

IN THE COURT OF ADDITIONAL DISTRICT MUNSIF, CUDDALORE

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

Additional District Munsif, Cuddalore

Tuesday, the 04th day of November – 2025

I.A.No.186/2025 in O.S.No.96/2021

Santha

.....Petitioner/Plaintiff

-Vs-

1. Dhinagararaman
2. Sathyanarayanan
3. Gnanasekaran
4. Kumaran
5. Saravanan
6. Royal Veerasamy

.....Respondents/Defendants

Counsels on Record:

For Petitioner : Mr.B.Ravichandran

For R1, R2, R4, R5 : Exparte in suit.

For R3 : Mr.R.Shankar

For R6 : Mr.R.Arulsakthi

This petition came before this Court on 28.10.2025 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;

*I.A.No.186/2025 in O.S.No.96/2021 -Dt.04.11.2025.
Additional District Munsif, Cuddalore*

ORDER

This is an application taken out by Petitioner under Order 16, Rule 21 & S.151 of CPC to permit the petitioner to examine the further witness.

2. Gist of the Affidavit filed by the Petitioner:-

(i) The petition mentioned properties, bearing Survey Numbers 11/3 and 13/1, measuring 13 acres 50 cents, originally belonged to the 1st and 2nd respondents through a registered settlement deed from their ancestors. Of this, 1 acre 50 cents constitutes the petition properties, which have been with the petitioner and his forefathers' possession and enjoyment on lease for over 70 years, with the permission of the respondents' ancestors. The land was initially barren, but through our continuous efforts, it was converted into cultivable paddy land. The lease agreement has been oral, renewed annually by mutual understanding between our families since my forefathers' time, with an annual lease payment of 10 paddy bags (approx. value Rs.5,000), subject to variation in case of natural calamities, as per customary practice.

(ii) Even now, the lease amount is being received by the respondents through an authorized person. Recently, due to the rise of the real estate sector in Tamil Nadu, the 1st and 2nd respondents attempted to sell the petition properties and others to brokers by converting them into plots. The petitioner requested them to sell the petition properties to the petitioner, given the long-standing possession and right

to purchase, but they refused and insisted on selling to brokers for a high price, leading to misunderstandings. Subsequently, respondents 3 to 6 (real estate brokers) visited the land, and the petitioner again requested them to consider my long possession. Further, in September 2012, respondents 3 to 6, in collusion with respondents 1 and 2, attempted to forcibly evict the petitioner from the petition-mentioned properties using goondas, but they resisted.

(iii) The local police intervened, registered FIR No. 253/2012 under Section 145 CrPC, and referred the matter to the DRO. Despite ongoing DRO proceedings, respondents 1 and 2, colluding with respondents 3 to 6, executed a sale deed in favor of the 3rd respondent on 14.03.2019 without informing the petitioner, intending to defeat his rights. However, respondents 1 and 2 still accept the lease amount from petitioner. The 3rd and 6th respondent are the one contesting the case and wantonly hide the 1st and 2nd respondent before this Hon'ble Court as because, if the 1st and 2nd respondent comes to this Hon'ble Court, the real fact would come into light. The petitioner have got a very good case after examination of the further witness i.e., 1st and 2nd respondents herein. If the petitioner would not be permitted to examine the further witness (i.e., 1st and 2nd respondents herein) on the petitioner's side, he would be put very great loss and hardship.

3. Gist of Counter filed by the 3rd Respondents:

(i) The plaintiff have filed suit for permanent injunction as against the

respondents and the suit was filed in the year of 2021 by stating that the plaintiffs were in possession and enjoyment in the suit property. The plaintiff is a only person who have to decide as to whom and as against whom the suit has to be filed and the suit filed by the plaintiff has already came to an end and posted for argument and while so 6th defendant have filed petition to set aside the ex-parte order and the said petition was also allowed and the suit was posted for cross of PW1 by the 6th defendant but the plaintiffs were not appeared and hence the suit was dismissed for default and the plaintiff have also come forward with an application to set aside the dismissal order and the order was also set aside and posted for cross of PW1 by 6th defendant and now plaintiff and his side witness were cross examined by 6th defendant and the plaintiff side was opened only at the instance of 6th defendant and hence the plaintiff side evidence was closed long back and now the plaintiff cannot summon any one on his side without reopen his side evidence.

(ii) Right from the beginning this respondent is saying that the plaintiff is dragging the suit to the maximum extent and filed petition one after another and finally the suit was posted for argument and the 6th defendant have come forward with an application to set aside the ex-parte order. Even no relief was asked as against 6th defendant and only at the instigation of plaintiff, the 6th defendant have filed an application and even in the written statement filed by this respondent, he have clearly stated that the 6th defendant is behind back of the suit for broker

commission and to prove the same the 6th defendant have filed an application and at last the petition was also allowed and now the plaintiff have instigated the present petitioner to file this vexatious application to drag on the case.

(iii) The person who was to be examined by the plaintiff is 1st and 2nd defendant and they were party to the proceedings and summon was served long back and now the petitioner have come forward with this vexatious application to examine the 1st and 2nd defendant and it cannot be permitted under law, since the other party to the suit cannot be summoned as a witness on his side and it is settled position of law and hence the petition has to be dismissed.

4. Gist of Counter filed by the 6th Respondents:

(i) The petitioner has made certain allegations against the respondent that are unsubstantiated and misleading. The petitioner seeking the permission to examine the witness with the intention of prolonging the suit proceedings. The petitioner do not have valid ground in the present application.

(ii) This petitioner have suppressed truth from the knowledge of this Hon'ble Court and come forward with false and untrue particulars to petition in their own convenience. All the allegation and averment were created by the petitioners only for the purpose of the present petition. Hence, they are not entitled to any relief. This respondent submits that the petitioners do not have prima-facie case on their favour, the balance of convenience not in their favour.

5. The only question that falls for consideration in the case on hand is that whether the 1st and 2nd defendant can be summoned as witnesses for giving evidence in the suit by the plaintiff ?

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

7. **Heard both sides. Perused the records.**

8. Analysis:-

(i) At the outset, it would be apt to refer to the Judgment of Hon'ble Andhra Pradesh High Court in the case of *National Insurance Co. Ltd. And Ors. vs Susru Sea Foods* reported in **2005(1) ALD 464** wherein the Hon'ble court has held that there is no bar in the provision of law to summon the defendants as witness by the plaintiffs. As the opponent would be able to cross examine him if at all the witness turns adverse. The relevant excerpt from the said Judgment is as follows:

"12...Even otherwise, there appears to be no legal impediments for examining even a defendant as a witness in the suit at the instance of the plaintiff. However, reliance has been placed upon the judgment reported in Mahunt Shatrugan Das v. Bawa Sham Das and Ors., AIR 1938 PC 59, in which the Privy Council observed, 'calling of defendant by plaintiff as his witness is condemnable.' However, a close reading of the judgment of the Privy Council makes it clear that even a defendant can be called as a witness of truth i.e., the Court Witness. Summoning of defendant at the instance of the plaintiff is not altogether ruled out."

(ii) In view of the said judgment and settled position of law on the subject, this court is inclined to allow this petition as the petitioner have made out sufficient grounds warranting examination of the defendants. However, the said witnesses are to be summoned as court witness and have to be examined in chief by plaintiff and cross examined by defendants.

Resultantly, the petition is hereby allowed. 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 04th 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
