

**IN THE COURT OF ADDITIONAL DISTRICT MUNSIF, KULITHALAI****Present : Selvi.A.Yugathymariya, B.Com, L.L.B.(Hons.,)****Additional District Munsif, Kulithalai.****Dated Saturday, the 06<sup>th</sup> day of December 2025****O.S No.262/2019 in I.A No.08/2025**

Jothilakshmi

**...Petitioner****- Vs -**

Maran

**...Respondent**

This petition has come up before this Court for final hearing on 20.11.2025 in the presence of Mr.R.Madhu, the Learned Counsel appearing for the petitioner and in the presence of Mr. K.S.M.Sahul Hammed, the Learned Counsel appearing for the Respondent and upon perusal of material records and having stood over for consideration till this day, this court delivers the following:

**ORDER**

This petition is filed by the Petitioner/Defendant under Order 18, Rule 17 r/w Section 151 of CPC for the purpose of recalling the Defendants side witness namely DW1 for her cross examination.

**Brief averments in the plaint:**

2) The Petitioner is the Defendant in the above suit. The Plaintiff has filed the above suit for the relief of declaration and Permanent Injunction. When the above suit was posted on 10.09.2025 for Defendant side evidence, the Petitioner was examined as DW1 on the side of the Defendants and thereafter, the above suit was posted for the cross examination of DW1. Unfortunately, the Petitioner went abroad for delivery of her daughter. Hence, the Petitioner is not able to attend this Court on the said date and hence, this Court has closed the cross examination of DW1. The

Petitioner has now only returned abroad and filing this petition for recalling herself for her cross examination. Unless the Petitioner is recalled, the Petitioner will be put to irreparable loss and hardships. Hence, this petition.

**Brief averments in the counter objection filed by the Respondent:**

3) This petition is unsustainable in law or on facts. The Petitioner is not entitled to the relief sought for by her. Except the averments which are admitted by the Respondent herein, all other allegations contained in the affidavit are denied as false and the Petitioner is liable to prove them all. On 17.02.2025 in the above suit, DW1 was cross examined in full by the Respondent/Plaintiff's side. Then the above suit was posted for further Defendant side evidence on several occasions. Thereafter, on the side of the Defendants, a petition to recall DW1 was filed for the purpose of marking of certain documents, which were no way connected to the suit property and the above petition was also allowed by this Court. Thereafter, DW1 was recalled and chief examined in full and the documents were also been marked through her. Thereafter, the above suit was posted for the cross of DW1. The Respondent/Plaintiff was ready to cross examine at all times. However, the Petitioner/the Defendant side witness namely DW1, was not present before this Court on several occasions, when the above suit was posted for her cross examination. Hence, DW1 was called absent and her cross examination was closed by this Court on 10.09.2025.

4) This being the situation, this petition has been filed by the Petitioner only for the purpose of drag on the above suit. No proper reasons were stated by this Petitioner in the petition. This petition has no prima facie. Hence, this petition is liable to be dismissed with costs.

**Point for consideration:**

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

**Evidence:**

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

**Discussion:**

7) Heard both sides. Perused records. Upon perusal of records, it is seen clear that the Respondents/Plaintiff has filed the above suit against the Petitioner/Defendant for the relief of declaration of a registered settlement deed dated 05.12.2016 as null and void and also for the relief of Permanent Injunction against the Defendant. Upon perusal of records, it is seen clear that on 19.08.2024 itself, the Plaintiff side evidence was closed and thereafter, the above suit posted for Defendant side evidence subsequently on several occasions. Thereafter, despite sufficient opportunities given to the Defendant, the Defendant did not turn up and hence, the Defendant side evidence was closed by this Court and the above suit was posted for arguments on 13.09.2024.

8) Thereafter, a petition u/s.151 of CPC was filed by Defendant to reopen the Defendant side evidence and the same was allowed on 18.12.2024 by Court. It is also seen that thereafter, the DW1 was chief examined in full and the above suit was posted for her cross examination by this Court on 24.01.2025. Subsequently, on 17.02.2025 DW1 was cross examined in full on the side of the Plaintiff and thereafter, the above suit is posted again for further DW's.

9) This being so, again a petition under Order 18, Rule 17 of CPC was filed on the side of the defendants for the purpose of recalling DW1 and for marking of certain documents through her which was allowed by this Court with costs on 04.06.2025. Thereafter, DW1 was again recalled and chief examined in full. Subsequently, the matter was posted for the cross examination of DW1 on various occasions, wherein DW1 was not present throughout all those occasions and therefore, this Court on

03.09.2025 has closed the cross examination of DW1 and posted the above suit for further DW's. Pending the same, this petition for the purpose of recall of DW1 for her cross examination was filed by the Defendant before this Court.

**10)** The major contention that has been raised on the side of the Petitioner is that unfortunately the Petitioner went abroad for delivery of her daughters, when the above matter was posted for her cross examination and hence, she could not be able to come to depose before this Court for her cross examination. The Petitioner has also contained that she has returned abroad and is filing this petition by now only and sought this Court to allow this petition. The major objection that has been placed on the side of the Respondent is that the petitioner was not at all present before this Court for her cross examination on several occasions, despite more than sufficient opportunities given to her and the Respondents were always ready to cross examine DW1. The Respondents have also contented that this petition has been filed by the Petitioner only to drag on the above suit and without stating any proper reasons. Hence, the Respondent has sought this Court to dismiss this petition.

**11)** Upon consideration of the pleadings of both parties and upon considering the submission made on both sides, this Court is of the view that admittedly there is a huge delay on the side of the Petitioner/Defendant in cross examining the Defendant side witness namely DW1 in the above suit despite more than sufficient opportunities have been given by this Court. Moreover, on several occasions, DW1 was not present before this Court for her cross examination. It is also seen that several petitions were filed for the purpose of recall of DW1 and when the examination of DW1 was closed, again several petitions to recall DW1 was filed on the side of the Defendants in the above suit. The reasons stated by the Petitioner that she went abroad for the delivery of her daughter is found to be acceptable by this Court. Moreover, there is no objection specified on the side of the Defendants with regard to this specific fact.

12) Hence, this Court is of the view that such technical irregularities such as the delay may be condoned for rendering complete justice to the parties. This Court is also of the view that opportunities must be given to each and every parties to prove their cases respectively and this Court also ensures that the Respondent/Plaintiff will be given sufficient opportunities to prove his case by way of cross examining DW1 in the above suit. Therefore, this Court is inclined to allow this petition. However, due to the huge delay caused on the side of the Petitioner/Defendant, inconveniences have been caused to the Respondent/Plaintiff and in order to balance the equities, this Court deems it fit to impose costs on the Petitioner as a condition for allowing this petition.

**Result:**

In the result, with the above observations, this petition is allowed with costs of Rs.500/- to be paid by the Petitioner to the Respondent, on or before 10.12.2025, failing which this order shall stand automatically vacated. Hence, the Defendants side witness namely DW1 is hereby recalled for the purpose of cross examination of DW1.

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 06<sup>th</sup> day of December 2025.

**Additional District Munsif,  
Kulithalai.**

Petitioner side witness and document	-	Nil.
Respondent side witness and documents	-	Nil.

**Additional District Munsif,  
Kulithalai.**