

**IN THE COURT OF DISTRICT MUNSIF, GUDIYATTAM,
VELLORE DISTRICT.**

Present: Tr.K.Karthick Asath, B.A.,B.L.,(Hons),LLM.,
District Munsif,
Gudiyattam.

Tuesday, this the 22nd day of July 2025

IA. 04/2025 & IA. 03/2025
in
OS. 39/2020

1. Munirathinam
 2. Jayakumar
 3. Palani
 4. Kuppan
 5. Paneerselvam
 6. Subramani
- Petitioners / Defendants 1, 2 and 4 to 7
- // Versus //
1. Latha
 2. Ganesh
- Respondent/ Plaintiff
- Respondent/ 3rd defendant

These petitions came up on 07.07.2025 before me for final hearing in the presence of Thiru.K.M.Boopathi, M.L., Advocate for Petitioners and Thiru.K.Moganaraju, Advocate for the 1st Respondents and upon perusing the case records and having stood over for consideration till this day this court delivered the following.

Common Order

The application IA.No.04/2025 has been filed Under section 151 of the Code of Civil Procedure Code 1908 seeking to reopen the plaintiff side witness which was closed on 04.03.2025.

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The application IA.No.03/2025 has been filed Under Order 18, Rule 17 of the Code of Civil Procedure Code 1908 seeking to recall the PW2 for cross examination.

1. The averments of the petitioner in the both applications:-

The petitioner herein is the 1st defendant in the suit. The 1st respondent filed this suit against the petitioners and 2nd respondent for bare injunction. The said case was posted for cross examination PW2 on the petitioner's side on 04.03.2025. Since the 1st defendant fell in ill and suffering from viral fever and taking treatment for the same he could not contact his advocate to know about the case proceedings. Now only the petitioner contacted his advocate and know about the stage. Non cross examination of PW2 is neither willfull nor wanton and there is no wilfull default and part of his side. Otherwise he would put to great hardship and loss. Hence the petitioner prays for allowing the applications.

2. The averments made in the counter filed in both applications:-

The respondent submit that case is posted for filing defendant side evidence and the Hon'ble court has given several opportunity to the petitioner to cross examine PW2, Further PW2 filed chief affidavit on 16.11.2024 and the petitioner side seeking several adjournments for cross of PW2 further this Hon'ble court post the above case on 11.12.2024, 10.01.2025 and 04.03.2025 even after that defendants failed to cross PW2 and hence the Hon'ble court closed the cross examination of PW2. The petitioner wilfully and wantonly evaded to cross examine the PW2.

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The petition filed at belated stage and to drag on the proceedings. Hence prayed to dismiss both applications.

3. Point for consideration:-

Whether these applications are liable to be allowed ?

4. Evidence:-

Neither of the parties to these applications have adduced any oral or documentary evidence.

5. Discussion:-

Both side arguments heard and perusing the case records this court proceeds to delineate its findings by the following discussions. This present suit was filed by the 1st respondent against the petitioners for bare injunction. At the time of trial on 16.11.2024 one Murali Krishnan examined as PW2 on the side of plaintiff. At the request of petitioner's side the cross of PW2 is adjourned to 11.12.2024. Subsequently on 11.12.2024, 10.01.2025, 06.02.2025 the case was adjourned at the request of the petitioner side for cross examine the PW2. And finally on 04.03.2025 PW2 witness was present but the petitioner's side failed to cross examine him on the same day, hence the court closed the PW2 evidence and in view of the endorsement made by the plaintiff counsel plaintiff evidence also closed. On the next hearing (07.04.2025) itself these applications are filed by the petitioners to recall and reopen. On considering that the present applications are filed without any delay.

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And they are interested to contest the case. This court feels sufficient opportunity to be given to opposite side to test the credentials of a witness. On considering the nature of the present suit and to the cross examination of PW2 is necessary to determine the issues hence this court inclined to allow these applications.

6. Result:-

a) As a result the I.A.04/2025 for reopen the plaintiff side evidence is allowed on condition to pay cost of Rs.500/- to the plaintiff on or before 05.08.2025 and

b) As a result IA.03/2025 for recall the PW2 for cross examination is allowed on condition to pay cost of Rs.500/- to the PW2 on his appearance and PW2 should be cross examined on his appearance without getting any adjournment, unless his evidence will be closed on the day itself.

Dictated to Steno typist directly, typed by him corrected and pronounced by me in the open Court on this the 22nd day of July 2025.

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Petitioners side Witnesses and Exhibits :- Nil

Respondents side Exhibits and Exhibits :- Nil

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