

IN THE COURT OF PRINCIPAL DISTRICT JUDGE AT TIRUVALLUR
PRESENT: Tmt. J. JULIET PUSHPA, B.Sc., M.L.,
Principal District Judge, Tiruvallur

Tuesday, the 17th day of December, 2024

I.A.2/2024 in O.S.330/2018

M. Sivanandan,

....Petitioner

Versus

P. Stella,

.....Respondent

This Petition was filed on 05.12.2024 and coming before me in the presence of M/s K. Aswin Balaji, learned counsel for the Petitioner and M/s S. Muthukumaravel, learned counsel for the respondent and upon hearing the arguments of both side and upon perusing the material case records and having stood over for consideration till this date, this Court delivered the following:-

ORDER

This petition filed by the Petitioners under Order VIII Rule 8A of Civil Procedure code to receive the documents to mark the same as defendants side documents in the Original suit.

2. **Brief averments of the Petitioner is as follows :-**

According to the petitioner, she is the defendant in the original suit. The suit was filed by the respondent/plaintiff for recovery of a sum of Rs. 17,20,000/- on simple mortgage. When the suit was posted for defendant side evidence on 0708.2024, she could not appear to render evidence since she was

will. Hence, the defendant side evidence was closed on 07.08.2024 . In order to substantiate his case, the evidence of defendant is necessary. However, the documents were misplaced in the office and inspite of due diligence, she could not locate the documents within the time stipulated, hence, could not produce the same. The petition mentioned documents are very necessary and relevant to substantiate the case of the petitioner. Unless the documents are received and admitted, she would be put to irreparable loss and injury. The delay in filing the document is neither willful nor wanton. Hence, prayed to receive the following documents.

1. Certified copy of Proof affidavit in OS No.460/2018 on the file of Sub court, Poonamallee
2. Certified copy of Judgment in OS.No.460/2018 on the file of Sub court, Poonamallee
3. Certified copy of mortgage deed in OS.No.460/2018 on the file of Sub court, Poonamallee
4. Certified copies of cheques filed in in OS.No.460/2018 on the file of Sub court, Poonamallee
5. Certified copy of Legal notice of plaintiff in OS.No.460/2018 on the file of Sub court, Poonamallee
6. Certified copy of Legal notice of plaintiff in OS.No.460/2018 on the file of Sub court, Poonamallee
7. Certified copy of receipt in the name of plaintiff in OS.No.460/2018 on the

file of Sub court, Poonamallee

3. **Brief averments in Counter filed by the respondent is as follows :-**

The respondent resists the petition denying the averments in the affidavit. The documents were not pleaded in the written statement. The suit is based on the register mortgage deed which defendant has admitted. The defendant is introducing a new set of documents which were not pleaded. It is settled proposition of law after commencement of trial, the respondent cannot be put forth a new case to surprise the respondents, when the documents are not connected with the suit and when the plaintiff is not a party to the said documents. . The documents sought to be received are irrelevant to the *lis* , hence, prayed to dismiss the petitioner.

4. No oral and documentary evidence on both sides.

5. Now, the points for consideration in this petition are:

- 1) **Whether the petitioner is entitled to the relief as prayed for ?**
- 2) **Whether this petition is to be allowed?**

6. **POINTS 1 AND 2 :-**

Heard both side.

This petition is filed by the petitioner, who is defendant in the original suit seeking permission to receive totally 7 documents to be marked on the side of the petitioner.

The case of the petitioner is she is the defendant in the original suit. When the suit was posted for defendant side evidence on 07.08.2024, due to her illness she could not attend the court, hence, her side evidence was closed and now posted for arguments. It is necessary to render evidence on the side of defendant to substantiate her defence in the case. Already petition to reopen the defendant side evidence was allowed on 20.11.2024. Due to her illness, she could not file trace the documents previously, hence they omitted to be filed along with the written statement, which are to be marked on their side and these are vital documents to prove her case as against the case of plaintiff, hence prayed to receive the same.

7. Per contra, the respondent vehemently objected on the ground that the petitioner have not explained for non-filing of documents at the earliest point of time and the documents were not pleaded in the written statement, and further, the documents are irrelevant to the suit.

8. On perusal of records and points put forth by both counsels, the suit is filed by the respondent for recovery of money Rs.17,20,000/- on simple mortgage deed dated 27.08.2015. The plaintiff side evidence was closed on 16.08.2023 and posed to defendant side evidence to 08.09.2023. From 08.09.2023, the case stands posted time to time for defendant side evidence till 07.08.2024. On 07.08.2024, since the defendant has not come forward to adduce evidence, even after sufficient opportunities, the defendant side evidence

was closed, hence posted for arguments. Already petition to reopen the defendant side evidence was allowed on 20.11.2024. Now the case is posted for defendant side evidence. The petitioner now wants to file 7 documents stating that they are necessary to defend her case as against the respondent/plaintiff.

9. As far as the documents filed by the petitioner are concerned, those are certified copies of judgment, proof affidavit and other documents filed in OS No. 460/2018 on the file of Sub Court, Pooamallee which was disposed on 18.03.2019. While the petitioner contends that these documents are vital to defend her case, the respondent assails these documents as irrelevant to the issues involved and the same were not pleaded in the written statement and also the respondent is not a party to the said suit.

10. The petitioner has sought for only receiving the documents. Now, the suit is pending for defendant side evidence. No document is marked on the side of the defendant so far. Therefore, this Court considers that an opportunity has to be given to the petitioner for adducing all the oral and documentary evidence to prove her case as against the respondent. Moreover, no prejudice would be caused to the respondent by receiving these documents, since mere filing of the documents does not amount to its proof and relevancy. All the documents are certified copies in O..460/2018 on the file of Sub Court, Poonamallee.

11. Considering the nature of the documents, which the petitioner sought to be received, no prejudice would be caused to the respondent by receiving these

documents, as the respondent will have ample opportunity to object the proof and relevancy of these document sought to be received. Therefore, considering the nature of the documents sought to be received and in order to give the petitioner an opportunity to prove her case, this Court is inclined to allow this petition.

In the result, this petition is allowed, subject to proof, admissibility and relevancy of the documents sought to be received. No costs.

Dictated by me to the Steno-Typist, taken down, transcribed and typed by him, corrected and pronounced by me in the open Court on this the 17th day of December, 2024.

**PRINCIPAL DISTRICT JUDGE,
TIRUVALLUR**

Petitioner & Respondent side
Witnesses and exhibits : NIL

**PRINCIPAL DISTRICT JUDGE,
TIRUVALLUR**