

**IN THE COURT OF ADDITIONAL DISTRICT JUDGE (FTC),
THENI.**

**Present : Tmt.G.Sree Devi, B.A. L.L.M.,
Additional District Judge [FTC],Theni.**

Thursday, the 30th day of July 2026.

IA.Nos.11/2026 & 12/2026 in OS.No.246/2021

Dhanarajan	...	Petitioner/3 rd Defendant
	Vs.	
1. Kanishkar	...	1 st Respondent/Plaintiff
2. Jeyaraj		
3. Ganesan	...	2, 3 Respondents/1, 2 Defendants

These petitions came up for final hearing before this court on 27.07.2026 in the presence of Thiru.S.Pandiyarajan, Advocate for the Petitioner and Thiru.R.Gunasekaran, Advocate for the 1st Respondent/Plaintiff and upon perusing the documents and upon hearing both sides and having stood over for consideration till this day, this Court delivered the following :

COMMON ORDER

IA.No.11/2026 petition is filed by the Petitioner under Section 151 of CPC to reopen the Defendant side witness.

IA.No.12/2026 petition is filed by the Petitioner under Order 18 Rule 17 to recall the Defendant side witness.

2. Averments made in the petition in IA.Nos.11/2026 & 12/2026 brief is as follows:

(2.1) The suit schedule properties had been in the possession and enjoyment of the petitioner/3rd defendant's mother, Mrs. Vellaithai, even prior to the period covered by the Sale Agreement dated 25.06.2006. After the death of the petitioner/3rd defendant's mother, Mrs. Vellaithai, on 06.04.2013, the suit schedule properties were allotted to the petitioner/3rd defendant in July 2013 pursuant to a family partition. From then, the petitioner/3rd defendant has been in exclusive possession and

enjoyment of the suit properties, maintaining them and enjoying the income and benefits derived therefrom. However, the 1st respondent/plaintiff has filed the present suit before this Court alleging that the suit property had been in the possession and enjoyment of the 1st respondent/plaintiff and that the petitioner/3rd defendant had unlawfully encroached upon it. Further, the Uthamapalayam Tahsildar has issued Exhibits A-8 and A-9, certifying that the suit property was in the possession and enjoyment of the 1st respondent/plaintiff. Therefore, in order to examine the Uthamapalayam Tahsildar as a witness on behalf of the petitioner/3rd defendant, a witness summons was issued through the Court on 15.06.2026, and the matter was adjourned to 25.06.2026.

(2.2) However, on 25.06.2026, the Uthamapalayam Tahsildar, who had issued Exhibits A-8 and A-9, did not appear before the Court. Instead, the Revenue Inspector, of Thevaram appeared before the Court and sought time for the Tahsildar's appearance. Accordingly, the matter was adjourned to 06.07.2026 for the appearance of the Uthamapalayam Tahsildar. Even on 06.07.2026, the Uthamapalayam Tahsildar, who had issued Exhibits A-8 and A-9, did not appear before the Court till 5:45 p.m. Instead, one Mr. Sasikumar appeared before the Court and sought further time for the Tahsildar's appearance. Based on that request, the matter was adjourned to 13.07.2026. On 13.07.2026, the Uthamapalayam Tahsildar again did not appear. Instead, the Deputy Tahsildar, Mr. Murugan, appeared before the Court. The petitioner/3rd defendant was prepared to cross-examine him.

(2.3) However, the counsel for the petitioner/3rd defendant was engaged in proceedings before another Court on that day. At about 12:30 p.m., the case was called upon, the petitioner/3rd defendant to cross-examine Deputy Tahsildar Mr. Murugan. Since the petitioner's counsel was attending another Court, he could not immediately appear before the Court to conduct the cross-examination. Consequently, the Court recorded that the petitioner/3rd defendant had not cross-examined the witness and that there was no representation on behalf of the petitioner/3rd defendant

for such cross-examination. Accordingly, the Court closed the evidence of the petitioner/3rd defendant on 13.07.2026. As a result, the petitioner/3rd defendant was unable to examine the Uthamapalayam Tahsildar, who had issued Exhibits A-8 and A-9. Only after the petitioner's counsel returned and the petitioner met him to enquire about the case did the petitioner come to know about the order passed by the Court. The suit property rightfully belongs to the petitioner/3rd defendant.

(2.4) Further, the petitioner/3rd defendant possesses valid documentary evidence and witnesses to establish his case before the Court. Since Exhibits A-8 and A-9 incorrectly describe the possession of the property, it is only by examining the Uthamapalayam Tahsildar, who issued those documents, that the petitioner/3rd defendant can establish the true facts relating to those documents before the Court. Further, it is necessary to examine the Uthamapalayam Tahsildar regarding Exhibits A-8 and A-9 and the documents relied upon in issuing those exhibits. Such examination would assist the Court in arriving at a proper and just decision in the suit. The failure to cross-examine Deputy Tahsildar Mr. Murugan was not deliberate or intentional on the part of the petitioner/3rd defendant; it occurred due to unavoidable circumstances.

3. Averments made in the counter filed in IA.No.12/2026 and adopted in IA.No.11/2026 by the Respondent in brief :

(3.1) The Respondent/Plaintiff categorically deny all the allegations, averments in his Supporting affidavit as false, vexatious and legally untenable. It is a well-settled principles of civil jurisprudence that the provisions of Order XVIII Rule 17 of the Code of Civil Procedure (CPC) cannot be invoked by a litigant as a matter of right to fill up lacunae in their case, or to patch up omissions after failing to utilize the legal opportunities provided by the Court. He explicitly states that he wants to challenge the validity of the officially marked public documents Ex.A8 and Ex.A9. Having slept over his rights when the official witness was physically present in Court, the Petitioner cannot now use the mechanism of "Recall" to stage a strategic

afterthought defense or to test a new line of cross-examination. The official docket entries maintained by this Hon'ble Court completely shatter the defense. On 01.06.2026 the Defendants were completely absent. The Court, showing utmost fairness, adjourned the matter to 08.06.2026.

