

IN THE COURT OF THE SUBORDINATE JUDGE, OMALUR  
SALEM DISTRICT.

Present: Tmt. T.Malathi, B.Sc., B.L.,  
Subordinate Judge, Omalur

Thursday, the 07<sup>th</sup> day of August 2025  
I.A.No.4/2025 in O.S.No.509/2018

1. P. Mani
  2. M. Senthilkumaran
  3. Mohanraj
  4. Lakshmi
  5. P. Babu
- ..... Petitioners/Defendants 1,2,5 to 7

/versus/

Arulmghu Sri Ramalinga Sowdeswari Amman Temple, Omalur

Represented by its Trustees:

1. S. Selvaraj (died)
  2. R. Balasubramaniam
  3. P. Krishnamoorthy
  4. B. Manoharan
  5. Chandrasekaran
  6. Sugumar
- .....Respondents/plaintiffs
7. Dr. Chandrasekaran
  8. Navaneetha Jayakrishnan
- .... Respondents/Defendants 3 and 4

This Petition came up for final hearing before me on 04-08-2025 in the presence of Learned counsel Mr. M.Senthilkumar, B.A., B.L., appearing for the Petitioners/Defendants 1,2,5to 7 . The Learned counsel Mr. P. Kandasamy, B.L., appearing for 2 to 6 respondents/plaintiffs. The Learned counsel Mr.C. Natarajan, B.A., B.L., appearing for 7, 8 Respondents/ Defendants 3 and 4. R1 reported as died and after perusal of petition, affidavit and case records and after hearing the arguments of both sides, this court passed the following...

ORDER

1. This Petition has been filed by the Petitioner/Plaintiff under Order 18 Rule 17 r/w section 151 of C.P.C to recall the DW1 for the purpose of marking documents .

2. Brief averments of the Petitioner's Affidavit:

The 1<sup>st</sup> Petitioner herein and the 1<sup>st</sup> defendant in the above suit. The Respondents/plaintiffs have filed the above suit for the relief of declaration of their title over the suit property with full of false declaration. The above suit is posted for arguments and at the time of filing his DW1 Chief examination he was not able to mark the documents on his side exhibits, since he was not able to trace out those documents at the time of his chief examination. Subsequently due to heart problem he was not able to collect those documents and not able to produce before this court. Since he was in bed ridden he was not able to meet his counsel and that on 02.07.2025 only the petitioner recovered and immediately rushed his counsel and enquired about the stage of the case. The petitioner later came to know that due to non production of his documents that his side oral evidence was closed and the suit is posted for arguments. Unless the petitioner was recalled for the purpose of marking documents on his side exhibits he will be put into heavy loss and hardships that would not compensated to him. The petitioner's non-production of documents is neither willful nor wanton. Therefore, the petitioner's side evidence to be recalled for the purpose of marking the documents as their side exhibits and to adduce further evidence on their side. Hence this petition.

2. The brief averments of counter filed by the 4<sup>th</sup> respondent and adopted the 2, 3, 5 & 6 is as follows:

All the averements stated in the affidavit and petition is false except which are specifically accepted by this respondents. The petitioners have to strictly prove their averments. In the above suit the plaintiff side evidence was closed on 04.09.2023. Subsequently the case was posted for defendants side evidence on 12.09.2023. After

several hearing i.e about 16 hearing on 27.03.2024 the defendants filed proof affidavit of 1<sup>st</sup> defendant as DW1. On that day they obtained the order for filing their side documents. Eventhough about 17 hearing given to the defendants for filing their side documents, the defendants not filed their documents. Hence on 18.10.2024, this court ordered to close the DW1 chief continuation. The case was posted to about 7 hearings for further Dws , after that the D3, D4 no representaion hence the D3, D4 side evidence closed and the case was adjourned to 04.07.2025 for arguments. This petition is not admissible in law as it has been filed on the basis of false grounds and without giving proper reasons. Hence, this petition is liable to be dismissed.

3. The Respondents 3 and 4 are endorsed as no objection to allow this petition.

4. The Points for consideration is Whether the Petition is to be allowed or not?

5. Both sides have not adduced any oral and documentary evidence. Petition, Affidavit, counter and case records were perused.

6. This Petition has been filed by the Petitioners to reopen the above case for the purpose of marking the documents.

7. On perusal of records, the Respondents/plaintiffs have filed the above suit for the relief of declaration of their title over the suit property against the petitioners/defendants. The above suit is pending at the stage of plaintiffs side arguments. The petitioners stated that he was not able to trace out the documents at the time of his chief examination of DW1. Subsequently due to heart problem he was not able to collect those documents and not able to produce before this court. Since he was in bed ridden he was not able to meet his counsel and that on 02.07.2025 only the petitioner recovered and immediately rushed his counsel and enquired about the stage of the case and his non-production of documents is neither willful nor wanton. The Respondents 7, 8/Defendants 3 and 4 side also endorsed as no objection. The respondents 2 to 6 side stating their counter that after the plaintiff side evidence was closed on 04.09.2023, the case was posted for defendants side evidence on

12.09.2023. After several hearings posted for DW1 Chief continuation. After that the DW1 chief continuation was closed and the above case was posted for further Dws. And after several hearings, on 27.06.2025 the D3, D4 side evidence was suomotto closed and the case was adjourned to 04.07.2025 for plaintiffs side arguments. In this stage the petitioners/defendants have belatedly filed this application to recall the DW1 chief continuation for production of documents.

8. And on perusal of case bundle, till now the DW1 evidence not properly concluded. And Even though several time has been taken by the petitioner and not complete chief examination, mere delay on the side of the petitioner is not a ground to reject the applicaiton of the petitioner. Hence opportunity to be given to the petitioners to prove their defense.

9. This court decided that since by allowing this petition, no harm would cause to the respondents and further if the documents are adduced for marking as their exhibits, the respondents/plaintiffs have chance to cross examine the petitioners/defendants and hence considering the facts and circumstances, this court in the interest of justice and by following the principles of natural justice and equity and to give an opportunity to the petitioner and to avoid multiplicity of proceedings this court inclined to allow this petition.

In the result, the Petition is allowed. No cost.

Order directly dictated to stenographer and she had typed in computer and taken print out and after rectification of mistake, Pronounced by me in open court this the 07<sup>th</sup> day of August 2025.

Sd./- T. Malathi  
Subordinate Judge,  
Omalur

Enclosure:

Both side witnesses/documents:Nil.

Sd./- T. Malathi  
Subordinate Judge,  
Omalur

Order uploaded on 11.08.2025