

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.431/2021

in

OS No.341/2015

1. Thambidurai
2. Tharanitharan
3. Venkateswaran
4. Gunavathi

...Petitioners/Defendants

//Vs//

Radhakrishnan

... Respondent/Plaintiff

This petition having been taken on file on 10.12.2021 and came up for final hearing on 01.04.2022 in the presence of Tr.M.Chakrapani, Learned Advocate on behalf of the Petitioners/Defendants and in the presence of Tr.R.Srinivasan, Learned Advocate on behalf of the Respondent/Plaintiff, 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 Petitioners/Defendants have filed this petition under Section 151 CPC to reopen the case for hearing the arguments of petitioners/defendants.

2. The petition in Brief is as follows:-

The 1st Petitioner is the 1st defendant in the suit. The petitioners 2 to 4 are his sons and daughter. The respondent has filed the suit for partition and separate possession of his half share in the suit properties. They have contesting the said claim. After the completion of evidences on both sides, the suit was posted on 24.11.2021 for argument of plaintiff and defendants. On that day, they are not able to attend the court because of a function conducted in his family. It seems that the court has been pleased to post the suit for judgment without hearing their side argument as

well as that of the respondent/plaintiff. The petitioners are now ready to argue the case. Hence, it becomes just and necessary to reopen the case for hearing the arguments of both sides, otherwise they will be put to irreparable loss and hardship. Hence the petition.

3. The Crux of Counter is as follows:

The respondent side counsel has made endorsement that denied the averments of petition.

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.431/2021 in OS No.341/2015?
- 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/defendant side arguments. The 1st Petitioner is the 1st defendant in the suit. The petitioners 2 to 4 are his sons and daughter. The respondent has filed suit for partition and separate possession of his half share in the suit properties. They have contesting the said claim. After completion of evidences on both sides, the suit was posted on 24.11.2021 for argument of plaintiff and defendants. On that day, they are not able to attend the court because of a function conducted in his family. It seems that the court has been pleased to post the suit for judgment without hearing their side argument as well as that of the respondent/plaintiff. The petitioners are now ready to argue the case. Hence, it becomes just and necessary to reopen the case for hearing the arguments of both sides, otherwise they will be put to irreparable loss and hardship. Hence the petition. The respondent side counsel has made endorsement that denied the averments of petition.

7. A careful perusal of records would reveal that the case is of the year 2015. After defendant side evidence was closed, following adjournments were given for arguments i.e., on 09.11.2021, 19.11.2021, 23.11.2021. The reason stated by Petitioners/Defendants is that due to function conducted in their family, they could

not argue the case in time. The petitioners are now ready to argue the case. Hence, it becomes just and necessary to reopen the case for hearing the arguments of both sides, otherwise they will be put to irreparable loss and hardship. 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. Under the above said circumstances the petition is liable to be allowed.

8. 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.

9. 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.