

IN THE COURT OF THE DISTRICT MUNSIF, SANKARI

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

02nd day of September, 2023, Saturday

திருவள்ளூர்வராண்டு 2054, சோபகிருது வருடம், ஆவணி திங்கள் 16 ம் நாள் சனிக்கிழமை

I.A. 8/2023 in O.S.310/2012

Krishnan

... Petitioner / Plaintiff

//Versus//

1. Ramasamy (Died)
2. Parwathy
3. Subramanian
4. Seerangammal
5. Periyasamy
6. Seerangan
7. Marimuthu

... Respondents / Defendants

This petition taken to file on 19.07.2023 and coming on this day for hearing on 16.08.2023 before me in the presence of Thiru. R. Ramasamy Advocate for Petitioner, and of Thiru. A. Kailassanathan Advocate for 5 to 7 Respondents . R2 to R4 were Called Absent and Set Exparte, R1 died and after perusing the Petition, Counter and on hearing both sides and this Court passed the following

ORDER

The Petitioners has filed this petition Under Order 18 Rule 17 and Section 151 of C.P.C. to recall the DW1 for the purpose of cross examination.

2)The gists of the Petition:-

The petitioner has averred, he is the plaintiff in the above suit. The petitioner filed this suit for the relief of partition and permanent injunction against the defendants. The above suit is posted for the cross examination of DW2. Earlier, the 5th defendant had filed chief affidavit as DW1 in the said suit and the same was posted for cross examination on petitioner side. Due to heavy blood pressure to petitioner, the petitioner unable to meet his counsel to cross

exam the DW1. Hence, the evidence of DW1 closed on 01.03.2023. The non cross examination of DW1 by petitioner side is neither willful nor wanton. It is necessary to recall the DW1 to cross exam on his side. Unless, this petition is allowed, the petitioner will be put to irreparable loss and hardships. Therefore, prays for allowing the petition.

3) The gists of the Counter filed by the 6th Respondent and adopted the same by the Respondents 5 and 7 :-

The respondent averred that, the petition filed by the petitioner is false and not maintainable in law. The 6th respondent does not admit any of the allegations made in the affidavit except those that are specifically admitted. It is true to state that the above suit is posted for the cross examination of DW2 on 19.07.2023 and On 06.02.2020, the chief affidavit of DW1 had filed. It is false to allege that, due to heavy blood pressure, the petitioner unable to meet his counsel to cross exam the DW1, hence, the evidence of DW1 closed on 01.03.2023. In fact, the petitioner never suffered from high blood pressure or any other medical ailment. Therefore, the petitioner did not come forward to file any documents along with his affidavit to prove. The petitioner/plaintiff did not come forward to cross-examine DW1 for the past three years by filing various petitions and delaying the time, so DW1 cross examination was closed on 01.03.2023. This said fact is well known to the petitioner. The petitioner filed the petition in I.A.NO.6/2023 on 20.03.2023 for receiving reply statement and the same was allowed on 15.06.2023. Therefore, it is proved that the petitioner has filed the said petition only when he is in good health. In fact, if the petitioner was in good faith to contest the case expeditiously, the recall petition will be file at the time of filing the reply statement petition. So it is proved that there is no good faith in petitioner to conduct the case. Now, the case is Posted for the cross-examination of DW2. and without cross- examination of DW2 and closed the same, the petition filed by the petitioner seeking permission to recall the DW1 must be dismissed as unsustainable in law. It is proved that the said petition was filed with malafide intention to delay the proceedings of the case without any genuine

reason for the delay of four months in filing the said petition. The petitioner filed the original suit in the last year 2012 by mentioning false averments. The petitioner has been filing various petitions one after the other seeking wrong and false remedies. The petitioner has not come to court with clean hands. Therefore, prays for dismissal of the petition.

4) There is no oral evidence or documentary evidence on both sides. Ex. C1 marked on 16.08.2023.