(3.2) On 08.06.2026 again, there was absolutely no representation for the Defendants. The Defendants were called, found absent, and their cross-examination stage was closed. On 15.06.2026 The Court graciously permitted the issuance of summons to the Tahsildar. On 25.06.2026 The Revenue Inspector, Ilayaraja, appeared on behalf of the Tahsildar and sought time to produce documents. The matter was posted to 06.07.2026. On 06.07.2026 one R. Sasikumar appeared with documents. The Court waited until late evening, as there was no representation, the Court then explicitly ordered the personal appearance of the Tahsildar on 13.07.2026. On 13.07.2026 the official witness (Deputy Tahsildar Murugan) was physically present in the court hall with all public records. The Court waited patiently until 12:30 PM. Yet, the Petitioner and his counsel completely did not appear, the evidence was closed on 13.07.2026. The Petitioner pleads that his counsel was "busy in another court assignment" at 12:30 PM on 13.07.2026. This is an unacceptable and legally invalid excuse. It is the bounden duty of the litigant and his legal representatives to make alternative arrangements when an official government witness is present in the court hall. Public servants cannot be summoned to Court repeatedly at the whims and caprices of a negligent litigant. Wasting the administrative time of the Uthamapalayam Revenue Department and the judicial time of this Court amounts to an abuse of the process of law.

(3.3) Furthermore, despite clear directions issued by the Madurai Bench of the Hon'ble Madras High Court to expedite and dispose of this trial within a stipulated time frame, the Petitioner herein / 3rd Defendant has been deliberately filing frivolous, unmerited, and unnecessary intermediate applications. This is a calculated attempt to waste the precious judicial time of this Court, derail the ongoing trial, and

divert the focus of the main suit. Consequently, the present application is an abuse of the process of the Court and is liable to be dismissed with exemplary costs.

4. No oral or documentary evidences let in by both sides.

5. Point for consideration:

Whether IA.No.11/26 filed u/s 151 of the CPC and IA.No.12/26 filed under Order 18 Rule 17 petitions are allowed or not?

6. Point :

(6.1) These petitions filed to reopen the 3rd Defendant side evidence for the purpose of summoning the Tahsildar, Uthamapalyam for marking certain documents and adducing evidence. On 15.06.2026 batta was paid by the 3rd Defendant to examine Tahsildar, Uthamapalayam. On 25.06.2026 on behalf of the Tahsildar, the Uthamapalayam Revenue Inspector appeared and sought time for the production of documents by the Tahsildar, Uthamapalayam. On 06.07.2026 the Revenue Inspector, Sasikumar appeared before the court with the relevant documents called for Petitioner/3rd Defendant. The Revenue Inspector, was physically present in the court from the morning session till 5.45 P.M. However, there was no representation by the Plaintiff and Defendant side. Hence, the case was adjourned to 13.07.2026. On 13.07.2026 Thiru.Murugan, the Deputy Tahsildar appeared before the court with the register and documents summoned by the Petitioner/3rd Defendant. However neither the Petitioner nor the counsel for the Petitioner appeared before the court till 12.30 P.M. As sufficient opportunity was given to the Petitioner the 3rd Defendant side evidence was closed, taking into consideration that there is a direction by the Hon'ble Madurai Bench of Madras High Court, to dispose the case within a stipulated time and was posted on 15.07.2026. However the Petitioner watching the proceedings of the court has filed this petition to reopen and recall on 27.07.2026 to the 3rd Defendant side evidence.

(6.2) The Respondent side vehemently opposed these applications on the ground that the Petitioner is unnecessary prolong the proceedings by filing petition after petition and is not showing progress in the case. It is out of context to mention that as per the directions of the Hon'ble Madurai Bench of Madras High Court the case is proceeded by posting the dates shortly to dispose the case. It is pertinent to note that when the suit was posted on 30.01.2026, this Petitioner filed IA.No.10/2026 under Order 7 Rule 11 of the CPC and after hearing both the sides the petition was dismissed on 09.04.2026. Once again after merely 1½ months the Petitioner summoned the Tahsildar, Uthamapalayam for cause production of the documents relied upon him. When the witness, the Deputy Tahsildar, Uthamapalayam appeared with the relevant records the Petitioner not proceeded with the case on 13.07.2026.

(6.3) It is apparent that the Petitioner is trying to gain time and prolong the proceedings. However, this court considers that the Petitioner should be given an opportunity to put forth his best evidence before this court to prove his defense theory. The court may at any stage of the suit recall any witness. To given opportunity to the Petitioner and to avoid multiplicity of proceedings, this court is inclined to allow these petitions to meet the ends of justice.

7. For the foregoing reasons these petitions are allowed. In the result,

- (i) This petitioner is directed to pay the cost of Rs.2,000/- to the 1st respondent/Plaintiff on or before 05.08.2026,
- (ii) Sum of Rs.1,000/- to the summoned witness who appear before the court directly,
- (iii) The Petitioner is directed to examine/cross examine the summoned witness on the same day,
- (iv) failing compliance of the above conditions these petitions shall stands automatically dismissed.
- (v) Witness summons in three days.

(vi) Post the case on 07.08.2026 for compliance and examination of the witness.

Dictated by me, directly typed by Steno - typist into computer, corrected and pronounced by me in the open Court on 30.07.2026.

Additional District Judge,
Theni

Petitioner and Respondent side Witnesses and Documents : - Nil -

Additional District Judge,
Theni