

IN THE COURT OF PRINCIPAL DISTRICT MUNSIF AT
KANCHIPURAM

PRESENT: Tmt. Fanny Rajan, B.A., B.L.,(Hons)
Principal District Munsif, Kanchipuram

On Thursday, the 5th day of March 2026

I.A.No. 6 of 2026

and

I.A.No. 7 of 2026

in

O.S.No. 191 of 2016

CNR.No.TNKP08-000255-2016

S. Revathi

.... Petitioner/Plaintiff

/Versus/

D. Karunamoorthy

.... Respondent/Defendant

This Petition has come up on 26.02.2026 for final hearing before me in the presence of M/s.M. Ramesh counsel for the Petitioner and M/s.CTA Associates, A. Sujatha, L. Sowmiya Narayanan counsels for the defendant, upon hearing the argument and upon perusing the connected material records and having stood over till this day for consideration, this court delivers the following orders:

COMMON ORDER

1. **IA No.6 of 2026:** The petitioner filed this petition under section 151 of CPC reopen the DW-1 side evidence which is closed on 11.11.2025 and thus render justice.

2. **IA No.7 of 2026:** The petitioner filed this petition under Order XVIII Rule 17 to recall the cross examination for DW-1 side evidence which is closed on 11.11.2025 and thus render justice.

Concise statement of the averments in the affidavit filed by the Petitioner in IA No.6 and 7 of 2026:

3. The petitioner has averred that she filed the suit for permanent injunction. The suit is posted for arguments. At the time of DW1 cross examination, some vital questions were omitted on her side. They are essential to prove her case. If the DW1 is not recalled for further cross examination, she will be put to irreparable loss and hardship, which cannot be compensated in any way. Hence this petitions.

Concise statement of the averments in the counter affidavit filed by the Respondent in I.A No.6 and 7 of 2026: :

4. The respondent has stated that the petition to recall at the stage of arguments is not maintainable. The Order XVIII Rule 17 CPC does not confer any right to recall after closure without any bonafide reason. The Petitioner is trying to misuse the discretionary power without any bonafide reasons. The bald statement of omission is not bonafide reason. The suit is of the year 2016, written statement was filed on 18.11.2016 and issues were

framed on 25.11.2016. It is pending for nearly a decade. It was dismissed for default on 09.02.2022 and restored. Even after restoration, sufficient and ample opportunities were granted to the Plaintiff to prosecute the case.

5. The evidence of DW1 was completed and closed on 11.11.2025 after granting adequate opportunities to the Plaintiff for cross-examination. The Plaintiff had fully cross-examined DW1 and only thereafter the evidence was closed. At this highly belated stage, after closure of evidence and at arguments stage, this petition is filed with an intention to protract the proceedings and delay disposal of the suit. The Petitioner has not assigned any valid, bona fide, or sufficient reason for recalling DW1. There is no new circumstance or subsequent development warranting reopening of the evidence. Hence, the petitions are liable to be dismissed.

POINT FOR CONSIDERATION:

6. **I.A NO.6 OF 2026:** Whether the petition to re-open the DW1 for further cross examination has to be allowed or not?
7. **I.A NO.7 OF 2026:** Whether the petition to re-call the DW1 for further cross examination has to be allowed or not?

DISCUSSION AND FINDINGS:

8. Heard the Learned Counsel the Petitioner and Respondent. Records perused. This court finds that both the parties have not let in any oral or documentary evidence in this petition.
9. On perusal of the records, this Court finds that suit is at the stage of arguments when a petition for amendment was filed on 17.11.2025 and allowed on 02.01.2026. After the amendment was carried out and amended plaint filed, there was no additional written statement or additional issues framed, as the amendment was cursory relating to a issue for which already the parties have adduced evidence. Hence, the suit was posted for arguments on 22.01.2025. On 22.01.2026, 29.01.2026, 10.02.2026 the case was continuously posted for arguments. Whiles, on 16.02.2026, this petitions to reopen and recall the evidence of DW1 is filed.
10. Further, upon perusal of records it is noted that the Plaintiff evidence commenced on 20.03.2024 by examining PW1. It was closed on 18.08.2025 after due examination and cross examination of PW1 and PW2. Thereafter, the defendant evidence by examining DW1 on 28.08.2025 and the chief was closed on 16.10.2025. Thereafter, the DW1 was cross examined by the Learned counsel for the Petitioner on 28.10.2025,

11.11.2025. Thereafter, on completion of the cross examination of the DW1 in full, the defendant evidence was closed on 11.11.2025.

11. It is the case of the Petitioner that some vital questions have been omitted in the cross examination of DW1 and hence the DW1 has to be again cross examined. Per contra, the learned counsel for the Respondent have denied the same and stated that the petition is filed to fill up the lacuna in the Petitioners case, protract the proceedings. There is no indication about any ambiguity necessitating reopening the cross examination of DW1. The discretionary power of cross examination shall be diligently exercised and cannot be recalled without any valid grounds. He also relied on the Judgment in *Shubhkaran Singh Vs. Abhayraj Singh and others, 2025 INSC 628*.
12. This court perused the judgment in *Shubhkaran Singh case (Supra)*. It has been categorically observed about Order XVIII Rule 17 CPC and held by the Hon'ble Supreme Court that

