

**IN THE COURT OF THE DISTRICT MUNSIF, SULUR**

**Present : Tmt.M.Santhosham., B.Sc., B.L.,**

**District Munsif, Sulur**

Thiruvalluvar year 2056 Visvavasu year, 23<sup>rd</sup> day of Panguni

Monday the 6<sup>th</sup> day of April 2026

**I.A.No.9/2026**

**in**

**O.S.No.48/2019**

M. Krishnasamy

**... Petitioner/ 3<sup>rd</sup> Plaintiff**

**/VS/**

1. A. Selavaraj

2. A. Thangavel

**... Respondents/ Defendants**

This petition coming for final hearing before me in the presence of Mr.K.Srikumar, Advocate for the Petitioner and, Mr.R.V.Gurunathan, Advocate for the Respondents and upon perusing the records, and this court made the following:

**ORDER**

Petition filed by petitioner under Order 18 Rule 17 r/w section 151 of CPC to reopen the plaintiff's side chief examination to enable the plaintiff to file an additional proof affidavit and lead further evidence in light of the changed circumstances, specifically the setting aside of the exparte order against the 1<sup>st</sup> defendant and subsequent filing of an additional written statement by the 1<sup>st</sup> defendant, which has introduced new facts and contention requiring a comprehensive response from the plaintiff for a just and fair adjudication of the suit.

**1. Gist of averment in petition affidavit as follows:-**

1.1. The defendants were initially proceeded exparte in the present suit. Consequently, petitioner had his proof affidavit in chief and the documents were marked as evidence before this court. Subsequently, the exparte order against the 1<sup>st</sup>

defendant was set aside by this court and the 1<sup>st</sup> defendant have since filed an additional written statement. The said additional written statement introduces new facts, contentions and defences which were not present or available for petitioner to address at the time of filing his initial proof affidavit.

1.2. It has become absolutely necessary for petitioner to file an additional proof affidavit to effectively respond to the new pleadings and to place on record further relevant evidence to ensure a just and fair trial. The present application is being made bona fide and in the interest of justice, and not with a view to delay the proceedings or to fill any lacunae in petitioner original case, but to adequately respond to the change circumstances brought about by the 1<sup>st</sup> defendant's additional written statement. No prejudice will be caused to the defendants if this application is allowed, as they will have the opportunity to cross examine petitioner on the additional affidavit. Conversely, grave prejudice will be caused to petitioner if this application is disallowed, as petitioner case would be decided without a full and proper response to the 1<sup>st</sup> defendant's updated defence. Hence, the petition is to be allowed.

## **2. Gist of averment in counter statement filed by the Respondent as follows:-**

2.1. The petition is false, frivolous, vexatious and not maintainable either in law or on facts of the case. This respondent deny the various averments contained in the petition except those specifically admitted herein and the petitioner is put to strict of the same. The petitioner has already filed his proof affidavit and marked documents before this Court. The petitioner had sufficient opportunity to place all the necessary pleadings and evidence before this Court at the appropriate stage. Having completed his chief examination, the petitioner cannot now seek to reopen the evidence for the purpose of improving his case.

2.2. Order XVIII Rule 17 CPC empowers the Court only to recall a witness for the purpose of clarification on any point and not to permit a party to

adduce further evidence or to file an additional proof affidavit so as to fill up the lacuna in the case already presented. The petitioner is attempting to reopen the evidence only to fill up the lacuna and to strengthen his case after having known the defence taken by the this defendant. Such a course is impermissible in law. The filing of an additional written statement by the 1<sup>st</sup> defendant does not automatically confer any right upon the plaintiff to reopen the evidence and to file an additional proof affidavit. The petitioner has not made out any valid or sufficient cause for invoking the discretionary powers of this Court.

2.3. It is true that the plaintiff evidence is not formally closed. However, the petitioner has already filed his chief proof affidavit and produced documents before this Court. After having completed his chief examination, the petitioner cannot be permitted to file successive proof affidavits in order to improve or alter the evidence already adduced. The additional written statement filed by the defendant does not automatically entitle the plaintiff to reopen or supplement his evidence by filing a fresh proof affidavit. The petitioner must show compelling and bona fide reasons for such request.

2.4. The petitioner is attempting to introduce new pleadings and evidence under the guise of responding to the additional written statement. Such a course would amount to permitting the petitioner to fill up the lacuna in the case already presented before this Court. If the petitioner is permitted to file an additional proof affidavit at this stage, it would cause serious prejudice to this defendant and would unnecessarily prolong the trial of the suit which is pending from the year 2019.

