

IN THE COURT OF PRINCIPAL DISTRICT MUNSIF, CHIDAMBARAM

PRESENT: Tmt. S.SUGANIYA SRI B.A.B.L (Hons), M.L., PGDAML

PRINCIPAL DISTRICT MUNSIF, CHIDAMBARAM

THURSDAY, THE 20TH DAY OF MARCH 2025

IA.NO.535/2024 AND IA.NO.536/2024 IN OS.NO.165/2004

Bhuvanagiri Varthagar Sangam by its Secretary

ACP. Rathinasubramanian

----- Petitioner/ Plaintiff

VS

1. Sriraman
2. Ponnachi ammal
3. Rama Thilagam (died)
4. Vasntha
5. Vijayalakshmi
6. Rukmani
7. Pattabiraman
8. Navamani
9. Padmavathi (died)
10. Darani
11. Bhuvanagiri Varthagar Sangam @
 Poorasami Varthagar Sangam
 Bhuvanagiri its President Sriraman
12. Jayaraman
13. Barath
14. K. Prema
15. Sathiyagnanam

-----Respondents/ Defendants

For Petitioner	Thiru.N.Rajendiran, Advocate
For Respondents	Thiru.E.Jayachandiran, Advocate
Relief Claimed in IA. 535/2025	This petition is filed under Section 151 of CPC to mark the letter dated 29.8.2024 which was filed by PW3.
Relief Claimed in IA.536/2025	This petition is filed under Order 18 Rule 17 of CPC to recall PW3 to mark the document.
Final Hearing	4.3.2025

Upon hearing the arguments of petitioner and respondent perusal of the entire records and having stood over for consideration till this day, this court delivers the following..

COMMON ORDER

The case of petitioner in IA. No.535/2025:

1. The petitioner is plaintiff and the respondent is the defendant in this case. The suit was filed for the relief of recovery of possession and others. The defendants are contesting the suit. When the suit was posted for plaintiff side evidence, summon was issued to the Executive Officer of Srimushnam Boovaragasamy Temple. On his behalf, the employee of the temple by name Thirumoorthy was examined as PW3. The authorization given by Executive Officer, in that regard, was submitted in the court. But the said document was not marked as an Exhibit till now. It is an important document, for this suit and therefore, it has to be marked through PW3 or otherwise, the petitioner will be put to irreparable loss and injury. Therefore, the petitioner prays to mark the letter dated 29.8.2024 which was filed by PW3.

The case of the Respondent in IA.No.535/2025:

2. The respondents vehemently oppose the petition filed by the petitioner and this petition is liable to be dismissed. There is no reason stated by the petitioner as to what document has been left to be marked. There is no reason stated by the petitioner as to how the said document has been acquired by petitioner. The petitioner does not have any authority over the witness whom the petitioner intends to examine. The document which is in hold of another person cannot be marked by the petitioner. Therefore, the respondent prays for the dismissal of this petition with cost.

The case of petitioner in IA.No.536/2025:

3. The petitioner is the plaintiff and the respondent is the defendant in this case. The suit was filed for the relief of recovery of possession and others. The defendants are

contesting the suit. When the suit was posted for plaintiff side evidence, summon was issued to the Executive Officer of Srimushnam Boovaragasamy Temple. On his behalf, the employee of the temple by name Thirumoorthy was examined as PW3. The authorization given by Executive Officer, in that regard, was submitted in the court. But the said document was not marked as an Exhibit till now. It is an important document, for this suit and therefore, it has to be marked through PW3 or otherwise, the petitioner will be put to irreparable loss and injury. Therefore, the petitioner prays to recall PW3 to mark the document.

The case of the Respondent in IA. No.536/2025:

4. The respondents vehemently oppose the petition filed by the petitioner and this petition is liable to be dismissed. There is no reason stated by the petitioner as to what document has been left to be marked. There is no reason stated by the petitioner as to how the said document has been acquired by petitioner. The petitioner does not have any authority over the witness whom the petitioner intends to examine. The document which is in hold of another person cannot be marked by the petitioner. Therefore, the respondent prays for the dismissal of this petition with cost.

5. Now the point for consideration is whether the petitioners are entitled to get the relief as prayed for?

6. On the side of both parties, no oral and documentary evidence was let in.

Points for consideration:

7. Heard both sides learned counsels. Material records perused. These petitions are filed under Section 151 of CPC to mark the letter dated 29.8.2024 which was filed by PW3 and under Order 18 Rule 17 of CPC to recall the PW3 so as to mark the letter. According to the petitioner, the petitioner is the plaintiff and the respondent is the defendant in this case. The suit was filed for the relief of recovery of possession and others. The defendants are contesting the suit. When the suit was posted for plaintiff side evidence, summon was issued to the Executive Officer of Srimushnam Boovaragasamy Temple. On his behalf, the employee of the temple by name Thirumoorthy was examined as PW3. The authorization given by Executive Officer,

in that regard, was submitted in the court. But the said document was not marked as an Exhibit till now. It is an important document, for this suit and therefore, it has to be marked through PW3 or otherwise, the petitioner will be put to irreparable loss and injury. Therefore, the petitioner prays to mark the letter and to recall PW3 to mark the document. On the other hand, the respondent contends that there is no reason stated by the petitioner as to what document has been left to be marked. There is no reason stated by the petitioner as to how the said document has been acquired by petitioner. The witness whom the petitioner intends to examine is a person on whom the petitioner cannot have authority. The document which is in hold of another person cannot be marked by the petitioner.

