

IN THE COURT OF THE DISTRICT MUNSIF, PONNERI.

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

Friday, the 06th day of February 2026.

I.A. NO.14 OF 2026
IN
O.S. NO.313 OF 2006

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

..... Petitioners/Defendants

Versus

1. N.Shantha Kumari (died)
2. P.V.L.Narayan (died)
3. Tmt.S.Rajeswari
4. Tmt.N.Sujatha

..... Respondents/Plaintiffs

This petition came before me 04.02.2026 for final hearing in the presence of Mr.G.Nanthagopal, Learned counsel appearing for the Petitioners/Defendants and Mr.T.Susairaj, Learned counsel appearing for the Respondents/plaintiffs. Upon hearing both sides, after perusing the material case records and having stood over for consideration till this day, this Court delivers the following:

ORDER

1. This application has been filed under Order 16 Rule 1, 5 and 7 and Read with Section 151 of Civil Procedure Code to petitioners/defendants to take summon on

the witness namely Ex-Karnam/Document writer/scribe in the sale agreement dated 27.01.1993 whose particulars given.

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

The petitioners/defendants have filed suit for declaration of title and other reliefs in respect of suit property. The suit is posted today for defendant's side further evidence. The important witness namely Ex-Karnam/Document Writer/Scribe Mr.Udhayakumar is ought to be examine about the sale agreement dated 27.01.1993 in respect of suit properties executed by N.Shanthakumari (1st plaintiff) to and in favour of their mother namely Rathinavalli (2nd defendant) in the above suit. The said Mr.Udhayakumar only written the said sale agreement dated 27.01.1993. It is just and necessary permit the petitioners to take witness summon on the witness. Hence this petition.

3. Brief averments of the counter filed by the 4th respondent and adopted by the 3rd respondent are as follows:

3.1. The respondent/plaintiff further submits that the respondents/plaintiffs have filed the suit seeking for declaration of title and injunction and also to set aside the sale deed executed by defendants 1 and 2 in favour of 3rd defendant being null and void. The 1st petitioner Radhakrishna Naidu who has been examined as DW1 has admitted in his cross examination stating that he has conveyed the property to the 3rd defendant and has received the sale consideration by deed of sale dated 23.11.2006 registered as document No.6999/2006 registered with SRO, Ponneri. The said document also has been admitted and marked. The DW1 in para 13 of the proof affidavit has admitted with regard to the execution of sale deed in favour of 3rd defendant. The petitioners/defendants also have filed counter claim seeking for declaration of title by adverse possession and the court in IA.No.6/2022 has

directed the payment of court fee by the defendants which amounts to Rs.15,91,920/- and the defendants have failed to pay the said amount within the stipulated time and the court has rejected the counter claim.

3.2. The respondent/plaintiff now wanted to examine the Karnam said to be a witness in the alleged agreement dated 27.01.1993. The petitioners/defendants have not filed the suit for specific performance based on the alleged agreement dated 27.01.1993 and the petitioners/defendants also have admitted that they have not filed any relief based on the sale agreement. The petitioners/defendants have admitted with regard to the sale of the property in favour of 3rd defendant. Now with a view to cause harassment and cause mental agony the petitioners/defendants have filed the petition seeking permission to examine the witness pertaining to the agreement of the year 1993 and the petitioners having given away the relief under the said agreement without seeking any remedy based on the agreement. The petitioners/defendants claim possession through Kuthagai and adverse possession through continuous possession and enjoyment Radhakrishna Naidu and his wife Rathinavalli have conveyed the property illegally to third defendant and the third defendant has absented himself from court proceedings. Hence, the respondent prays that this petition be dismissed with costs.

4. Brief averments of the Reply counter filed by the 6 and 8th petitioners/defendants adopted by the 1,4,5 and 7 respondents/defendants are as follows:

4.1. The petitioners submit that the present application for seeking permission to take summon for produce the witness who is document writer of the Ex.B1 as sale agreement dated 27.01.1993 as much as early before the suit in several years ago. Its endorsement dated 17.03.1994 for further total consideration passed and possession handed over to the petitioner's mother and father. Which facts clearly admitted by the first and second plaintiff only on the signatures itself but

contention not admitted by the plaintiff's side. While so, in order to bring the truth about earlier transaction between them are vital facts and necessary to prove the same on the petitioners/defendant's side. Since the suit is declaration of title and injunction.

