

IN THE COURT OF I ADDITIONAL DISTRICT JUDGE, TIRUVALLUR

**PRESENT: Thiru.S.GANAPATHISAMY, B.A., B.L.,
I Additional District Judge, Tiruvallur**

Monday, the 29th day of September 2022

I.A.Nos.6 and 7 of 2022

in

O.S.No.389/2019

1. Mrs.E.Eswari
 2. Minor Suriya
Rep. by his mother and Natural Guardian
 3. Mrs.Karpagam
 4. Mrs.Radhi Devi
- Petitioners / 6th to 9th Defendants

Versus

1. Mr.M.Chandrasekaran
 2. Mrs.M.Vasanth
 3. Mrs.J.Eswari
 4. Mrs.V.Sivaranjani
- ... Respondents / Plaintiffs

These Petitions coming on 27.09.2022 for final hearing before me in the presence of Mr.D.Thanigaivasan, Mr.E.Rajasekar and Mr.S.Vinothkumar, learned counsels for the Petitioners/6th to 9th Defendants, Mr.G.Balu, learned Counsel for respondents/Plaintiffs and upon hearing both side arguments; and having stood over for consideration till this day, this Court delivers the following :-

COMMON ORDER

The petitioners/6th to 9th defendants have come forward with these applications u/s 151 of CPC and under Order 18 Rule 17 of CPC to reopen the case posted for the defendant side evidence and to recall the PW1 for further cross examination inter alia alleging that due to the non-availability of seven vital documents produced by the first plaintiff in O.S.No.21/2014, the counsel for the 6th to 9th defendants could not put some questions on the above documents and the petitioners have obtained those documents recently and the PW1 has to be recalled and cross examined for which the case shall be reopened.

The averments of the common counter filed by the respondents / plaintiffs are briefly stated as follows :

2. This court has given sufficient opportunities to the petitioners to cross examine PW1 and a lengthwise cross examination was done by the petitioners with irrelevant facts and subsequently PW2 was also cross examined. The PW1 has already marked the documents and the petitioners have elaborately cross examined the PW1. The petitioners can file the alleged certified copies obtained by them through their witnesses. On 20.07.2022, the PW1 filed Ex.A7 to Ex.A23 which are the documents relating to O.S.No.21/2014. On 26.07.2022,

the PW1 was fully cross examined and when the counsel for the petitioners sought time for further cross examination, this court closed the evidence of PW1.

3. Heard both sides.

4. The point for consideration in these applications is whether the PW1 can be recalled for further cross examination?.

5. The plaintiffs have filed the main suit for the relief of partition and for permanent injunction. The petitioners are fighting with the plaintiff tooth and nail in this case. The PW1 was partly cross examined on 20.07.2022. At the request of the counsel for the contesting defendants, this court adjourned the case to 27.06.2022 for continuation of cross examination of PW1. The PW1 was cross examined and the counsel for the petitioners sought further time for continuation of cross examination of PW1. This court closed the cross examination stating that the cross examination of PW1 could not be completed from 22.06.2022. Thereafter, the PW2 filed his proof affidavit and he was cross examined on the next hearing date. But the 6th to 9th defendants want to recall PW1 for further cross examination to put some questions on the documents obtained by them recently from the Principal District Court. Though it can be marked through 6th to 9th defendants, the right of the petitioners to put some

questions on the PW1 with regard to the contents of the above documents cannot be curtailed. If the PW1 is recalled, he will not be prejudiced in any way. The PW1 has sufficient opportunity to explain his case better in further cross examination.

6. The counsel for the 6th to 9th defendants undertook not to subject the PW1 for further lengthwise cross examination and the counsel would restrict to few questions on the documents. This court hopes that the counsel for the defendants will keep up his promise. At the same time, the 6th to 9th defendants shall not be permitted to procrastinate the proceedings. For the delay caused by the petitioners, the plaintiffs can be compensated with costs.

7. Considering the facts and circumstances of the case, each application will be allowed on payment of cost of Rs.1,500/- by the petitioners to the respondents / plaintiffs on or before 17.10.2022 at 11.00 a.m., subject to the further condition of completion of cross examination of PW1, if he is present, failing which the applications will stand dismissed. Total cost Rs.3,000/-. Call on 17.10.2022.

Dictated by me to the Steno-Typist and transcribed by her, corrected and pronounced by me in the open Court on this the 29th day of September 2022.

Sd/S.GANAPATHISAMY
**I Additional District and Sessions Judge,
Tiruvallur**

Both side Witness and Exhibits :- Nil

Sd/S.GANAPATHISAMY
**I Additional District and Sessions Judge,
Tiruvallur**

Fair/Draft Order

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DD : 29/07/2022

