

IN THE COURT OF ADDITIONAL DISTRICT MUNSIF, CUDDALORE

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

Additional District Munsif, Cuddalore

Tuesday, the 12th day of August – 2025

I.A.No.133/2025 and I.A.No.134/2025

in O.S.No.284/2018

Thamizhvanan

.....Petitioner/Defendant

..Vs..

1. Ganapathy

2. Kasipattu

....Respondents/Plaintiffs

Counsels on Record:

For Petitioner : Mr.V.Venkatesan

For Respondents : Mr.K.Kodeeswaran

COMMON ORDER

I.A.No.133/2025 and filed under Section 151 CPC to reopen PW1.

I.A.No.134/2025 filed under Order18, Rule 17 r/w 151 CPC to recall PW1.

2. Gist of the Affidavit filed by the Petitioner in I.A.No.133/2025 and I.A.No.134/2025 respectively:-

(i) The petitioner herein is the defendant in the original suit. The plaintiffs have

filed the suit for permanent injunction and other reliefs. In the suit property, $\frac{1}{4}$ share belonged to the petitioner's father, Mr.Pakkiri, who purchased it from Mr.Shanmugam, the brother of the first plaintiff's father, through an unregistered sale deed. After his father, he have been in possession and enjoyment of the property for years. With the wrongful intention of restraining the petitioner's rights over the said property, the plaintiffs have filed the present suit. The plaintiffs' side filed their chief examination affidavit, and the matter was posted for cross-examination. Before the said date, the petitioner was affected by diabetes, and two of his toes were amputated; he was under treatment in the hospital, and therefore, he could not meet the counsel and give instructions regarding the case.

(ii) In the above suit, petitioner's side's cross-examination was closed on the said date, and the matter was posted for the plaintiffs' witnesses. The cross-examination of P.W.1 on his side was closed without being conducted. Therefore, it is just and necessary to reopen the case for petitioner's side's cross-examination. If the cross-examination is not conducted, the case cannot be fully proceeded with. Hence, these petitions are to reopen and recall PW1.

3. Gist of Counter filed by the Respondents in I.A.No.133/2025 & I.A.No.134/2025:-

(i) The respondents has filed the chief examination of PW1 as earlier on

04.07.2023. Thereafter the above case was posted for cross examination of PW1 from 12-12-2023 to 07.02.2025. In spite of several opportunities given by this Hon'ble Court neither the petitioner nor his counsel appeared before this Hon'ble Court and cross examined the PW1 for more than 15 years. At last the PW1 evidence was closed by this Hon'ble Court on 07.02.2025.

(ii) Thereafter the above case was posted for further plaintiff's side evidence. The plaintiff has also filed the chief examination of PW2 evidence in the above suit and he was cross examined by the petitioner's counsel in full. Thereafter, the plaintiff's side evidence was closed by the respondent's counsel and the above case was posted for defendant's side evidence. At the belated stage of the proceedings the petitioner came forward with this vexatious application without any merits. The present application filed by the petitioner is only a tactics of delaying the suit. And moreover the petitioner has stated in the affidavit that, he was suffering from diabetic and his leg two fingers were removed by surgery. In order to prove the allegations made by the petitioner, no satisfactory medical proof was submitted.

4. The point for consideration is whether the petitions filed by the petitioner under is to be allowed or not?

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

5. The learned counsel for the petitioner reiterated the petition averments

and argued that, due to the medical condition of petitioner, no instructions were given to the petitioner. It was neither willful nor wanton. Hence prayed to allow the petition. Per Contra, **The learned counsel for the respondent reiterated the averments in the counter and submitted that, the petitioner has** not filed any medical reports to prove his case.

6. Heard both sides. Perused the records.

7. Analysis:-

(i) These petitions have been filed to reopen and recall PW1 on the reason that the petitioner/defendant was not able to give instructions to his counsel due to his medical condition. Though no documents were filed to prove the same, this court is inclined to allow this petition, in the interest of justice for proper and effective adjudication of the matter.

(ii) However, the petitioner is bound to show his diligence by cross examining the PW1 within 1 to 2 hearings failing which the opportunity would stand closed.

In fine, both Petitions are allowed on condition that PW1 should be cross examined within 2 hearings. No order as to costs.

Dictated to Steno Typist, typed and printed out by her and corrected and

pronounced by me in open court, on this day, the 12th day of August – 2025

Additional District Munsif,
Cuddalore.

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

Additional District Munsif,
Cuddalore.

ADM Court, Cuddalore.

Fair Order

I.A.No.133/2025 and I.A.No.134/2025
in O.S.No.284/2018

Date: 12.08.2025
