

**In the Court of the Additional District & Sessions Judge,
Srivilliputtur.**

**Present : Tmt. Gajara R. Jiji, M.A., LL.M.,
Additional District Judge,
Srivilliputtur.**

Wednesday, the 29th day of November 2023

I.A.No. 5/2023

in

O.S. 72/2015

.....

Muthuramalingam

... Petitioner / Plaintiff

/vs/

- 1) Muniyandi (Died)
- 2) Murugan
- 3) Kaleeswari
- 4) Annapoorani
- 5) Umadevi
- 6) Pandiaraj
- 7) Ramkumar
- 8) Muthulakshmi
- 9) Nithya
- 10) Nimala
- 11) Jothiprakash
- 12) Mariappan
- 13) Nadarajan

... Respondents / Defendants

This petition came before me for final hearing on 15.11.2023 in the presence of Thiru.S. Duraisaravanan, Advocate for the petitioner, and the respondents 2, 3, 11 and 13 are set exparte, and of Thiru. Pandian, Advocate for the respondents 4 to 7, and of Thiru. Kaliyappan, Advocate for the respondents 8 to 10, and of Thiru. S. Manikannan, Advocate for the 12th respondent, and upon hearing arguments on both side and perusing the case records, this Court passed the following

ORDER

This is a Petition under Order 16 Rule 21 and Section 151 CPC to examine the 8th defendant as a witness on the side of the plaintiff.

1) Averments in the petition in brief are as follows:

The petitioner is the plaintiff in the suit. The suit has been posted for examination of witnesses on the side of the 12th defendant. The 8th defendant had adopted the written statement filed by the 4th respondent but has been set exparte. Hence it is necessary to examine the 8th defendant as a witness on the side of the plaintiff in order to prove the Will. Hence prays to issue summon to the 8th defendant in order to examine the 8th defendant as a witness on the side of the plaintiff. Hence this petition.

2) Averments in the counter statement filed by the respondents 4 to 7 in brief are as follows :-

The averments in the petition are false. The reason stated by the plaintiff that since the 8th defendant had adopted the written statement of the 4th defendant, the 8th defendant ought to be examined as a witness on the side of the plaintiff is legally untenable. The petition is filed only to delay the proceedings of the case. This petition to summon the 8th defendant is an unnecessary petition and also not maintainable. Hence prays to dismiss the petition.

3) Averments in the counter statement filed by the 12th respondent in brief are as follows :-

The petition has been filed only to delay the proceedings of the case. The evidence of the plaintiff was closed and the evidence of other defendants also closed and now the suit has been posted for the evidence of the 12th defendant. The

petitioner/plaintiff is not entitled to examine the 8th defendant as a witness on his side. This petition has been filed only in order to harass the respondent. Hence prays to dismiss the petition.

4) Points for Consideration

1) Whether the petitioner has shown sufficient reasons to examine the 8th defendant as a witness on the side of the plaintiff?

2) Whether the petition is to be allowed or not?

5) No witnesses or documents were produced on either side. Heard both side. Records perused.

6) Points and answer :-

This petition has been filed to issue summons to the 8th defendant to examine as a witness on the side of the plaintiff. The evidence on the side of the plaintiff was closed on 03.03.2023. The evidence on the side of Defendants 4 to 7 has been let in and closed and evidence on the side of D8 to D10 also has been closed. The case stands posted for evidence on the side of the 12th Defendant. Now this petition has been filed to issue summons to the 8th defendant to examine as a witness on the side of the plaintiff.

7) The learned counsel for the petitioner/ plaintiff would state that the defendants 8 to 10 has been set exparte. But on perusal of the case adjudication, it is seen that D8 to D10 side evidence was closed on 16.06.2023, since the evidence of D8 to D10 was not let in. Hence the contention of the counsel for the petitioner that D8 to D10

were set exparte is not correct. The only reason stated by the petitioner to examine the 8th defendant as a witness on the side of the plaintiff is that the 8th defendant adopted the counter filed by the 4th defendant. The petitioner side has not stated the counter in which petition has been adopted by the 8th defendant. Further, the 8th defendant has filed separate written statement and the defendant 9 and 10 adopted the written statement of the 8th defendant. However on perusal of the written statement filed by D4 and D8, it is candid that the written statements are verbatim the same. However the 8th defendant has out right denied the case of the plaintiff. Further, the mere fact that the defendants 8 to 10 had not let in evidence cannot be taken as a reason to call them as a witness on the side of the plaintiff. Even otherwise, the 8th defendant cannot be compelled to depose as a witness on the side of the plaintiff.

8) In the light of the above discussions, this court finds that the petitioner has not shown sufficient reasons to issue summons to the 8th defendant to examine as a witness on the side of the plaintiff and as such this petition is liable to be dismissed.

In the result, petition is dismissed. No costs.

Dictated to Steno Typist, typed by her in computer, then corrected and pronounced by me in open court, on this the 29th day of November 2023.

Additional District and Sessions Judge,
Srivilliputtur.

Additional District & Sessions Court,
Srivilliputtur,
I.A. 5/2023 in O.S. No. 72/2015
ORDER (Web copy)
Date: 29.11.2023