

IN THE COURT OF THE DISTRICT MUNSIF, PONNERI.

PRESENT: Selvi.A.Keerthana, B.A., L.L.B.,
District Munsif, Ponneri.

Saturday, the 25th day of October 2025.

I.A.Nos.11 and 12 of 2025

In

O.S. NO.313 of 2006

1. N.Santhakumari (Died)
2. P.V.L.Narayanan (Died)
3. Mrs.S.Rajeswari
4. Mrs.N.Sujatha

..... Petitioners/Plaintiffs

Versus

1. Radhakrishna Naidu
2. Rathinavalli (Died)
3. Ashok
4. Sathyakumar
5. Premkumar
6. Suresh Babu
7. Malliga
8. Rajesh Babu

..... Respondents/Defendants

These petitions came up before me for final hearing on 24.10.2025 in the presence of Mr.T.Susairaj, Learned counsel for the Petitioners/Plaintiffs and Mr.G.Nantha Gopal, Learned counsel for the Respondents/Defendants. Upon hearing both sides, on perusal of the material case records, and having stood over for consideration till this day, this Court delivers the following:

COMMON ORDER

1. **I.A.No.11 of 2025**: This petition has been filed under Section 151 of CPC to reopen the evidence of DW1 which has been closed on 25.08.2025.
2. **I.A.No.12 of 2025**: This petition has been filed under Order 18 Rule 17 of CPC to recall DW1 for the purpose of further cross examination.

3. Brief averments of the common affidavit filed by the petitioners are as follows:

The petitioners herein are the plaintiffs in the suit, which is currently at the stage of cross-examination of DW2. The petitioners state that the cross-examination of DW1 was closed on 25.08.2025, and at that time, the junior counsel appearing for the defendants represented that DW1 was not able to understand and answer the questions. Therefore, DW1 could not be fully cross-examined, and hence these petitions have been filed.

4. Brief averments of the common counter filed by the 6th respondent and adopted by the other respondents are as follows:

The respondents submit that the cross-examination by the plaintiff's side has already been completed, after which the stage proceeded to the examination of the other defence witnesses. The respondents contend that the recall of DW1 is unnecessary, as the witness, being about 80 years of age, was unable to understand and comprehend the questions put forth by the plaintiff and is also incapable of giving rational answers. Hence, the respondents pray for the dismissal of this petition.

5. Evidence :

Neither the petitioners nor the respondents have placed any oral or documentary evidence before this court.

6. Point for determination :

Whether this petition can be allowed or not.

7. Discussion and findings :

7.1. Heard. Records perused. The petitioners submit that they could not fully cross-examine DW1 as the junior counsel of defendants represented as DW1 is not properly able to answer hence cross-examination of DW1 was closed. The respondents/defendants objects to this petition stating already an opportunity was given also the witness was unable to answer as he is aged about 80 years. Further the respondents have shared the citation of the Hon'ble Madras High Court in the

case of *N.Sadasivam Vs. Samiyathal, CRP(PD)No.1314 of 2014* to rely upon this stand that no person shall be permitted to fill up lacuna by way of reopen the recall the witness. The petitioners contention regarding the omission of certain points and specific pleading that he has not cross-examined the witness in full and it is in incomplete stage cannot be acceptable as at the time of closure of evidence of DW1, the counsel for the petitioner was himself present and specific pleading clearly indicates that despite having knowledge of facts he has failed to put them to the witness during cross examination. Further more, the Hon'ble Apex Court has specifically declined to grant relief for recalling a witness on the ground "left out points" in the case of *Ram Rati Vs. Mange Ram and others, Civil Appeal No.1684 of 2016(arising from S.L.P.(C) No.22141 of 2013)* where it has held the following:

"18. The settled legal position under Order 18 Rule 17 Read with Section 151 of the Code of Civil procedure, being thus very clear, the impugned orders passed by the trial court as affirmed by the High Court to recall a witness at the instance of the respondent for further elaboration on the left out points is wholly impermissible in law.

