

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 April 2024.

I.A.3 of 2022

IN

O.S.No.90 of 2017

M.Amalraj

..... Petitioner/Plaintiff

Versus

1. C.Selvaraj

2. C.Kumar

..... Respondents/Defendants

This petition having come on 02.04.2024 before me for final hearing in the presence of Mr.R.Ravichandiran, Mr.A.Moorthy, learned counsels for the petitioner/Plaintiff and Mr.G.Sugumar, Mr.R.Kalamegam, learned counsels for the Respondents/Defendants, upon hearing the arguments made by the learned counsels for the petitioner and the respondents and on perusal of the material case records, this Petition having stood over for consideration till this day, this Court delivers the following:

ORDER

1. This petition has been filed under Order XVIII Rule 17 of CPC to Re-call PW1 for cross examination on the side of respondents/defendants.

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

The petitioner / plaintiff submits that he has filed the above suit for a relief of declaration of title to the suit property and for recovery of possession of the same along with other reliefs. He further states that he was already examined as PW1 on his side and when the case was posted on 10.10.2022 for his cross examination by the respondents/defendants, he was not able to appear before this court as he was not

well. He further states that his non-appearance before this court was neither willful nor wanton but due to the above mentioned bonafide reason. He further states that he has a good case to succeed the said suit and hence it is necessary to permit him to be cross examined by the respondents. Hence this Petition.

3. Brief averments of the counter filed by the 1st respondent and adopted by the 2nd respondent are as follows:

3.1. The respondents deny all the averments made in the affidavit and submits that the petitioner has not submitted any medical records to support his contention. The respondents submit that the petitioner has filed this petition only to drag on the case proceedings. The respondents further submit that this suit was already dismissed on 04.10.2019 for the fault of the petitioner and subsequently got restored.

3.2. This respondents further state that the petitioner has no case at all and hence this application is being filed without any iota of truth. Hence this petition is liable to be dismissed with costs.

4. On the side of the petitioner and the respondents no oral or documentary evidence was placed before this court. Now, it is the paramount duty of this court to decide whether this petition is to be allowed or not.

5. Heard both sides arguments. Records Perused.

6. 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 a relief of declaration of title to the suit property and for recovery of possession of the same along with other reliefs. When the suit is pending for production of further evidence on the side of the plaintiff, this petition has been filed to recall PW1 for cross examination on the side of the respondent. The petitioner states that when the case was posted for his cross examination by the respondents/defendants, he was not able to appear before this court as he was not well and that it is necessary to permit him to be cross examined

by the respondents to prove his case. On the other hand, the respondents state that the petitioner has not submitted any medical records to support his contention and that the petitioner has filed this petition only to drag on the suit proceedings. Considering the rival submissions and 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 prove his case 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.

7. In the result, this petition is allowed subject to payment of costs of Rs.2000/- payable by the petitioner to the respondents on or before 16.04.2024. Call on 23.04.2024 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 April 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.3/2022
O.S.No.90/2017
Date:02.04.2024
DMC,PNI.