

IN THE COURT OF ADDITIONAL DISTRICT MUNSIF, CUDDALORE

Present: Selvi.B.Phebe, B.A.,LLB.,

Additional District Munsif, Cuddalore

Friday, the 07th day of November – 2025

I.A.No.335/2025 and I.A.No.336/2025 in O.S.No.92/2004

S.Prabakaran

.....Petitioner/D2

-Vs-

1. G.Muthukrishnan

2. G.Pandurangan

3. G.Gunasekaran

4. S.Sudhakaran

5. K.Sidharthan

6. K.Thangapazham

7. R.Ramamurthy

.....Respondents/Plaintiffs

8. N.Janardhanan (died)

9. S.Premkumar

10. S.Sathishkumar

11. L.Devanathan

12. P.Prabahvathy

13. Selvam

14. Umamaheswari

15. The State of Tamil Nadu, rep. by District

Collector, Cuddalore District.

16. The Sub-Registrar, Cuddalore.
17. The commissioner, Cuddalore Municipality,
Cuddalore.
18. The Tahsildar, Cuddalore Taluk Office.
19. The Assistant Engineer (Town), Tamil Nadu,
Electricity Board (O&M), Cuddalore.
20. Raja @ Govindaraj
21. The Sub-Registrar, Nellikuppam.
22. R.Pandian

.....Respondents/
Defendants 1 & 3 to 22

Counsels on Record:

- | | |
|------------------------|--------------------|
| For Petitioner | : Mr.G.Murugaiyan |
| For R1 to 7 | : Mr.R.Rajavelavan |
| For R9 -12,15,18,20,21 | : Exparte in suit. |
| For R13 | : Mr.Ramadoss |
| For R22 | : Mr.S.Ram Mohan |

This petition came before this Court in the presence of both counsels and upon perusal of records and having stood over for consideration till this day, this court delivers the following:

COMMON ORDER

I.A.No.335/2025 is taken out by Petitioner under Section 151 of CPC to reopen the plaintiff's side for the purpose of further cross-examination of PW1 and PW2.

I.A.No.335/2025 & I.A.No.336/2025 in O.S.No.92/2004 – Dt.07.11.2025

Additional District Munsif Court, Cuddalore.

I.A.No.336/2025 is taken out by Petitioner under Order 18 Rule 17 of CPC to recall the PW1 for the purpose of further cross-examination

2. Gist of the Affidavits filed by the Petitioner in both I.A.No.335/2025 and I.A.No.336/2025:

(i) The petitioner herein is the 6th defendant. The main suit has been filed for the alleged relief of declaration of sale deed as null and void and for permanent injunction. The 4th respondent/4th plaintiff namely S.Sudhakar was examined in Chief on 03.08.2018 and was cross examined on 09.08.2018. Subsequently, various I.As were filed and the suit was adjourned periodically. Only, 14.02.2024 new counsel G.Murugaiyan was appointed. While so recently the 1st respondent/plaintiff namely G.Muthukrishnan was further examined and crossed examined. After perusal of the court record and also the oral evidence of PW1 and PW2 the petitioner counsel came to know that some important points were left out during the course of examination of 4th Respondent namely Sudhakar who was examined as PW1 in the main suit. Hence the petition.

3. Gist of Counters filed by the Respondents in both I.A.No.335/2025 and I.A.No.336/2025:

(i) The petition filed by the petitioner / D2 to reopen the suit and recall PW1 – Sudhakar and PW2 – Muthukrishnan for further cross-examination is not bona fide. It has been filed with an oblique motive to harass the

respondents/plaintiffs and to delay the fair trial of the suit. The chief examination by affidavit of PW2 – Muthukrishnan is in alignment with the chief evidence of PW1 – Sudhakar. Therefore, the present counsel on record for the petitioner could have cross-examined PW2 on the alleged omissions to cross-examine PW1 and PW2. Having entered appearance as early as 14.02.2024, it is not open to the petitioner's counsel to leisurely file the instant application well after 1½ years, i.e., on 10.10.2025. This clearly shows the reluctance and negligence on the part of the petitioner in defending the suit.

(ii) The petitioner has already filed successive petitions only to delay the proceedings and prevent the suit from reaching its logical conclusion. The contention that the earlier counsel omitted to put certain questions to PW1 and PW2 is not valid or admissible, as the present counsel has already cross-examined PW2. Entertaining such a plea would defeat the very purpose of the procedural amendments made to expedite trials. Hence, the instant application, deserves to be dismissed with heavy costs.

