

IN THE COURT OF THE DISTRICT MUNSIF, SANKARI

Present: Tmt. R. ELAMATHI, B.A., B.L.,
District Munsif Court, Sankari

Wednesday, the 12th day of November, 2025

திருவள்ளூர்வராண்டு 2056, விசுவாவசு வருடம், ஐப்பசி திங்கள் 26 ம் நாள் புதன்கிழமை

I.A.13/2025 and I.A. 14/2025 in O.S.243/2004

1. The Government of Tamilnadu rep by

District Collector, Salem

2. The Revenue Divisional Officer, Sankari

3. The Tahsildar, Sankari

... Petitioners/Defendants 1 to 3

//Versus//

Nallamuthu

... Respondent/Plaintiff

This above two petitions taken to file on 11.08.2025 and coming on this day 03.11.2025 for hearing before me in the presence of Mr.R.Arulprakash Advocate/Government pleader for the Petitioners/D1-D3 and of Thiru.A.Kailasanathan, Advocate for the Respondent/plaintiff and after perusing the case records and hearing on both sides, this Court passed the following,

COMMON ORDER

I.A.No.13/2025 and I.A.14/2025

This Interlocutory Applications has been filed by the petitioners/ Defendants 1 to 3 Under Section 151 of the Code of Civil Procedure Code, 1908 and Order XVIII Rule 17 to reopen and recall PW1 for further cross examination.

2) The Gist of the petition in I.A.No.13/2025

2.1) The Petitioners / Defendants 1 to 3 submits that the Respondent/Plaintiff has filed the above suit for declaration and permanent injunction against the petitioners and other defendants. The petitioners have been freshly appointed as the Tahsildar, Sankari. Now only she came to know about the pendency of this suit and when she approached the counsel government pleader she was informed that the above case was posted for P.W.1 cross and the same is closed without the cross of the defendants 1 to 3.

2.2) The Petitioners / Defendants 1 to 3 submits that, the counsel for the defendants 1 to 3 who is the Government pleader had represented the plaintiff in another case regarding the same suit property. The 8th defendant in his written statement had stated the same and so the Government pleader filed petition before the District collector to allow change of counsel and to appoint another government pleader in order to prevent prejudice. While the defendants was waiting for the collector order, the case was posted for cross examination of PW1, only the 8th defendant crossed the PW1 and as the result this Court has passed an order of closing the evidence of PW1 without petitioner side cross examination. Only due to the above bonafide reason PW1 was not cross examined on that date. The Petitioners further submits that they are positive that the collector will issue his order to change the Government pleader in 10 days. The delay in processing the order, is due to the change is office of the collector. It is of imminent necessary to recall and reopen the PW1 for falsifying the plaintiff's case and without which the petitioners can not establish his defense in this case.

2.3) The Petitioners / Defendants 1 to 3 submits that, unless the P.W.1 is reopened the petitioners will be put to great loss and hardship which cannot be compensated by money. The petitioners have made out a prima facie case and the balance of

convenience is in his favour. Therefore the petitioners have to pray this Court may kindly be reopen the case for cross of PW1 in the above suit and thus render justice.

3) The Gist of the petition in I.A.No.14/2025:-

3.1) The Petitioners / Defendants 1 to 3 submits that the Respondent/Plaintiff has filed the above suit for declaration and permanent injunction against the petitioners and other defendants. The petitioners have been freshly appointed as the Tahsildar, Sankari. Now only she came to know about the pendency of this suit and when she approached the counsel government pleader she was informed that the above case was posted for P.W.1 cross and the same is closed without the cross of the defendants 1 to 3.

