

IN THE COURT OF DISTRICT MUNSIF, KATPADI, VELLORE DISTRICT
PRESENT: THIRU. K.VENKATESAN, B.A., B.L.,
DISTRICT MUNSIF, KATPADI.

Monday, this the 14th Day of August – 2023

I.A.No. 02 of 2023
In
O.S.No. 83 of 2018
(CNR.No.TNVL23-000120-2018)

Shanmugam

.....Petitioner/Plaintiff

-Vs-

1. Dharmalingam
2. Chenthamizh Selvan
3. Murugesan

.....Respondents/Defendants

This petition has come up today before this Court for orders, upon hearing the argument of Thiru. G.Seralathan, the Counsel for the Petitioner, and Thiru. T.Munisamy, the Counsel for the Respondents, has made endorsement as 'no counter', and upon perusing the petition, and the case records, and having stood over for consideration till this date, this court delivers the following:-

ORDER

This petition has been filed by the petitioner/plaintiff under Order 16 Rule 1 and Section 151 of Civil Procedure Code, to permit the petitioner to examine the Manager, National Trust Housing Finance, Gandhi Nagar, Vellore as a witness on the plaintiff's side.

1. **Brief averments of the affidavit filed by the petitioner is as follows:-**

He is the plaintiff and he filed the above suit for mandatory injunction to demolish the encroached area and for recovery of possession and for other reliefs in which the petitioner

have been examined as PW-1 in the above case and posted for further evidence in which the petitioner is inclined to examine further evidence to the Manager, National Trust Housing Finance, situated at Gandhi Nagar, Vellore-67, for the purpose to produce the Original Patta No.791, dated 15.03.1993 which is hypothecated in the said Bank for obtaining loan the Account Number is VLR03010102684 which is stands in his name and this patta is required, since he is constrained to file in the above case for the purpose of prove his possession and enjoyment. Hence, he is filing this petition to examine the Manager, National Trust Housing Finance, Gandhi Nagar, Vellore, as further witness, unless this petition will be allowed, he will be put to great loss and hardship, and prays to allow this petition.

2. Instead of filing counter, the Respondents Counsel has made endorsement as 'no counter'.

3. Neither the petitioner nor the respondents had placed any oral or documentary evidence before this court.

4. **Point for Consideration:-**

(a) Whether this petition is entitled to be allowed or not?

5. **Answering to the Point:-**

Heard. Records perused. Upon careful analysis of the entire case records including the petition and considering the argument advanced by the petitioner counsel, it is found that the petitioner herein is the plaintiff and he filed the above suit against the defendants (who are the respondents herein) for the relief of directing the defendants to demolish the encroached place described in 'B' 'C' 'D' schedule of property by the order of mandatory injunctions and recovery of possession.

6. On perusal of records, it is revealed that on receipt of summons, the 1 to 3 defendants had entered appearance through their Counsel on 03.11.2018, and the 3rd defendant had filed written statement on 13.02.2019, and the same was adopted by the 1 & 2-defendants, and then, issues were framed on the same date, and posted for trial.

7. Already an Advocate Commissioner Thiru. Ravivarman, has been appointed by this Court vide Order passed in I.A.No.95 of 2020 dated 18.02.2021, and he inspected the property and filed the Commissioner report & plan, and the said I.A. was closed due to no objection on either side. During trial, on the side of plaintiff, on 09.12.2022, the plaintiff was examined himself as PW-1, and later on 07.02.2023 marked Ex.A.1 to Ex.A.7, and then, he was cross examined in full on 21.04.2023. Thereafter, the case was posted for further PW's. At that juncture, the plaintiff has filed this present petition to examine the Manager, National Trust Housing Finance, Gandhi Nagar, Vellore as a witness on his side.

