

IN THE COURT OF THE ADDITIONAL DISTRICT JUDGE, DHARMAPURI

Present: Tmt.U.Monica,M.L.,
Additional District Judge,
Dharmapuri.

Monday, this the 2nd day of June 2025

I.A.No.8/2025
in
O.S.No.220/2023

1). Rajendran
2). Vijayasanthi

...Petitioners/1st and 2nd
defendants

/versus/

Periyammal

...Respondent/plaintiff

This petition is coming on 30.4.2025 for final hearing before me in presence of Thiru.P.V.Ravi, Advocate for petitioners and Thiru.K.Boopathi, Advocate for respondent and upon hearing both side arguments and on perusal of the entire case records and having stood over till this day, this court pronounced the following:

ORDER

This petition has been filed under order 18, rule 17 to recall DW.2.

2. The averments in the petition in brief is as follows:

According to petitioners, DW.2 has to be recalled to give evidence as to attestation in Settlement deed by Siddhan in favour of Rajendran and in Will executed by Siddhan in favour of his grandson Muniraj to prove their case. Hence petition has to be allowed,

3. The averments in the counter in brief is as follows:

The respondent resisted petition by contending that as beneficiary of Will

executed by Siddan predeceased him, there is no need to examine attestor of Will. Siddan has canceled one Settlement deed executed by him. DW.2 has admitted in his cross examination that he has not signed as attestor in Settlement deed executed by Siddhan. There is no necessity to recall DW.2, petition has been filed to fill up lacuna and liable to be dismissed.

4. The point for consideration:

Whether the petition is to be allowed or not?

5. Heard both side. No oral evidence have been adduced on either side.

6. Point:

This is a suit for partition and case is in stage of further defendant side evidence. At this stage, present petition has been filed to recall DW.2 to give evidence as to attestation in Settlement deed executed by Siddhan in favour of Rajendran and in Will executed by Siddan in favour of his grandson Muniraj to prove their case. The respondent counsel relied upon (2009) 4 SCC 410 in the case of Vadiraj Naggappa Vernekar Vs. Sharadchandra Prabhakar Gogate, wherein our Hon'ble Apex Court held as follows :-

"25. In our view, though the provisions of Order 18 Rule 17 C.P.C. have been interpreted to include applications to be filed by the parties for recall of witnesses, the main purpose of the said Rule is to enable the Court, while trying a suit, to clarify any doubts which it may have with regard to the evidence led by the parties. The said provisions are not intended to be used to

fill up omissions in the evidence of a witness who has already been examined."

Relying the said principle, the learned counsel appearing for respondent would contend that now the petitioners are attempting to fill the lacuna found in case. On perusal of DW.2 chief examination and cross examination, it is evident that he has already spoken about his attestation in Settlement deed and Will and he has been cross examined. Already DW.2 has given evidence elaborately and has been cross examined extensively. It is nor clear for what reason DW.2 has to be recalled. The contention of respondents that petitioner seeks to recall DW.2 to fill up lacuna has to accepted. The petitioners cannot be permitted to recall DW.2 to dilute his evidence during his cross examination. The authority cited above by learned respondent counsel is applicable to facts of case. The petitioners have not made out any case for recalling DW2. Hence there is no merits in the petition. Therefore, the petition is liable to be dismissed.

In the result, petition is dismissed. In the facts and circumstances of case, no cost is ordered.

Dictated by me, typed by the Steno-typist, corrected and pronounced by me in Open Court on this the 2nd day of June 2025.

Additional District Judge,
Dharmapuri.

Petitioners Side Witness, Exhibits: Nil
Respondent Side Witness, Exhibits: Nil

Additional District Judge,
Dharmapuri.

Fair Order
I.A.No.8/2025 in
O.S.No.220/2023
Dated:2.6.2025.