

In the Court of the Principal District Judge, Villupuram

**Present : Selvi. R. Poornima, B.com., L.L.M.,  
Principal District Judge, Villupuram.**

Wednesday, the 23<sup>rd</sup> day of November 2022

**I.A. Nos. 2/2022 and 3/2022**

**in**

**O.S. No. 44/2017**

1. Ramalingam
2. Sakthivel
3. Karnan ... Petitioners / 9 to 11 defendants

/vs/

1. Pavunambal
2. V.P.Murugan
3. N.Sakthivel
4. N.Ilango
5. Paranthaman
6. Manivasagam
7. Manjunathan
8. Anandan
9. B.R.Danabal ... Respondents/Plaintiff/1 to 8 Defendants

This Petition is coming on 16.11.2022 for final hearing before me in the presence of Tr.T.Prabakaran, Advocate for the petitioners and Tr. N.Kannadasan Advocate for the 1<sup>st</sup> respondent and Tr. D.Latchathipathy

Advocate for the respondents 2 to 8 and the 9<sup>th</sup> respondent was set set exparte in the suit and upon hearing both side arguments and on perusing the records and having stood over for consideration till this day, this court passed the following...

### **COMMON ORDER**

I.A. Nos.2 and 3 of 2022 are filed to reopen and recall of PW2 to cross examine by the defendants 9 to 11.

**2. The brief averment contained in I.A. Nos.2 and 3 of 2022 are as follows :-**

The suit is posted for the evidence of defendants 9 to 11. Already on the side of the plaintiff the daughter of the plaintiff and other witnesses were examined, PW2 was cross examined by defendants 9 to 11 on 31.03.2021, but it was mentioned that defendants 1 to 7 were cross examined and the same was amended by the plaintiff side. The plaintiff and defendants 1 to 8 do not have any right over the property. Both the plaintiff and defendants 1 to 8 joined together and filed a suit against these defendants as if they are having joint possession and enjoyment. The suit property absolutely belonging to the defendants 9 to 11. Already Paramasivam, Arumugam, Srinivasan who are sons of Vaithiya Asari and Smt.Santha w/o. Natesa Asari, Tr.Ranganathan s/o.

Ponnusamy Asari filed a suit for declaration against the defendants 9 to 11 and it was dismissed on 19.10.1994. An appeal was filed in A.S. No.18/1995 and the same was dismissed on 11.03.1999. The defendants 9 to 11 failed to cross examine the PW.2 with regard to important aspects raised in their written statement and to raise some question about their possession and enjoyment. Therefore he had filed these petitions to reopen and recall PW.2. He had already informed the counsel about the same but it was omitted. Already in I.A. Nos.317 and 318 of 2021 petitions are filed to reopen and recall witness Indrani. The Advocate who has been engaged on behalf of the defendants 9 to 11 had return the bundle to the petitioners and requested to engage new Advocate. The new Advocate mentioned in the petition as per the deposition as PW.1 and the same was withdrawn now witness PW.1 has been amended as PW.2. Therefore a fresh petition has been filed. Hence, these petitions are filed to reopen and recall of PW2.

**3. The brief averments contained in the counter I.A. Nos.2 and 3 of 2022 filed by the 1<sup>st</sup> respondent and adopted by the respondents 2 to 8 would run as follows :-**

The respondents denied the entire allegation contained in the petition. There is no provision to cross examine PW.2 at the discretion of the petitioners. In order to drag on the proceedings these types of petitions are filed. Both the plaintiff and PW.2, daughter of the plaintiff are residing in

Bangalore, due to the age factor she is not in a position to depose evidence, her daughter was examined as PW.2 with the consent of the court. Already one Advocate Tr.Sheshadri, appeared on behalf of the defendants 9 to 11 and he had fully cross examined with regard to his defence. Therefore he has no necessity to recall the PW.2. During cross examination the Advocate Tr.Sheshadri, post a question about Appeal Suit No.18/1995, PW.2 stated that she is not aware about the same and again the petitioner wanted to post the same question which is not necessary and proper. This respondent/plaintiff is not party to this above Appeal proceedings and the PW.2 is also not a party and therefore the petitioners are not entitled to cross examine in this aspect. The reasons stated for the cross examination is not acceptable one. The petitioners/defendants 9 to 11 defended the case based on the Patta. In order to drag on the proceedings and on the assumption that due to age factor the plaintiff would not remember the facts, they have changed the advocate and filed these petitions. Hence, it is liable to be dismissed.

**4. Point for consideration :-**

Whether both petitions can be allowed or not?

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

a) Both side heard, it is the contention of the petitioners that they wanted to recall PW.2 and to further cross examine certain aspects which

was omitted to be cross examined by their Advocate. This petitioners further stated that they had instructed their Advocate to cross examine certain aspects which was omitted and subsequently due to age factor the Advocate of the petitioners return the bundle and now they had engaged new Advocate. On perusal of the bundle it shows that now the petitioners appeared through Advocate Tr.T.Prabakaran and the respondents/plaintiff seriously objected to cross examine by stating that the previous Advocate fully cross examined and there is no proper reason stated in the affidavit.

**b)** The petitioners stated that they wanted to establish that the plaintiff is not in possession and enjoyment of the property and has no right over the suit property. Now, this case is posted for the evidence of defendants 9 to 11. No prejudice would be caused if the petitioners are provided with an opportunity. However, as per the docket sheet the evidence of defendants 9 to 11 are pending for long time almost it is pending for 1 year. In order to avoid multiplicity of proceedings and to avoid delay the petitioners are given an opportunity to recall and cross examine the witness PW.2

In the result, both petitions are allowed with condition that the petitioners are liable to pay a sum of Rs.150/- each to the respondents 1 to 8 towards cost and further if the cost is paid, on further condition that petitioners must cross examine P.W.2 at once when PW.2 appears, if they fail

to cross examine on the date of witness present, they will not be provided with further opportunity to cross examine. Cost to be paid on or before 29.11.2022, failing which the petitions will be dismissed automatically. Call on 30.11.2022.

Order dictated by me to the stenographer, transcribed and typed by him, corrected and pronounced by me, in the open court, on this the 23<sup>rd</sup> day of November 2022.

Sd/- R. Poornima,  
**Principal District Judge,**  
**Villupuram.**

Draft / Fair Order :  
I.A. Nos. 2/2022 and 3/2022  
in O.S. No. 44/2017  
23.11.2022..