

In the Court of the Principal District Judge, Villupuram

**Present : Thiru. A.Manimozhi, B.A., LL.B.,
Principal District Judge, Villupuram.**

Wednesday, the 8th day of April 2026

**I.A. Nos.11 & 12/2025 in
O.S. No.172/2019**

Sasikala

... Petitioner/1st Defendant

/Vs/

1. Jayalakshmi

2. Mani @ Manikandan

3. Rajeswari

4. Kothainayagi

... Respondents/Plaintiffs

5. The Zonal Manager,
Civil Supplies Corporation, Villupuram.

6. The Manager,
Tamil Nadu Mercantile Bank,
Villupuram.

... Respondents/2,3 Defendants

These Petitions are coming on 09.03.2026 before me for final hearing in the presence of Tr.M.Harikrishnan, Advocate for the Petitioner; Tr.P.A.Narayanasamy, Advocate for the Respondents 1 to 4; and Tr.R.K.Suresh Babu, Advocate for the 6th Respondent; and they have not come forward to file counter statement, there was no representation for them, they were called absent and they were set exparte; and the

5th Respondent remained exparte in the suit; and upon hearing the arguments of Petitioner side and on perusing the records and having stood over for consideration till this day, this court passed the following...

COMMON ORDER

(i) I.A. No.11/2025 is filed by the Petitioner/1st Defendant under Section 151 of C.P.C., to reopen the case for the purpose of cross examination of PW2. (ii) I.A. No.12/2025 is filed by the Petitioner/1st Defendant under Order 18 Rule 17 r/w Section 151 of C.P.C., to recall PW2 for cross examination.

2.(a) The case of petitioner is that, the above suit has been filed by respondents 1 to 4, as plaintiffs for partition and other reliefs. The suit is pending for arguments. This Court closed the right of the petitioner to cross examine PW2 on 30.07.2024 due to non-availability of her counsel on the date of hearing. One Tr.Prabhakar deposed evidence as PW2 on 06.04.2024. Only partial cross examination of PW2 was done on 06.07.2024 and the PW2 was not present on the next date i.e., 16.07.2024 for continuation of cross examination. Hence, the suit was adjourned to 30.07.2024. On the said date the counsel for the petitioner could not appear before this Court due to her engagements before the Hon'ble Madras High

Court. The plaintiff side evidence was closed on the next hearing date i.e., 07.08.2024.

(b) Even PW1 evidence was closed on partial cross examination earlier and the same was reopened by order dated 08.01.2025. The absence of her counsel was neither willful nor wanton. PW2 has nothing to do with the suit property. He has filed a suit against the plaintiff for recovery of money and for attachment of the property which is sought to be partitioned. Therefore, making PW2 as plaintiff side witness is only an attempt to accommodate and appease the plaintiff. All these facts can be brought to light only if the petitioner is given opportunity to cross examine PW2. Hence, the present petition.

3. In the enquiry no witness was examined and no document were marked on Petitioner side.

4. Though sufficient opportunities have been granted to the respondents 1 to 4 (plaintiffs) and R6 (D3), they have not come forward to file counter statement. There was no representation for them. They were called absent. Hence, they were set exparte. The 5th respondent remained exparte in the suit. Hence arguments was heard on the petitioner's side. Perused the records.

5. The point for consideration is :-

Whether the Petitioner has shown sufficient cause for seeking reopen of the plaintiff side and to recall PW2 for cross examination?

Answer to the point :-

6.(a) The above suit is filed for partition. The plaintiff side evidence was previously closed after the examination of PW1 and PW2. Due to the non-appearance and failure of this petitioner, defendants side evidence was also closed and the matter was posted for arguments. Now, at the stage of arguments, the present petitions are filed on 02.09.2025. It is to be noted that originally PW1 was cross examined in part and adjourned for continuation of cross examination; but this petitioner did not cross examine PW1 and therefore evidence of PW1 was closed and again reopened and PW1 was recalled and cross examined on 04.07.2025, by filing similar applications. It is pertinent to mention that even prior to the said date of continuation of cross examination of PW1, PW2 had been examined on the plaintiff side as early as on 26.04.2024 and PW2 evidence was closed on 30.07.2024, as the petitioner had not chosen to cross examine PW2 despite several opportunities. The perusal of records reveal a history of procedural lethargy on the part of this petitioner from the beginning of the trial, which

commenced in the year 2023.

(b) Despite being granted an earlier opportunity to recall and cross examine PW1, the petitioner did not seek to recall PW2 at that stage, choosing instead to wait until the matter returned to the stage of arguments. The petitioner has yet to file any petition to adduce evidence on her own side, focusing solely on the recall of plaintiff witnesses. The lethargic attitude of this petitioner requires due consideration by this Court.

(c) In a suit for partition, the rights of the parties are interlinked, and a decision on merits is always preferable to one based on procedural default. However, the power to recall a witness under Order 18 Rule 17 is discretionary and should be used sparingly, not to fill up gaps or to cause unnecessary delay. The conduct of the petitioner (D1) in this case reflects a lack of diligence and a piecemeal approach to litigation, which has burdened the courts calendar. Nevertheless, to ensure that no party is deprived of a fair trial and to provide a final opportunity to the petitioner to challenge the testimony of PW2, this Court is inclined to allow the petition on strict terms to compensate for the delay and lethargy shown. The point is answered accordingly.

RESULT :

In the result, Common Order passed in both the petitions as follows :-

(i) The reopen petition in **I.A. No.11/2025** for cross examination of PW2 is allowed on condition that the Petitioner shall pay a sum of Rs.1,500/- as cost to the District Mediation Centre, Villupuram on or before 24.04.2026 and file the cost memo on 27.04.2026;

(ii) The recall petition in **I.A. No.12/2025** to recall PW2 for cross examination is allowed on condition that the Petitioner shall pay a sum of Rs.1,500/- as cost to the District Mediation Centre, Villupuram on or before 24.04.2026 and file the cost memo on 27.04.2026;

(iii) The Respondents 1 to 4 shall ensure the presence of PW2 on 27.04.2026 for the cross examination by the Petitioner;

(iv) If the Petitioner fails to pay the cost or fails to cross examine PW2, on the fixed date, the right to recall PW2 shall stand forfeited automatically;

(v) For compliance of the condition call on 27.04.2026.

Order dictated by me to the Stenographer, transcribed by him in the Computer, corrected and pronounced by me, in the open court, this the 8th day of April 2026.

Principal District Judge,
Villupuram.

List of witness examined and document marked on the side of the
Petitioner :-

- Nil -

List of witness examined and document marked on the side of the
Respondents :-

- Nil -

Sd/- A.M
P.D.J,
VPM.

Draft / Fair Common Order :
I.A. Nos.11 & 12/2025 in
O.S. No.172/2019
Dated: 08.04.2026.