

**IN THE COURT OF THE I ADDITIONAL SUBORDINATE JUDGE,
VILLUPURAM.**

**Present: Thiru.C. Sundarapandian, B.Com.,B.L.,
I Additional Subordinate Judge, Villupuram.**

Wednesday, the 20th day of April 2022

IA No.335/2021

in

OS No.249/2014

Radhakrishnan

.... Petitioner/ 2nd Defendant

//Vs//

1. Balambal(Died)

2. Dhanalakshmi

3. Dhayanithi

..... Respondents/Plaintiffs

This petition having been taken on file on 06.12.2021 and came up for final hearing on 01.04.2022 in the presence of Tr.R.Srinivasan, Learned Advocate on behalf of the Petitioner/2nd defendant and in the presence of Tr.M.Chakrapani, Learned Advocate on behalf of the R1 to R3, upon perusing the case records, upon hearing arguments of both side and having been stood over for consideration till this date, this court delivered the following:-

ORDER

The Petitioner/2nd defendant has filed this petition under section 151 CPC to reopen the case for 2nd defendant side evidence.

2. The petition in Brief is as follows:-

The Petitioner is 2nd defendant in the suit. The petitioner is father of R.Raguraman who is plaintiff in OS No.304 of 2014. The Respondents/plaintiffs have filed suit for partition in OS No.249 of 2014 against petitioner and his son and

have examined witnesses starting from 15.11.2016 and their evidence was closed on 01.09.2021. Meanwhile, the petitioner was advised to adduce evidence after completion of evidence by Thambidurai/1st defendant in OS No.249 of 2014 with 3,4,5 Respondents. But, the court has closed both side evidence and further closed arguments and posted the case for Judgment to 10.12.2021. In fact, without evidence from Thambidurai/4th respondent in OS No.304 of 2014, the stage was closed. Non-examination of witness by petitioner is neither willful nor wanton. The respondents/plaintiffs have adduced Ex.A1 to Ex.A55. The petitioner was on impression that sufficient time will be granted for perusal of exhibits since more number of exhibits adduced by Respondents/plaintiffs. But, without evidence from petitioner side the stage was closed. The petitioner has good case in OS No.249 of 2014 as well as OS No.304 of 2014. Hence the petition.

3. The Crux of Counter filed by R3 is adopted by R2 is as follows:

The petitioner application is false, vexatious and frivolous and is liable to be dismissed. It is true that the suit in OS No.249/2014 instituted by this respondents and the suit in OS No.304/2014 instituted by the petitioner's son Raguraman are being tried jointly. The evidence on the side of respondents/plaintiffs in OS No.249/2014 was let in and was closed on 08.09.2021 after examining PW1 to PW4 and marking Ex.A1 to Ex.A55. Since the petitioner/2nd defendant alone is the contesting defendant in OS No.249/2014, he was directed to produce his evidence on 01.10.2021. But he did not let in any evidence on that day, his side of evidence was closed. Then the suit stood posted on 10.12.2021 for pronouncing judgment and only on that day, the petitioner has filed this application for re-opening his side of evidence with inordinate delay. The petitioner's reasoning that he was thinking of letting evidence after the evidence on the side of Thambidurai/the 1st defendant in OS No.249/2014 is not tenable and sustainable. Because Thambidurai remains exparte in the above suit and has been contesting the suit filed by Raguraman in OS No.304/2014 being the 4th defendant therein. As a contesting defendant in OS No.304/2014, he may produce his evidence only after recording the evidence of plaintiff/Raguraman in OS No.304/2014. Besides, the petitioner's surmise that

Thambidurai was directed by the court to produce his side of evidence after the closure of plaintiff's side of evidence is not true and there was no such direction. As the petitioner has not come to the court with clean hands and after an inordinate delay, he deserves to be censured by imposing heavy terms as to costs to the respondents. Hence the petition is liable to be dismissed with cost.

