

IN THE ADDITIONAL DISTRICT COURT, TIRUVANNAMALAI

PRESENT : Tr. B.C. GOPINATH, M.L.,

Additional District Judge,

Tiruvannamalai.,

Saturday, the 18<sup>th</sup> day of April, 2026

**I.A.No. 5/2026 in O.S.No.34/2010**

Nirmal Kumar

.... Petitioner/ 3<sup>rd</sup> defendant

/vs/

1. Ashok kumar (Died)
2. Padma Bai
3. Chain Raj @ Jain Raj
4. Manju Bai
5. Anandabai
6. Sunandha Bai
7. Kamala Bai
8. Nideshkumar
9. Sathishkumar

...Respondents/ plaintiff

This petition coming before me for final hearing on 18.04.2026 in the presence of Tr. B. Palaniraj Advocate for the petitioner and Tr. R. Venkatesh Rao and Tr. N. Suresh and Tr. D. Karthikeyan Advocates for the Respondents and after hearing the arguments of both, upon perusing the records and having stood over for consideration, till this day, this court passed the following

**ORDER**

Petition under Order 18 Rule 17 and Section 151 CPC to Recall D.W.1 for further examination.

**1) Petitioner's case in brief:**

The petitioner is the 3<sup>rd</sup> defendant in the above suit. There is a need to file additional documents on his side. Hence it is just and necessary to the open his evidence (D.W.-1). Hence the petition

**2) Averments in the counter statement of 3<sup>rd</sup> respondent/plaintiff that was adopted by respondents 2, 4 to 9:**

The petition to recall D.W.1 is not maintainable as the petitioner has filed this application to fill up the lacuna. The petitioner/D.W.1 was extensively examined on 10.04.2026. When he attempted to mark a document, the court did not permit him to mark it. The petitioner had purposely suppressed the relevant facts in the Written Statement. The document that the petitioner intends to mark is of the year 2010. No evidence is admissible without any pleadings in the Written Statement. In his Written Statement, the petitioner has spoken about the "C" schedule property that is located in Rajasthan in one full paragraph. However, he failed to disclose about the sale that he made in respect of the 'C' schedule on 06.05.2010. The petitioner wants to thrust in

those two documents only at the time of trial. Without disclosing about the sale in the written statement and also during his examination -in- chief, now the petitioner wants to recall himself. Therefore the petition is not maintainable and is liable to be dismissed with costs.

3) During enquiry, no evidence oral or documentary was let in on either side. This court has perused the entire materials available on record and has anxiously considered rival submissions.

**4) Now the point for consideration is whether the petitioner/D.W-1 has shown a justifiable cause to recall himself for further examination:**

**5) Point:**

The petitioner Nirmal Kumar, the 3<sup>rd</sup> defendant in the above suit has filed this petition seeking leave to recall himself for filing additional documents on his side.

6) The undisputed facts leading to the filing of this petition, in brief is as follows:

The respondents/plaintiffs filed the above suit for the relief of partition and separate possession. Among the suit properties, one property is located at Gujarat. This property has been described as the 'C' schedule property in the plaint. The petitioner/3<sup>rd</sup> has filed his Written Statement way back on 02.02.2012. Trial commenced on 05.11.2025 and the 6<sup>th</sup> plaintiff was

examined as P.W.-1 and the plaintiff's evidence was closed on 27.01.2026. On 09.03.2026, the petitioner/3<sup>rd</sup> defendant filed a petition in I.A. No.4/2026 seeking leave to file additional documents. In the said petition, Leave was granted subject to admissibility of the document in evidence. Thereafter, on 10.4.2026, the petitioner examined himself as D.W.1 and one exhibit was marked. When the petitioner attempted to mark a sale deed dated 06.05.2010, the counsel for the respondents/plaintiffs raised strong objections for marking the same as the petitioner has not divulged about the sale of the "C" schedule property anywhere in his Written Statement or at least in his evidence affidavit. In view of the objections raised and after due consideration, this court sustained the objection and rejected the petitioner's request to mark those sale deeds as exhibits on behalf of the petitioner. A detailed "Memo of evidence" was also recorded to that effect. On the same day, the petitioner/D.W-1 was extensively cross-examined by the plaintiff and the matter was posted for further evidence on the defendant side, as requested. In such circumstances, on 16.04.2026, the petitioner/3<sup>rd</sup> defendant has come forward with this application to reopen his evidence for filing additional documents.

