

In the Court of District Munsif, Lalgudi.
Present: Shri. M. Kadarkaraiselvam, B.A., LL.M.,
Principal District Munsif,
Lalgudi.
Tuesday the 22nd day of July 2025
IA.No.9/2025 in OS.No.23/2018

1) Bharathidasan (died)

2) R.Loganathan

....Petitioners/ Plaintiffs

3) B. Mahalakshmi

4) B. Devika

5) B. Kishore

1) Muruganantham

2) Renuka Kalaiselvi

3) The District Collector, Trichy.

4) The Tahsildar, Lalgudi.

5)The surveyor, Lalgudi.

....Respondents/Defendants

Mr. S. Shankar Murali

– For Petitioners

Mr. G. Shanmugam

– For 1,2 respondents

Upon hearing the counsel this court made the following.....

ORDER

Petition filed Under Order 18 Rule 17 of CPC.

1) On perusal of this petition that the petitioner filed this petition to recall of DW1 for cross examination. The petitioner adduced reason that his counsel was on

that day engaged in Hon'ble High Court. Therefore, not able to cross examine the witness. As such as recall of DW1 is necessary to prove the petitioners case. Hence, he prayed for allow this petition.

2) On the other hands the respondent stated that this petition is not maintainable either in law or facts. The respondent further stated that DW1 was Chief examined on 05.09.2024 and posted for cross on 26.09.2024 on that day DW1 present but, the petitioners counsel has not cross examine in the DW1. Hence, the case posted for cross of DW1 on 17.10.2024. Thereafter, the case adjourned on 13.11.2024 on that day DW1 was partly cross examined by the plaintiff counsel and the case posted for cross continuation of DW1 on 25.11.2024.

3) Further the respondent stated that on 25.11.2024 DW1 was present. The petitioner has not turned up to cross examined the DW1. Hence, this court closed the cross examination of DW1 and posted the case was further DWs. The petitioner filed a petition to recall of DW1 for cross examination on 12.12.2024 and the same was allowed by this court with an endorsement made by the respondent counsel as no objection.

4) On 17.02.2025 the case posted for cross examination of DW1 on that day DW1 was present counsel for the petitioner seeking for adjournment at request of petitioners counsel the case adjourned on payment of cost Rs.600/- has to be paid to DW1 and the posted the case for cross examination on 24.02.2025.

5) Further, is stated that on 24.02.2025 DW1 and 3rd and 5th plaintiffs are present. 3rd plaintiff represented that due to illness of his counsel seeking for adjournment at request the case adjourned to 03.03.2025. On 03.03.2025 with time of calling the petitioner passed over the case for cross examination of DW1 after lunch. At the time of calling 5.00 p.m 3rd plaintiff represented that his counsel not able to attend this court. Therefore, this court has closed the cross examination of DW1 and posted the case was further DWs on 24.03.2025. Only in order to drag the proceedings this present petition filed for. Hence, this petition required to the dismissed.

Points for consideration is whether this petition is allowed or not?

6) It is not in dispute that the petitioners filed a suit for seeking relief of declaration and permanent injunction against the respondents on 09.01.2018.

7) It appears from the records after completion of plaintiff side evidence the case posted for defendant side evidence on 22.11.2022. On 05.09.2025 DW1 was examined in chief on proof affidavit Ex.B10 to Ex.B34 marked and the posted the case was cross of DW1 on 26.09.2024. After lapse of 2 months on 13.11.2024 DW1 was partly cross examined by the petitioner and posted the case was DW1 cross continuation on 25.11.2024. But, the petitioner counsel has not turned up to cross examined on 25.11.2024. Hence, this court closed the cross examination of DW1 and posted the case was further DWs. On 12.12.2024 the petitioners filed a petition Under O18 R17 of CPC and the same was allowed by this court on 29.01.2025 and posted the case was cross examination of DW1 on 17.02.2025.

