

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

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

Tuesday, the 14th day of October, 2025

I.A. No.7/2024 and I.A. No.8/2024 in O.S. No.76/2017

Parties in I.A. No.7/2024

Viswanathan . . . Petitioner/Plaintiff

Versus

1. G.Subramani (Died)
2. S.Jagadambal
3. Murugan
4. Jothi
5. Gnanambikai
6. Karunakaran
7. Madavan
8. Elumalai
9. Chithra

.....Respondents/ Defendants

Parties in I.A. No.8/2024

Viswanathan . . . Petitioner/Plaintiff

Versus

1. G.Subramani (Died)
2. S.Jagadambal
3. Murugan
4. Jothi
5. Gnanambikai

6. Karunakaran
7. Madavan
8. Elumalai
9. Chithra

.....Respondents/ Defendants

These petitions came up before me for final hearing on 26.09.2025, in the presence of Thiru.B.Palanisamy, Counsel for the Petitioner; Thiru.S.Babu, Counsel for the Respondents 2, 3 and 9; Respondents 4 to 8 were called absent, set exparte; and the 1st Respondent was died 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

I.A. No.7/2024:

This petition has been filed under Section 151 of C.P.C. to reopen the case to enable the petitioner/plaintiff to file the petition to recall D.W.1 for the cross examination of counsel for the petitioner/plaintiff.

I.A. No.8/2024:

This petition has been filed under Order XVIII Rule 17 and Section 151 of C.P.C. to recall D.W.1 for the cross examination of counsel of the petitioner/plaintiff.

2. The averments of the affidavit in I.A. No.7/2024 are as follows:-

2.1 The petitioner is the plaintiff in the above suit filed for partition to divide the schedule mentioned 'A' and 'B' properties in to 3 equal shares and allot

one such share to the petitioner and also directing the respondents/defendants to hand over the possession of the same to the petitioner and the same is pending for disposal. On the petitioner's side petitioner has been examined as PW1 and also cross examined by the counsel of the respondents/defendants and also the petitioner's side witnesses have been examined and cross examined and the evidence of petitioner's side was closed by this court.

2.2 Thereafter on the side of the respondents/defendants witnesses are examined. Further the DW1 was examined on the side of the respondents/defendants by filing the proof affidavit. Now the petitioner's counsel has to cross examine the DW1. Since the petitioner's counsel was engaged in another court and due to that his counsel was not in a position to cross examine the DW1 meanwhile this court was closed the witness of the DW1 without the cross examination of petitioner's counsel.

2.3 The same is not willful or wanton but the reasons beyond the petitioner's control. Now the petitioner filing this petition to Recall DW1 for the Cross examination of his counsel. It is just and necessary the suit has to be reopened to enable the petitioner to file the petition to Recall DW1. Hence the petitioner filing this petition to Reopen the case. Unless this petition is allowed the petitioner will be put to serious loss and hardship.

2.4 It is therefore prayed to Reopen the case to enable the petitioner to file the petition to Recall DW1 for the Cross examination of petitioner's counsel.

3. The averments of the affidavit in I.A. No.8/2024 are as follows:-

3.1 The petitioner is the plaintiff in the above suit filed for partition to divide the schedule mentioned 'A' and 'B' properties in to 3 equal shares and allot one such share to the petitioner and also directing the respondents/defendants to hand over the possession of the same to the petitioner and the same is pending for disposal. On the petitioner's side petitioner has been examined as PW1 and also cross examined by the counsel of the respondents/defendants and also the petitioner's side witnesses have been examined and cross examined and the evidence of petitioner's side was closed by this court.

3.2 Thereafter on the side of the respondents/defendants witnesses are examined. Further the DW1 was examined on the side of the respondents/defendants by filing the proof affidavit. Now the petitioner's counsel has to cross examine the DW1. Since the petitioner's counsel was engaged in another court and due to that his counsel was not in a position to cross examine the DW1 meanwhile this court was closed the witness of the DW1 without the cross examination of petitioner's counsel.

3.3 The same is not willful or wanton but the reasons beyond the petitioner's control. It is just and necessary the DW1 has to be recalled for the

cross examination of petitioner's counsel. Hence the petitioner filing this petition to Recall D.W.1 for the cross examination of petitioner's counsel. Unless this petition is allowed the petitioner will be put to serious loss and hardship.

3.4 It is therefore prayed to recall D.W.1 for the Cross examination of petitioner's counsel.

4. The brief averments of the Counter filed by the 03rd Respondent adopted by Respondents 2 and 9 in I.A. No.7/2024 are as follows:-

The application is not sustainable either in law or on the facts of the case. The suit had been filed in 2009 and was already more than fourteen years old. The petitioner had been trying to prolong the proceedings only to harass the parties. The petitioner has filed two more applications, one for recalling DW4 and another for cross examination of DW4 along with this petition. It has been the practice of the petitioner/plaintiff to file one application and another in order to delay the proceedings. The xerox copies of the documents filed with this petition will not advance the case of the petitioner/plaintiff in any way and he only wants to coerce the respondents/defendants into submission by frustrating them with prolongation of the suit. The petitioner abuses the process of law by exploiting every chance to delay the proceedings. Such an dishonest course should not be entertained by this court and prayed to dismiss the petition with costs of the respondents.

