

**IN THE COURT OF THE DISTRICT MUNSIF, DEVAKOTTAI**

**PRESENT : Tmt.R.PREMI, B.A., L.L.B., (Hons).,**

District Munsif, Devakottai

Monday, the 2<sup>nd</sup> day of March, 2026

**IA.No.13/2025**

**in**

**OS.No.74/2017**

Kannan

...Petitioner

-Vs-

1. Santhi

2. The Municipal Commissioner, Devakottai.

...Respondents

This petition is coming before me for final disposal in the presence of Thiru.K.Periyasamy learned advocate for the Petitioner, Thiru.N.Ramji learned advocate for the R1 and whereas R2 was set Ex-parte. Having heard of both side enquiry and upon perusing the documents, this court do hereby pronounce the following...

**ORDER**

**The petition is filed under Order XVIII, Rule 17 and 151 of CPC**

**1. The averments in the petition are as follows:**

The petitioner is the plaintiff in the main suit. The suit for declaration and permanent injunction has been filed by the petitioner. In the main suit since the evidence from the defendant's side has been completed, when the Advocate Commissioner has measured the suit property, and the petitioner came to know

that the first defendant has built a house and compound in the suit property. Hence, the measurement of the suit property and the prayer needs to be changed for which a fresh suit was filed by this petitioner in OS.no 69/2021 by withdrawing this suit. But the first respondent has filed a civil revision petition before the Honorable High Court of Madras, in which an order was passed and based on that the suit in OS.no 69/2021 was withdrawn by this petitioner. After that, an amendment petition in IA.no 10/2024 was filed by this petitioner to amend the plaint regarding the encroachments made by the defendant. Based on which, the plaint was amended and subsequently, additional written statement was filed by the respondent. Since the plaintiff side evidence was closed before the Advocate Commissioner filed his report, it becomes important to reopen the plaintiff side evidence to prove the property details of the suit. Hence, he has filed this petition to recall the plaintiff side witnesses PW1 and prays that if the petition is not allowed, he would be subject to irreparable loss and injury. Hence, he prays for the petition to be allowed.

**2. Averments in the counter are as follows:**

The respondent has denied the contentions of the petition and states that the suit property of plot number 62, initially belonged to Kupusamy Servai and his brothers and plot number 61 was bought by the respondent/defendant by a registered sale deed dated 24.07.1997 and he has been in possession and enjoyment of the same by building a house and compound wall. The property bought by the respondent is plot number 61 to an extent of 4,300 square feet and the Eastern four boundary in the sale deed has been shown as 15 feet pathway. The predecessor of the Petitioner owned plot number 62. In the sale deed of the petitioner's predecessor, the East-West road to an extent of 15 feet is on the Southern side of the property and in the said sale deed, the Northern four

boundary has been shown as plot number 61 belonging to the respondent's predecessor, Mr.Karu.Veerasaamy. The first respondent has placed a door on the Southern side in plot number 61 for his own purpose and did not make any encroachment regarding the same. The property bought by the petitioner is the part of plot number 62. But the petitioner has influenced the revenue officials and has changed the patta for the Southern part of number 61 and is claiming ownership over the same. This suit property is part of the plot number 61 belonging to the respondent. The property bought by the petitioner and the property for which the petitioner has obtained patta transfer are two different properties. A wrongful patta transfer does not create any right with respect to the property. A petition has been filed by the respondent to cancel the wrongful patta transfer order and the same is pending. The petitioner having deposed with respect to the documents based on the old measurements, did not mention as to on the basis of what he is about to give evidence now. The petitioner, having accepted the fact that the documents produced by him is not related to his property, has filed this petition now to reopen his evidence to fill the lacunas left out by him. The first respondent has always been in possession and enjoyment of the suit property and unnecessary problems have been caused by measuring the suit property as if it falls within the compound of the first respondent. It was measured based on the submitted patta of the petitioner. These details having been mentioned in the written statement, the petitioner has filed a petition now stating as if he came to know about those details only when the Advocate commissioner has filed his report. The main suit having been posted for arguments, the petitioner has filed his petition now, only with an intent to drag on the proceedings of this case. Hence, he prays for the petition to be dismissed.

