

IN THE COURT OF THE ADDITIONAL DISTRICT JUDGE (FTC),
VELLORE, VELLORE DISTRICT.

PRESENT: Thiru.P.V.Sandilyan, M.L.,
Additional District Judge (FTC), Vellore.

Wednesday, the 3rd day of September, 2025

I.A. No.6/2025 in O.S. No.145/2009 & O.S. No.30/2012

and

I.A. No.7/2025 in O.S. No.145/2009 & O.S. No.30/2012

Parties in I.A. No.6/2025

1. N.Palani
2. N.Gopal . . . Petitioners/Defendants 4 and 5

Versus

1. Shanthi
2. The Executive Engineer,
Tamilnadu Housing Board, Vellore.
3. The Chairman,
Tamilnadu Housing Board, Chennai.
4. N.Munisamy Mudaliyar (Died)
5. Jothi
6. Lakshmi
7. Balaji
8. Arul . . . Respondents/Plaintiff/
Defendants 1 to 3, 6 to 9

Parties in I.A. No.7/2025

1. N.Palani
2. N.Gopal . . . Petitioners/Defendants 4 and 5

Versus

1. Shanthi
2. The Executive Engineer,
Tamilnadu Housing Board, Vellore.
3. The Chairman,
Tamilnadu Housing Board, Chennai.
4. N.Munisamy Mudaliyar (Died)
5. Jothi
6. Lakshmi
7. Balaji
8. Arul . . . Respondents/Plaintiff/
Defendants 1 to 3, 6 to 9

These petitions came up before this court for final hearing on 28.08.2025, in the presence of Thiru.B.Yayathi Rajan, Counsel for the Petitioners; Thiru.D.Ravi, Counsel for the 1st Respondent; Thiru.J.Sridharan, Counsel for the Respondents 2 and 3; the 4th Respondent is died; and Thiru.V.Rathinakumar, Counsel for the Respondents 5 to 8 and upon hearing the arguments of both sides, upon perusal of case records and having stood over for consideration till this date, this court delivers the following:-

COMMON ORDER

Parties in I.A. No.6/2025

This petition has been filed by the petitioners under Order XVIII Rule 17 and Section 151 of C.P.C. to pass an order to re-open the plaintiff's side evidence.

Parties in I.A. No.7/2025

This petition has been filed by the petitioners under Order XVIII Rule 17

and Section 151 of C.P.C. to pass an order to re-call the plaintiff's side witness, P.W.1 for cross examine by the defendants 4 and 5.

2. The brief averments of the affidavit in I.A. No.6/2025 are as follows:-

2.1 The petitioner is the 2nd petitioner and the 5th defendant in the suit O.S. No.145/2009 and the 2nd defendant in O.S. No.30/2012. The 1st petitioner is his elder brother. The 1st respondent has filed the above suit against the petitioners and others to declare sale deed dated 05.08.2009 as null and void and for permanent injunction. Further, one Munusamy has filed suit O.S. No.30/2012 for the relief of declaration of title over the suit 'A' schedule mentioned property and for consequential injunction. The suit properties in previous suit is portion of the suit property in later suit. The suits are ordered to be tried together and joint trial commenced.

2.2 In the suits the plaintiff Santhi has examined herself as P.W.1 and marked documents and the suit posted for cross examination. The defendants 1 & 2 cross examined her. Since the petitioner suddenly fell in sick and could not instruct his counsel to cross her this court has closed the cross examination of P.W.1. Since the plaintiff has not examined by further witnesses, this court closed the plaintiff's side evidence and posted for defendant's side evidence.

2.3 The petitioner has good case and fair chance of success. In order to disprove the case of the plaintiff and to prove his case, it is necessary to cross

examine the plaintiff's side witness P.W.1. Hence, it is prayed to pass an order to reopen the plaintiff's side evidence.

3. The brief averments of the affidavit in I.A. No.7/2025 are as follows:-

3.1 The petitioner is the 2nd petitioner and the 5th defendant in the suit O.S. No.145/2009 and the 1st petitioner is his elder brother. The 1st respondent has filed the above suit against the petitioners and others to declare sale deed dated 05.08.2009 as null and void and for permanent injunction. Further, one Munusamy has filed suit O.S. No.30/2012 for the relief of declaration of title over the suit 'A' schedule mentioned property and for consequential injunction. The suit properties in previous suit is portion of the suit property in later suit. The suits are ordered to be tried together and joint trial commenced.