5. The brief averments of the Counter filed by the 03rd Respondent adopted by Respondents 2 and 9 in I.A. No.8/2024 are as follows:-

The application is not sustainable either in law or on the facts of the case. The suit had been filed in 2009 and was already more than fourteen years old. The petitioner had been trying to prolong the proceedings only to harass the parties. No acceptable reason was cited in the petition to recall DW4 for cross examination in the above suit. No documents have been filed subsequently that would warrant cross examination on their part and no details as to why is cross examination at this stage is necessitated are given in the petition. For mere whims and fancies, DW4 should not be recalled for cross examination. In fact, the petitioner/plaintiff has already examined three witnesses in the above suit and the examination of the witnesses of the defendants is also over. Under these circumstances, this petition is only a dilatory tactics on the part of the petitioner and prayed to dismiss the petition with costs of the respondents.

6. There is no oral and documentary evidence on both sides.

7. The point for consideration in these petitions are, ***whether these petitions (1) I.A. No.7/2024 - To reopen the case to enable the petitioner/plaintiff to file the petition to recall D.W.1 for the cross examination of counsel for the petitioner/plaintiff, (2) I.A. No.8/2024 - To recall D.W.1 for the cross examination of counsel of the***

petitioner/plaintiff are to be allowed as prayed for?

8. Point:-

8.1 The petition filed by the plaintiff to reopen and recall DW.1 for the purpose of cross examination in those IA's. The learned counsel for the petitioner contented that the petitioner filed a suit for partition and examined himself as P.W.1. When the plaintiff evidence was closed D.W.1 was examined on the side of respondent, the petitioner counsel was not in a position to cross examine D.W.1, this Court closed the evidence of D.W.1 and prayed to reopen and recall D.W.1 for cross examination.

8.2 The learned counsel for the respondent contented that recall of D.W.4 for cross examination is not sustainable, the suit is of the year 2017 originally the suit was in the year of 2009, 14 years lapsed. The petitioner prolonging the proceedings to harass the petitioner and prayed to dismiss the petition.

8.3 The petition filed by the petitioner who is the plaintiff to recall D.W.4 for cross examination. The respondent filed counter to dismiss the petition thereby D.W.4 should not be recalled for cross examination. However, on perusal of petition para.4, 5 and 6 in each petition it was corrected as D.W.1 by overwriting on the no.4 as 1. Perusal of counter reveals no notice was given to the respondent for amending the No of D.W's from D.W4 to 1. No such permission was granted by this Court for such amendment made by the petitioner.

If the petitioner needs to amend after filing the petition and also furnishing copies to other side he is duty bound to give notice to the court as well as to the other side for such amendment. This irregularity is also not noticed by the concerned clerk.

8.4 In the decision of **Vadiraj Naggappa Vernekar (Dead) Vs Sharadchandra Prabhakar Gogate** reported in (2009) 4 SCC 410, the Hon'ble Apex Court held that the main purpose of Order 18 Rule 17 of the CPC, was to enable the court trying a suit, to clarify any doubts which it may have with regard to evidence led by the parties. The said provision was not intended to be used to fill up omissions in the evidence of a witness who had already been examined.

8.5 In **Ram Rati Vs. Mange Ram (Dead) Through Legal Representatives and Ors.**, reported in (2016) SCC 296, the Hon'ble Apex Court held that recall could not be a matter of right and no prejudice should be caused to any of the parties. Recall could not be a mechanism to fill up any omission or lacuna in the evidence. Evidence could not be reopened for the purpose of further cross-examination or even for production of fresh evidence.

8.6 On perusal of records the suit is for partition the plaintiff alleging that the suit properties are the joint family properties but the defendant's resisting that the suit properties are self acquired properties of their grandfather. D.W.1 is also not cross examined fully by the plaintiff. The essential and vital questions was

not put during the examination due to the counsel engaged in another court and there is no strong objection on the side of the respondent. Further, counsel engaged in another court is not a ground to plead, however this court is of the view to provide an opportunity to the petitioner by allowing this petition and at the same time the delay must be compensated by way of cost to the respondent.

In the result, these petitions are allowed by reopening and recall of D.W.1 for cross-examination, on payment of Cost of Rs.1000/- to be paid by the petitioner directly to the respondent on or before 27.10.2025, failing which these petitions shall stand dismissed. Call on 28.10.2025

Dictated to Steno-typist directly, typed by her through computer, corrected and pronounced by me in open court, this the 14th day of October 2025.

**Additional District Judge(FTC),
Vellore.**

Annexure : Nil

**Additional District Judge (FTC),
Vellore.**