2.5. The petitioner has filed this application only to protract and delay the proceedings of the suit. If the present application is allowed, the same would cause serious prejudice to this defendant and would unnecessarily prolong the trial of the suit. In *K.K. Velusamy*, (2011) 11 SCC 275 while dealing with the power of Court under Order 18, Rule 17 this Court held that "Order 18, Rule 17 of the Code

enables Court, at any stage of a suit, to recall any witness who has been examined (subject to the law of evidence for the time being in force) and put such questions to him as it thinks fit. The said power is not intended to be used to fill up omissions in the evidence of a witness who has already been examined.

2.6. Order 18, Rule 17 of the Code is not a provision intended to enable the parties to recall any witnesses for their further examination-in-chief or cross-examination or to place additional material or evidence which could not be produced when the evidence was being recorded. Court should first award appropriate costs to the other party to compensate for the delay. Secondly, Court should take up and complete the case within a fixed time schedule so that the delay is avoided. Thirdly, if the application is found to be mischievous, or frivolous, or to cover up negligence or lacunae, it should be rejected with heavy costs. Hence, the petition is to be dismissed.

3. No Witnesses were examined on either side, and no documents were marked as exhibits.

#### **4. Points for Consideration:-**

Whether the petition under Order 18 Rule 17 r/w section 151 of CPC to reopen the plaintiff's side chief examination is to be allowed?

#### **5. Points:-**

5.1. The petition affidavit, counter and the enquiry of both parties were carefully considered. Heard the counsels for both the parties. Both sides were heard, and the case documents were examined. The original suit was filed seeking for the relief of Declaration and Permanent Injunction and now the main suit is pending for PW.1 cross.

5.2. The Petitioner stated that, in his written argument that, the necessity to rebut new pleading introduced in the additional written statement. The application

is not an attempt to fill lacunae. The scope and ambit of order 18 R 17 and section 151 of the CPC. *The Hon'ble Supreme Court in Vadiraj Naggappa Vernekar (D) through Lrs. V Sharadchandra Prabhakar Gogate, (2009) 4 SCC 410*, has held that if pleadings are amended, a party may be permitted to recall a witness to depose on the amended pleading. The filing of an additional written statement is analogous to an amendment, as it fundamentally introduces new pleadings that require a response. Furthermore, the very case cited by the 1<sup>st</sup> respondent, *K.K.Valusamy V N.Palaanisamy, (2011) 11 SCC 275*, lays down that the court may exercise its discretion under section 151 of CPC to permit additional evidence if the application is bona fide and the evidence is necessary to clarify issues and assist in rendering justice. No prejudice shall be caused to the 1<sup>st</sup> respondent/ 1<sup>st</sup> defendant.

5.3. The respondents objected that, Order XVIII Rule 17 CPC empowers the Court only to recall a witness for the purpose of clarification on any point and not to permit a party to adduce further evidence or to file an additional proof affidavit so as to fill up the lacuna in the case already presented. The petitioner is attempting to reopen the evidence only to fill up the lacuna and to strengthen his case after having known the defence taken by the this defendant. Such a course is impermissible in law.

5.4. *Order 18 Rule 17 of the Code of Civil Procedure (CPC) empowers the court to recall any witness already examined at any stage of a suit to put questions for clarification. This provision is solely for clarifying ambiguities, not for filling gaps in evidence or re-examining witnesses, and is generally exercised at the court's discretion.*

5.5. Considering the aforesaid provision, this Court is vested with the power to recall a witness. It is the specific case of the petitioner that the additional written statement filed by the respondent introduces new facts, contentions, and

defences, which were neither raised nor within the knowledge of the petitioner at the time of filing the initial proof affidavit.

5.6. In such circumstances, this Court is of the considered view that an opportunity must be afforded to the petitioner to effectively meet the said new pleadings. Accordingly, having regard to the reasons stated by the petitioner and in the interest of justice, this petition is allowed. This being the trial court, have to given opportunity to both sides to elucidated both side case before this court. Further this being the declaration and and permanent injunction of title suit, this court must considered both side oral and documentary evidences. Hence, this court thinks an another opportunity can be given to the petitioner / 3<sup>rd</sup> plaintiff to reopen for plaintiff side chief examination to prove his case.

***In the result this petition is allowed with condition that cost of Rs.500/- to be paid to the Respondents/Defendants on or before 10.04.2026. On failure this petition is dismissed automatically. For compliance call on 10.04.2026.***

Dictated to the Steno typist and directly typed by her in computer, corrected and pronounced by me in open court this the 6<sup>th</sup> day of April 2026.

Sd/M.Santhosham

**District Munsif,  
Sulur.**

**List of witnesses and documents on Petitioner side:-** - Nil

**List of witnesses and documents on Respondents side:-** - Nil

Sd/M.Santhosham  
**District Munsif,  
Sulur.**

Draft/Fair Order  
I.A.No.9/2026 in  
O.S.No.48/2019  
Dated : 06.04.2026  
DMC, Sulur.