

IN THE COURT OF THE SUBORDINATE JUDGE, MELUR.

Present: Tmt. M. SAMUNDEESWARI PRABHA, M.A., M.L.,

Monday, the 16th day of February 2026

I.A.No.11/2025

in

O.S.No.361/2019

1. N.Sankar

2. T.Sekar

3. T.Kannan (died)

4. K.Hariharan

5. K.Ramki

6. K.Lakshmi Narayanan

7. Seethalakshmi

8. Vaishali Petitioners/Defendants

// Vs //

P.Devadass Respondent/Plaintiff

This petition is coming up for final hearing before this court on 03.02.2026 in the presence of Advocate.P.Suresh Kumar, Advocate for the Petitioners and Advocate.Mr.S.Vijayakumar, Advocate for the respondent and upon hearing the enquiry on both sides and on perusal of the records and having stood over for consideration till this day, this court delivers the following :-

ORDERS

This petition has been filed by the Petitioners Under Order 18 Rule 17 and Section 151 of CPC pass an order to recall PW1 for cross in the original suit.

1. Brief averments of the petition :-

The 1st petitioner herein is the 1st defendant in the original suit. The petitioner has filed this petition on himself and on behalf of the other petitioners. The original suit has been filed by the plaintiff/respondent for declaration and for injunction. On 15.10.2025, there was an opportunity to cross-examine of PW1. During the above period, due to the rainfall caused by climate change, the 1st petitioner affected viral fever, headache, cough and cold and had been in poor health for a week. The lawyer could not be contacted regarding the above case. When the 1st petitioner, who has now recovered and inquired about the case with his lawyer, he came to know that on 15.10.2025, a exparte judgment was issued against the 1st petitioner and the other petitioners, making them non appearance. The inability to cross-examine the petitioners was not intentional. If this court were to call back PW1 and allow him to cross-examine, the petitioners would be able to prove that the plaintiff's case is false. The petitioners prays to pass an order to recall PW1 for cross in the original suit. Hence this petition has to be allowed.

2. Brief averments of the counter affidavit filed by the respondent/ plaintiff :-

(I) The respondent herein is the plaintiff in the original suit. The suit property was sold to the respondent. The petitioners illegally

occupied the disputed property and built a temple pedestal and steps on the disputed property. The plaintiff has filed the suit for declaration and for injunction. IA.9/2024 on the filing of the petition for appointment of a Commissioner, the Advocate Commissioner was appointed. With the help of a surveyor, the Advocate Commissioner inspected the property and found out the details of the encroachment of the plaintiffs on the property. The Commissioner filed the report and plan in this court.

(ii) On 22.07.2025, the respondent appeared and proof affidavit, the primary examination of the plaintiff was concluded, and an adjournment was set for 25.08.2025 for the cross-examination of the defendant to the plaintiff. This court refer to lok adalat on 25.08.2025 but not settled. On 16.09.2025 the court ordered, for PW1 present. Defendant side prays time. No settlement reported. PW1 cross call on 25.09.2025. On 25.09.2025 the court ordered, PW1 present. Defendant not ready for cross. Hence PW1 cross or further ordered call on 15.10.2025. On 15.10.2025 the court ordered, PW1 present. Defendant called absent. No representation. PW1 cross not done till date. Hence D1, D2, D4 to D8 set exparte. PW1 chief treated as exparte evidence. Hence posted for exparte judgment.

(iii) There is no mention of the files indicating that the 1st petitioner received treatment, nor of whom he received treatment, nor of the date from which the 1st petitioner was ill. The petitioner did not state in his petition why the other petitioners, except the 1st petitioner, did not meet with a lawyer, nor why the petitioner's lawyer did not appear by this court and file a petition seeking leave. The petitioners

have filed this petition citing false reasons. Hence this petition has to be dismissed.

3. The point for consideration aroused is that :-

Whether the petition has to be allowed or not ?

4. Point :-

Both sides heard. Records perused. This petition has been filed by the defendants to recall PW1 for cross.

It has been stated that the 1st defendant who was looking after the case was suffering from viral fever on 15.10.2025 and so he couldn't attend the court; Hence PW1 cross examination suomoto closed.

Hence in order to give an opportunity to the defendants/petitioners to defend the case on merits.

5. Result:-

In the result, this court inclines to pass an order in favour of the petitioners/defendants provided they have to pay cost of Rs.500/- to the plaintiff/respondent on or before 27.02.2026. Failing which this petition stands dismissed. Call on 27.02.2026.

Dictated to the Steno Typist by me, and typed by her directly, corrected and pronounced by me in open court, this the 16th day of February 2026.

**Sub Judge,
Melur.**

Petitioners and Respondent both sides witness and documents : Nil

**Sub Judge,
Melur.**

Draft/Fair Order
in
IA.No.11/2025
in
O.S.No.361/2021
Date : 16.02.2026
Sub Court, Melur.