

IN THE COURT OF THE DISTRICT MUNSIF, SULUR

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

District Munsif, Sulur

Thiruvalluvar year 2056 Visvavasu year, 5th day of Karthigai

Friday the 21st day of November 2025

I.A.No.22/2025

in

O.S.No.137/2017

D. Selvaraj

... Petitioner/ 16th Defendant

/VS/

Janaki @ Kannammal

...Respondent/ Plaintiff

This petition coming for final hearing before me in the presence of Mr.M.Gobalakrishnan, Advocate for the Petitioner and, Ms.R.Krishnaveni, Advocate for the Respondent and upon perusing the records, and this court made the following:

ORDER

Petition filed by petitioner under section 151 of CPC to reopen for PW.1 cross examination.

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

1.1. The Respondent/Plaintiff has filed the case against the Petitioners/ Defendants for Partition and other relief. The main case was posted for further cross examination of PW.1 on 01.02.202. The petitioner/ 16th Defendant's earlier counsel Mr.Kuppuraj died on 29.03.2025. Hence, the Petitioner not able to trace out the case bundle from the Advocate's Office. After that some important papers and written statement filed by the petitioner/ 16th defendant is no in the case bundle. Therefore the petitioner/ 16th defendant have applied certificate copy of the written

statement filed by him. So the petitioner/ 16th defendant could not cross examined in time. Hence, this court was close the cross examination of PW.1.

1.2. There is no carelessness or negligence on petitioner/ 16th defendant part. Only due to the above said reason, the petitioner/ 16th defendant was not able to cross examination of PW.1 before this court. The PW.1 cross examination is very much essential to prove petitioner/ 16th defendant case. Therefore it is just and necessary that the case has to be reopening the case for cross examination of PW.1. Hence, the petition is to be allowed.

(Amended as per order in I.A.No.25/2025 dated 11.11.2025)

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

2.1. The petition is false, frivolous and unsustainable in law and on facts. The petitioner is put to strict proof of the various allegations made in the petitioner that are not expressly admitted or specifically dealt with herein. The petitioner had already engaged a new counsel to represent him in these proceedings. The petitioner went further to file a fresh vakalath on 29.07.2025, thereby securing continuous legal representation. PW.1 was examined in chief on 11.12.2024 and the petitioner was present on that day and it was reposed to 07.01.2025 was cross examination of PW.1 by the 6th and 16th defendants. Though the 6th and 16th defendants were present on 07.01.2025 they did not cross examine the P.W.1 and the case was adjourned for cross examination of PW.1 as last chance as NFA on 21.01.2025. On 01.02.2025, PW.1 was cross examined by the 6th defendant and reposed for cross examination of PW.1 as last chance as NFA on 06.02.2025 by the 16th defendant. Since there was no representation on the side of the 16th defendant, the opportunity to cross examine the PW.1 was closed on 13.02.2025 and the plaintiff's side evidence was also closed on the very same day and reposed to 17.02.2025. From 17.02.2025, nearly 39 hearing were given till 17.09.2025 for the examination of the defendants' side witnesses and at last the opportunity for examination of defence witnesses was closed on 17.09.2025.

2.2. The petitioner has utterly failed to produce the death certificate of his earlier counsel or any other documentary evidence that could substantiate their claim of being unable to cross examine PW.1 due to the alleged demise. The absence of such critical documentation not only undermines the veracity of their claim, but also raises serious doubts regarding the genuineness of their allegations. The court should view the petitioner's claim with extreme caution, particularly in light of the fact that their claim is unsupported by any corroborating documents, and appears to be a deliberated attempt to mislead the court and obstruct the orderly conduct of the proceedings.

2.3. The opportunity for the petitioner to cross examine the PW.1 was formally closed long back in the month of February 2025, after this court had graciously granted multiple adjournments at the specific request of the petitioner. A careful perusal of the court records will reveal that the petitioner has been repeatedly seeking adjournments from as early attributable to their own conduct. The PW.1 is presently bedridden and physically incapable of moving from her bed due to her serious medical condition. The petitioner is fully aware of the witness's health status, including her inability to attend court proceedings in person. Despite this knowledge, the petitioner has chosen to file the present application seeking the recall of PW.1, which clearly demonstrates malafide intentions aimed at harassing the respondent and unnecessarily prolonging the proceedings.

2.4. Allowing the recall of the PW.1 at this advanced stage of the proceedings would cause substantial prejudice to the respondent. The respondent has relied upon the closure of cross – examination in order to schedule further proceedings, organize the submission of evidence, and plan their litigation strategy. Permitting the recall of the witness now would disrupt the procedural timeline, undermine the orderly conduct and integrity of the judicial process, and impose unnecessary burden and expenditure of time, effort, and resources on the respondent.

Such a course of action would be inherently unfair, as it would reward the petitioner's deliberated delays and repeated adjournments, and would set a precedent allowing parties to manipulate procedural timelines to his advantage. Hence, the petition ought 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 section 151 of CPC to reopen for PW.1 cross 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 Partition and Permanent Injunction.

5.2. In Original suit, Both side evidence have been completed. Now the case is pending for arguments on Plaintiff's side. The Petitioner stated that the petitioner/ 16th Defendant's earlier counsel Mr.Kuppuraj died on 29.03.2025. Hence, the Petitioner not able to trace out the case bundle from the Advocate's Office. After that some important papers and written statement filed filed by the petitioner/ 16th defendant is no in the case bundle. Therefore the petitioner/ 16th defendant have applied certificate copy of the written statement filed by him. So the petitioner/ 16th defendant could not cross examined in time. The respondent/plaintiff objected the same.

5.3. This being the trial court, have to given opportunity to both sides to elucidated both side case before this court. Further this being the partition 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 / 16th defendant to further cross examination of PW.1 to prove their case. But, the main suit is in the year of 2012. Hence, considering the year of the main suit, the delay should be compensated by way of cost.

In the result this petition is to be allowed on payment of cost of Rs.2000/- to be paid to the respondent/plaintiff on or before 25.11.2025 on failure this petition stands dismissed automatically. For compliance Call on 25.11.2025.

Dictated to the Steno typist and directly typed by her in computer, corrected and pronounced by me in open court this the 21st day of November 2025.

Sd./M.Santhosham
District Munsif,
Sulur.

List of witnesses and documents on Petitioners side:- - Nil

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

Sd./M.Santhosham
District Munsif,
Sulur.

Draft/Fair Order
I.A.No.22/2025 in
O.S.No.137/2017
Dated : 21.11.2025
DMC, Sular.

The petitioner has entirely failed to demonstrate any sufficient cause or exceptional circumstances that could possibly justify the recall of Plaintiff's witness No.1(PW.1). The petitioner's assertions are wholly unsubstantiated and don not meet the threshold required for this court to exercise its discretion in favour of recalling a witness. It is well settled law that the power to recall a witness is not an absolute right, but is a discretionary relief to be exercised only in exceptional situations where the interest of justice clearly demand it. The purpose of this provision is to prevent injustice, and not to serve as a mechanism for parties to delay proceedings, prolong litigation, or gain tactical advantage. In the present case, there is no new evidence, o oversight, and no genuine inability on the part of the petitioner that could justify recall. On the contrary, the application appears to be a calculated attempt to obstruct the course of justice and cause unnecessary delay, thereby constituting an abuse of the process of this court.