

**IN THE COURT OF THE ADDITIONAL SUBORDINATE JUDGE,
TIRUPPUR**

Present :- Thiru. S.Ramachandran, B.L.,
Principal Subordinate Judge,
Additional Subordinate Judge, (FAC)
Tiruppur.

Wednesday the 31st day of July 2024

I.A. No. 18 / 2024

in

O.S.No. 38 / 2017

1. G. Jayanthi
2. G. Udhayakumar
3. G. Navaneethan

... Petitioners/ Defendants 2 to 4

//Vs//

R. Rathinasamy

....Respondent/Plaintiff

This Petition is coming on 25.07.2024 for final hearing before me in the presence of Thiru.J.Gowrisankar, learned Counsel for the Petitioners/Defendants 2 to 4 and V.Sairam, M.A.,B.L., learned Counsel for the Respondent/Plaintiff, upon hearing both side argument, and all connected material records and having stood over till this day, for consideration, this court delivered the following.

ORDER

The petition is filed under Order 18 Rule 17 of 151 of CPC to recall the PW.1 for cross examination.

2. The crux of the petition is as follows :-

On the ground that, the petitioner came to know that they have been set exparte as early as 31.08.2021 and the same has been came to know through their advocate only

in the month of December 2023. Hence, a petition has been filed to set aside the exparte order and the same was allowed by this Court. Hence, the petitioner's want to cross examine the PW.1.

3. The gist of the Counter filed by the Respondent/Plaintiff is as follows :

The respondent/plaintiff filed counter by objecting the petition and stated that, the PW.1 deposed in chief examination on 28.09.2021 and he was cross examined on 05.09.2022, 01.11.2021, 04.08.2022 and 23.08.2022 and on the side of the plaintiff five witnesses were examined. On behalf of the 1st defendant DW.1 examined in chief as well as completed cross examination. After, that the defendants side evidence has been closed. Further the 1st defendant filed petition for reopen the case and the same was allowed and after that, DW.2 has been examined and now posted for cross examination of DW.2 by defendants 2 to 4. The suit has been filed for partition, but the written statement filed by the petitioners does not disclose the pleadings denying the right of the plaintiff. Hence, this petition is abuse of process of Law.

4. No oral and documentary evidence was adduced on Respondent side.

5. The points for consideration is, whether the petitioner is entitled for the relief as prayed for ?

6. Points :-

6.1 The learned advocates appearing for both side have put forth their arguments on par with the averments made in petition as well as Counter.

6.2 On perusing the entire case records, this court finds that, the cases in O.S.Nos.38/2017, 100/2017 and 98/2021 were taken up for joint trial and the evidences were recorded in O.S.No. 38/2017, further this court finds that, this petitioners were set exparte in all three cases and only after examining the DW.1 petitions were filed to set aside the exparte order in all three cases against them and the three petitions were allowed by this Court. Therefore, this Court has to permit the petitioners to cross examine the witnesses particularly the PW.1, so as to enable the

petitioners to defend their case. In the above circumstances, this Court feels that the petitions has to be allowed.

In the result, this petition is allowed. No cost.

Dictated to the Steno-Typist, typed by him directly into the computer, corrected, printed out and pronounced by me in the Open Court on this the 31st day of July 2024.

Additional Subordinate Judge,(FAC)
Tiruppur.

Fair Order
I.A.No.18/2024
O.S. No. 38/2017
Date : 31.07.2024
ASJ Court, Tiruppur