8. It is useful to refer the Order 16, Rule 1 of CPC which gives guideline to the Court, how the witnesses should be summoned for their attendance to give evidence. Sub-Rule 2 to Rule 1 of Order 16 of CPC reads:

“(2) A party desirous of obtaining any summons for the attendance of any person shall file in Court an application stating therein the purpose for which the witness is proposed to be summoned.”

The rule does not say, it is an automatic or for mere asking, without reason and it is evident, that there must be a reason, not only from the reading of sub-rule (2), but also by the reading of sub-rule (3). In sub-rule (2), when the party applies to the Court, he must state ‘the purpose’ for which the witnesses are proposed to be summoned or examined. If reasons are

assigned, then it is the duty of the Court, for the reasons to be recorded, to permit the application to call the witnesses either by summoning through Court or otherwise, thereby making it clear that a party desirous of obtaining any summons, for the attendance of any person which should include a party to the suit, also should assign reasons viz., the purpose. If the purpose is not stated, then the Court is competent to deny the demand, refuse to issue summons, which cannot be questioned. In this context, this Court have to see, what is the purpose of summoning the proposed witness.

9. In the petition affidavit, in para-2, the petitioner/plaintiff states that; “**...I have been examined as PW1 in the above case and posted for further evidence in which I am inclined to examine further evidence to the manager National Trust Housing Finance situated at Gandhi Nagar, Vellore – 67 for the purpose of the Original Patta No.791 dated 15.03.1993 which is hypothecated in the said Bank for obtaining loan the Account Number is VLR03010102684 which is stands in his name and this patta is required, since he is contrained to file in the above case for the purpose of prove his possession and enjoyment...**”

From the above reading of the averments, it is evident that the petitioner/plaintiff have not filed the List of witnesses within 15 days after the issues are settled as per Sub-Rule (1) of Rule 1 of Order 16 of CPC, and this case was opened for plaintiff’s side evidence since 11.04.2019, and the plaintiff’s took almost 4 years 2½ months to file this petition only after due cross examination of PW-1.

10. It is pertinent to mention that already the True Copy of the Patta No.791, dated 11.12.2017 stands in plaintiff name was issued by Head Quarters Deputy Tahsildar, Katpadi

was marked as Ex.A-1 through PW-1, and the same is very well available in Court. Further, in the plaint, the plaintiff did not whispered anything about the alleged Original Patta No.791, dated 15.03.1993 was hypothecated to the National Trust Housing Finance for obtaining loan in VLR03010102684. That facts being so, at the stage of further PW's, the plaintiff has come forward with this present petition to examine the Manager, National Trust Housing Finance, Gandhi Nagar, Vellore as a witness on his side, without any relevancy. It is pertinent note that in written statement, the defendants merely have taken only a defense that they did not encroach the suit properties. From the above facts, the purpose for calling the petition mentioned proposed witness is not properly reasoned and its beyond the pleadings.

11. In the present case, the petitioner/plaintiff was already examined as PW-1 and produced the Patta which stands in his name, to prove the averments of the plaint, and then the said PW-1 has been duly cross examined by the respondents/defendants. Even after adduced the patta in his name, and without any pleadings in plaint in respect of the alleged Original Patta No.791 dated 15.03.1993 and its was hypothecated to the National Trust Housing Finance and is in possession of the said Housing Finance, the petitioner/plaintiff wants to examine the Manager, National Trust Housing Finance, Gandhi Nagar, Vellore is clearly shows that there is no proper relevancy and purpose in this case.

12. Thus, on cumulative consideration of entire facts and circumstances of the case, this Court is not inclined to allow this petition. Accordingly, the point is answered against the petitioner.

13. **Result:-**

In fine, in the interest of justice, this petition is dismissed and no orders as to costs.

-//Dictated by me to the steno-typist, who directly typed the same and corrected and pronounced by me in the open court, on this the 14th Day of August– 2023.

DISTRICT MUNSIF
KATPADI

Both sides documents and witnesses: **NIL**

DISTRICT MUNSIF
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