4.2. The petitioners submit that it is true that the DW3 was examined in full but subsequently several adjournments happened only on the Bar Associations Advocate Boycott, so could not make mistake on the anybody. Rather declaration of title deed and injunction and also set aside the sale deed being null and void is not correct since the very initial defendants Mr.Radhakrishnan and Rathavalli also they prayed for the relief of adverse possession and prescription that they had valid right and title to convey the suit property to the third party which has been pleaded in the earlier written statement dated 01.03.2007 filed by 1st defendant will goes to prove their pleadings. Suit is filed by the petitioner herein for declaration of title and other reliefs. Besides the witness in very vital to the crux of the case to decide upon the merit, since the very 1st defendant namely Santhakumari in earlier suit in OS.No.348 of 1993 she, who was admitted that she sold this suit property by way of sale agreement to the 1st defendant in this case. It has been reveal the written statement dated 03.09.1993 of the earlier case. The petitioners submits that the Additional written statement dated 19.10.2010 filed by the first and second defendant in the present case the same will reveal that they have had perfected title by adverse possession exhausted twelve long years as early as before 2017 amendment Act of TNCF.

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 the learned counsel on either side and perused the material available on record. The present application has been filed by the petitioners/defendants seeking permission to examine the Ex-Karnam/Document Writer in relation to Ex.B1. The suit has been instituted by the respondent/plaintiff for declaration that the sale deed executed by defendants 1 and 2 in favour of the 3rd defendant is null and void, and the matter presently stands at the stage of defendant's evidence. The petitioners contend that examination of the said witness is essential for the purpose of proving Ex.B1.

7.2. Per contra, the respondents/plaintiffs have opposed the application contending that the suit is not one for specific performance based on the alleged sale agreement dated 27.01.1993, nor have the petitioners sought any substantive relief on the basis of the said agreement. It is further contended that when the execution of the registered sale deed in favour of the 3rd defendant is already admitted, the examination of the document writer serves no useful purpose. It is also pointed out that the petitioners are, in any event, setting up a claim of title by adverse possession, which is mutually inconsistent with reliance upon a sale agreement.

7.3. Upon consideration of the rival submissions and a careful scrutiny of the pleadings and record, this Court finds that the petitioners have failed to plead in what manner the proposed witness is material to the adjudication of the issues in the suit. A perusal of the plaint itself reveals that the plaintiff has made a vague yet conscious reference to the steps allegedly taken by defendants 1 and 2 to purchase

the suit property, thereby impliedly acknowledging the existence of the alleged sale transaction. At the same time, the plaintiff has pleaded that upon his refusal to convey the property, defendants 1 and 2 proceeded to execute a sale deed in favour of the 3rd defendant, which transaction forms the very subject matter of challenge in the present suit. When such facts stand disclosed and impliedly admitted in the plaint, the necessity or relevance of examining the document writer of Ex.B1 does not arise. In the absence of any specific denial or controversy requiring clarification through oral evidence, the prayer to examine the said witness remains unsubstantiated and devoid of merit.

7.4. It is well settled that the power to summon or examine a witness under Order XVI of the Code of Civil Procedure is discretionary and must be exercised only where the evidence sought is necessary for determining the real questions in controversy. It is well settled principle that procedural provisions cannot be invoked to fill up lacunae in evidence or to protract the proceedings, and that courts must be circumspect in permitting additional evidence unless due diligence and necessity are clearly established.

7.5. In the absence of any cogent explanation as to how the examination of the Ex-Karnam/Document Writer would advance the defence case, and having regard to the specific directions of the Hon'ble High Court to dispose of the suit within the stipulated time in CRP(PD) No.2642/2011, this Court is of the considered view that the present application lacks merit. Considering also the long pendency of the suit and the need to avoid unnecessary delay and multiplicity of proceedings, this is not inclined to entertain this application. Accordingly, the application is dismissed.

8. Result :

In the result, this Petition is dismissed. No costs.

Dictated by me to stenographer, dictated by me and typed by her in her desktop, corrected and pronounced by me in the open court, on this the 06th day of February 2026.

District Munsif,
Ponneri.

Both sides documents and witnesses: Nil

District Munsif,
Ponneri.

Fair/ Draft Order
I.A.No.14/2026
O.S.No.313/2006
Date:06.02.2026
DMC,PNI.