

IN THE COURT OF THE DISTRICT MUNSIF, SANKARI

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

Tuesday, the 22nd day of April, 2025

திருவள்ளூர்வராண்டு 2056, விசுவாவசு வருடம், சித்திரை திங்கள் 09 ம் நாள் செவ்வாய்கிழமை

I.A.12/2023 in O.S.243/2004

A. Nallamuthu

... Petitioner / Plaintiff

//Versus//

1. The Government of Tamilnadu
represented by District Collector, Salem.
2. Revenue Divisional Officer, Sankari
3. Tahsildar, Sankari
4. Sithan (died)
5. Raju
6. Selvam
7. Sabapathi
8. Malaiyadi Muniyappan Temple Ellapalayam
by its Oor Moopar P. Ponnusamy
9. Kaliasammal

... Respondents / Defendants

This petition taken to file on 08.12.2023 and coming on this day for hearing on 17.04.2025 before me in the presence of Thiru. A. Kailassanathan Advocate for Petitioner, and of Thiru. M. Sakthivel Advocate for R8. R4 died. R1 to R3 and R5 to R7 were Exparte, and after perusing the Petition, Counter and on hearing both sides and this Court passed the following

ORDER

This Interlocutory Application has been filed Under Order 18 Rule 17 read with Section 151 of the C.P.C, 1908 seeking the recall of DW2 for further cross examination.

2) Gist of the petition:-

The Petitioner/Plaintiff has filed the present suit for declaration and permanent injunction against the respondent/defendant. The said suit was posted for further cross examination of DW2 on 06.12.2023. The petitioner have applied for certain documents to cross examination of DW2. The petitioner contends that due to illness from 04.12.2023 to 06.12.2023 they were unable to instruct their counsel to proceed with the cross examination on the scheduled date. Upon recovery, the petitioner filed this application promptly to recall DW2 for further cross examination.

3) Brief Averments of Counter filed by the Respondent/ 8th defendant:-

The respondent contends that the petition is false, fraudulent and lacks legal and factual merit. All allegations are denied unless specifically admitted and the petitioner is put to strict proof thereof. The respondent alleges that the petition has been filed to unnecessarily prolong the proceedings. It is claimed that the petitioner has no legitimate claim over the property in question and has previously failed to cross examine DW2 despite multiple opportunity and adjournments granted by the court. The respondent prints out that the petitioner had already filed a recall petition for DW2 on 06.07.2023. This current petition is the second attempt to recall DW2 for continued cross-examination without presenting any valid (or) new reasons. The respondent request this Hon'ble court to dismiss the current petition to recall DW2 and to impose exemplary costs on the petitioner for causing unnecessary delays and inconvenience.

4) There is no oral and documentary evidence on both sides.

5) Point for consideration:-

Heard, Both sides. Perused case records. The petitioner/Plaintiff avers that he filed this petition to recall DW2 for the purpose of further cross examination on his side. The petitioner contends that the matter was posted for further cross examination of DW2 on 06.12.2023 but due to illness from 04.12.2023 to 06.12.2023 he was unable to instruct their counsel to proceed with the cross-examination on the scheduled dated. Upon his recovery, he filed this application promptly on 08.12.2023 to recall DW2 for further cross examination.

6) On the other hand, the Respondent/Defendant vehemently contends that the petition has been filed to prolong the proceedings. Despite multiple opportunities and adjournments granted by the court the Petitioner/Plaintiff has failed to cross examined DW2. This current petition is the second attempt to recall DW2 for continued cross examination without presenting any valid reasons and he prayed to dismiss the petition with exemplary cost.

7) The court has considered the submissions made by both parties and previous stages of this petition, it is noted that the cross of DW2 was adjourned on 01.08.2022 and after giving several opportunity the stage of Cross of DW2 was closed on 06.07.2023. On deeply looking into the allegations made by the respondent, on 10.07.2023 petitioner/plaintiff has filed 1st Application Under Order 18 Rule 17 in I.A.No.9/2023 and allowed on 25.07.2023. On 26.09.2023 DW2 was partly cross examined and adjourned for further cross of DW2, but even after giving multiple opportunity the Petitioner/Plaintiff has not cross the DW2 and hence on 06.12.2023, DW2 Cross continuation is closed. On 08.12.2023 this petition (2nd Application) Under Order 18 Rule 17 is filed.

8) Since there is no statutory time limit for filing recall application Under Order 18 Rule 17 of C.P.C, Courts expect the parties to act Promptly. It is imperative to act without undue delay and to provide substantial justification for the recall to ensure the application is considered favourably. However, the petitioner/plaintiff despite of giving multiple opportunities, the petitioner/plaintiff has cross examined DW2 partly. Eventhough this is a 2nd Application for recall of DW2 for further cross examination, he has provided a reasonable explanation for the absence on the schedule date. The application has been filed without undue delay and the recall of DW2 is essential for the just adjudication of the matter.

9) By taking into consideration, the year of the suit and the age of the Petitioner/Plaintiff, and the circumstances of the case, this court is of the opinion that further cross of DW2 is necessary for the effective adjudication. In the interest of the justice and without prejudice to both parties this court is of the opinion to give one more opportunity for DW2 Cross. Hence, this court is inclined to allow this petition and for the inconvenience caused due to prolonged delay, it is appropriate to impose cost of Rs.1000/-.

10) In view of the above, this petition is allowed. DW2 shall be recalled for further cross examination by the Petitioner/Plaintiff. The cross examination shall be conducted on the next schedule date without fail.

Finally, this Petitioner/Plaintiff shall pay Rs.1000/- to the Respondent/Defendant by 24.04.2025 as cost. It is also ordered that in case of default, this petition will automatically be dismissed. Call on 25.04.2025.

This order directly dictated and typed by Steno-typist and corrected by me, and Pronounced in the Open Court in the 22nd day of April, 2025.

District Munsif,
Sankari.

Encl.: NIL

District Munsif,
Sankari.