“7. This Rule provides the Court with a power which is necessary for the proper conduct of a case. If it appears to a court trying the suit at any stage of the proceedings that it is necessary to recall and further examine a witness it can always do so. This power can be exercised even at the stage of writing a judgment by the court. It is, however, proper that this power should not be exercised lightly and the rule is that it should be used sparingly and in exceptional cases only. The

power is to be used for removing ambiguities, for clarifying the statement and not for the purposes of filling up the lacuna in a party's case. It is true that the power can be exercised by the Court at its own initiative and may even be so done at the instance of a party. Section 165 of the Evidence Act provides that a Judge may in order to discover or obtain proper proof of relevant facts, ask any question he pleases in any form at any time of any witness about any fact relevant. The section further provides that the parties shall not be entitled to make any objection to any such question, nor cross-examine any witness upon any answer given in reply to any such question without the leave of the Court. If the provisions of Order 18 Rule 17 are read along with the provisions of Section 165 of the Evidence Act it is clear that the power to recall and re-examine a witness is exclusively that of the court trying the suit. The parties to the suit cannot take any objection to the question asked nor can they be permitted to cross-examine any witness without the leave of the court.

8. The said rule, in our opinion, makes it abundantly clear that the right to put questions to the witness recalled under Rule 17 is given only to the court and even cross-examination is not ordinarily permitted on the answers given to such questions, without the leave of the court. Under that rule therefore, a witness cannot be recalled at the instance of a party for the purpose of examining, cross examining or re-examining, and that rule is not intended to serve such purpose, and the purpose for which that rule can be invoked is the one that is indicated above.”

13. Further, in the said judgment, the Hon’ble Supreme Court upheld the ratio decidendi in ***Sultan Saleh Bin Omer v. Vijayachand Sirmal* [A.I.R. 1966, A.P. 295.]**, ***Vadiraj Naggappa Vernekar v. Sharadchandra Prabhakar Gogate***, reported at (2009) 4 SCC 410, ***K.K. Velusamy v. N. Palanisamy*** reported at (2011) 11 SCC 275. Thereby, it was upheld that even assuming

that the power under Section 151 of CPC can be invoked for recall and reopen of the DW1 cross examination on petition by the parties, it cannot be done in a mechanical manner and should be exercised only in exceptional cases, when clarification is required.

14. In the instant case, the suit is for bare injunction against the defendants not to disturb the peaceful possession and enjoyment. This court finds that the issues have been framed on 25.11.2016 regarding whether the Plaintiff is in possession, whether the judgment and decree in OS.No.115/2009 is binding on the parties and whether the Plaintiff is entitled to permanent injunction. No additional issues were framed even after amendment.

15. Even on the date of the cross examination of the DW1, the Petitioner was aware of the issues framed. He had the due opportunity for cross examination of the DW1 on two occasions. The DW1 cross examination runs to 9 paragraphs and 6 pages. The Plaintiff had extensive opportunity to cross examine the DW1 in detail regarding his proof affidavit and Ex.B1. There are no new pleadings or documents filed after the cross examination of the DW1 in this case. So the facts remain that the Petitioner had access and knowledge about all the material facts, pleadings and documents in the case while examining DW1.

16. This court considers that the suit is only for injunction simpliciter and the burden is upon the Petitioners/plaintiff to prove their case. Under such circumstances material issues between the parties which can be decided in this suit is limited. Though the Petitioner indicates that some vital questions were omitted, the statement is vague. The reason for omission is also not quoted.
17. Having failed to utilise the opportunity for cross examination presented to him, the Petitioner cannot be permitted to fix the lacuna in his evidence by reopening and recalling the DW1. Nothing in this petition clarifies the purpose of reopen and recall, the reason quoted is without any material facts. Also no ambiguity is pleaded requiring the reopening and cross examination of DW1. In the absence of any indication of ambiguity, this court opines that there is no necessity to reopen DW1 cross examination.
18. Apart from that the Petitioner have waited until the case was posted for arguments to file this petition. This court finds that the suit is of the year 2016 but the instant petition has been filed in 2026 after the evidence stage was closed for the Plaintiff and defendant and posted for arguments. In fact the amendment application was also filed after the suit was posted for arguments and allowed after contest. After completion of the formalities

regarding carrying out amendment and closure of additional written statement, the case was again reverted to arguments stage.

19. At this stage, another petition for reopen and recall is filed. Even while the amendment petition was allowed and this court held that there is no necessity to reopen the evidence, the Petitioner had not preferred any revision against the same. Also he did not take any efforts to adduce any further evidence regarding the amendment till date, which clearly indicates that the Petitioner had sufficiently adduced evidence in his side.
20. Whiles, he filed this petition to cross examine the DW1 further. The fact that the Petitioner has filed petitions time and again after the suit was posted for arguments only establish the lack of bonafides on the part of the Petitioner in proceeding with this case. It clearly amounts to delay tactics. Hence, in the interest of justice, this Court is inclined to dismiss the reopen and recall petition as devoid of merits.
21. Considering the nature of the pleadings and relief sought for by the parties and protraction of proceedings, this Court finds that the Petitioner shall pay the cost of this petition to the Respondents.

RESULT:

22. I.A.No.6 of 2026: In the result, this Petition is dismissed with costs.

23. I.A.No.7 of 2026: In the result, this Petition is dismissed with costs.

Dictated to the steno typist partly, who directly typed the same in her Computer and partly typed by me, corrected and pronounced by me in open court, this the 5th day March 2026.

PRINCIPAL DISTRICT MUNSIF
KANCHEEPURAM

Petitioner and Respondent side witness and document : NIL

PRINCIPAL DISTRICT MUNSIF
KANCHEEPURAM