

**IN THE COURT OF ADDITIONAL DISTRICT JUDGE,
ADDITIONAL DISTRICT COURT, SIVAGANGAI.**

**Present: Tmt.R.Sathiathara,M.A.,M.L.,
Additional District Judge,
Additional District Court,
Sivagangai.**

Dated Tuesday, the 29th day of November 2022.

2052 ThiruvalluvaranduSubakrith on Tuesday 13th day of KarthigaiThingal

I.A.No.10/2022 in OS.No.40/2013

Singaram ... Petitioner/1stDefendant

-//Vs//-

1. Chandran	... Respondent / Pliaintiff
2. Yegappan	... Respondent / 2 nd Defendant
3. Jeyachitra	... Respondent / 3 rd Defendant
4. VD.Vallikannu	... Respondent / 4 th Defendant
5. T.Sekar	... Respondent / 5 th Defendant
6. J.Karthik	... Respondent / 6 th Defendant
7. SR.Gomathi	... Respondent / 7 th Defendant
8. S.Meenal	... Respondent / 8 th Defendant
9. Karpagavalli	... Respondent / 9 th Defendant

This petition is coming on 10.11.2022 before me in the presence of Thiru.Maga.Muthupandian, counsel for the Petitioner and Thiru.M.Mohanasundaram, counsel for respondents and on perusal of records and documents and on considering the evidence and on hearing arguments this court delivered the following.

ORDER:

Petition filed under section 151 of CPC to permit the petitioner to recall the petitioner to depose his evidence.

The averments in the petition in brief is as follows:

2. The petitioner is 1st defendant in the suit. The 1st respondent is the plaintiff has filed original suit for partition and other relief against other respondent and defendants. The plaintiff side evidence was closed on 21.02.2020 and posted for 1st defendant side evidence on 26.02.2020 and this petitioner was unable to attend court in person owing to the past COVID-19 lockdown situation and the travel rules and regulations imposed by the Malaysian government and as this petitioner was residing in Malaysia and had to comply with Malaysian government rules and regulations. Due to oldage and sickness this petitioner will not allow to go overseas including India. This delay is neither wilful nor wanton. Hence evidence closed on 17.03.2020. This petition filed to recall to depose evidence. Otherwise this petitioner will be put into irreparable loss.

The averments in the counter filed by R2 adopted by R3, R4 and R9 in brief is as follows:

3. The petitioner is said to be hale and healthy. There is no legal impediment to prevent him to come over to India which is his birth place. The medical certificate issued in another country cannot be accepted without proper enquiry. The original suit posted for argument on 22.07.2022. The reason stated to recall are untrue. The petition was filed only to drag on the matter. Hence this petition to be dismissed.

Points to be decided:

1. Whether the petition to be allowed to recall the main suit to depose the evidence?

4. On the side petitioner and respondents no oral and documentary evidence adduced.

Points for consideration:

5. The petitioner is 1st defendant in original suit No.40/2013 filed in the year 2013. The 1st respondent is the plaintiff in the main suit. The other respondents are defendant in the suit. The Original suit is filed for partition and other relief. The plaintiff side evidence was closed on 21.02.2020 and posted for 1st defendant side evidence on 26.02.2020. The 1st defendant side evidence was closed on 17.03.2020. The 1st defendant counsel endorsed on 17.03.2020 as 1st defendant is admitted as in patient at Malaysia he is unable to examine himself as a witness and hence no evidence on the side of the 1st defendant at present his side is closed. But the 1st defendant filed recall, to examine through video conference stating that he was unable to attend this court in person owing to the past COVID 19 lockdown situation and the traffic rules and the regulation imposed by the Malaysian government as at the time he was residing in Malaysia and had to comply with Malaysian government rules and regulations and due to his old age and sickness will not allow him to go overseas including India. In the main case trial commenced on 23.09.2019 and the plaintiff side evidence closed on 21.02.2020 and posted for defendant side evidence on 26.02.2020 and on 17.03.02020 endorsed as 1st defendant side no evidence and he had not sought for permission to examine him at later stage before other witnesses under order 18 Rule 3A also and after several hearings and on 16.10.2020 2nd defendant examined as DW1 on 16.10.2020 and in chief and after several hearings he

was cross examined on 21.03.2022 in full and after several hearing DW2 proof affidavit filed on 18.04.2022 and after several hearing cross examined by DW1 on 16.06.2022 and after two hearings DW2 was cross examined by plaintiff on 06.07.2022 and posted for further defendant side evidence after 3 hearings and D2 to D9 evidence were closed on 20.07.2022 and posted for argument on 22.07.2022 and this petition to recall filed on 01.08.2020 belatedly as afterthought. Physical hearing was restricted in the court due to spread of pandemic Covid 19 only from 24.03.2020 to 22.07.2020 and 01.04.2021 to 30.06.2021. The physical hearing restriction was uplifted from 22.07.2020 and 01.07.2021. The 1st defendant never took any steps to examine himself either for physical hearing or through video conferencing during the opportunity given from 26.02.2020 for adducing defendant side evidence. He had not taken any effective steps during all the above adjournments and several hearings granted. Now while the case is posted for argument in order to drag on the further proceedings this recall petition is filed along with petition to permit to examine through video conference petition knowing that he was not already examined will lead to abuse of process of court. So I answer the point as against the petitioner.

In the result, petition dismissed. No cost.

Dictated to the typist and typed by him in the computer in my presence and corrected and pronounced by me in open court this the 29th day of November 2022.

Additional District Judge,
Sivagangai.

List of witness and documents on the side of the Petitioner and respondents : Nil

Additional District Judge,
Sivagangai.