

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

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

Friday, this the 27th day of February 2026

E.A.01/2025 & E.A.02/2025 & EA.03/2025

in

EA.No.39/2019

in

EP.No.66/2016

in

O.S.No. 105/2011

Pachaiyappan

.... Petitioner/ Plaintiff

// Versus //

1. K. Malathi

.... Respondent/ D.Hr.

2. G. Salammal

3. K. Pichandi

4. G. Krishnan (Died)

5. K. Venkadamma (Died)

.... Respondents/ J.D's

These petitions came up on 17.02.2026 before me for final hearing in the presence of Thiru.K.Loganathan, Advocate for Petitioner and Thiru.M.V.Jagadeesan, Advocate for the 1st Respondent and the respondents 2 and 3 are set exparte and respondents 4 and 5 are died and upon perusing the case records and having stood over for consideration till this day this court delivered the following.

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Common Order

The application EA.No.01/2025 has been filed Under section 151 of the Code of Civil Procedure Code 1908 seeking to reopen the petitioner side evidence which was closed on 18.07.2022.

The application EA.No.02/2025 has been filed Under Order 18, Rule 17 of the Code of Civil Procedure Code 1908 seeking to recall the PW1 for cross examination.

The application EA.No.03/2025 has been filed Under Order 7 Rule 1(A)3 of Code of Civil Procedure Code 1908 prayed to condone the delay for filing the documents.

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

The petitioner stated that the 2nd respondent Salammal's father filed suit OS.No.938/1982 against the petitioner, petitioners father Manickam, mother Salammal, Bangaru ammal and petitioners sister Selvi. That suit for declaration is dismissed on 16.11.1999. Against the decree the 2nd respondent Salammal prepared AS.No.07/2000 and the same was decreed. Against the first appeal decree the petitioner and others filed second appeal No.342/2003 and the same was decreed on 19.02.2010 on that the suit for title filed by the 2nd respondent against the petitioner is dismissed. He further submit that hence the 2nd respondent has no title to execute mortgage deed infavour of the 1st respondent. The documents regarding mortgage deed and OS.938/1982 is very important to decide the issues. But the respondent Malathi not examined herself as a witness in the EA. On comparing those documents the petitioner title will be proved. Now

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only the petitioner advocate informed above those documents. Hence it is necessary to receive those additional documents and reopen the petitioner side evidence and recall the PW1 for marking of those documents.

2. The averments made in the counter filed by the 1st respondent in applications:-

The 1st respondent counsel filed counter and stating that those documents are obtained in the year 2019 and 2022 but only filed after years for the purpose of only to drag on the suit. Those documents are not necessary to recall PW1 for further evidence. The petitioner cannot file those documents not in his name he has to summoned the competent authority who has issued it to prove its genuineness. The ulterior motive of the petitioner is only to drag the proceedings hence the delay cannot be condoned.

3. Petitioner and 1st respondent side enquiry heard, Records perused.

4. Point for consideration:-

Whether these applications are liable to be allowed ?

5. Evidence:-

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

6. Discussion :-

On considering the submissions made by the both counsels and perusing the available records this court delineate and proceeds its findings based on the following discussion.

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6.1. The petitioner is the claimant in EA.39/2019 in EP.66/2016. The execution petition 66/2016 is filed by the 1st respondent against the respondents 2 to 5. Originally the 1st respondent filed OS.105/2011 for recovery of money against the respondents 2 to 5 and the same was decreed on 16.12.2011. The 1st respondent filed final decree application in IA.173/2014 and the same was decreed on 20.08.2014 on that the respondents 2 to 5 are direct to sale the mortgaged property to the 1st respondent. Based on the final decree the 1st respondent filed execution petition for sale.

6.2. It is further submit that in the execution petition the present petitioner filed EA.39/2019 stating that the respondents 2 to 5 are having no title over the petition mentioned property. On that they cannot have right to mortgaged the property infavour of the 1st respondent. The 2nd respondent Salammal's father filed suit OS.No.938/1982 against the petitioner, petitioners father Manickam, mother Salammal, Bangaru ammal and petitioners sister Selvi. That suit for declaration is dismissed on 16.11.1999. Against the decree the 2nd respondent Salammal prepared AS.No.07/2000 and the same was decreed. Against the first appeal decree the petitioner and others filed second appeal No.342/2003 and the same was decreed on 19.02.2010 on that the suit for title filed by the 2nd respondent against the petitioner is dismissed. He further submit that hence the 2nd respondent has no title to execute mortgage deed infavour of the 1st respondent. While the EA.39/2019 posted for enquiry the petitioner filed this petitions to reopen and recall the PW1 for examination along with petition to receive additional documents.

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6.3. On perusal in this EA the petitioner side evidence was closed on 08.12.2022. In this circumstances the petitioner filed the present petitions on 04.12.2025 for recall and reopen the PW1 evidence. In the present petition the petitioner stated that the 1st respondent failed to file the mortgage deed hence it is necessary to file those documents in the present application for proving his case at present he wants to produce the judgment passed in OS.938/1982 filed by the 2nd respondent against the petitioner and his family. And he wants to file the mortgage deed filed by the 1st respondent in OS.105/2011 by which the 1st respondent filed suit and obtained decree against the respondents 2 to 5. Per contra the 1st respondent counsel filed counter and stating that those documents are obtained in the year 2019 and 2022 but only filed after years for the purpose of only to drag on the suit. The ulterior motive of the petitioner is only to drag the proceedings hence the delay cannot be condone.

6.4. It is further submit that in the EA.39/2019 the petitioner prayed to dismiss the execution petition and set aside the decree passed in OS.105/2011. On considering the decree in OS.105/2011 it is passed based on the mortgage deed dated 09.08.1999. But the said document was not yet filed by none of the parties. The petitioner also denying title of 2nd respondent in respect of the schedule mentioned property based on the judgment in OS.938/1982. But the said judgment also not filed by none of the parties. On considering the petitioner claim this court thinks those two documents are necessary to decide the petition filed under Section 47 of CPC. It is true that those documents are obtained on 10.07.2019 and 13.09.2022 but those documents are not produced earlier in the EA. For

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that the petitioner stated that the 1st respondent failed to mark the mortgage deed by which she obtained decree hence at present the petitioner filing the mortgage deed. He further stated that already he filed decree of OS.938/1982 along with the EA at present the judgment of OS.938/1982 is producing for proving his case. On perusal the petitioner already filed decree in OS.938/1982 and marked as Ex.P5. On that the reasons stated by the petitioner is accepted. But the respondents side evidence was closed on 09.09.2025 itself and finally posted for both side enquiry on 18.11.2025. There after only the petitioner filed this present petitions. This court thinks necessary opportunity should be given to parties to adduce their case. On considering the above discussion this court inclined to allow the condone delay petition in receiving documents. On that the reopen and recall of PW1 is consequential and necessary petitions hence this court inclined to allow those petitions also.

7. Result :-

As a result the EA.01/2025, EA.02/2025 and EA.03/2025 are allowed on condition to pay cost of Rs.1000/- to the 1st respondent on or before next hearing.

Dictated to Steno typist directly, typed by him corrected and pronounced by me in the open Court on this the 27th day of February 2026.

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Petitioners side Witnesses and Exhibits :- Nil

Respondents side Witnesses and Exhibits :- Nil

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