4. The point for consideration is whether the petition filed by the petitioners under Sec.151 CPC is to be allowed or not?

5. No witnesses were examined nor any documents were marked on either side.

6. The learned counsel for the petitioner reiterated the petition averments and argued that, As per the provisions of Order XVIII Rule 17 of CPC the court

has got powers to recall a witness at any stage under court and the same can be exercised either suo motto and also the instance of a party. In this case, the petitioner has stated a valid and sufficient reason seeking permission for recall of witness, since the earlier counsel has let out some important points during the course of cross examination. Further there is no delay on the side of the petitioner Unless fair opportunity given the petitioner would be put into loss and hardship.

The learned Counsel for the petitioner relied on the following judgment to substantiate his case.

- The Judgment of Hon'ble Madras High Court in the case of *Andichi Ammal & Anr v. Periya Muniyandi Moopar* reported in (1994) 1 MLF 514 for the proposition that when an unforeseen situation has developed or even when an inadvertent omission is there Order 18 Rule 17 could be invoked.

7. The learned counsel for the Respondents reiterated the counter averments and argued that, the reasons stated by the petitioner counsel that the PW1 was to be recalled for further cross-examination on certain omitted points as a new counsel was appointed would not amount to sufficient reason warranting recall of PW1. PW2's evidence was in alignment with PW1 hence if at all the counsel want to cross examine the PW1 he could have very well cross-examined PW2 who is also plaintiff on the above said omissions. Further the petitioner has entered appearance on

14.02.2024 and it is not open to him now after a period of 1 1/2 years to file this petition. It is settled principle of law that evidence cannot be recalled for the purpose of filling a left out points or omissions. The petitioner has not made out sufficient grounds as mandated under Or.18 Ru.17 of CPC. In fine sought to dismiss the petition.

The learned Counsel for the respondent relied on the following judgment to substantiate their case.

- The Judgment of Hon'ble Supreme Court in the case of ***K.K.Velusamy v. N.Palanisamy*** reported in **2011 AIR SCW 2296** for the proposition that Order 18 Rule 17 is not intended to be used to fill up omissions in the evidence of a witness who has already been examined.

8. Heard both sides. Perused the records.

9. Analysis:-

(i) This petition has been filed by the petitioner to reopen PW1 and for recall of PW1 for further cross examination. The reason stated for the same is that PW1 was cross examined by the earlier counsel who had not cross examined him on certain points. Now as the new counsel was appointed, he wanted to cross examine PW1 on those points. The reason stated as for PW1's recall seems satisfactory for this court.

(ii) However, this court could not permit to reopen the evidence of PW2 as he was cross examined by D2 & D6 counsel on 26.08.2025. The suit is of the year 2004. On perusal of records, this court could see that the suit was pending for long time due to the pending I.As. However, this does not bar the petitioner from cross examining the PW2 in any way as sufficient opportunity was given and he was properly cross examined by D2. Further both PW1 and PW2 are plaintiffs in the suit.

(iii) The suit is now at the stage of defendant side evidence. This court is of the view that these petitions have to be allowed in the interest of justice only with regard to recall and reopen of PW1 to have a fair trial at either ends. It is well settled principle of law that procedural law being a handmaid of justice has to be used in such a way as not to create a hinderance to the justice delivery system but should be used to reach just outcome.

(iv) However, this court is also wary of hassle to the respondent/plaintiff in allowing these petitions at the stage of defendant side evidence, hence in the interest of justice these petitions are allowed only in respect of PW1's reopen and recall, with a condition to pay Rs.1000/- to the respondent/defendants for each petition, in aggregate Rs.2,000/- on or before 12.11.2025

In result, both I.A.No.335/2025 and I.A.No.336/2025 are allowed on condition, to pay Rs.2,000/- in aggregate to the respondent/ plaintiff on or before

12.11.2025 failing which the order stands cancelled and on further condition that PW1 has to be cross-examined within 2 hearings failing which opportunity will be closed as the suit is of the year 2004. For compliance call on 13.11.2025

Dictated to Steno Typist, typed and printed out by her and corrected and pronounced by me in open court, on this day, the 07th of day of November 2025.

Additional District Munsif,
Cuddalore.

List of Witnesses and Documents on both sides:- -NiL-

Additional District Munsif,
Cuddalore.

ADM Court, Cuddalore.
Fair Order
