

**IN THE COURT OF THE I ADDITIONAL DISTRICT AND SESSIONS
JUDGE, VELLORE, VELLORE DISTRICT.**

PRESENT: Tmt.G.Santhi, B.A., M.L.,
I Additional District and Sessions Judge,
Vellore.

Thursday, the 7th day of March, 2024

I.A. No.4/2023 in O.S. No.3/2020 (Or.18 RI.17 CPC)

1. S.Gnanavel	
2. S.Thanigaivel	
3. S.Kumaravel	... Petitioners/1st to 3rd Defendants

/ Vs /

1. R.Bullima	
2. R.Manikandan	... Respondents/Plaintiffs

I.A. No.5/2023 in O.S. No.3/2020 (Sec.151 CPC)

1. S.Gnanavel	
2. S.Thanigaivel	
3. S.Kumaravel	... Petitioners/1st to 3rd Defendants

/ Vs /

1. R.Bullima	
2. R.Manikandan	... Respondents/Plaintiffs

These petitions are coming on 06.03.2024 before this court for final hearing in the presence of Thiru.V.Punniakodi, Advocate for the Petitioners/1st to 3rd Defendants and Thiru.S.Vijayakumar, Advocate for the Respondent and on hearing the arguments of both sides and upon perusing the entire case records and having stood over for consideration till this day, this Court delivered the following:-

COMMON O R D E R

- (i). I.A.4/23 was filed to recall the petitioner side witness. Defendants 1 to 3 are the petitioners to prays to recall the PW1 to cross examination.

(ii). I.A.5/23 was filed to reopen the plaintiff side witness for the purpose to cross examination of PW1.

2. Brief averments in the affidavit are read as follows in I.A. No.4/2023:

The 2nd petitioner is the 2nd defendant in the suit. The suit was posted for DWs, in the meantime the 2nd plaintiff has examined himself as PW1, subsequently it was posted for cross examination of PW1, but the previous counsel of petitioner have not cross examined PW1, Hence the cross examination of PW1 is closed on 13.12.2022, later it was known to the petitioner. Since to cross examine the witness PW1, provide one more opportunity to cross examine the said witness, is very essential and necessity to prove his case. Non cross examination of PW1 is neither wilful nor wanton. It is just and necessary to reopen the suit. Unless the case is reopened, the petitioner will be put to serious loss and hardship. Hence, the petition.

3. Brief averments in the affidavit are read as follows in I.A. No.5/2023:

The 2nd petitioner is the 2nd defendant in the suit. The suit was posted for DW2, in the meantime the 2nd plaintiff has examined himself as PW1, subsequently it was posted for cross examination of PW1, but the previous counsel of petitioner have not cross examined PW1, Hence the cross examination of PW1 is closed on 13.12.2022, later it was known to the petitioner. Since to cross examine the witness PW1, provide one more opportunity to cross examine the said witness, is very essential and necessity to prove his case. Non cross examination of PW1 is neither wilful nor wanton. It is just and necessary to reopen the suit. Unless the case is reopened, the petitioner will be put to serious loss and hardship. Hence, the petition.

4. Common Counter in both petitions filed by the 2nd Respondent adopted by the 1st Respondent is having the following contentions:

The petition filed on behalf of the petitioners/defendants seeking order to re-call for cross examination of PW1 is unsustainable in law and on the facts of the case. It is absolutely false to allege that the reason of previous counsel for petitioners/defendants have not cross examined PW1 and unable to produce suit documents are all imaginary stories. Since from 12.10.2022 to 13.12.2022 several opportunities were given for this petitioners/Defendants for cross examination of PW1. On 13.12.2022 this court has passed an order stating that petitioners/Defendants 1 to 3 called absent, No representation, already sufficient opportunities given but on the side of petitioners/Defendants 1 to 3 not cross examined PW1. Hence on the side of petitioners/Defendants 1 to 3 cross examination of PW1 is closed. The petition is devoid of merits. Hence, the petition is liable to be dismissed.

5. Both petitions have no oral evidence was let in on and both sides.

6. The point for consideration whether the petitions stands for valuable reasons are to be allowed or not ?.

7. Heard, perused the records.

8. POINTS:-

(i). I.A.4/2023, the Petition was filed on behalf of the Petitioner/1st Defendant under Order 18 Rule 17 of CPC., to recall the case for giving further evidence on the side of the petitioner.

(ii). I.A.5/2023, the Petition was filed on behalf of the Petitioner/1st Defendant under Section 151 of CPC., to reopen the case for giving further evidence on the side of the petitioner.

9. Both side arguments heard. Records perused, These case was pending at the stage of defendant side further evidence. Plaintiff side evidence has to be closed.

10. In this circumstances defendant 1 to 3 / petitioner hear in to recall the PW1 for cross examination. In order to give one more opportunity for DW1 to DW3 for cross examination of PW1. This Court decide to allow the application on cost and further condition that defendants 1 to 3, shall cross examination the witness on his appearance without fail. In case on failure, the petitioners right stands for dismissed automatically. Hence for the interest of justice this petition is allowed on payment of cost of Rs.1,000/- to be paid to the respondents and the point is answered accordingly.

11. In the result this this petition is allowed on payment of cost of Rs.1000/- to be paid by the petitioner to the respondents on or before 20.03.2023, or otherwise, the petition shall stand dismissed. Call on 21.03.2023.

Dictated by me to the Steno-typist, typed by her in computer, corrected and pronounced by me in the Open Court, this, the 07th day of March, 2023.

I Additional District and Sessions Judge,
Vellore.