3.2 In the suits the plaintiff Santhi has examined herself as P.W.1 and marked documents and the suit posted for cross examination. The defendants 1 & 2 cross examined her. Since the petitioner suddenly fell in sick and could not instruct his counsel to cross her this court has closed the cross examination of P.W.1. Since the plaintiff has not examined by further witnesses, this court closed the plaintiff's side evidence and posted for defendant's side evidence.

3.3 The petitioner has good case and fair chance of success. In order to disprove the case of the plaintiff and to prove his case, it is necessary to cross examine the plaintiff's side witness P.W.1. Hence, it is prayed to pass an order to

recall the plaintiff's side witness, P.W.1.

4. The brief averments of the Objection filed by the 1st Respondent are as follows:-

The petition is not maintainable either in law or on facts of the case. The petitioners regularly following the suit and the suit is pending more than 15 years. The above case was posted on 18.07.2024, 23.08.2024 and 20.09.2024 for cross of P.W.1 on the side of defendants 4 to 9, but either the defendant nor the defendant counsel appear before this court to cross P.W.1, Shanthi. The Hon'ble High Court of Madras directed to complete the aforesaid case within 6 months, but already 5 months was elapsed now the petitioners have filed the present applications to drag the matter endlessly and prayed to dismiss the petition with cost.

5. The counsel for the 1st Respondent in I.A. No.7/2025 filed a Memo stating that the counter filed in I.A. No.6/2025 in O.S. No.145/2009 may be treated as counter for I.A. No.7/2025 in O.S. No.145/2009 and the same was recorded.

6. There is no oral evidence, no documents marked on both sides.

7. The point for consideration in these petitions are, ***whether these petitions to reopen the plaintiff's side evidence and to recall the plaintiff's side witness, P.W.1 are to be allowed as prayed for?***

8. Point:-

The petitioners are 4th and 5th defendants in O.S. No.145/2009 and 1st and 2nd Defendants in O.S. No.30/2012. Joint trial ordered and as such common evidence was let-in in O.S. No.145/2009. The plaintiff Shanthi in O.S. No.145/2009 was examined as P.W.1 and she was cross examined by Defendants 1 and 2 in full. Meanwhile, in the suit 3rd defendant and the plaintiff in O.S. No.30/2012 Thiru.N.Munusamy died and his legal heirs were impleaded as Defendants 6 to 9. On 20.09.2024, when the case was posted for cross examination of P.W.1, Defendants 4 to 9 were absent, therefore P.W.1 cross examination was closed and plaintiff's side evidence was closed on 12.12.2024. The plaintiff was examined in chief on 01.11.2023 and it was posted for cross examination of P.W.1 from 23.11.2023, nearly 19 hearings for 11 months P.W.1 was not cross examined by the petitioner. When the case was posted for Defendants' side evidence, these petitioners, viz.4th and 5th defendant filed reopen and recall petitions to reopen plaintiff's side evidence and recall P.W.1 for cross examination by defendants 4 and 5. The suit filed for declaration of sale deed dated 05.08.2009 is null and void and for permanent injunction relief in O.S. No.145/2009. The deceased N.Munusamy filed the suit in O.S. No.30/2012 for the relief of declaration and consequential injunction. The reason stated by the petitioners that they fell in sick is unacceptable and untenable. However, to prove the case of the petitioners, they must be provided an opportunity since their

rights of property involved in the suit. The petitioners were provided several opportunities to cross examine the plaintiff, but they for the reasons best known to them dragged it endlessly for which the 1st respondent being the plaintiff should not be suffered and she must be compensated by way of heavy terms. It is averred in the counter that the Hon'ble High Court of Madras issued directions to complete this suit within 6 months. Therefore, the plaintiff's side evidence is reopened for the purpose of cross examination of P.W.1 and thereby P.W.1 is recalled for cross examination by D4 and D5 with a condition not to delay the cross examination.

In the result, these petitions are allowed and the petitioners are directed to pay a cost of Rs.1,000/- directly to the 1st respondent/plaintiff on or before 18.09.2025, failing which these petitions stand cancelled. Call on 19.09.2025.

Dictated to the Steno-Typist, transcribed by him, corrected and pronounced by me in the Open Court, on this the 3rd day of September, 2025.

**Sd/- P.V.Sandilyan,
Additional District Judge (FTC),
Vellore.**

Both side Witnesses and Exhibits:- - NIL -

**Sd/- P.V.Sandilyan,
Additional District Judge (FTC),
Vellore.**