

**IN THE COURT OF THE II ADDITIONAL DISTRICT & SESSIONS JUDGE,
THANJAVUR.**

**Present :Tmt. P.R. Supraja, M.L.,
II Additional District & Sessions Judge,
Thanjavur.**

**Monday the 14rd day of October 2024
(Thiruvalluvar Aandu 2055-Purattasi Matham 28th day)**

I.A. No.77/2024 in O.S. No.214/2021

S.Saravanan

.....Petitioner/Plaintiff

/Vs/

M.Hemkumar

.....Respondent/Defendant

These petitions having come up for final hearing before me on **01.10.2024** in the presence of **Thiru.K.Mayavan**, Advocate for the Petitioner/plaintiff and of **Thiru.R.Guhavenkateswaran**, Advocate for the respondent/defendant and upon hearing the arguments of both sides, upon perusal of the entire material records pertaining to the case and the matter having stood over for consideration till this date, this court delivered the following

ORDER

(1) This petition has been filed by the petitioner/plaintiff under sec. 151 of CPC to reopen the plaintiff's evidence which was closed on 02.12.2023.

Gist of the Affidavit filed by the petitioner is as follows:

(2) The petitioner is the plaintiff in the original suit. The original suit was filed against the defendant for specific performance and permanent injunction. In the original suit defendant filed his written statement and issues were framed by this court. On 20.02.2023 the plaintiff side proof affidavit was filed and 1 to 7 exhibits were marked. On 20.10.2023 PW1 was cross

examined by the defendant. The case was posted for further evidence of plaintiff on 02.12.2023. On that day, the petitioner was ill health and his counsel went to some other District Court for attending his case. So, the court closed the plaintiff side further evidence and case was posted for respondent/defendant side evidence. It is necessary to prove the plaintiff side, the further evidence will be examined. One Kamalavasan, who have signed in the sale deed dated 30.03.2021 as evidence may be examined. Now this petition is filed by the petitioner to reopen the petition for plaintiff side evidence. If this petition is allowed the respondent will not be caused any prejudice. Hence, this petition may be allowed.

Crux of Counter filed by the respondent:

(3) The petition is not maintainable and it will be dismissed in limine. The petitioner was examined as PW1 and on 20.10.2023 the cross examination of PW1 was also closed. Several opportunities given to the petitioner for his additional evidence. But the petitioner drag the proceedings wantonly. Then the case was posted for argument, this reopen petition was filed belatedly by the petitioner i.e., after six months and this petition should be dismissed in limine. The petitioner has not filed any oral or documentary evidence to prove his illness or his counsel's absence. If this petition will be allowed this respondent will be much hardship. This petition was filed by the petitioner to drag the case proceedings endlessly. So, this petition is to be dismissed.

(4) Point for consideration:

Whether these petitions are to be allowed or not?

Point:

(5) The learned counsel for the petitioner has submitted that the suit is filed against the defendant for specific performance and injunction. After closing of PW1's evidence when the case was posted for further PW's on the side of the petitioner, since his counsel had gone to another district and the petitioner was unwell, evidence was not let in on behalf of the petitioner and plaintiff side evidence was closed. The petitioner seeks to examine the attesting witness to the settlement deed on his side. Hence, the present petition.

(6) Per contra, the learned counsel for the defendant contended that plaintiff was examined as PW1 on 20.10.2023 and the case was posted for further evidence on plaintiff side. Since no witnesses was examined on the plaintiff side, plaintiff's evidence was closed. This petition is filed belatedly at the argument stage and therefore liable to be dismissed.

(7) I have carefully considered the rival submissions and perused the materials on record. The present petition is filed for reopen plaintiff's side evidence to let in further evidence on his side. Admittedly, suit is for specific performance. Plaintiff seeks to examine the attestor as further witness on his behalf. On perusal of records, it is seen that though the case was posted for plaintiff side further evidence from 9.11.2023, the plaintiff failed to let in evidence. The same was closed on 4.3.2024. Later, defendant had let in

evidence and the case was posted for arguments. At this juncture, it is one year later the present petition is filed by the plaintiff belatedly to reopen the plaintiff side evidence. Though the reason stated by the plaintiff for non appearance of the witnesses on that date when the case was posted for further evidence no reason is stated by the plaintiff for non filing of this petition for the past one year. The inordinate delay remains unexplained. But as the suit is for specific performance and the plaintiff seeks to examine the attesting witness to establish this case one more opportunity is granted to the plaintiff to establish his case on merits. Considering the above circumstances, I am inclined to allow this petition on condition in the interest of justice.

In the result, this petition is allowed on payment of costs of Rs.2000/- to the respondent on or before 21.10.2024, failing which the petition stands dismissed.

Dictated to the Steno-Typist, transcribed by her in computer, corrected and pronounced by me in the open court, this the **14th day of October 2024**.

**II Additional District & Sessions Judge,
Thanjavur.**

**Petitioner and Respondent side
Exhibits and Witnesses : Nil**

**II Additional District & Sessions Judge,
Thanjavur.**

Order

IA.77/2024 in O.S.No.214/2021

Dated: 14.10.2024