4. Heard both. Perused Records. Neither Petitioner nor Respondent have examined any witnesses and marked exhibits.

5. Point for Consideration:-

- i). Whether the petitioners have shown sufficient cause to allow the petition in I.A.No.335/2021 in OS No.249/2014?
- ii). Whether the petition is to be allowed or not?

6. On Point:-

The relief sought for in the petition u/s.151 of CPC is to reopen the case for Petitioner/2nd defendant side evidence. According to petitioner, The Respondents/plaintiffs have filed suit for partition in OS No.249 of 2014 against petitioner and his son and have examined witnesses starting from 15.11.2016 and their evidence was closed on 01.09.2021. Meanwhile, the petitioner was advised to adduce evidence after completion of evidence by Thambidurai/1st defendant in OS No.249 of 2014 with 3,4,5 Respondents. But, the court has closed both side evidence and further closed arguments and posted the case for Judgment to 10.12.2021. In fact, without evidence from Thambidurai/4th respondent in OS No.304 of 2014, the stage was closed. Non-examination of witness by petitioner is neither willful nor wanton. The respondents/plaintiffs have adduced Ex.A1 to Ex.A55. The petitioner was on impression that sufficient time will be granted for perusal of exhibits since more number of exhibits adduced by Respondents/plaintiffs. Hence the petition.

7. **Per Contra**, The respondent vehemently objected that the petition that the reason stated by petitioner that he was thinking of letting evidence after the evidence on the side of Thambidurai/the 1st defendant in OS No.249/2014 is not tenable and

sustainable. Because Thambidurai remains *exparte* in the above suit and has been contesting the suit filed by Raguraman in OS No.304/2014 being the 4th defendant therein. As a contesting defendant in OS No.304/2014, he may produce his evidence only after recording the evidence of plaintiff/Raguraman in OS No.304/2014. Hence the petition is liable to be dismissed.

8. A careful perusal of records would reveal that the case is of the year 2014. The plaintiffs in OS No.249 of 2014 have filed suit for partition and separate possession against the petitioner/2nd defendant and others. Plaintiff side evidence was closed on 08.09.2021. Following adjournments were given for Defendant side Witnesses on 01.10.2021, 20.10.2021. From year 2017 to 2021 the case was pending for cross-examination of plaintiff side witnesses. The reason stated by petitioner/2nd defendant is that the petitioner was advised to adduce evidence after completion of evidence by Thambidurai/1st defendant in OS No.249 of 2014 with 3,4,5 Respondents. But, the court has closed both side evidence and further closed arguments and posted the case for Judgment to 10.12.2021. In fact, without evidence from Thambidurai/4th respondent in OS No.304 of 2014, the stage was closed. Non-examination of witness by petitioner is neither willful nor wanton. Only in trial court, both side could establish their case through evidence and arguments. Hence reasonable opportunity should be given to parties to the case. The petitioner has shown sufficient cause to allow the petition.

9. Under the above said circumstances, this court is of the view that in order to render substantial justice, this petition is viewed liberally and leniently. In order to give an opportunity to the petitioner, this court is of the opinion that it would be appropriate to allow this petition, in the interest of justice and to avoid multiplicity of proceedings. Hence the points 1 and 2 are decided in favour of petitioner and the points are answered accordingly.

10. It is hereby made clear that the observation reason the findings rendered above in this interlocutory application is only limited to the extent of deciding the interlocutory application. It is further clarified that both the parties are at liberty to

adduce evidence both oral and documentary during the time of trial as they may be so advised.

In the result, in view of foregoing discussion and reasons stated as above, this petition is allowed.

There shall no order as to cost.

Dictated to the Steno-typist, typed on computer, corrected, print out was taken and pronounced by me in the open court, on this 20th day of April 2022.

I Additional Subordinate Judge,
Villupuram.

Petitioner's side Witness and Exhibits: -

NIL.

Respondent's side Witness and Exhibits: -

NIL.

I Additional Subordinate Judge,
Villupuram.