

**IN THE COURT OF PRINCIPAL DISTRICT JUDGE,
KANCHEEPURAM DISTRICT AT CHENGALPATTU.**

Present : **Tmt.J.Mavis Deepika Sundaravadhana, M.A.,M.L.,**
Principal District Judge, Chengalpattu.

Friday the 15th day of March 2024

I.A.No.4 of 2023

and

I.A.No.5 of 2023

in

O.S.No.207/2018

I.A.No.4/2023 :

K.Murali . . . Petitioner / Defendant.

/Vs/

1. Dr.K.Sumathi

2. K.Shanthi . . . Respondents / Plaintiffs.

I.A.No.5/2023 :

K.Murali . . . Petitioner / Defendant.

/Vs/

1. Dr.K.Sumathi

2. K.Shanthi . . . Respondents / Plaintiffs.

These two petitions came up before me in this court for final
hearing on 11.03.2024, in the presence of Tvl.K.Manimaran and
K.Elumalai, Advocates for the petitioner, and Thiru.A.Ananthkumar,

Advocate for the respondents, upon perusing the entire records and having stood over for consideration till this day, this court delivers the following,

COMMON ORDER

I.A.No.4/2023 :

This petition is filed by the petitioner under Section 151 of CPC, to reopen the above OS 207/2018.

I.A.No.5/2023 :

This petition is filed by the petitioner under Section 151 of CPC, to recall PW1.

2. The brief case of the petitioner in I.A.No.4/2023 and 5/2023 :

The above suit is posted for continuation of cross-examination of PW1 on 3.11.2023. Petitioner's senior advocate Mr.Narayanasamy died long back. Hence, the petitioner engaged one counsel K.Manimaran for conducting the above case on behalf of his counsel K.Elumalai. On 3.11.2023, counsel K.Manimaram was held up before the Disciplinary Committee No.1 in DCC.No.102/2023 at 3.00 p.m. This was clearly explained by petitioner's junior counsel K.Elumalai to the counsel for the plaintiff Mr.Anandkumar much earlier than the hearing date over the phone. The counsel for the plaintiff also accepted but on the date of

hearing, he was opposed to grant time for cross-examination. On 3.11.2023, the junior counsel represented and sought time for cross examination on 8.11.2023 but this court closed the evidence and on the plaintiff's side. The petitioner's counsel verified "*PW1 and both counsels present plaintiff counsels willing for defendants counsel, not tomorrow willing for cross seeking adjournment on 8.11.2023 PW1 evidence closed for plaintiffs further witness 27.11.2023.*" The petitioner's counsel informed the petitioner and he was shocked by the closure of PW1. Unless this court grants time to cross-examination of PW1, the petitioner will put to irreparable loss and hardship. The petitioner and his counsel could not appear before this court and the PW1 evidence was closed and and posted for further evidence on 27.11.2023. Unless the evidence of PW1 is not reopened, the petitioner will put to irreparable loss and hardship. Moreover, petitioner's counsel is to be examined the PW1. Hence, it is just and necessary to reopen the case and to recall PW1. Hence, these petitions.

3. The brief averments of counter filed by the 1st respondent and adopted by the 2nd respondent :

The petitioner's counsel has cross examined in part on 5.7./2023 and on 18.10.2023. On that day also, the petitioner's counsel ask few questions alone what are all in the form of demeaning / disgusting the

PW1's status, reputation and dignity, even the petitioner's counsel never considered the PW1 is a lady and Hon'ble Judge is also a woman, since the Hon'ble Judge has condemned the petitioner's counsel attitude and guide him to ask the questions related with suit for partition. Each and every hearings, the PW1 has appeared before the court and she reached this court from Valparai, Coimbatore District by spending much money towards travel expenses and the PW1 is a lady and she accompanied with her aged sister / 2nd plaintiff and both of them are aged and helpless. Apart from that weather is very worst in the October and November months 40 hair pin bends and precipitation occurring regularly and often throughout the whole day and wild elephants are blocked the road to reach the Pollachi to take the bus to Chengalpattu. In such circumstances they arrived to this court in obedient manner. Those difficulties are represented before this court on 18.10.2023, since the District Judge has directed this petitioner's counsel to complete the cross examination on the next hearing date and further direct the PW1 to must appear before the court, while the petitioner's counsel Mr.Manimaran wantonly seek adjournment on 3.11.2023d because he is not having any other importance case before any other court / forum, hence the case is posted on 3.11.2023. Moreover the case is adjourned on 3.11.2023

upon the request of the petitioner's counsel Mr.Manimaran alone. Hence, prayed for dismissal of petition.

4. The point that arises for consideration in both the applications is whether the applications are liable to be allowed.

5. Point :

This petition is filed to reopen plaintiff's evidence and to recall PW1 for cross-examination. The trial of the suit was commenced on 15.3.2023. On 5.7.2023 cross examination of PW1 was commenced in part and continued on 18.10.2023. Thereafter the counsel for the defendant failed to cross-examine PW1. Therefore the evidence of PW1 was closed on 3.11.2023.

6. The petitioner / defendant filed reopen application to recall PW1 for cross examination. The reason stated by the petitioner that his counsel held up in an enquiry before Bar Council of Tamil Nadu. The reason stated by the petitioner is not proved by an acceptable documentary evidence. The PW1 is a lady who was dragged like anything by the petitioner / defendant. It is alleged in the counter that she is travelling from Pollachi to attend the trial. Even though, there is no valid and acceptable reason to condone the lapses on the part of petitioner / defendant, but in the interest of justice this petition will be allowed on payment of cost of

Rs.1000/- to the respondent / plaintiff on or before 5.4.2024, otherwise petition stands dismissed.

7. As the result, this petitions will be allowed on payment of cost of Rs.1,000/- to the respondent / plaintiff on or before 5.4.2024, otherwise petition stands dismissed. Call on 8.4.2024.

Dictated by me to the steno-typist, computerized by her directly, corrected and pronounced by me in open court, on this the 15th day of March 2024.

Principal District Judge,
Chengalpattu.

Both side witness and exhibit :
Nil.

Principal District Judge,
Chengalpattu.