

IN THE COURT OF THE DISTRICT MUNSIF AT AMBATTUR.

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

Friday, the 16th day of June 2023.

INTERLOCUTORY APPLICATION NO.2 of 2022
AND
INTERLOCUTORY APPLICATION NO.3 OF 2022
IN
ORIGINAL SUIT NO.395 OF 2012

1. B.Sujatha
2. N.Vasanth
3. K.Kala

..... Petitioners/Defendants

Versus

B.James @ Raj Vigneshwar

..... Respondent/Plaintiff

These petitions having coming on 14.03.2023 before me for final hearing in the presence of Shri.V.S.Raghavan and B.Anantha Narayanan, learned counsels for the Petitioners/Defendants, Shri.D.Inbaraj, learned counsel for the Respondent/Plaintiff, upon hearing the arguments made by the learned counsel for the petitioners and the respondent and perusal of the records, having stood over for consideration till this day, this Court delivers the following:

COMMON ORDER

1. **I.A NO.2 OF 2022:** This petition is filed under Section 151 of CPC to Re-open the suit from the evidence of defendant to plaintiff side evidence.
2. **I.A NO.3 OF 2022:** This petition is filed under Order 18 R17 of CPC to recall the PW1 and to enable 2nd petitioner/2nd defendant and the 3rd petitioner/3rd defendant to cross examine him to prove their case.

Concise statement of the averments of the Petitioner:

3. The Petitioners have averred that the suit was posted in the special list on 02.08.2018 and Plaintiff was examined and documents were marked on 21.09.2021. It was posted for cross of PW1 on 30.09.2021, 02.11.2021 and 24.11.2021. On 03.12.2021, though time was sought for cross, it was rejected and PW1 evidence was closed. It was posted for further PWs on 05.01.2022 and closed on 16.02.2022. The suit was posted for DWs on 25.02.2022, 10.03.2022 and 24.03.2022. The suit is filed for permanent injunction and the Petitioner having purchased the property is in possession. Due to continuous disturbance of the Plaintiff, a suit for permanent injunction by the 2nd Petitioner and 3rd Petitioner in OS No.387/2012, OS No. 386/2012 was filed on 01.10.2012. In the said suits set aside exparte order is filed by the Plaintiff alongwith petition to recall. The Plaintiff remained exparte in the said suits since 12.11.2018 and he was continuously absent when the PW1 evidence was closed. Now he had filed petitions to reopen and hence it is necessary to reopen and recall the PW1 evidence in this case as well. Hence, this petition.

Concise statement of the Counter filed by the Respondent:

4. The Respondents have denied that the allegations and averred that he is the absolute owner of the suit property and after filing his proof affidavit, Ex.A3 to Ex.A11, C1, C2 were marked on 21.09.2021 and the Ex.C1 and C2 would prove the title of the Plaintiff. The suit was posted for cross examination and the Petitioner's advocate was not ready to cross examine and hence it was closed on 03.12.2021. The

suit is posted for DWs upon closing of Plaintiff evidence and this petition is filed to drag the proceedings. Hence the petition has to be dismissed.

POINT FOR DETERMINATION:

5. **I.A NO.2 OF 2022:** Whether this petition under Section 151 of CPC to Re-open evidence has to be allowed or not?

6. **I.A NO.3 OF 2022:** Whether this petition under Order 18 Rule 17 CPC seeking to recall PW1 has to be allowed or not?

DISCUSSION AND FINDINGS:

7. 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. On perusal of the records, it is found that the Plaintiff evidence opened on 02.08.2018, the PW1 was examined on 07.08.2018 and his chief was closed on 15.11.2018 and posted for cross of PW1 since 12.12.2018. On 04.01.2019, reopen petition was filed and allowed on 31.01.2019. Again as the PW1 was absent and cost was imposed on 27.03.2019 and on 12.06.2019, the case was referred to Mediation Center.

8. Later upon return, the cost memo was filed and posted for PW1 evidence since 25.03.2021. From 31.08.2021 till 21.9.2021 the case was posted for appearance of PW1 and he was examined in chief on 21.09.2021, posted for cross examination. On 30.09.2021, the PW1 was present and on 02.11.2021 and 24.11.2021, PW1 was

absent. On 03.12.2021, the PW1 was present but the Petitioners sought time for cross but the cross was closed and posted for further PWs. The PWs was closed on 25.02.2022 and posted for Defendant evidence. Whiles, this petition to reopen and recall was filed on 25.04.2022.

9. This Court finds it necessary to take judicial note of the ratio decidendi of the Hon'ble Supreme Court in several cases that ***“It must be remembered that in every case of delay there can be some lapse on the part of the litigant concerned. That alone is not enough to turn down his plea and to shut the door against him. If the explanation does not smack of mala fides or it is not put forth as part of a dilatory strategy the court must show utmost consideration to the suitor.”***

10. This Court finds that the reason quoted by the Petitioner for delay and non appearance is about the lack of diligence by the Plaintiff, in the suits filed by the 2nd and 3rd Petitioner and inability of his counsel to cross examine on 03.12.2021. This Court finds that irrespective of the averment, no document has been produced or marked in this Petition to substantiate the alleged reasons. However this court opines that the non filing of the document has not rendered the case of the Petitioner malafide.

11. It is a well established principle of law that if the explanation provided does not smack malafides or it is not putforth as part of a dilatory stratergy the court must show utmost consideration. In view of the above stated, this Court adopts a liberal approach in the case of the Petitioner and examines if there is any deliberate

negligence or delay. This court has considered the arguments of the Learned Counsel for the Respondent alleging that this Petition is filed to delay the proceedings. It is pertinent to note that despite the contention of dragging the proceedings, the said argument appears as a formal defense without any substantive facts or evidence to establish the alleged malafide for the actions of the Petitioners. In fact the lack of diligence is alleged even against the Plaintiff herein in the other related cases. Hence, in the interest of justice, this Court is of the considered view that the contention of the Learned Counsel for the Respondents on this behalf is not acceptable. Whiles, the contention regarding the ownership of the suit property, is a matter of trial and cannot be decided in this petition irrespective of the contentions raised by both learned counsels.

12. Though this Court has concluded that the reasoning stated by the Petitioner is vague and not substantiated by documents, upon perusal of the Petitioner's Affidavit and other material records, this Court finds that 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, as the PW1 was absent on the earlier two occasions before the cross was closed. Therefore, this Court considers it necessary to adopt a liberal approach in respect of the vague reasoning by the Petitioner that his counsel was unable to appear and cross examine the PW1 in full and this Court is inclined to permit the Petitioner to reopen and recall the PW1 evidence. Hence, this Court concludes that in the interest of justice, the Petitioner ought to be provided with an opportunity to reopen and recall the PW1 evidence for cross examination.

13. Considering the nature of allegations against each other, this court is of the considered view that the parties shall bear their own costs.

RESULT:

14. **I.A.No.2 of 2022**: In the result, this petition is allowed and the PW1 evidence is reopened for the limited purpose of cross by the petitioners/Defendants. No costs.

15. **I.A.No.3 of 2022**: In the result, this petition is allowed and the PW1 evidence is recalled for the limited purpose of cross by the petitioners/Defendants. No costs.

Dictated to Steno-typist, typed by her in the Computer directly, printed, corrected and Pronounced by me in open court on this the 16th day of June 2023.

District Munsif,
Ambattur.

PETITIONERS AND RESPONDENT SIDE WITNESSES AND EXHIBITS: NIL.

District Munsif,
Ambattur.