

IN THE COURT OF ADDITIONAL DISTRICT MUNSIF, KULITHALAI

Present : Selvi.A.Yughathymariya, B.Com, L.L.B.(Hons.,)

Additional District Munsif, Kulithalai.

Dated Saturday, the 01st day of November 2025

I.A No.13/2025 in O.S No.62/2012

1) Maimoon Bibi (died)

2) Sulaiman

3) Muhammad Hanifa

4) Muhammad Asen

5) Khadhija Bibi

6) Subhaidha Bibi

7) Aisha Bibi

8) Jimlath Begam

9) Paridha Begam

10) Mabu @ Mabukhan

11) Sarbudhin

12)Shajahan

13) Nawaz

14) Renish

15) RashidhaBegam

16) Rajiya Begam @ Banumathi

...Petitioners/Defendants 1 to 4 and 8 to 19

- Vs -

1) Jayboon Bibi (Died)

2) Parveen

3) A.M.Rafik Bhasha

4) Ammu

5) Momala

...1 to 5 Respondents/Plaintiffs

6) Branch Manager, Indian Bank, Kulithalai

7) Zonal Manager, Indian Bank, Trichy.

8) Sub Registrar, Kulithalai

9) Badrun @ Banu

...6 to 9 Respondents/ 5, 6, 7 and 20th Defendants

This petition has come up for final hearing on 24.10.2025 before this Court in the presence of Mr. B.Malarkannan, the Learned Counsel appearing for the Petitioners and Respondent No.1 died and Respondents No. 6,7,9 called absent and set exparte and in the presence of Mr. R.M.Sivakumar, the Learned Counsel appearing for the Respondents No.2 to 5 and in the presence of the Government Pleader Mr. K.S.M.Sahul Hameed, the Learned Counsel appearing for the Respondent No.8, upon perusal of material records and having stood over for consideration till this day, this court delivers the following:

ORDER

This petition is filed under Order 18, Rule 17 r/w Section 151 of CPC by the Petitioner in order to recall the Defendants side witness namely DW1 in the above suit.

2) The Learned Counsel for Respondents No. 2 to 5 stated no counter and endorsed that without prejudiced, this petition may be allowed on terms.

Brief averments in the affidavit:

3) The Petitioner is the 2nd Defendant in the above suit and he is filing this petition on behalf of the Defendants No. 3, 4 and 8 to 19. The above suit has been filed by the Respondents/Plaintiffs against the Petitioners/Defendants for the relief of Permanent Injunction and also for the relief of Mandatory Injunction. In the above suit, the Petitioner/Defendants have also filed written statement along with counter claim.

4) In the above suit, on the side of the Defendants, DW1 was examined in full and the above suit has been posted for further DW's. While the chief examination of DW1, an agreement dated 04.05.2000 which is been entered by the 1st Plaintiff and the 1st Defendant was marked as Ex.B11 on the side of the Defendants. In the said document, this petitioner has attested as the 2nd witness. In order to prove the above document by way of the examining 1st attested witness namely, A. Muhamed Ghous, a petition in I.A.No. 10/2025 has been filed on behalf of the Petitioners and the same was allowed by this Court on 30.01.2025.

5) Subsequent to that order, summons were served on the said attesting witness, but the same was returned to this Court for the reason that the said person was died. In order to prove his signature, the Petitioners had again taken a step to mark the written statement filed by the said witness along with his signature which was filed in O.S.No. 378/1996 before this Court.

6) For marking of the said written statement which has been filed by the 1st attesting witness namely Muhamed Ghous to prove his signature in the Ex.B11 document, yet another application in I.A.No. 12/2025 has been filed by the Petitioners herein before this Court in this suit. But the above said petition was dismissed by this Court. Therefore, in order to prove the Ex.B11 document by way of examining the DW1, who is the 2nd attesting witness to the said document, it is necessary to recall DW1 in the above suit for the purpose of proving Ex.B11. Premafacie case and balance of convenience for this petition are in favour of the Petitioners only. If this petition is allowed, the Respondents would no way get prejudiced. If this petition is not allowed, the Petitioners will be put to irreparable loss and injury. Hence, this petition.

