

IN THE COURT OF THE DISTRICT MUNSIF AT AMBATTUR.

PRESENT: TMT. FANNY RAJAN, B.A., B.L(Hons.),
DISTRICT MUNSIF, AMBATTUR

Monday, the 07th day of November 2022.

INTERLOCUTORY APPLICATION NOS.5 Of 2022

and

INTERLOCUTORY APPLICATION NOS.6 Of 2022

IN

ORIGINAL SUIT NO.63 OF 2007

L.Angel Yazhini

..... Petitioner/4th defendant

Versus

1. L.Janaki (died)
2. L.Anbalagan
3. L.Sathya Vani
4. L.Pandima Devi
5. L.Maya Devi
6. L.Sethupathi
7. T.M.Alwar
8. Lawrence
9. A.Tamil Selvam

..... Respondents/Plaintiffs 1 to 6

..... Respondents 7 to 9/Defendants 1 to 3

This petition having coming on 17.10.2022 before me for final hearing in the presence of Shri.P.Vijayakumar and K.Muralibabu, learned counsels for the petitioner/4th defendant, Shri.Y.Kerisshnan and K.P.Reetha, learned counsels for the Respondents 2-6/plaintiffs, Respondents 7 to 9 were set exparte, upon hearing the arguments made by the learned counsels for the petitioner and the learned counsels for the respondents 2 to 6, and also on perusal of the records, having stood over for consideration till this day, this Court delivers the following:

COMMON ORDER

1. **I.A NO.5 OF 2022:** This petition is filed under Section 151 of CPC to Re-open Respondent/plaintiff side evidence which was closed on 22.03.2021.

2. **I.A NO.6 OF 2022**: This petition is filed under Order 18 Rule 17 of CPC to recall Respondent/Plaintiff to be cross examined on behalf of the petitioner/4th Defendant.

Concise statement of the averments of the Petitioner:

3. The Petitioners have averred that the suit is filed for permanent injunction and OS No.482 of 2017 is filed for permanent injunction against the Plaintiffs. Another suit OS No.209.2015 is filed for declaration and sale deed as null and void. Whiles, when the Plaintiff evidence was recorded and not cross examined by the defendants 1 to 3 and closed on 22.03.2021. Later the Petitioner was impleaded as the 4th defendant and hence this petition to reopen and recall. If the suit is not re-opened and the PW1 is not recalled for cross examination, the Petitioner will be put to irreparable loss, hardship. On other hand if the application is allowed no prejudice will be caused to the respondents.

Concise statement of the Counter filed by the Respondents 2 to 6:

4. The Respondents have averred that the Petition is not maintainable and has to be dismissed as not sustainable. The suit was filed in 2007 against the respondents 7 to 9. The Release Deed dated 04.02.2013 was executed by the respondents 7 and 8 in favour of the 9th respondent and later Sale Deed was executed by the 9th respondent represented through his power agent in favour of the Petitioner pending suit. Whiles, upon the demise of 1st respondents, respondents 2 to 6 have inherited the property. Further, OS No.17/2007 filed by respondents 7 to 9 against 1st respondent has been dismissed for default in 2010.

5. Later OS No.209 of 2015 was filed by the 1st respondent against the respondents 7 to 9 to declare the sale Deed in favour of the Petitioner as null and void. Despite being aware of the case, the Petitioner belatedly filed the implead petition and this petition with an intent to drag the proceedings. The PW1 evidence was closed as not cross examined by Respondents 7 to 9 and posted for their evidence. The Petitioner is not a bonafide purchaser and was aware of the suit as she is the daughter of the 8th respondent. Hence, the Petition has to be dismissed with exemplary cost.

6. The respondents 7 to 9 have already been set exparte in the suit on 31.03.2022 and hence the notice to these respondents have been dispensed with.

POINT FOR DETERMINATION:

7. **I.A NO.5 OF 2022:** Whether this petition under Section 151 of CPC to Re-open the PW2 has to be allowed or not?

8. **I.A NO.6 OF 2022:** Whether this petition under Order 18 Rule 17 CPC seeking to recall the PW2 has to be allowed or not?