**3. Now the question to be decided is whether the petition has to be allowed or not?**

3(i). Petition and counter perused. Enquiry heard on both sides. The petition has been filed to reopen the evidence on plaintiff side as the plaint was amended and additional written statement was filed by the respondent. The petitioner states that since the respondent seems to have encroached upon the suit property based on the Advocate Commissioners report, he seeks to reopen the plaintiff side evidence and to provide further evidence on his side. On the other hand, the respondent has denied the contention of the petition and stated that the suit property belongs to the respondent and the property bought by the plaintiff and the property for which the plaintiff has obtained a Patta transfer are two different properties and he is disturbing the respondent/defendants peaceful possession. Both side averments perused. On perusal of records it becomes clear that the plaint in the main suit has been amended regarding the extent of encroachment in the suit property claimed to have been done by the defendant and a prayer of recovery of possession has been added. Following the same, the additional written statement was filed by the defendant based on the amended plaint copy and the next stage would only be additional issues followed by additional evidence if any on both sides. Hence it would only be fair to give one more opportunity to the plaintiff to adduce additional evidence on his side, based on the new prayers added as the plaint has been amended, additional written statement was filed and additional issues are about to be framed. Hence, based on the additional issues to be framed, it is only fair to give the plaintiff an opportunity to provide additional evidence if any on his side and for that purpose alone, the plaintiff side evidence can be reopened. But the petitioner has filed this petition to recall the PW1 who was the first witness on the plaintiff side to

depose regarding the amended property description which is not permissible because the PW1 has sworn before the court and has filed an affidavit and has deposed regarding the suit property. Subsequently, the same witness cannot be recalled to depose in a different manner only because the plaint has been amended. Moreover, In the case of **K.K. Velusamy v. N. Palanisamy reported at (2011) 11 SCC 275**, the Honourable Supreme Court of India has discussed the power of the Court under Order XVIII Rule 17 of Civil Procedure of Code. It was held that this power is only for clarification (i.e.) to enable Court to clarify any issue or doubt, it may have in regard to evidence led by parties by recalling any witness so that the Court itself can put questions to such witness and elicit answers. The relevant paras read as under:

“9. Order 18 Rule 17 of the Code is not a provision intended to enable the parties to recall any witnesses for their further examination-in-chief or crossexamination or to place additional material or evidence which could not be produced when the evidence was being recorded. Order XVIII Rule 17 is primarily a provision enabling the court to clarify any issue or doubt, by recalling any witness either suo motu, or at the request of any party, so that the court itself can put questions and elicit answers.”

Thus, the powers under this provision cannot be exercised without proper reason and grounds. The only remedy available to the plaintiff would be to adduce additional witnesses on his side, so as to prove his case before the court and provide necessary additional evidence regarding the same as there is no material amendment regarding the nature of the property, but only with respect to the extent of encroachment and a new prayer having been amended regarding the encroachment. Hence, plaintiff shall produce additional evidence on his side and the PW1 cannot be recalled to depose based on the amended plaint copy

against what he has already deposed before this court. Hence, in the end, this petition is dismissed. No order as to cost

**4. Decision**

**In the end, the petition is dismissed. No order as to cost.**

This Order was dictated by me, typed by the steno-typist, corrected by me and pronounced by me in the open court on 2<sup>nd</sup> day of March 2026.

**District Munsif,  
Devakottai.**

**Annexures:**

List of witnesses on the side of the Petitioner-Nil-

List of documents on the side of the Petitioner-Nil-

List of witnesses on the side of the Respondents-Nil-

List of documents on the side of the Respondents-Nil-

**District Munsif,  
Devakottai.**