

IN THE COURT OF THE DISTRICT MUNSIF AT MADURANTAKAM

PRESENT: Tmt.R.Mahalakshmi., B.A., B.,L.,

District Munsif, Madurantakam

Monday, the 14th day of July, 2025

I.A.No.10/2025

in

O.S.No.194/2015

1. Radha
2. Ajeethakumar
3. Vasanthakumar

...Petitioners/Defendants
1, 3 and 4

-Vs-

1. Raja
2. Muniyammal
3. Logammal
4. Veeramuthu
- 5, Aboorvammal
6. Kuppammal
7. Krishnan

...Respondents/Plaintiffs
...Respondent/2nd Defendant

This petition coming up before me on 23.06.2025 for final hearing in the presence of, Tr.S.Senthilkumaran, counsel for Petitioners/Defendants 1, 3 and 4 and Tr.V.Agoram, counsel for Respondents 1 to 6/Plaintiffs and 7th Respondent/2nd Defendant having been already set exparte in main suit and after hearing the arguments on both sides and upon perusing the materials placed on record, and having stood over for consideration till this day, this court delivers the following,

ORDER

This petition is filed by the Petitioner/Defendant's under Order 18 Rule 17 of Code of Civil Procedure, to recall the PW1 for further cross examination.

2.The brief averments stated in the petition:

(i). The petitioner herein is the 4th Defendant in the suit. The petitioner states that the suit is filed by Plaintiff/Respondent for permanent injunction, mandatory injunction and declaration. He filed this petition on behalf of 2nd and 3rd Petitioner also.

(ii). The petitioner states that the 1st Plaintiff was examined as PW1 and cross examined on 10.10.2018 and during cross examination, due to over sight and in advertence, certain crucial aspects were omitted to be question which are essential for the just and fair adjudication of the case. If the petition is not allowed the petitioner will be put to heavy loss and hardship. On the other hand no prejudice will be caused to the Respondents. Hence the petition.

3. The averments stated in the counter filed by the Respondents 1 to 6/Plaintiffs, in brief:

(i). This petition is not maintainable in law and on facts. The Respondent denies the entire allegations in the affidavit petition as false except those that are specifically admitted herein.

(ii). The Respondent states that the PW1 was already elaborately cross examined by the Petitioner/Defendant. The Respondent further states that the Defendant's side evidence was already examined by Respondent/Plaintiff. The Respondent states that the above suit is posted for arguments stage. This petition is filed only to drag on the proceedings. The petition is not at all maintainable in law. There is no merits in this petition. Hence this petition is liable to be dismissed with costs.

4. The point for determination is whether these petitions are to be allowed or not?

5. No Exhibits marked and no witnesses were examined on both sides.

6. Heard both sides and perused the records.

7. On perusal of records it is seen that the suit is filed by the plaintiff for the relief of permanent injunction, mandatory injunction and declaration. Further it reveals that originally the case is posted for PW1 cross examination by 3rd and 4th defendant side on 27.06.2018. Thereafter the case is adjourned for PW1 cross from 28.08.2018 to several hearings and on 10.10.2018 PW1 was cross examined in full by defendant side.

8. Further certain amendments was carried out and on that aspect PW1 was again cross examined in part on 26.08.2021 and posted for cross continuation and after several opportunity PW1 cross continuation was taken on 20.10.2021 and again PW2 cross examination was posted on 28.10.2021, but after several hearings PW2 was cross examined on 27.06.2023. At this stage the petitioner filed this petition to recall PW1 for further cross. The Petitioner has pleaded that due to inadvertence certain crucial aspects were omitted to be questioned.

9. In view of the above discussion this court considers that defendants/petitioners were given sufficient opportunity to cross examine PW1. Just because certain crucial aspects were omitted by petitioner/defendant to questioned the plaintiff witness, this court shall not allow to recall the witness for further cross examination merely to fill up the lacuna in the case. Further the petitioner has not clearly stated on which aspect the plaintiff witness PW1 has to be cross examined.

10. Therefore this court considers that to patch up the parts of the case a witness cannot be recalled and further the suit is filed in the year 2015 and sufficient opportunity granted for defendant to cross examine PW1. Thus this court decides that power to recall a witness cannot be used to compensate the oversight of a party and hence this court is inclined to dismiss the petition.

11. In the result, this petition is dismissed. No costs.

Dictated to the Stenographer, typed by her and corrected and pronounced by me in open court on this the 14th day of July, 2025.

Sd/-R.Mahalakshmi
District Munsif
Madurantakam

Petitioner side witnesses and documents:

Nil

Respondents side witnesses and documents:

Nil

Sd/-R.Mahalakshmi
District Munsif
Madurantakam