8. On perusal of records, it is seen that the suit in OS.No.165/2004 was filed for the relief of recovery of possession and the suit in OS.No.31/2004 was filed by the plaintiff for the relief of permanent injunction and there was an order of joint trial to conduct the suit together and the evidences are being recorded in the suit in OS.No.165/2004. The suit pertains to the year 2004 and the suit was restored to file on 21.12.2022 after having dismissed for default on 22.3.2021. The trial was commenced in the suit on 12.9.2023, PW1 was examined and through him Ex.A1 to A61 was marked. PW2 was examined and after having closed the PW2 evidence, the plaintiff has filed witness batta for Executive Officer of Srimushnam Boovaragasamy Temple and Employee of the said temple by name Thirumoorthy appeared before this court on 22.4.2024 and he was examined as PW3 on 11.6.2024. It is to be noted here that the authorization given by the Executive officer of Boovaragasamy temple dated 11.6.2024 was marked as Ex.X1. In the said authorization it is stated as follows:

”எனக்கு உடல்நிலை சரியில்லாத காரணத்தால் மருத்துவ விடுப்பில் இருப்பதால் எனக்கு பதிலாக இத்திருக்கோயில் பணியாளர் திரு.மூர்த்தி, சீட்டு விற்பனையாளர் என்பவர் ஆஜராகுவார் என தெரிவித்துக் கொள்கிறேன்.”

9. In addition to Ex.X1, Ex.X2. X3 was also marked by PW3 and he was completely cross examined by defendant and PW3 evidence was closed on

29.8.2024. When the suit was posted for further Plaintiff side evidence on 4.9.2024, this petition is filed by plaintiff. Along with the petition in IA.No.535/2024 the plaintiff has also filed authorization dated 29.8.2024 given by Executive Officer of Srimushnam Boovaragasamy Temple. The contents of the said document is as follows:

”எனக்கு உடல்நிலை சரியில்லாத காரணத்தால் மருத்துவ விடுப்பில் இருப்பதால் எனக்கு பதிலாக இத்திருக்கோயில் பணியாளர் திரு.மூர்த்தி, சீட்டு விற்பனையாளர் என்பவர் வழக்கு எண். OS. 165/2004 என்ற வழக்கு தொடர்பாக திருக்கோயில் செயல் அலுவலர் அவர்களுக்கு நீதிமன்றம் மூலம் சம்மனில் தெரிவிக்கப்பட்டுள்ளவாறு சாட்சியம் அளிக்க திருக்கோயில் வசம் உள்ள உற்சவ உபயதாரர் ரொக்க பட்டுவாடா பதிவேடு மற்றும் திருவிழா பத்திரிக்கை ஆகியவற்றுடன் ஆஜராகுவார் என தெரிவித்துக் கொள்கிறேன்.”

10. In the cross examination of PW3, it was specifically raised by the defendant counsel as to the authorization given to the employee for deposing in this court. Therefore, this petition has been filed by the plaintiff to overcome the point of cross examination. It is to be noted here that PW3 evidence was closed on 29.8.2024 itself. While being so, the public document being the authorization which ought to have been given by PW3 in this court at the time of commencing chief examination is filed as a document by the plaintiff now. Furthermore, it is not known as to how the public document went to the hands of plaintiff when it was specifically addressed to this court, According to this court, the document will not serve any useful purpose as because the PW3 was completely cross-examined on all aspects of the issues involved in the suit. According to this court, through Ex.X1, the authorization has already been marked. While being so, the second authorization which is intended to be marked by petitioner does not serve any useful purpose for the issues of this suit.

11. The suit pertains to the year 2004 and the power under section 151 of CPC is a discretionary power and this court is duty bound to exercise the said discretion in a reasonable manner. According to this court, this petition is filed only to protract the

suit proceedings. It is the settled proposition that “the power under Section 151 of CPC will have to be used with circumspection and care only when it is absolutely necessary and when there is no provision in the code governing the matter, when the bonafides of the applicant cannot be doubted and when such exercise is to meet the ends of justice and to prevent abuse of process of court.” The reopen petition under section 151 of CPC cannot be used as a tool to delay the suit proceedings. Furthermore, the long pendency of litigations causing untold mental agony to the litigants is to be considered by the court and unnecessary interlocutory applications are to be dealt with in accordance with law. Therefore, for the afore-mentioned reason, this court is of the view that there are no merits in this petition.

Result in IA.No. 535/2024

In the result, this petition is dismissed

Result in IA.No. 536/2024

In the result, this petition is dismissed

Dictated to the steno-typist, transcribed by her and typed in computer, corrected and pronounced by me in the open court this the 20th day of March 2025.

(Sd/- S. Suganiasri)
Principal District Munsif,
Chidambaram.

List of witnesses and documents on the side of the petitioners:

NIL

List of witnesses and documents on the side of the respondents:

NIL

(Sd/- S. Suganiasri)
Principal District Munsif,
Chidambaram.