7) At the outset, it is worthwhile to highlight that the supporting affidavit to this petition has only one line that the petitioner needs to file

additional documents and it is just and necessary to permit him. Nothing more has been stated in the affidavit. It is also relevant to note that the Hon'ble High Court the Hon'ble Madras High Court, after taking note of the fact that it is an old suit has directed a time-bound disposal in CRP No 2747 of 2025. In view of the direction of the Hon'ble High Court, and to avoid a hyper-technicalities at the stage of trial, this court granted to the petitioner leave to file the additional documents in I.A. No.4/2026, subject to admissibility of those documents in evidence. As mentioned supra, when the petitioner attempted to mark a Sale deed dated 06.05.2010 in respect of the "C" schedule property, the counsel for the respondents/plaintiffs raised strong objections for marking the same on the ground that the petitioner has not divulged about the sale of the "C" schedule property anywhere in his Written Statement or at least in his evidence affidavit. Hence the objection was found reasonable and the petitioner's request to mark those sale deeds as exhibits was rejected. A detailed "Memo of evidence" was also endorsed at the foot of the deposition as required under the Indian Evidence Act.

**8)** At this juncture, the learned counsel for the petitioner stoutly contended that a party to the litigation cannot be denied an opportunity to produce the materials that are relevant to his defence and therefore the petitioner should be permitted to recall himself and marked the relevant

documents with the help of additional evidence. Per contra, the learned counsel for the respondents/plaintiffs vehemently contended that it is a suit for partition and the petitioner cannot be permitted to exhibit any documents about which he has not whispered in his Written Statement. It would be contended that any amount of evidence without pleadings has to be eschewed from consideration.

9) While appreciating rival contentions, this court is conscious of the fact that it is a suit for partition in which the respondents/plaintiffs claim share the suit property alleging that it is an ancestral property. At the risk of repetition, the “C” schedule property is one of those properties and from the materials it appears that it was purchased in the name of the petitioner when he was a minor. The petitioner/3<sup>rd</sup> defendant who filed his Written Statement on 02.02.2012 has not averred that he sold the property in the year 2010 itself. It is those sale deeds that he intends to mark now. Therefore, it does appear that the petitioner has filed this application obviously to get over the lacuna of not making a pleading that he had already sold the ‘C’ schedule property way back in the year 2010.

10) In a suit for partition, the sale of the alleged coparcenary property is crucial for effectively deciding the case and it goes without saying that the suit could have taken a different course if the fact of the sale was there was in

the original Written Statement. Hence this court is in agreement with the learned counsel for the respondents/plaintiffs that the petitioner/3<sup>rd</sup> defendant, wittingly or unwittingly failed to mention about the sale in respect of the “C” schedule property. It is a fundamental principles of law that the Indian evidence Act allows evidence to be let in only on ‘facts in issue’ or “relevant facts” and such evidence should be backed by pleadings. Therefore, if the intention of the petitioner is to mark the same document that was disallowed by this court, then trying to embark upon the same by way of this application cannot be allowed. Pertinently, as mentioned supra, the petitioner has, in the supporting affidavit only averred that he has to file some additional documents without mentioning the documents that he actually wants to bring in on record. Hence the petition and also the supporting affidavit is bereft of material particulars and I find that the petitioner has not shown any justifiable cause for his recall for further evidence. The point is answered accordingly.

In the result, the petition is dismissed. No costs.

Dictated to the Steno-Typist, typed by her and corrected by me and pronounced in the open court on this the 18<sup>th</sup> day of April, 2026.

Additional District Judge,  
Tiruvannamalai.