5) Point for consideration:-

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

6) Both sides heard. Records have been perused. The petitioner has filed this petition Under Order 18 Rule 17 and Section 151 of C.P.C. to recall the DW1 for the purpose of cross examination.

7) On the side of the petitioner it is contended that,he is plaintiff in the suit and he filed the suit for the relief of partition and permanent injunction against the defendants. The above suit has been pending for the cross examination of DW2 by his side. The 5th defendant had filed chief affidavit as DW1 in the said suit and the same was posted for cross examination on petitioner side. Due to heavy blood pressure to petitioner, the petitioner unable to meet his counsel to cross exam the DW1. Hence, the evidence of DW1 closed on 01.03.2023. The non cross examination of DW1 by petitioner side is neither willful nor wanton. It is necessary to recall the DW1 to cross exam on his side. Unless, this petition is allowed, the petitioner will be put to irreparable loss and hardships. Therefore, prays for allowing the petition.

8) On the contra, the respondent contended that, it is true to state that the above suit is posted for the cross examination of DW2 on 19.07.2023 and On

06.02.2020, the chief affidavit of DW1 had filed. The petitioner/plaintiff did not come forward to cross-examine DW1 for the past three years by filing various petitions and delaying the time, so DW1 cross examination was closed on 01.03.2023. This said fact is well known to the petitioner. The petitioner filed the petition in I.A.NO.6/2023 on 20.03.2023 for receiving reply statement and the same was allowed on 15.06.2023. Therefore, it is proved that the petitioner has filed the said petition only when he is in good health. In fact, if the petitioner was in good faith to contest the case expeditiously, the recall petition will be file at the time of filing the reply statement petition. So it is proved that there is no good faith in petitioner to conduct the case. Now, the case is Posted for the cross-examination of DW2. and without cross- examination of DW2 and closed the same, the petition filed by the petitioner seeking permission to recall the DW1 must be dismissed as unsustainable in law. It is proved that the said petition was filed with malafide intention to delay the proceedings of the case without any genuine reason for the delay of four months in filing the said petition. The petitioner filed the original suit in the last year 2012 by mentioning false averments. The petitioner has been filing various petitions one after the other seeking wrong and false remedies. The petitioner has not come to court with clean hands. Therefore, prays for dismissal of the petition.

9) Considering the facts and circumstances of the case. Averments and contentions of both the sides. It could be seen that the, the petitioners herein are the petitioners filed the above suit in O.S.310/2012 for the relief of partion and Permanent Injunction against the defendants. Now, the suit is posted and pending cross of DW2 by the petitioner side. In the above said circumstances, this court is of the view that the petitioner is being the plaintiff, the petitioner shall be given sufficient opportunity to give prove his case. Therefore, for the above reasons, this court is of the view that it is just and necessary to reopen the case and recall DW1 cross examination. But, at the same time, while considering the hardships caused to the respondents, this court is of the opinion that the hardships caused may be compensated by terms of costs. Therefore, for the above

said reasons and in the interest of justice, this petition stand allowed on condition of payment of costs.

10) In the result, this petition is allowed on condition that the Petitioners shall pay a cost of Rs.500/- (Rupees Five Hundred only) to the Respondents No. 5 to 7 on or before 14.09.2023 failing which, this petition stands automatically dismissed. Call on 15.09.2023.

This order directly dictated to the Steno-typist, typed by him and corrected by me, and Pronounced in the Open Court in the 02nd day of September, 2023.

(Sd/-) R. Radhakrishnan,
District Munsif,
Sankari.

Encl.:

Petitioner Side Evidence :- Nil

Petitioner Side Documents:- Nil

Respondents side Evidence:- Nil

Respondents side Documents:- Nil

Court Documents:-

Ex.C1	---	I.A.No.6/2023 in O.S.310/2012 (Sec 151 of CPC) on the file of District Munsif Court, Sankari.
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(Sd/-) R. Radhakrishnan,
District Munsif,
Sankari.