

IN THE COURT OF THE DISTRICT MUNSIF, PONNERI.

**PRESENT: Tmt. V. Vannamalar, M.L., PGDIPR., PGD in CrI. & Fr.Sc.,
District Munsif, Ponneri.**

Tuesday, the 02nd day of January 2023

I.A.No.6/2023
in
O.S.No.52/2015

V.Rathinabai

.....Petitioner/plaintiff

-Vs -

1. Gruhalakshmi
2. Maharani
3. Janarthana Reddy (Died)
4. State represented by the District Collector
Tiruvallur District.
5. The Revenue Divisional Officer, Ponneri.
6. The Tahsildar, Ponneri.
7. Kala
8. Thirulogu
9. Praveen

.....Respondents/defendants

This petition came up for hearing on 02.01.2024, in the presence of Mr.T.Susairaj, learned counsel for the petitioner/plaintiff and Mr.R.Krishnaswamy, learned counsel for the respondents/defendants 1, 2, 7 to 9 and Mr.Nithyakumar, the Learned Government Pleader for the respondents 4 to 6. Upon hearing the arguments of both sides and on perusal of the material case records and having stood over for consideration before this court till this day, this court delivers the following

ORDER

This petition has been filed by the petitioner under Order 18 Rule 17 of CPC to recall the petitioner/plaintiff examined as PW1 and to let in evidence to mark certain documents on her side.

2. Brief averments of the affidavit filed by the petitioner are as follows:

The petitioner submits that she has filed the suit for declaration of title and for injunction along with other reliefs against the defendants. The suit is pending for cross examination of PW2. The petitioner submits that being a 83 years old lady when she tried to search with the help of others for papers connected with the suit, she found the certain documents which are material to prove her right in the suit property. The evidence of PW1 was closed on 12.09.2022. Now it is necessary to recall the said PW1 to mark the said additional documents. The petitioner states that if this petition is not allowed she would be put to irreparable loss and hardship. The petitioner states that there is no intentional delay in filing the said additional documents. In spite of reasonable and meticulous search, she was not able to trace the said documents earlier and hence the delay. If the applications are allowed no prejudice or hardship would be caused to the respondents. Hence, this petition.

3. Brief averments of the counter filed by the 1st respondent and adopted by Respondents 2, 7, 8 and 9 are as follows:

The 1st respondent submits that the reasons given in the affidavit for the recall of the plaintiff as PW-1 are not true and correct. The 1st respondent deny that those two documents are material to prove the petitioner's alleged right over the suit property. Now the documents sought to be received in evidence are only revenue documents and there is no specific reference at all made about those documents in the plaint pleadings or in the chief examination proof affidavit already filed on the side of the petitioner / plaintiff. As far as the provisions under Order XVIII Rule 17 is concerned after the amendment of the provisions of CPC, it is not a matter of right for any party to recall herself/himself. It is for the court to recall any witness to clarify any doubt. Hence, this petition is liable to be dismissed.

4. The counsel for the respondents 4 to 6 has made an endorsement in the petition that he has no counter to this petition.

5. Neither the petitioner nor the respondents have placed any oral or documentary evidence before this court. Now, it is the paramount duty of the court to decide whether this petition is to be allowed or not?

6. Heard both sides arguments. Records Perused.

7. On careful analysis, it is noted that the petitioner, who is the plaintiff in the suit has filed the suit against the respondents/defendants for declaration of title and for injunction along with other reliefs. When the suit is pending for cross examination of PW2, this petition has been filed to recall PW1 stating that she need to mark certain documents through PW1 to prove her case. The respondents who are the defendants in the suit on the other hand had stated that there is no specific reference at all made about the documents that are sought to be marked either in the plaint pleadings or in the chief examination proof affidavit already filed on the side of the petitioner / plaintiff. Considering the nature of the suit and in the interest of justice, this court is of the view that an opportunity to be given to the petitioner to submit her documents in the suit and hence this court is inclined to allow this petition. However, to compensate the delay and expenses caused to the respondents as a result of this petition, this court is inclined to allow this petition on terms.

8. In the result, this petition is allowed subject to payment of costs of Rs.500/- payable by the petitioner to Respondents 1, 2, 7 to 9 on or before 12.01.2024. Call on 19.01.2024 for reporting compliance.

Dictated by me to the steno-typist, who directly typed the same, corrected and pronounced by me in the open court, on this the 02nd day of January 2024.

**Sd/-V. VANNAMALAR,
DISTRICT MUNSIF
PONNERI**

Both side witnesses and documents:- NIL

**Sd/-V. VANNAMALAR,
DISTRICT MUNSIF
PONNERI**

Fair/ Draft Order
I.A.No.6/2023
O.S.No.52/2015
Date:02.01.2024
DMC,PNI.