

**IN THE COURT OF THE II ADDITIONAL DISTRICT & SESSIONS JUDGE,  
THANJAVUR.**

**Present : Thiru. P.Nagarajan, M.A.,M.L.,  
II Additional District & Sessions Judge,  
Thanjavur.**

**Monday the 6th day of October 2025  
(Thiruvalluvar Aandu 2056-Purattasi Matham 20<sup>th</sup> day)  
I.A. No.3/2025 in O.S. No.150/2022**

1. M.Ilavazhagan  
2. M.Mayilvaganan

..... **Petitioners/Defendants**

/Vs/

A. Varatharajan

..... **Respondent/Plaintiff**

These petitions having come up for final hearing before me on **18.09.2025** in the presence of Thiru.**S.Elamparithy**, Advocate for the Petitioners/Defendants and of **Tmt.S.Thenmozhi**, Advocate for the respondent/Plaintiff and upon hearing the arguments of both sides, upon perusal of the entire material records pertaining to the case and the matter having stood over for consideration till this date, this court delivered the following

**ORDER**

(1) This petition has been filed by the petitioner's/Defendants under sec. 151 of CPC to reopen the PW1 witness for further cross examine on petitioners' side.

**Gist of the Affidavit filed by the petitioners is as follows:**

(2) The petitioner is the defendant in the original suit. The original suit was filed against the petitioners/defendants for recovery of suit Mortgage amount. In the trial of this original suit respondent/Plaintiff was examined himself as PW.1. In the defendant side the 2nd Petitioner/2nd defendant was examined as DW1 and his mother was examined as DW2. There after five witnesses were summoned on the side of the petitioners/defendants to appear on 30.07.2025 and adjourned to next day

31.07.2025. But in both hearings witnesses called absent even though the witness summons were duly served hence this court for further evidence on the side of petitioner to 05.08.2025. Under the absence of three independent witnesses after received summons, It is necessary to re-open the PW1 witness to examine him. unless this petition is allowed the petitioners will be put to hardship. Therefore it is just and necessary to allow this petition and to reopen the PW.1 witness to further cross examination of petitioners/defendants side.

**(3) Crux of Counter filed by the respondent:**

The petition is not maintainable and it will be dismissed in limine. The Respondent/ Plaintiff was examined as PW1 and on 12.02.2024 and 20.02.2024 posted for cross examination. On 04.03.2024 the PW1 was cross examined partly and also several opportunities given to the petitioners for cross examination. But the petitioners/defendants failed to cross examine the PW1. Finally on 09.09.2024 completed their cross examination of PW1, After that the 2nd petitioner/defendant and his mother were examined as DW1 and DW2 and the cross-examination was completed and stated in the affidavit that they themselves had summoned 5 witnesses through the court without any prior notice to the plaintiffs, but only two of them were summoned and appeared in court on 30.07.2025, and the other witnesses were not summoned. Furthermore, the affidavit does not mention which witnesses were summoned for examination by the petitioner and for what reason. Since three individual witnesses were not present, it is not permissible in law for the plaintiff to

reopen the evidence of the prosecution and to re-examine the prosecution. But the petitioners drag the proceedings wantonly and if this petition will be allowed this respondent/plaintiff will be much hardship. Hence this petition is to be dismissed with costs.

**(4) Point for consideration:**

**Whether the petition is to be allowed or not?**

**(5) Point:**

The learned counsel for the petitioners has submitted that the suit is filed by respondent/plaintiff for recovery of money due on Mortgage amount from the petitioners/defendants. At the time of trial, Plaintiff was examined himself as PW.1. 2nd defendant was examined as DW1 and his mother was examined as DW2. There after five witnesses were summoned on the side of the petitioners/defendants. Even though the witness summons were duly served three independent witnesses were absent. Hence it is necessary to re-open the PW1 witness to examine him. unless this petition is allowed the petitioners will be put to hardship. Hence pray to allow this petition.

(6) Per contra, the learned counsel for the respondent/plaintiff submitted that several opportunities were given to the petitioners for cross examination of PW1. But he has not utilize the opportunities After that the 2<sup>nd</sup> defendant and his mother were examined as DW1 and DW2 and the cross-examination was completed and that they have summoned 5 witnesses through the court without any prior notice to the plaintiffs, but only two of them were summoned and appeared in court on

30.07.2025, and the other witnesses were not summoned. Furthermore, the petitioners not mentioned which witnesses were summoned for examination by the petitioner and for what reason. Since three individual witnesses were not present, it is not permissible in law for the plaintiff to reopen the evidence of the prosecution and to re-examine the prosecution. But the petitioners filed this petition only during the proceedings. Hence this petition is to be dismissed with costs.

7) On perusal it is clear that the present petition is filed for reopen the PW1 witness for further cross examine on petitioners' side. The plaintiff filed the suit for recovery of money on mortgage against the defendants. Now the suit is under the stage of trial only. Therefore it is just and necessary to re-open the plaintiffs' evidence and one more opportunity is granted to the petitioners to establish their case on merits. In the interest of justice, this court finds that the petition is to be allowed on condition.

In the result, this petition is allowed on payment of costs of Rs.500/- to the respondent on or before 14.10.2025, failing which the petition stands dismissed.

Dictated to the Steno-Typist, transcribed by her in computer, corrected and pronounced by me in the open court, this the **06th day of October 2025**.

**II Additional District and Sessions Judge,  
Thanjavur.**

**Petitioner and Respondent side  
Exhibits and Witnesses : Nil**

**II Additional District and Sessions Judge,  
Thanjavur**