Brief averments in the counter filed by the 3rd Respondent and adopted by the Respondents No. 2, 4 and 5:

7) All the allegations raised in the petition affidavit are denied as false, frivolous, vexatious and mischievous. The Petitioner are put to strict prove of each and every

allegation except that has been specifically and individually admitted by the Respondents. It is seen clear that this petition is a replica of the earlier petition in I.A.No. 12/2025 which was dismissed by this Court after contest. The Petitioners knowing well that they have lost previous interlocutory application, again come up with this present petition only to frustrate the entire proceedings. This suit is filed in the year of 2012 and already more than a decade has passed.

8) DW1 was cross examined in full on 23.01.2025 by the Plaintiff's Counsel. Thereafter, the case was posted for further Defendants side witnesses on several dates and more than sufficient opportunities have been given to the Defendants. On 03.03.2025, the Petitioners filed an application under Order 8 Rule 1 of CPC which was returned and the case was again posted for further Defendants side witness.

9) Again on 10.03.2025, the affordsaid applications were represented and numbered as I.A.No. 11/2025 and I.A.No.12/2025, wherein in both these petitions, the Petitioners did not take notice to the correct address of the 9th Respondent. As such, many a time a notice sent to the 9th Respondent through Court and post and was returned for want of correct address. In these way, the Petitioners managed to prolong the case.

10) Finally, the 9th Respondent herself appeared before this Court voluntarily and sought time to change her counsel. But subsequently, the 9th Respondent eventhough changed her counsel did not turn up and untimately remained exparte. Obviously for the person to remain exparte, the Petitioners have given a wrong address and have also taken adjournments stating that they will take notice through Court and post and also privately.

11) At the end, I.A.No.12/2025 was dismissed by this Court and the above suit was posted for further Defendants side witnesses. This time the Petitioners have come up with the present petition as another attempt to drag on the case. Already, the Defendant who has been examined as DW1 has filed his proof affidavit in tune to his

statement and has been cross examined fully. Upon perusal of the evidence of DW1, it would reveal that the present petition is totally unwanted and unnecessary, because sufficient questions have been posted to DW1 during his cross examination on Ex.B11 and he answered the same. Further reference has also been made by DW1 with regard to Ex.B11 in his chief affidavit. That's why the document itself has been marked through him.

12) Hence, when Ex.B11 has been marked through DW1 and has been cross examined in this regard, there is no necessity to recall DW1 for the same purpose. Knowing the petition to be meaningless, the Petitioners have attempted to file the same under the cover of recall. The witness intended to be recalled has spoken about Ex.B11. In such circumstances for the same reason, another application is not maintainable.

13) The Petitioners have never respected “ no further adjournments” orders of this Hon’ble Court. The facts placed above would throw ample light that merely a dozen times, the no further adjournment orders have been discarded by the Petitioner. The Petitioners have taken the order of no adjournment in a very casual manner and have been prolonging the case in the name of further Defendants side witnesses. After all in an injunction suit, where some of the parties have already died, still the Defendants are not prepared and willing to terminate the trial, but are pulling it on one pretext or other. Even after considerable years, the case has not crossed the 1st tire in litigation process. Therefore, this petition is liable to be dismissed in the interest of justice with costs.

Points for determination:

14) Whether this petition is entitled to be allowed or not?

Evidence:

15) There is no oral and documentary evidence adduced on either side.

Discussion:

16) Heard both sides. Perused records. Upon perusal of records, it is seen that the above suit has been filed by the 1 to 5 Respondents/Plaintiffs against the Petitioners/Defendants for the relief of Permanent Injunction as well as for the relief of Mandatory Injunction. This apart, it is also seen that the Petitioners herein have filed their written statement along with the counter claim in the above suit against the Respondents herein.