7.2. Further the evidence now sought to be adduced by recalling the witness was already available at the time when the affidavit of evidence was prepared. It is not as though any new facts have been discovered subsequently which were not within the knowledge of the petitioner during the recording of evidence. In this context, our Hon'ble Apex Court in the case of *Vadiraj Nagappa Vernekar (dead) through Lrs. Vs. Sharadchandra Prabhakar Gogate, 2009 (4) SCC 410* as held the following:

"25. In our view, though the provisions of order 18 Rule 17 CPC have been interpreted to include applications to be filed by the parties for recall of witnesses, the main purpose of the said rule is to enable the court, while trying a suit, to clarify any doubts which it may have with regard to the evidence led by the parties. The said provisions are not intended to be used to fill up omissions in the evidence of a witness who has already been examined.

26. As indicated by the learned single judge, the evidence now being sought to be introduced by recalling the witness in question, was available at the time when the affidavit of evidence of the witness was prepared and affirmed. It is not as if certain new facts have been discovered subsequently which were not within the knowledge of the applicant when the affidavit evidence was prepared.

28. The power under the provisions of Order 18 Rule 17 is to be sparingly exercised and in appropriate case and not as a general rule merely on the ground that is recall and reexamination would not cause any prejudice to the parties. This is not the scheme or intention of order 18 Rule 17.”

7.3. Further it is useful to refer to the case of the Hon’ble Madras High Court, CRP(PD) No.1279 of 2015 judgement dated 30.03.2015 in the case of *Rajeshwari Vs. Govindaraj* wherein it has held the following:

“6. It is settled law that the application to reopen and recall witnesses can be done only for clarifying any ambiguity in evidence and the power cannot be utilized to fill up lacuna. At this juncture it is useful to refer to the judgment of the Hon’ble Apex Court in K.K.Velusamy Vs. N.Palanisamy, 2011 (3) CTC 422 wherein it has been held as follows: 8. order 18, Rule 17 of the Code enables the court, at any stage of a suit to recall any witness who has been examined (subject to the law of evidence for the time being in force) and put such questions to him as it thinks fit. The power to recall any witness under Order 18 Rule 17 can be exercised by this court either on its own motion or an application filed by any of the parties to the suit requesting the court to exercise the said power.”

7.4. Based on the above legal precedents and the supporting legal principles, this Court finds that the reasons cited by the petitioners for recalling the witness lack merit. Considering in particular the submissions of the respondents/defendants that the witness is unable to comprehend the questions and provide rational answers, this Court is of the view that the discretionary power conferred upon the Court under

Order XVIII Rule 17 of the Code of Civil Procedure to recall a witness must be exercised sparingly and only in appropriate circumstances. Such power is intended to enable the Court to clarify any doubts it may have regarding the evidence already adduced by the parties, and not to fill up omissions or lapses in the evidence of a witness who has already been examined. In the present case, DW1 was examined on 25.08.2025, and the cross-examination of DW1 was closed on the very same day in the presence of counsels for both sides. Subsequently, another witness, DW2, was also examined on behalf of the defendants. At this stage of the proceedings, and particularly considering the pendency of the suit, which dates back to the year 2006, as well as the specific direction issued by the Hon'ble High Court in CRP (PD) No.2642 of 2011 dated 03.01.2020, directing disposal of the suit within a period of three months, this Court is of the considered view that the petitioners have not established any valid grounds for recalling DW1 for the purpose of clarifying any alleged ambiguity in the evidence. Instead, it appears that the petitioners seek to recall DW1 merely to put forth questions that were omitted during the earlier cross-examination. For the reasons stated above, this Court is not inclined to allow the present petitions. In the result, and in the interest of justice, these petitions stand dismissed.

8. **Result:**

I.A.No.11 of 2025: In the result, this petition is dismissed. No costs.

I.A.No.12 of 2025: In the result, this petition is dismissed. No costs.

Dictated by me to the stenographer, directly typed by her, corrected and pronounced by me in the open court, on this the 25th day of October 2025.

**DISTRICT MUNSIF
PONNERI**

Both side witnesses and documents:- NIL

**DISTRICT MUNSIF
PONNERI**

Common Fair/ Draft Order
I.A.No.11 & 12/2025
O.S.No.313/2006
Date: 25.10.2025
DMC, PNI.