

**IN THE COURT OF ADDITIONAL DISTRICT MUNSIF, POLLACHI.**

**PRESENT: Thiru. M.S.Sreenath B.A., B.L.,(Hons) L.L.M.,  
Additional District Munsif, Pollachi**

**Wednesday 18<sup>th</sup> day of March 2026**

**IA 17/2026 and IA 18/2026**

**In**

**O.S.No.736/2010**

K.Mariammal

... Petitioner/2nd Defendant

-Vs-

1. K.N.Vadivelu (Died)
2. K.N.Gopalan (Died)
3. K.N.Balasubramaniam
4. K.N.Chandran
5. Rajamani (Died)
6. Gomathi
7. Sivakumar
8. Panchali
9. Bharathi
10. Shanthi
11. Revathi
12. Anandhakumar

... Respondents/Plaintiffs

These Petitions came up for final hearing before me in the presence of Thiru S.Senthilkumar learned Counsel for the Petitioner and in the presence of the Thiru K.P.Shanmugam, as learned counsel for the respondents. Upon hearing the arguments of the both sides and upon perusing the materials on record and having stood over for consideration till this day, this court passes the following:

## **COMMON ORDER**

The petition in IA No.17/2026 is filed under Section 18 Rule 17 of CPC to examine the witness. The petition in IA No.18/2026 is filed under Order 151 of CPC to to reopen the suit.

### **2. GIST OF THE PETITIONS**

The petitioners in both the petitions are the 2<sup>nd</sup> defendant in the above suit. The Respondent filed the suit for partition and other reliefs. This petition is filed to reopen and examine witness to prove the suit property was bought by the petitioner and her deceased husband K.N.Krishnasamy. The suit property is self acquired property of the petitioner and her deceased husband K.N.Krishnasamy. This petition is filed to give additional evidence and strengthen the case of petitioner. The respondents never spent any amount for the purchase or development of the suit property. The respondents and the deceased husband of the petitioner executed an undertaking deed on 26.10.1981 before the purchase of the suit property in the presence of one Sebiullah and it is necessary to examine him as witness. If the petition is not allowed, the petitioner will be put to huge loss and hardship. The petitioner prayed that the petition may be allowed and evidence of 2<sup>nd</sup> defendant may be reopened.

### **3. GIST OF COUNTER**

(3.1) The petitions are false frivolous, vexatious and not maintainable in law and on the facts of the case. This respondent does not admit any of the allegations contained in the petition and affidavit, except to the extent specifically admitted herein and the rest are put to strict proof. It is further submitted that, it is false to state that, the suit property was purchased by this petitioner and her husband. The suit property was purchased by the plaintiffs 1 to 4 and the deceased Krishnasamy. It is

also false to state that, the plaintiffs 1 to 4 have not given any amount for the purchase of the suit property and it is also false to state that, the plaintiffs 1 to 4 have not spent any amount in developing the suit property. It is again false to state that, the deceased Krishnasamy alone is the absolute owner of the suit property and it is also false to state that, this petitioner and her husband, Krishnasamy alone have spent huge amounts in developing the suit property and it is again false to state that, they are alone were in the possession and enjoyment of the suit property.

(3.2) It is further submitted that, this petitioner in her written statement have nowhere stated that, on 26.10.1981 the plaintiffs to 4 and Krishnasamy have executed a confirmation document. The petitioner, has not mentioned the above said date and also have not produced any such document. On the other hand, the 5th defendant during his evidence produced a confirmation document said to have been executed between plaintiffs 1 to 4 and Krishnasamy. But, the Hon'ble court has rejected the same, since it could not be marked as exhibit. The alleged confirmation document was not stamped and no witnesses have signed in the same. The document itself is not admissible in evidence and the plaintiffs 1 to 4 have also not executed any such document. Only because of the reason that, the above said alleged confirmation document is not admissible in evidence, the Hon'ble court has rejected the same and have not marked as exhibit.

