

IN THE COURT OF THE DISTRICT MUNSIF, PONNERI.

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

Monday, the 07th day of July 2025.

I.A. NO.8 OF 2025
IN
O.S. NO.46 OF 2019

D.Neelatharan

..... Petitioner/1st Defendant

Versus

1. D.Saravanan

2. Sasikala

3. Padmini

4. Devika

5. D.Sarojammal (died)

6. Dilli

..... Respondents/Plaintiffs

..... Respondents/2nd and 3rd Defendants

This petition came up on 07.07.2025 for final hearing before me in the presence of Mr.Yuvaraj, Learned counsel appearing for the petitioner/1st Defendant and Mr.R.Krishnaswamy, Learned counsel appearing for the Respondents 1 to 4/Plaintiffs 1 to 4. 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

This petition has been filed by the petitioner under Order XVIII Rule 17 of CPC to recall the plaintiff side evidence PW1 which was closed on 27.09.2023 in OS.No.46 of 2019 and allow the defendants to cross examine the PW1.

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

The petitioner herein is the first defendant in the above suit. The matter was posted for final cross-examination of PW1 on 27.09.2023. On that date, PW1 was present before the Court, the first defendant was called absent, and the counsel for the first defendant was present. The learned counsel for the first defendant sought

additional time to cross-examine PW1 on the ground that settlement proceedings were underway between the parties. However, during the course of proceedings, the first defendant was set *ex parte* due to his non-appearance. At the very next hearing, the counsel for the plaintiff filed the proof affidavit of PW2 on 20.11.2023. Subsequently, the counsel for the first defendant cross-examined PW2 on 31.01.2024, and the plaintiff's side evidence was formally closed with an endorsement on 22.07.2024. The *ex parte* order dated 27.09.2023 has already been set aside at the instance of the first defendant. Hence this petition to permit the cross-examination of PW1 by reopening the plaintiff's side evidence. The petitioner submits that if the present petition is not allowed, the petitioner will suffer irreparable loss and serious hardship. On the contrary, no prejudice will be caused to the respondent if a limited opportunity is granted for the cross-examination of PW1. Hence this petition.

3. Brief averments of the counter filed by the 1st respondent and adopted by the respondents 2 to 4 are as follows:

The respondents submit that the plaintiffs' side evidence was closed as early as the year 2023. After the chief examination of the first plaintiff, who was examined as PW1, the evidence was closed, as the defendants failed to appear or express willingness to cross-examine PW1 at that stage. Subsequently, the chief examination of PW2 was conducted, and PW2 was duly cross-examined by the counsel for the defendants. The explanation now offered by the petitioner for having cross-examined PW2 without first recalling and cross-examining PW1 is wholly incorrect and unsubstantiated. In fact, the plaintiffs' side evidence was formally closed on 22.07.2024. Despite this, the petitioner has failed to take any steps for nearly eight months and has not filed any application seeking permission to recall PW1 or reopen the plaintiffs' evidence during this time. The delay and the timing of the present application clearly indicate that it has been filed only with the intent to protract the proceedings and derail the smooth progress of the case. In any event, the petitioner/first defendant has no legal right to seek reopening of the plaintiffs'

evidence at this belated stage, especially after having allowed the opportunity to lapse without sufficient cause. Therefore, this petition is liable to be dismissed with costs.

4. Evidence :

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

5. Point for determination :

Whether this petition can be allowed or not

6. Discussion and Findings :

6.1. Heard the arguments advanced by both sides. Records have been perused. Upon hearing the rival submissions, it is observed that the petitioner was set ex parte by this Hon'ble Court on 27.09.2023, due to his failure to cross-examine PW1, despite having been granted several opportunities by the Court to do so. The present petition has now been filed by the petitioner seeking to reopen the plaintiffs' side evidence and recall PW1 for the purpose of cross-examination. It is trite law that the right to cross-examination is a valuable procedural right vested in the defendant, and such a right cannot be denied merely on the ground of delay. This is not a case where the defendant has already cross-examined, either fully or partially, the plaintiff's witnesses, in which event the Court would be required to examine whether the request amounts to an attempt to fill up a lacuna in the evidence.

6.2. It is a well-settled principle of law that a petition for recall of a witness ought not to be allowed if the sole object is to fill up gaps or lacunae in a party's case. However, in the present case, the defendant has not cross-examined PW1 at all, and therefore, the question of filling up any lacuna does not arise. Furthermore, it must not be forgotten that litigation is essentially a pursuit of truth, which forms the cornerstone of justice. It is the solemn duty of the Court to take all necessary and appropriate

steps to bring to light the real truth underlying every dispute placed before it. The art of cross-examination is fundamental to this process; it serves as a tool for ferreting out the truth by challenging the testimony of witnesses and exposing any inconsistencies, exaggerations, or weaknesses therein. It enables the opposing party to test both the credibility of the witness and the reliability of their statements. Denying the defendant the opportunity to exercise this valuable right, particularly where the witness in question has not been subjected to cross-examination would, in the opinion of this Court, amount to a serious failure of justice. This Court is, therefore, of the considered view that, in the interest of fair adjudication, PW1 ought to be subjected to cross-examination by the defendant in order to assess the veracity and reliability of his testimony.

6.3. In this regard, it is pertinent to cite here the relevant case of ***K.K. Velusamy v. N. Palanisamy, (2011) 11 SCC 275***. The relevant portion of the citation is extracted as follows :

“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.”

6.4. Considering the above and the nature of the suit, in the interests of justice, this court is of the discerned view that an opportunity to be given to the petitioner to prove his case. However, to compensate the delay, expenses and hardship caused to the respondents, this court is inclined to allow this petition on conditions.

7. Result :

In the result, in the interests of justice, this petition is allowed on twin conditions :

(i) The petitioner shall pay a sum of Rs. 500/- as costs to the respondents/Plaintiffs on or before the next date of hearing.

(ii) The petitioner shall cross examine PW1 on next hearing, subject to appearance of PW1.

Dictated by me to stenographer, transcribed by her, corrected and pronounced by me in the open court, on this the 07th day of July 2025.

**DISTRICT MUNSIF
PONNERI**

Both side witnesses and documents:- NIL

**DISTRICT MUNSIF
PONNERI**

Fair/ Draft Order
I.A.No.8/2025
O.S.No.46/2019
Date:07.07.2025
DMC,PNI.