

**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. 4/2023

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 18 Rule 17 and Section 151 CPC to reopen the evidence 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 petitioner has to examine the witness in the Will as a witness on their side by appointing an Advocate Commissioner. Further the 8th defendant has adopted the counter filed by the 4th defendant but has not let in any evidence on his side and remains exparte. Hence it is necessary to examine the 8th defendant as a witness on the side of the plaintiff. It is necessary to examine the witness who attested the Will as a witness in order to prove the Will and also in order to prove that the suit properties are ancestral joint family properties it is necessary to examine the 8th defendant as a witness on the side of the plaintiff. Hence prays to reopen the evidence 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 petition has been filed only to delay the proceedings of the case. The evidence on the side of the plaintiff has been closed as early as on 03.03.2023. This petition filed after closing the evidence on the side of this respondents is 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 to delay the proceedings of the case. The evidence

on the side 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 and the petition to reopen filed at this stage is not maintainable. The petition has been filed to harass the respondent. Hence prays to dismiss the petition.

4) Points for Consideration

1) Whether the evidence of the plaintiff has to be reopened as prayed for?

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 reopen the plaintiff side evidence. 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 reopen the evidence on the side of the plaintiff.

7) The petitioner / Plaintiff has stated that he has to examine the attestor of the Ex.A.13 Will as a witness in order to prove the Will. As rightly pointed out by the learned counsel for the petitioner, the 4th Defendant while deposing as DW1 had denied the Ex.A.13 Will as a forged document. Hence the contention of the learned

counsel for the petitioner that he has to examine the witness of the Will is reason satisfactory to reopen the evidence on the side of the plaintiff. It is also to be considered that the plaintiff is depending on the Ex.A.13 Will to prove that the suit properties are ancestral properties and that the husband of the 4th defendant was given monies to start his business. Since the plaintiff heavily depends upon the Will to prove his case, this court finds that the plaintiff should be given one more opportunity to let in sufficient evidence and to provide all the available evidence at the court of first instance itself.

8) In the light of the above discussions, this court finds that the petitioner has shown sufficient reasons to reopen the plaintiff side evidence and as such this petition is liable to be allowed.

In the result, petition is allowed. 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. 4/2023 in O.S. No. 72/2015
ORDER (Web copy)
Date: 29.11.2023*