3.2) The Petitioners / Defendants 1 to 3 submits that, the counsel for the defendants 1 to 3 who is the Government pleader had represented the plaintiff in another case regarding the same suit property. The 8th defendant in his written statement had stated the same and so the Government pleader filed petition before the District collector to allow change of counsel and to appoint another government pleader in order to prevent prejudice. While the defendants was waiting for the collector order, the case was posted for cross examination of PW1, only the 8th defendant crossed the PW1 and as the result this Court has passed an order of closing the evidence of PW1 without petitioner side cross examination. Only due to the above bonafide reason PW1 was not cross examined on that date. The Petitioners further submits that they are positive that the collector will issue his order to change the Government pleader in 10 days. The delay in processing the order, is due to the change is office of the collector. It is of imminent necessary to recall and reopen the PW1 for falsifying the plaintiff's case and without which the petitioners can not establish his defense in this case.

3.3) The Petitioners / Defendants 1 to 3 submits that, unless the P.W.1 is reopened the petitioners will be put to great loss and hardship which cannot be compensated by money. The petitioners have made out a prima facie case and the balance of convenience is in his favour. Therefore the petitioners have to pray this Court may kindly be reopen the case for cross of PW1 in the above suit and thus render justice.

4) The Brief averments of the Counter by the Respondent/Plaintiff in I.A.13/2025 and I.A.No.14/2025:-

4.1) The respondent/plaintiff submits that the petition filed by the petitioners is false, fraudulent, and wholly unsustainable in law and on facts.

4.2) The respondent / plaintiff categorically denies all the allegations made by the petitioners in their affidavit, except those specifically admitted herein, as false, baseless and misleading.

4.3) The Respondent / Plaintiff contends that, it is true that the respondent/plaintiff has filed the above suit against the petitioners and other defendants seeking the relief of declaration and permanent injunction. The said suit is presently posted for additonal evidence on behalf of the 8th defendant.

4.4) The Respondent / Plaintiff further contends that the 3rd petitioner of the present petition is the newly appointed Tahsildar of sankari, who has only recently become aware of the pending proceedings. Upon consulting the public prosecutor, he was formed that the cross examination of the Village Administrative Officer(V.A.O) was permitted but was closed without cross examining defendants 1 to 3. It is further stated that since the public prosecutor who appeared on behalf of defendants 1 to 3 had earlier represented the plaintiff in another case, the 8th defendant had raised objections in his counter and filed a petition before the District Collector seeking the

appointment of another public prosecutor for the defendants. Based on that request, an order was passed by the District Collector.

4.5) The Respondent / Plaintiff affidavit further states that due to the transfer of the District Collector, there was a delay in appointing a new prosecutor, and hence an opportunity is sought to re-open the case and recalling PW1 for cross. These Statements are completely false and misleading.

4.6) The Respondent / Plaintiff alleged that, in fact, the PW1 was cross examined by defendants 1 to 3 on 06.01.2004. Subsequently, after the filing of the additional proof affidavit on 26.06.2009, the same witness was again cross examined on behalf of defendants 1 to 3 on 06.07.2009. By deliberately suppressing these material facts and falsely claiming that PW.1 has not been cross examined till date, the petitioners have filed the present petition seeking permission to cross examine the witness once again after a lapse of nearly 16 years, which is absolutely untenable in law.

4.7) The Respondent / Plaintiff further more alleged that, it is only after the cross examination of PW1 by the Defendants 1 to 3, the evidence on both sides has thus been fully completed. Therefore, the present petition filed by the petitioner seeking to reopen the case and recall of PW1 for cross and made the false plea that he was not earlier cross-examined, is wholly misconceived and liable to be dismissed in limine.

4.8) The Respondent / Plaintiff contends that, a petition seeking re-opening of evidence and recall of PW1 must be founded on proper and bona fide grounds supported by truth and necessity. However, in the present petition, the petitioners have deliberately suppressed the true facts and have misrepresented that the cross examination was not done earlier. Hence, the petition deserves to be dismissed.

4.9) The Respondent / Plaintiff further more contends that, the petitioners have not approached this Court with clean hands, bona fide intention, or true disclosure of

facts. The present petitions have been filed with the sole intention to mislead and deceive the Court by suppressing material facts and fabricating false grounds. Hence the petitions are liable to be dismissed with exemplary costs.

5) Points for consideration:-

Whether the petitioner's / Defendant's 1 to 3 are entitled for the relief as prayed for?