8) Further it appears from the records on 17.02.2025 DW1 present. But, the petitioner counsel seeks adjournment at request of petitioner counsel the case adjourned cross of DW1 on 24.02.2025. On that day DW1 present, 3rd and 5th plaintiffs also present. But, the petitioner counsel has not turned up to cross examined the DW1. Hence, this court closed the cross examination of DW1 and posted the case was further DWs. At the Juncture the petitioner again filed this petition along with petition Under O16 R1 (2) and (3) of CPC. Before going to decide the issue this court has gone through the relevant decision in this regard. The Hon'ble Supreme Court in **“Shubhkaran singh vs Abhay raj singh and ors 2025 INSC 628”** has held that as follows:-

ANALYSIS AND REASONS

8. The said rule, in our opinion, makes it abundantly clear that the right to put questions to the witness recalled under Rule 17 is given only to the court and even cross-examination is not ordinarily permitted on the answers given to such questions, without the leave of the court. Under that rule therefore, a witness cannot be recalled at the instance of a party for the purpose of examining, cross examining or re-examining, and that rule is not intended to serve such purpose, and the purpose for which that

rule can be invoked is the one that is indicated above.

9. In this connection, we may refer to the following observations in *Sultan Saleh Bin Omer v. Vijayachand Sirmal* [A.I.R. 1966, A.P. 295.], which accords with the above view:

“A close reading of this rule makes it obvious that the right under that Rule to put question at any stage or a suit or recall any witness for that purpose, is given to the Court. The court can put questions to the witness recalled, and no cross-examination is ordinarily allowed upon the answers to the questions put by the Judge without leave..... It cannot therefore be said that an opportunity to a party to recall any witness for the purpose of examining cross-examining or re-examining is governed by O. 18, R. 17 C.P.C.”

10. We are of the opinion that if circumstances warrant, an opportunity to a party to re-call a witness for examining, cross-examining or re-examining can be granted by a Court in the exercise of its inherent jurisdiction under [Section 151 C.P.C.](#)

11. This Court in the case of [Vadiraj Naggappa Vernekar v. Sharadchandra Prabhakar Gogate](#), reported at (2009) 4 SCC 410 more particularly para 28 held as under:

“28. The power under the provisions of [Order 18 Rule 17 CPC](#) is to be sparingly exercised and in appropriate cases and not as a general rule merely on the ground that his recall and reexamination would not cause any prejudice to the parties. That is not the scheme or intention of [Order 18 Rule 17 CPC.](#)”
(Emphasis supplied)

12. In the case of [K.K. Velusamy v. N. Palanisamy](#) reported at (2011) 11 SCC 275, this Court discussed the power of the Court under [Order 18 Rule 17 of CPC](#). 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 9, 10 and 19 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 cross- examination or to place additional material or evidence which could not be produced when the evidence was being recorded. Order 18 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. Once a witness is recalled for purposes of such clarification, it may, of course, permit the parties to assist it by putting some questions.

10. 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 cross-

examination or to place additional material or evidence which could not be produced when the evidence was being recorded. Order 18 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. Once a witness is recalled for purposes of such clarification, it may, of course, permit the parties to assist it by putting some questions.

19. We may add a word of caution. The power under [Section 151](#) or Order 18 Rule 17 of the Code is not intended to be used routinely, merely for the asking. If so used, it will defeat the very purpose of various amendments to the Code to expedite trials. But where the application is found to be bona fide and where the additional evidence, oral or documentary, will assist the court to clarify the evidence on the issues and will assist in rendering justice, and the court is satisfied that non-production earlier was for valid and sufficient reasons, the court may exercise its discretion to recall the witnesses or permit the fresh evidence. But if it does so, it should ensure that the process does not become a protracting tactic. The court should firstly award appropriate costs to the other party to compensate for the delay. Secondly, the court should take up and complete the case within a fixed time schedule so that the delay is avoided. Thirdly, if the application is found to be mischievous, or frivolous, or to cover up negligence or lacunae, it should be rejected with heavy costs.”
(Emphasis supplied)

9) On care perusal of the above decision it is made clear that the witness cannot be recall routinely merely for asking. If so use, it will defeat the very purpose of various amendments to code to expedite trials.

10) Considering the above decision, the reason adduced by the petitioners was not sufficient and acceptable one. Therefore, this petition is deserved to be petition is dismissed and is accordingly dismissed.

11) **In the result**, the petition is dismissed.

This order dictated by me to the typist typed by her, corrected and pronounced by me in the open court this 22nd day of July 2025.

District Munsif,
Lalgudi.

Petitioner side witness and evidence - Nil

Respondent side witness and evidence - Nil

District Munsif,
Lalgudi.