

IN THE COURT OF THE DISTRICT MUNSIF, SANKARI

Present: Tmt. R. ELAMATHI, B.A., B.L.,
District Munsif Court, Sankari

Tuesday, the 17th day of June, 2025

திருவள்ளூர்வராண்டு 2056, விசுவாவசு வருடம், ஆனி திங்கள் 03ம் நாள் செவ்வாய்க்கிழமை

I.A. 10/2024 in O.S.136/2008

Sengottaiyan ... Petitioner / 3rd Defendant

//Versus//

Pavatharani ... Respondent / Plaintiff

This petition taken to file on 07.03.2024 and coming on this day 04.06.2025 for hearing before me in the presence of Thiru. K. Kasilingam, Advocate for the Petitioner and of Thiru. N. Rajagopalan and Thiru. R. Ramasamy, Advocates for the Respondent and after perusing the Petition, Counter and on hearing both sides, this Court passed the following,

ORDER

This Interlocutory Application has been filed by the Petitioner/ 3rd Defendant Under Section 151 of the Code of Civil Procedure Code, 1908 to reopen his evidence (DW1) for the purpose of filing an Additional Chief Affidavit, in view of the Amended Plaint filed by the Plaintiff/Respondent on 02.09.2023.

2) The Gist of the petition:-

The petitioner has averred that he is the 3rd defendant in the suit. The respondent filed the above suit for the relief of declaration, partition and permanent injunction against the petitioner and others. The petitioner further averred that, he already filed chief affidavit as DW1. At the time of cross examination of this petitioner, the respondent/plaintiff leave the suit as dismiss for default. Now the respondent/plaintiff filed amendment

petition to amend the plaint and the same was allowed and the respondent filed amended plaint on 02.09.2023. Therefore, the petitioner filed Additional Written Statement and the same was received by this court on 02.03.2024. It is necessary to file additional chief affidavit to prove his case. The petitioner filed this application to reopen the DW1 witness to file additional chief affidavit. Unless this petition is allowed, the petitioner will be put into heavy loss and hardship. Hence, this petition.

3) Brief averments of the Counter filed by Respondent:-

The Respondent contends that the petition filed by the petitioner is false, frivolous, vexatious and untenable in law and on facts. This Respondent puts the petitioner to strict proof of the allegations made in affidavit except those that are specifically admitted. It is correct to state that the petitioner had filed the chief affidavit as DW1. It is false to state that petitioner had filed amendment petition to amend the plaint. It is false to state that the petitioner had filed the additional written statement and the same was received by this court on 02.03.2024. It is false to state that hence it is necessary to file additional chief affidavit to prove his case. The affidavit mentioned reasons are not sufficient to allow this petition. The petitioner is introducing the new case by way of filing chief affidavit. The same cannot be entertained. The petitioner has suppressed the real facts and filed this petition. The petitioner did not approach this court with clean hands. There is no merit in this petition. Therefore, prays for dismissal of the petition.

4) No oral and documentary evidences are adduced on both sides.

5) Point for consideration:-

Whether the Petitioner/ 3rd defendant is entitled for the relief as prayed for?

6) Heard both sides, Records perused. This petition has been filed Under Section 151 of CPC, 1908 seeking to reopen the Petitioner/ 3rd defendant side evidence for the purpose of filing an additional chief affidavit. The Petitioner/ 3rd defendant submits that he had earlier filed a chief examination affidavit and was examined as DW1. During cross examination, the suit was dismissed for default. Subsequently the Plaintiff/Respondent was permitted to amend the Plaint and Amended Plaint copy filed on 02.09.2023. The defendant filed an Additional Written Statement on 02.03.2024 which was accepted by the court. Consequently the petitioner seeks to reopen his evidence to file an additional chief affidavit to meet the amended pleadings. On the other hand, the Plaintiff/Respondent has filed a counter strongly opposing the application, stating that the petition is false, vexatious and attempts to introduce a new case through an additional affidavit. The Respondent contends that the petitioner did not approached with clean hands and that no sufficient cause has been shown.

7) Upon careful consideration and perusal of records, this court is of considered opinion to cite Judgment of Hon'ble Supreme Court in **Raj Kumar – Vs – Dipinder Kawr (2013) 9 SCC 461** “ A party must be given a fair opportunity to rebut amended pleadings and additional evidence to that effect should not be denied on technicalities” In **K.K.Velusamy – Vs – N. Palanisamy (2011) 11 SCC 275** “ The Power to reopen evidence and receive further evidence is discretionary Under Section 151 of Civil Procedure Code, to meet the ends of Justice”.

8) Based upon the submissions and discuss of Hon'ble Supreme Court Judgment, it is an established principle of procedural fairness that a party must be given the opportunities to rebut new pleadings introduced by the

opposite party, when the plaintiff was allowed to amend the plaint and the defendant has filed an additional written statement in response, it is only just and proper that the defendant be permitted to lead additional evidence.

9) In result, in the interest of justice and to afford a fair opportunity to the parties and without prejudice to both parties, this court is inclined to allowed the present petition. No cost.

This order directly dictated to the Steno-typist and typed by him and corrected by me, and Pronounced in the Open Court in the 17th day of June, 2025.

District Munsif,
Sankari.

Encl.:

Petitioners side Witnesses & Exhibits :- NIL

Respondents side Witnesses & Exhibits:- NIL

District Munsif,
Sankari.