

IN THE COURT OF THE PRINCIPAL DISTRICT JUDGE, SIVAGANGAI

**Present : Thiru.R.Gurumurthy, B.Sc., B.L.,
PRINCIPAL DISTRICT JUDGE, SIVAGANGAI.**

Tuesday, the 01st day of August 2023

I.A.No.02/2023 and I.A.No.3/2023 in O.S.No.79/2021

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V.Abdul Kadhar

... Petitioner/Plaintiff

-Vs-

P.Sakthivel

... Respondent /Defendant

These petitions are coming before this Court on 24.07.2023 for final hearing in the presence of Tmt.M.Sagunthala Devi, Advocate for the Petitioner/plaintiff and Thiru.R.Rajmohan, Advocate for the Respondent/defendant and upon hearing the arguments on both side and upon perusing material records and having stood over for consideration till this day, this court passed the following ...

COMMON - ORDER

I.A.No.2/2023 has been filed by the petitioner/plaintiff under Order 7 Rule 14 of C.P.C, to receive the documents mentioned in the petition as additional documents of his side and I.A.No.3/2023 to recall PW1 under Order 18 Rule 17 of C.P.C, for the purpose of marking the additional documents through him.

2) The common averments made in both petitions in brief are as follows:

The petitioner is the plaintiff. The suit was filed for specific performance against the defendant. The above suit is posted for examination of further plaintiff

side evidence. The petitioner who is examined PW1 has stated in the cross examination that he will produce the document showing the amount given to the defendant by pledging jewels and encumbrance certificate on the next hearing date. The petitioner had handed over the said documents to his counsel at the time of filing this suit, but his counsel had advised him to file the said documents at the time of trial, subsequently he has changed his counsel. Due to his old age, he has forgotten to hand over the said documents to his present counsel at the time of trial. Therefore the said documents were omitted to be marked on his side. The said documents are vital documents to prove his case. Therefore the petitioner has come forward with these petitions to receive said documents as additional evidence and to recall PW1 to mark the documents on the side of the petitioner/plaintiff. If these petitions are not allowed, the petitioner will be put to great loss and hardship.

3) The averments made in the counter in brief are as follows:

The averments made in the petitions are all false. The plaintiff has examined himself as PW1. Then, the petitioner/plaintiff filed proof affidavit of PW2 namely Ajmeer Kalanjiyam along with petition to receive additional documents. The said petition was dismissed by this Court on 24.02.2023. Now the petitioner has filed these petition to recall PW1 and mark the additional documents on his side through him. The averments that encumbrance certificate and sale deed dated:06.09.2019 were already handed to his counsel and the same was not filed along with plaint on

the advise of his counsel that the same can be filed during trial and that due to his old age, he had forgotten to hand over said documents to his present counsel at the time of examination are all false and contradictory in nature. This petition has been filed after completion of cross examination of PW1 with a view to fill up the lacuna in the case of petitioner/plaintiff. The petition filed by the petitioner under the Order 7 Rule 11 of C.P.C was already dismissed by this Court in I.A.No.1/2022 on 24.02.2023. The petitioner has again filed these petitions to receive the additional documents and to recall PW1 to mark the same. The reasons stated by the petitioner for non production of documents along with plaint are all false. The petitioner has no reason to allow these petition and these petitioner are liable to be dismissed as not maintainable.

4) The point for consideration in these petitions is :-

Whether I.A.2/2023 and I.A.3/2023 have to be allowed or not?

5) Answer to the point :-

The petitioner who is the plaintiff in the suit in O.S.79/2021 which was filed for seeking the relief of specific performance has filed the petition in I.A.2/2023 and I.A.3/2023 to receive the additional documents on his side and to recall PW1 to mark the same respectively.

6) It is contention of the petitioner/plaintiff that he had handed over the additional documents sought to be received to his earlier counsel at the time of filing

the suit, but the same were not filed along with plaint on the advise of his counsel that the same can be filed during trial and that due to his old age he had forgotten to produce the said documents before this Court at the time of his examination and that the documents mentioned in the petitions are vital documents to prove his case and therefore the petitioner/plaintiff has come forward with these petitions to receive the additional documents and to recall PW1 to mark the same. Therefore it is submitted that these petitions have to be necessary allowed in the interest of justice.

7) The learned counsel for the respondent would contend that the petitioner has filed these petitions only with a view to fill up the lacuna and that the reasons stated in these petitions are all false and contradictory in nature and the petition filed by the petitioner/plaintiff to receive the additional documents was already dismissed by this Court in I.A.1/2022 on 24.02.2023 and that the petitioner/plaintiff has again filed these petitions to receive the additional documents and to recall PW1 for marking the same and there is no valid reason on the side of the petitioner to allow these petitions and therefore these petitions are liable to be dismissed as devoid of merits.

8) Admittedly, the above suit in O.S.79/2021 was filed by the petitioner/plaintiff for specific performance in which PW1 was examined and Ex.A1 to Ex.A3 were marked on the side of him and when the case was posted for examination of plaintiff side further evidence. The petitioner/plaintiff filed proof affidavit of PW2 one Ajmeer Kalanjiyam along with petition to receive additional

documents and the same was dismissed by this Court in I.A.1/2022 on 24.02.2023 on the ground that the said petition was not filed by the parties to the suit and the same was filed by the witness on the side of the plaintiff to receive the documents in the name of witness Ajmeer Kalanjiyam. It is seen that the said petition in I.A.1/2022 was filed to receive 5 documents in the name of witness Ajmeer Kalanjiyam and now the petitioner/plaintiff has filed the petition in I.A.2/2023 to receive encumbrance certificate and other two documents stand in his name. The documents mentioned in I.A.1/2022 and the documents mentioned in I.A.2/2023 are not one and the same. Hence the contention of the respondent that the petitioner has sought to receive the same documents which were sought to be received in I.A.1/2022 cannot be accepted. The reasons stated by the petitioner/plaintiff for not filing and marking the documents is that his counsel advised him to file the documents for marking during trial and due to his old age, he has forgotten to produce the same before the Court at the time of his examination. This Court is of view that the reasons stated by the petitioner in these petitions cannot said to be false and same can be accepted. It is settled law that the parties should be given reasonable opportunities to put forth their case and they cannot be denied opportunities to mark the documents to substantive their case.

9) For all the reason stated above, this Court is of the view that the petitioner/plaintiff has valid reason to allow these petition and these petitions to receive additional documents and to recall PW1 to mark the same can be allowed in the interest of justice and no prejudice will be caused to other side by allowing these

petitions and thus this point is answered accordingly.

In the result, I.A.2/2023 and I.A.3/2023 are allowed. No costs.

Dictated by me to the stenographer, transcribed and typed by him into computer, corrected and pronounced by me, in the open court, on this the 01st day of August 2023.

Principal District Judge,
Sivagangai.

PETITIONER AND RESPONDENT SIDE

WITNESS AND DOCUMENT: NIL.

Principal District Judge,
Sivagangai.

PRINCIPAL DISTRICT COURT,
SIVAGANGAI
I.A.No.2/2023 and 3/2023
IN O.S.No.79/2021
FAIR / DRAFT ORDER
DATE: 01.08.2023