17) Admittedly, it is seen that the above suit has been posted for further Defendants side evidence. It is seen that on the side of the Defendants, DW1 was examined in full and through him Ex.B1 to Ex.B26 were marked in his chief examination. DW1 has also cross examined in full by the Plaintiff's Counsel. When the above suit was posted for further DW's, it is seen that the Petitioners herein have filed an application under Order 18 Rule 17 of CPC in I.A.No. 11/2025 and subsequently yet another application in I.A.No. 12/2025, for the purpose of recall of DW1 in order to mark the written statements and the signature of the 1st attesting witness to the Ex.B11 document, who is no more now namely, Muhamed Ghous which has been filed by him in O.S.No. 378/1996. But however, after contesting the same, the above petitions were dismissed by this Court on 04.09.2025 and again the above suit was posted for further DW's. Pending the same, this petition to again recall DW1 was filed by the Petitioners herein.

18) Upon perusal, it is seen clear that this petition has been filed by the Petitioners in order to recall DW1 only for the purpose proving the execution of the Ex.B11 document, which has been alleged to be excuted between the 1st Plaintiff and the 1st Defendant as alleged by the Defendants in the above suit. The major contentions that has been placed on the side of the Petitioners is that in order to prove the above document in Ex.B11, it is necessary in the interest of justice to recall DW1.

19) Per contra, the major objection that has been placed on the side of the 1 to 5 Respondents/Plaintiffs herein is that this that the Petitioners are intentionally dragging on the above suit by way of filing one petition after another eventhough they very well know that such petitions are not maintainable. This apart, the Respondents No. 2 to 5 have contended that the Ex.B11 document has been marked through DW1 in his chief examination and sufficient evidence has been let in, in respect of the said Ex.B11 in the chief examination affidavit of DW1. This apart, DW1 was further cross examined in full in respect of the Ex.B11 document and there is no necessity to recall DW1 for the same purpose. Therefore, the Respondents had contended to dismiss this petition for the said reasons.

20) As stated by the Learned Counsel for the Respondents No. 1 to 5, it is seen that this suit is filed in the year of 2012 and has been kept pending for more than 10 years. It is also seen that more adjournments have been given to the Defendants in the above suit for letting in evidence on their side. It is also seen that this Court has dismissed the petition in I.A.No. 11/2025 and 12/2025 which were filed by the Petitioners herein for the purpose of recall of DW1 in order to prove the signature of the 1st attesting witness to the Ex.B11 document namely, Muhamed Ghous, for the reason that when one of the attesting witnesses to the Ex.B11 document namely DW1 itself is alive, the same has to be proved only by way of examining DW1 himself in this suit with regard to the same. On that pretext, it is seen that this petition has been filed by the Petitioners in order to recall DW1 to prove the Ex.B11 document.

21) Without going to the admissibility and reliability of the Ex.B11 document, this Court is of the view that opportunities must be given to the parties in order to prove their respective cases. In order to ensure fair and complete justice, it is necessary that the parties must be heard and opportunity of hearing must be given to both the parties to prove their case. Though it is seen that there is an enormous delay on the side of the Defendants in letting evidence on their side, such technical irregularities and delay should not affect and prejudice the rights of the parties to prove their cases.

Hence, such technical irregularities such as the delay caused on the side of the Defendants/Petitioners herein may be condoned to render complete justice and to ensure a fair trial. Therefore, this Court is inclined to allow this petition to meet out the ends to justice. This apart, this Court is also of the view that the Respondents herein would be given every opportunity to cross examine DW1, in order to rebut the case of the Defendants in the above suit and to disprove their evidence. However, this Court finds that the Respondents No. 2 to 5 have been put to inconvenience for the delay caused on the side of the Petitioners in the above suit and hence, this Court finds fit to impose costs on the Petitioners as a condition for allowing this petition, in order to balance the equities.

Result:

In result, in the interest of justice and on merits, this petition is allowed with costs of Rs.500/- to be paid by the petitioners to the Respondents No. 2 to 5 herein, on or before 06.11.2025, failing which this order shall stand automatically vacated.

Dictated to my steno-typist, taken down by her in short hand and typed by her in the computer, corrected by me and pronounced by me in the open court on this the 01st day of November 2025.

**Additional District Munsif,
Kulithalai.**

Petitioners side witness and documents	-	Nil.
Respondents side witness and documents	-	Nil.

**Additional District Munsif,
Kulithalai.**