(3.3) It is further submitted that, this petitioner in her written statement have also not stated any date of such document and have also not mentioned who were present at that time of execution of the alleged confirmation document. This petitioner has already been examined as D.W.1. Even in her chief examination, she has not stated any were about the above said alleged confirmation document. The petitioner in her chief examination, in para-4. have only stated that, "அப்பொழுது வாதிகள் அவர்களுக்கும் சேர்த்து சொத்து வாங்க வேண்டும் என்றும்,

அவர்களுக்குரிய தொகையை மூன்று வருடக் காலத்திற்குள் செலுத்தி தனிக்கிரையம் செய்து கொள்வதாக உறுதி அளித்தனர். அதன் உறுதி மொழியை நம்பி" nowhere in the evidence of the petitioner, the petitioner have stated that, on 26.10.1981 a confirmation document was executed between the plaintiffs 1 to 4 and Krishnasamy and have also not stated anything about the alleged witnesses. In fact, if really the plaintiffs 1 to 4 and Krishnasamy have executed any such confirmation deed and if really certain persons were present at the time of execution of the alleged confirmation deed, definitely, they would have signed as witnesses. Only because no such document has been executed between the plaintiffs 1 to 4 and Krishnasamy, the petitioner has not stated anything about the alleged confirmation deed in her written statement and also in her evidence.

(3.4) It is further submitted that, the 5th defendant is the son of this petitioner. The 5th defendant has been examined as D. W.2. The 5<sup>th</sup> defendant also in his written statement, additional written statement and in his chief examination at the 1<sup>st</sup> instance, have not stated anything about the alleged confirmation deed dated 26.10.1981. Subsequently, the 5th defendant in his additional chief examination, have produced the alleged confirmation deed and which was also not admissible in evidence. Hence, the petitioner coming forward with this petition stating that, the witness who were present at the time of the execution of the alleged confirmation deed dated 26.10.1981, has to be examined, is not maintainable in law. Hence, without proper and specific pleadings in the written statement about the alleged confirmation deed dated 26.10.1981, the petitioner cannot produce evidence in supportive of it. Only to drag on the proceedings, the petitioner has come forward with this petition. There is no merit in the petition. Hence this petition may dismissed.

#### **4. DISCUSSION**

(4.1) Heard both sides. Records perused. Rival submissions considered. On perusal of records, it can be seen that the petitioner has filed this petition to prove the undertaking deed dated 26.10.1981 by examining one Sebiullah as witness. However no reason has been stated as to why the said Sebiullah was not examined as a witness when the opportunity was presented to her. Furthermore, the 2<sup>nd</sup> defendant/petitioner had not mentioned the date of the alleged undertaking deed in her written statement. She has also not pleaded the presence of said Sebiullah during the execution of said deed in her written statement. It is trite law that no evidence beyond pleadings could be considered.

(4.2) Admittedly, the said Sebiullah is not even an attesting witness to the said document. Moreover, the said document allegedly creating right in favour of the deceased husband of the petitioner in respect of the suit property ought to have been mandatorily registered as per Section 17 of the Registration Act 1908. Further since the petitioner seeks to use the said document to prove title, the said document is inadmissible as it cannot claim protection under section 49 of the Registration Act. When the document itself is inadmissible in evidence, no amount of oral evidence would do any good and hence allowing the oral evidence of the same would be only a futile exercise.

(4.3) As elucidated above, these petitions lack any reasonable cause for non examination of said Sebiullah. It is settled law that the power vested with the court under Order 18 Rule 17 CPC and Section 151 CPC to reopen and recall witness is to be used sparingly only for the purpose of clarifying the evidence. It cannot be used to fill up the lacunae. These petitions appear to be dilatory tactics to delay the disposal of the suit which is already 15 years old and is currently in the stage of arguments.

Hence in cumulative effect of the aforesaid discussion and in the interests of justice, this court is of the considered view that there is no sufficient basis for reopening the evidence of 2<sup>nd</sup> defendant and hence these petitions are liable to be dismissed.

**IN THE RESULT, these petitions are dismissed. No costs.**

Dictated by me, typed by steno typist on my computer and corrected by me and pronounced by me in open court on this 18<sup>th</sup> day of March, 2026.

ADDITIONAL DISTRICT MUNSIF  
POLLACHI

Both side witnesses and documents: NIL

ADDITIONAL DISTRICT MUNSIF  
POLLACHI

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Fair / Draft Order  
I.A.No.17/26 and 18/26 in O.S.736/2010  
Date: 18.03.2026  
Additional District Munsif Court, Pollachi

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