

IN THE COURT OF THE ADDITIONAL SUBORDINATE JUDGE, PONNERI

Present : Thiru.K.Bakkiaraj, B.Com., B.L.

Additional Sub Judge, Ponneri

Dated this 14th day of October, 2024, Monday

**I.A. No.1 of 2024
in
O.S.No.142 of 2014**

J.Munusamy

..... Petitioner/Plaintiff

Vs

1. B.Baskaran

2. B.Ravi

3. M.Loganathan

..... Respondents / Defendants

This petition having stood over for consideration till this date came up finally in this court on 04.10.2024 in the presence of learned counsel M/s R.Munusamy, for the petitioner and learned counsel Mr.R.Gopi, for the respondents and upon perusing the documents, evidence and hearing both sides this court today doth deliver the following:-

ORDER

This petition has been filed under section 151 of CPC to allow the petitioner to file additional proof affidavit and to mark additional documents in the above suit O.S.No.142 of 2014 c/w O.S.No.180 of 2017.

1. Brief Averments of Petition filed by the petitioner:-

i) The petitioner is the plaintiff in the main suit. The above suit has been filed by the petitioner/plaintiff for the relief of his right, title and

possession and also for permanent injunction in respect of the suit property. The respondent has filed a suit in O.S.No.29 of 2014 before the District Munsif Court, Ponneri. Then after the respondents had filed a petition before the Hon'ble Principal District and Sessions Court, Tiruvallur in TROP.No.72/2017 and sought for transfer of the suit in O.S.No.29 of 2014 and the same was allowed and the suit in O.S.No.29 of 2014, which was transferred to this court and the same was renumbered as O.S.No.180 of 2017 and it was also ordered for joint trial. The suit was listed for trial on 08.03.2021 and the petitioner filed his proof affidavit in O.S.No.142 of 2014 and it was posted for marking of documents on 19.03.2021. In the mean time O.S.No.180 of 2017 was also listed for trial on 12.03.2021 and since there was no representation on their side this court dismiss the suit for non prosecution. On 19.03.2021 in O.S.No.142 of 2014 documents were marked and posted for cross examination of PW.1 by the defendants on several dates at the request of the respondents. Subsequently the suit filed by the respondents was restored on their petition.

ii) The petitioner has filed his proof affidavit in O.S.No.142 of 2014 and documents were marked and the defendant's counsel had partially cross examined PW.1 at that juncture the defendant's counsel raised question which are irrelevant to the above case and also tried to mark a Xerox document which is the subject matter of counter suit and upon objecting for the same the cross examination was stopped. Since the suit filed by the respondents was restored to file, they seek the indulgence of this court for joint trial pursuant to the order of the Hon'ble Principal

District Court, made in the transfer petition and this court was also to observe the said order made in the transfer petition. Hence this court allow the petitioner to file his additional proof affidavit in the above suit for effective and proper adjudication in both the suits for joint trial. The above petition is not allowed and additional proof affidavit is not received he will be put to irreparable loss and hardship him. Hence this petition.

2. The averments of the counter filed by the respondent :

i) The petition is not sustainable either in law or on facts. All the allegations made in the plaint and affidavit those are not specifically admitted herein has to be proved by the petitioner. There cannot be better case of deliberate abuse of process of court than this case in O.S.No.142 of 2014 and this I.A.1 of 2017. The respondent/defendant filed the suit in O.S.No.29 of 2014 against the petitioner/plaintiff sought for permanent injunction before the District Munsif Court, Ponneri, Subsequently the petitioner/plaintiff fraudulently created a document based on the UDR Patta and filed the suit against the respondent/defendant for the relief of title and possession and permanent injunction before the Principal Sub Court, Ponneri in O.S.No.142/2014. Thereafter the respondent/defendant had filed a petition before the Hon'ble Principal District and Session court, Thiruvallur in TROP.No.72/2017 and sought for transfer of suit in O.S.No.29 of 2014 and the same was allowed on 04.08.2017 and the above suit on the file of District Munsif Court, Ponneri, was ordered to be transferred to the file of this court and the same was renumbered as O.S.No.180 of 2017 by the Sub Court, Ponneri and it was also ordered for joint trial.

