

IN THE COURT OF THE DISTRICT MUNSIF, PONNERI.

PRESENT: Selvi. **R.M. Subathra**, B.A.B.L(Hons.), M.L.(IPR).,
District Munsif, Ponneri.

Tuesday, the 27th day of August, 2019

I.A.1138/2018
in
O.S.No.255/2012

1. Saroja
2. Sakunthala

...Petitioners/Plaintiffs

-Vs-

1. Kiliammal
2. Soundararajan
3. Jagadeesan
4. Malathy
5. Arunkumar
6. Rajini
7. Mallika
8. Nageswari
9. Mohan Reddy
10. B.T. Enterprises Pvt. Ltd.
rep. by A. Bala @ Balamurugan

...Respondents/Defendants

This petition having been finally heard on 09.08.2019 in the presence of Mr. R. Suresh Kumar, learned counsel for the petitioners/defendants and Mr. R.Krishnaswamy, learned counsel for respondents/defendants and upon hearing the arguments of both sides and after perusal of the entire records and having stood over for my consideration till this day, this court delivers the following:

ORDER

This is the petition filed under Sec.151 of Civil Procedure code seeking to eschew the proof affidavit already filed by the petitioner/plaintiffs as PW1 evidence

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and to permit them to file a fresh proof affidavit as PW1 evidence in the above case and to mark the documents filed along with the plaint.

2. The averments set out in the petition affidavit filed by the petitioner are as follows:

The petitioner is the plaintiff in the suit filed for the relief of partition and also for declaration that the sale deeds are null and void. The suit was posted on 01.10.2010 in the special list. The counsel for the petitioner prepared proof affidavit and on that day as the advocates were on boycott, the counsel for the petitioner did not appear before the court. The petitioner in the absence of counsel, had filed proof affidavit without making necessary corrections in the same. The suit was adjourned from 08.11.2018 to 12.11.2018, for marking of documents and cross examination. The petitioner is now filing fresh proof affidavit as PW1 and now it is just and necessary to eschew the proof affidavit already filed by the petitioner and to receive the fresh proof affidavit filed herewith. If the same is not ordered, petitioner will be put into irreparable loss, damage and hardship. If the fresh proof affidavit is received, no prejudice or hardship would be caused to the other side. Hence, the present petition.

3. The averments set out in the counter filed by the 10th respondent are as follows:

a) The present application has been filed to permit PW1 to file a fresh proof affidavit. Admittedly the very same PW1 had already filed his chief examination proof affidavit and it is thereafter the present application has been filed to file a fresh proof affidavit.

b) Though this application has been filed seeking permission to file a fresh proof affidavit, for a long time copy of the fresh proof affidavit the same was not furnished to this respondent and only after making representation to the court in this regard the same was furnished.

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c) A perusal of the proof affidavit already filed and the proof affidavit now sought to be filed shows that there is no mistake in the earlier proof affidavit and it will be seen that the petitioners want to add something in the fresh proof affidavit, which could be done only by an additional proof affidavit.

d) There is no prayer in the affidavit or in the petition as to what should be done with regard to the proof affidavit already filed.

e) In any event there is no prayer to eschew the proof affidavit already filed by the very same PW1. In any event, this respondent has no objection in the petitioner filing additional proof affidavit which alone could be done as there is no scope at all to give a go bye to the earlier proof affidavit filed. Hence, this petition is to be dismissed.

4. Now the point for consideration is whether the petitioner is entitled to get the relief as prayed for?

5. On both sides no oral and documentary evidence was let in.

6. Heard both sides. Perused the records. The present petition had been filed to eschew the proof affidavit already filed by the petitioner and permit them to file fresh proof affidavit. The reason stated for the same in affidavit is that, the petitioner had filed the affidavit when advocate were on boycott and that he had himself filed his proof affidavit without making necessary correction of typographical errors. When the counsel for petitioner was not present he had filed a proof affidavit and now certain corrections are to be made in the same. Hence, the petition.

7. It is stated in the counter that there is no mistake in the earlier proof affidavit and it is seen that petitioner only want to add something in the fresh proof affidavit and the same could be done only by way of filing additional proof affidavit. The court had already received the proof affidavit of the petitioner and the proof affidavit

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now cannot be introduced. It is seen that there is no correction to the earlier one, but only additions of few paragraphs in the fresh proof affidavit file along with the petition. The fresh proof affidavit now sought to be filed consists of addition to the statement made in the proof affidavit already filed. As rightly pointed out by the respondent counsel additional proof affidavit would solve the very purpose. But filing of a new compiled single proof affidavit would not prejudice the right of the respondent in any way. Filing of proof affidavit in lieu of chief examination is a very important task in the trial of the suit and allowing this petition would not be prejudicial to the respondent in any way. Hence, petition allowed.

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

Order directly dictated to Steno-Typist, typed by him, corrected and pronounced by me in the Open Court on this, the 27th day of August 2019.

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Ponneri.**

List of witnesses on the side of the petitioners

NIL

List of documents on the side of the Petitioners

NIL

List of witnesses on the side of the respondents

NIL

List of documents on the side of the respondents

NIL

**DM,
PNI.**

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Fair/ Draft Order
I.A.No.1138/2018
O.S.No.255/2012
Date:27.08.2019
DMC,PNI.

District Munsif,

