filing this petition at the stage of cross examination of DW-1 this court is of the view that, the hardships caused would be compensated by way of terms of costs.

10) In the result, this petition is allowed on condition that the petitioner shall pay a cost of Rs.1000/- (Rupees One Thousand only) to the Respondents No.1,2 and 8 on or before 22.09.2023. Failing which, this petition stands automatically dismissed. Call on 23.09.2023.

This order directly dictated to the Steno-typist, typed by him and corrected by me, and Pronounced in the Open Court in the 13th day of September 2023.

District Munsif,
Sankari.

Encl.: NIL

District Munsif,
Sankari.