ii) The both cases also splinted in so unable to trace the respondent suit and finally O.S.No.180 of 2014 dismissed for default. Meanwhile the respondent/defendant continually appeared this present suit. The petitioner/plaintiff filed a proof affidavit on 08.03.2021 in the above suit but the respondent/defendant did not cross the PW.1 due to non availability of bundle pertaining to O.S.No.180 of 2017. The respondent/defendant finally traced out the case bundle on 28.08.2021 on that day only defendant knows about dismissal of above case for default i.e., 12.03.2021 immediately filed the set aside application on 31.08.2021 and other side counsel has received the copy and they had made endorsement on 01.07.2022. No counter petition was allowed posted for call with suit O.S.No.142/2014 jointly.

iii) The petitioner/plaintiff very well knows joint trial ordered by the Hon'ble Principal Sessions Court, Thiruvallur. Since the respondent/defendant suit bearing O.S.No.180 of 2017 dismiss for default. In the above matter while making cross of PW.1 in the witness of the respondent/defendant has shown copy of will pertaining to survey No.43/1 total extent of 8.86 Acre which was admitted by him at the time other side counsel objected the same. Hence cross was stopped by this court on 28.11.2023. Hence the petitioner/plaintiff chosen to file a petition for allowing him to file additional proof affidavit and to mark additional documents in the above suit O.S.No.142 of 2014 c/w O.S.No.180 of 2017 on 19.03.2024 which is not permissible as per law. Since trial is commenced and partly crossed. The respondent/defendant strongly objects to the present application. If the above petition is allowed the entire cause

of action and framing of issues will change and new issue will crop up. There is no truth or bona fide in the petitioner's case. This petition totally frivolous and vexatious and this petition is liable to be dismissed with exemplary and compensatory cost.

3. Points for consideration is :

Whether this petition is to be allowed or not?

4. Point.

Heard both sides and perused the materials available on record. It is found that the petitioner/plaintiff has filed this suit for the relief of permanent injunction. Admittedly the respondents herein had also filed a suit in O.S.No.29 of 2014 before the District Munsif Court, Ponneri and later the respondents had filed a petition before the Hon'ble Principal District and Sessions Court, Tiruvallur in TROP. No.72/2017 and sought for transfer of the suit in O.S.No.29/2014 and the same was allowed and the suit in O.S.No.29/2014 on the file of District Munsif Court, Ponneri was ordered to be transferred to this Court and the same was renumbered as O.S.No.180 of 2017 and it was also ordered for joint trial. It is admitted that the petitioner had examined in O.S.No.142 of 2014 and it was posted for marking of documents on 19.03.2021. In the meantime, the suit filed by the respondents in O.S.No.180 of 2017 was dismissed for non-prosecution. It is admitted that the petitioner/plaintiff had marked documents and the defendants' counsel had partially cross-examined PW.1 and at that juncture the suit filed by the respondents was restored to file, and they sought the indulgence of this Court for joint trial. That is why this

petition has been filed for filing additional chief affidavit in the above suit for effective and proper adjudication in both suits for joint trial. It is very clear that the petitioner has intended to file additional chief affidavit in respect of connected suit in O.S.No.180 of 2017. If this petitioner is not allowed to file additional chief affidavit in respect of the suit in O.S.No.180 of 2017, the purpose of joint trial of the both cases could not be reached. Moreover, if this petition is allowed no cause of action and framing of issues will be changed. Since the additional chief affidavit is only in respect of connected suit. Hence, this court inclines to permit the petitioner/plaintiff to filed additional chief affidavit and to mark additional document in-respect of the suit in O.S.No.180 of 2017 Only.

In the result, this petition is allowed without cost.

Dictated to the steno-typist, transcribed and typed by her, corrected and pronounced by me in the open court on this 14th day of October-2024.

(Sd/- K.Bakkiaraj)
Additional Sub Judge,
Ponneri.

Both Side Witness and Exhibits: Nil

(Sd/- K.Bakkiaraj)
Additional Sub Judge,
Ponneri.

// True Copy //

I.A.No.1/2024 in

O.S.No.142/2014

Fair/Draft order

Dated: 14.10.2024

Additional Sub Court,

Ponneri.