DISCUSSION AND FINDINGS:

9. This Court considers the submissions of both the counsels and perused the materials on record. No ocular or documentary evidence has been let in by the Petitioners and Respondents 2 to 6. On perusal of the records, it is found that the PW1 was examined on 06.02.2014 later closed and PW evidence was closed on cross examination on 28.02.2018. Since PW1 died, PW2 was examined on 29.01.2019 and cross examination was closed on 11.03.2021. Whiles, this Petitioner had filed

implead petition in I.A.No.2 of 2021 and allowed on 22.11.2021. After carrying out amendment, the case is posted for Petitioner/ 4th defendant evidence since 14.06.2022. Whileso the instant Petition to reopen and recall PW2 has been filed on 14.07.2022.

10. This Court finds it necessary to take judicial note of the ratio decidendi of the Hon'ble Supreme Court in pleathora of cases that there will be some lapse on the part of litigant concerned in all cases and that alone should not be enough of turn down his plea. If the explanation does not smack of malafides or it is not put forth as part of a dilatory strategy the court must show utmost consideration to the suitor.

11. In view of the above said propositions, this Court examines whether a liberal approach can be adopted in the case of the Petitioner. On thorough perusal of the records, this Court finds that the reason quoted by the Petitioner for this petition is that he was later impleaded in the suit only in 2022 and hence she should have an oppurtunity to cross examine the Plaintiff witness.

12. The contentions of the Learned Counsel for the Respondents 2 to 6 is that the reasons required to reopen and recall are kept vague and without proper reasons and that the Petitioner was all along aware of this suit as she is the daughter of the 8th respondent, not a bonafide purchaser and filed this petition belatedly, hence the Petition has to be dismissed. On perusal of the records, it is evident that the Petitioner has been impleaded only on 22.11.2021 and later amended. Now case is posted for her evidence. The reasons are clear and reasonable. Though the contention regarding

bonafide purchaser, daughter of 8th respondent, knowledge about the suit are not substantiated with material evidences and is a matter of trial.

13. In view of the above stated, this Court examines if there is any deliberate negligence or delay. This court has considered the arguments of the Learned Counsel for the Respondents 2 to 6 alleging that this Petition is filed to delay the proceedings and the Petitioner was not prudent. Admittedly, the Petitioner has been made a party to this suit only after 22.11.2021. Further, it is pertinent to note that despite the contention of dragging the proceedings, there is no substantive facts or evidence to establish the alleged malafide for the actions of the Petitioner. Hence, in the interest of justice, this Court is of the considered view that the contention of the Learned Counsel for the Respondents 2 to 6 on this behalf is not acceptable.

14. Thus, this Court has concluded that the reasoning stated by the Petitioner is reasonable. Further, there is no apparent or deliberate delay on the side of the Petitioner or any attempt by the Petitioner to abuse the process of law. Therefore, this Court considers it necessary to adopt a liberal approach in respect of the reasoning by the Petitioner and this Court is inclined to permit the Petitioner to reopen and recall the PW2 evidence as the PW1 has already demised. Further, in the absense of malafides and lapses on the part of the Petitioner, there is no reason to deny another opportunity to the Petitioner to contest the case on merits in the interest of justice. Hence, this Court concludes that in the interest of justice, the Petitioner ought to be provided with an opportunity to reopen and recall the PW2 evidence for cross examination.

15. Considering the fact that the Petitioner was impleaded only in 2022, this court is of the considered view that the parties shall bear their own costs. This Court directs that the Petitioner should be ready for cross examining the PW2 when he is present and should extend full co-operation to the conducting the trial effectively.

RESULT:

16. **I.A.No.5 of 2022:** In the result, this petition is allowed and the PW2 evidence is reopened for the limited purpose of cross by the Petitioner herein. No costs.

17. **I.A.No.6 of 2022:** In the result, this petition is allowed and the PW2 is recalled for the limited purpose of cross by the Petitioner herein. No costs.

Dictated to the steno-typist, transcribed by her in the desktop, corrected and pronounced by me in the open Court on this the 07th day of November 2022.

DISTRICT MUNSIF,
AMBATTUR.

PETITIONER AND RESPONDENTS SIDE WITNESSES AND EXHIBITS: NIL.

DISTRICT MUNSIF,
AMBATTUR.
