

**IN THE COURT OF THE DISTRICT MUNSIF JUDGE, PALLADAM**

**Present:- Thiru. V. Kalidasan, B.Com., L.L.M.,  
District Munsif, Palladam.**

**Monday the 9th day of December 2024**

**I.A. No.9/2024**

**in**

**O.S.No.195/2007**

1. Marathal

2. Rajalakshmi

3. Angammal

...Petitioners/Plaintiffs

**/Vs/**

1. V. Karunakaran

2. K. Ramkumar

3. K. Lakshmanaraj

4. T. Subramaniam (Died)

5. Selvi

6. Thangaraj

7. Minor Naveen, aged about 10

Rep. by his Mother/Next Friend/

Guardian Smt. Selvi

... Respondents/Defendants

The petitioners filed this petition Under Order 18 Rule 17 and Section 151 of CPC to recall DW2 (Udhayakumar) for the Petitioners side cross examination in the suit.

This Petition is coming on 09.12.2024 for final hearing before me in the presence of Thiru. M. Ponnusamy, B.A., B.L., Advocate for the Petitioners and Thiru. V. Raveendran, B.Sc., B.L., Advocate for the Respondents. Upon perusing the Petition, affidavit, counter statement and other connected material papers on record and hearing the arguments of both sides and having stood over till this day for consideration, this court made the following...

## ORDER

### **1) Brief averments of the petitioners:-**

The petitioner herein stated that he is the 3rd plaintiff in the suit. The 1st plaintiff is his mother and the 2nd plaintiff is his sister. The petitioners have filed the above suit for partition and other reliefs against the respondents. The petitioners co-sharers of the suit property. After getting several adjournments, DW2 was examined on 13.08.2024 on behalf of the defendants 4 to 7's side witness. DW2 was not present at the subsequent hearings posted on 02.09.2024, 13.09.2024, 21.09.2024 for the petitioner side cross examination. The above case was posted on 03.10.2024 for their side cross examination of DW2. Due to the 3<sup>rd</sup> petitioner illness suddenly caused by fever, she was not able to meet her counsel to give some important and vital instructions for preparing cross examination of DW2. Due to non cross examination of DW2, petitioner side cross examination of DW2 was closed on 03.10.2024 and the above case is posted today for further DWs. The petitioners absence on 03.10.2024 and their side non cross examination of DW2 is not Wanton or willful but due to above said bonafide reason. The petitioners have not executed the alleged Release deed dated 28.02.2007. The alleged Release deed is void and illegal one. The DW2 was examined as an alleged witness for the alleged Release deed dated 28.02.2007. In order to elicit and prove their claim for partition and etc, it is very necessary to re-call the DW2 for the petitioners side for cross examination. Hence, prayed to allow this petition.

### **2) Brief averments of the respondents :-**

The petition affidavit is totally false and incorrect. This Respondent strictly denies the allegation that DW2 was not present at the subsequent hearings posted on 02.09.2024, 13.09.2024, 21.09.2024 for petitioners side cross examination and due to sudden illness of the Petitioner caused by fever, she was not able to meet her counsel to give some important and vital instructions for preparing cross examination of DW2. The respondents submit that on the side of Defendant the 2nd witness namely Udhayakumar was examined on

13.08.2024 and posted for cross examination for several hearings dated 02.09.2024, 13.09.2024, 21.09.2024. The witness namely Udhayakumar was present in each and every hearing for his cross examination. But the Petitioners purposely and wantonly didn't cross examine the witness and got adjournments by stating invalid reasons. Further the above suit was posted on 03.10.2024 for the cross examination of D.W.2 and On that day the witness Udhayakumar was present in the court, while so the Defendant counsel represented in the calling work that he was ready for cross examination. Subsequently after the witness namely Udhayakumar was put in the box and he was ready for answer the cross examination. On the other hand the Defendant counsel represented that the senior counsel was out of station, Hence the junior was not in a possession to cross examine the witness. Therefore the Hon'ble court was pleased to close the cross examination due to the false and untenable representation on the Plaintiff side. The respondent further submit that the release deed dated 28.02.2007 is valid under law and also the release deed was acted upon. The respondent further submit that the Petitioner obtained the several adjournment and allowed to close the Defendant side evidence, only with intent to avail sufficient time to threaten the witness. The application is purely abuse of process of law and court. There is no merit or substance in the above application. Hence, prayed to dismiss the petition.

### **3. Points for consideration:-**

Whether this petition will be allowed or not ?

4. Heard both sides. No oral or documentary evidence is let in by both sides.

### **5. Answer to the point :-**

Materials on records perused. It is seen from the records the suit in O.S. No.195/2007 has been filed for Partition. This petition has been filed to recall DW2 for cross examination.

6. The learned counsel for the petitioners submitted that on 13.08.2024 the case was posted for cross of DW2 and subsequently on 02.09.2024, 13.09.2024, 21.09.2024 the case was adjourned for cross examination of DW2 on the side of petitioners herein. Since, witness was not present. On 03.10.2024 the case posted for cross examination of DW2 finally. But due to ill health of 3<sup>rd</sup> petitioner, the petitioners could not instruct their counsels properly and their counsel has not cross examined the DW2 on that day. Hence, this Court closed the cross examination of DW2 on 03.10.2024. In order to prove the case of the petitioners cross examination of DW2 is very much essential. Hence, the petitioners have to be permitted to recall the DW2 for the purpose of cross examination.

7. The learned counsel for the respondents submitted that on 03.10.2024, the learned counsel for the petitioners represented before this court during the calling work that they are ready for cross examination of DW2 but subsequently the junior counsel represented that the senior counsel was out of station and he also not in a position to cross examine the witness. Therefore, this Court has rightly closed the cross examination of DW2. The present petition is failed only to drag on the proceedings.

8. On considering the both side submissions and on perusing the entire case records it is seen that the present petition is filed to recall the DW2 on the side of the petitioners/Plaintiffs for cross examination. It is admitted that on 03.10.2024 due to non cross examination of DW2 by the petitioners, this Court has closed the cross examination of DW2. Only reason stated by the petitioners is that due to ill health of the 3<sup>rd</sup> petitioner they could not instruct their counsel to cross examine the witness. Though, the reason has been stated by the petitioners as stated above, it is the fact that as submitted by the respondents that on 03.10.2024 the junior counsel for the petitioners has represented before this Court that they are ready to cross examine the DW2. But, subsequently they sought adjournment citing the reason that the senior counsel was not available and he was in out of station. In spite of sufficient opportunities the petitioner has not cross examined the DW2 and therefore, this court had closed the cross

examination of DW2. Though the reason stated by the petitioner has not convincing to this court, in the interest of justice and in order to provide one fair opportunity to the petitioners this court is inclined to allow this petition. However the delay caused by the petitioners has to be compensated by way of cost.

**In the result**, this petition will be allowed on cost of Rs.2000/- to be paid to the respondents 4 to 7 on or before 16.12.2024. Failing which this petition will be dismissed automatically. For compliance call on 17.12.2024.

Dictated to Steno - Typist, and typed directly in computer and corrected & pronounced by me in open Court, on this 9th day of December 2024

**DistrictMunsif,  
Palladam.**