6) No oral and documentary evidences were adduced on both sides.

7) Heard both sides learned counsels. Records perused. This interlocutory application has been filed under section 151 of Code of Civil procedure Code 1908, and Under Order XVIII Rule 17 of Code of Civil procedure by petitioner's / Defendant's 1 to 3 seeking to reopen and recall of PW1 for further cross examination. The case of the petitioner's is that, the 3rd petitioner/ 3rd defendants, Tahsildar, Sankari by affidavit stated that she was appointed as Tahsildar, Sankari and only recently came to know about the pendency of this suit. The petitioner's further averred that when she consulted with the Government pleader it was represented that the matter was posted for the cross examination of PW1 but the Court closed the cross of PW1, without the cross of PW1 by the defendant's 1 to 3. The petitioner's further averred that the incumbent government pleader who appeared for defendant's 1 to 3 had previously represented the respondent/plaintiff in another matter relating to the same property, the 8th defendant had objected to such representation and a petition for change of government pleader was made before the district collector, who is stated to have agreed to appoint another government pleader. Delay in effecting the change is attributed to administrative process/transfer of the collector. The Petitioner's/defendant's contends that the failure to cross examine on the date fixed was bonafide and not deliberate and seeks reopen and recall of PW1 for further cross examination.

7.1) On the other hand, the respondent/plaintiff has opposed that PW1 was already cross examined earlier on 06.01.2004 and on 26.06.2009 additional proof affidavit filed by PW1 and on 06.07.2009, PW1 was cross examined by defendant's 1 to 3. The respondent further alleged that this petitioner's have filed this petition after 16 years for PW1 further cross in mala fide intention and attempting to drag on the proceedings and to fill gaps in this case after inordinate delay. Hence prayed for dismissal of this petition.

7.2) Upon careful consideration of contentions of both side counsels, this court is bound to elucidate the scope of Order XVIII rule 17 of code of civil procedure code which empowers the court to recall any witness who has been examined at any stage of the suit and to put such questions as it thinks fit. The court's power to recall is discretionary at the same time it must be exercised judiciously. While looking into present case in hand, as stated by respondent/plaintiff counsel, PW1 was cross examined by Defendant's 1 to 3 on 06.01.2004. On 26.06.2009 additional proof affidavit of PW1 was filed and on 06.07.2009 PW1 was again cross examined by Defendant's 1 to 3. In such circumstances the petitioner's have filed this present interlocutory application seeking permission to cross examine PW1 once again after a lapse of nearly 16 years. The court is of considered opinion as, the non- cross examination of PW1 by petitioners/Defendant's 1 to 3 occurred due to the pending administrative process for change of Government pleader. Now the suit is in further Dw's stage. This Court is of opinion as the though there is in ordinate delay between the original cross examination of PW1. The stage of evidence is not closed yet and in the present application, the Court has to verify whether there will be a potential prejudice will be cause to respondent/Plaintiff if reopen and recall is permitted.

7.3) This Court is of considered opinion as the petitioners failure was bonafide and the evidence sought be reopen and recall is essential for just decision and this Court opines to give one more opportunities to the petitioner's/defendant's 1 to 3. There

will be no prejudice cause to respondent/plaintiff. Considering the year of institution of the suit and for the hardship caused to the Respondent / Plaintiff and in the interest of justice, this interlocutory applications are deserved to be allowed on cost.

8) In the result, this Interlocutory applications in I.A.No.13/2025 and I.A.No.14/2025 are allowed on payment of cost of Rs.1000/- totally (500x2 counts) to be paid by Petitioner's/Defendant's 1 to 3 to the Respondent/Plaintiff. For compliance of cost call on 17.11.2025.

District Munsif,
Sankari.

Encl.:

Petitioner side Witnesses & Exhibits:- NIL

Respondent side Witnesses & Exhibits:- NIL

District Munsif,
Sankari.

District Munsif Court, Sankari.
Draft / Fair Common Order
I.A. 13/2025 and I.A.14/2025 in
O.S. No.243/2004
Date: 12.11.2025
