

In the Court of the Principal District Judge, Villupuram

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

Saturday, the 2nd day of August 2025

I.A.No.7/2025
in
O.S.No.96/2022
.....

Sudharsana

... Petitioner/
2nd defendant

/Vs/

1) Sakunthala

...1st Respondent/
Plaintiff

2) Appadurai Nainar

3) The Joint Sub Registrar – II,
Villupuram.

... Respondents/
Defendants 1 & 3

This Petition is coming on 10.07.2025 before me for final hearing in the presence of Tr.M.Chakrapani, Advocate for the Petitioner and Tr.T.S.Subramanian, Advocate for the 1st Respondent and Tr.M.P.Sivakumar, Advocate appeared for the 2nd respondent, but endorsed no counter; and the 3rd respondent remained exparte in the suit itself and upon hearing the arguments of both side and on perusing the records

and having stood over for consideration till this day, this court passed the following...

ORDER

The Petitioner/2nd Defendant filed this petition under Order 18 R 17 of C.P.C. to recall PW1 Vijayabalan and DW1 Appadurai Nainar for the purpose of cross examination.

2) The case of the Petitioner is that she remained exparte while the 2nd Respondent has been contesting the suit. After the close of evidence on both sides, she filed an application to set aside the exparte order and it was allowed. Inorder to establish her defence, it is necessary to recall the witnessess PW1 and DW1 for cross examination. Hence, this petition.

3) The 1st Respondent/Plaintiff filed the Counter Statement. The case of the 1st Respondent/Plaintiff is that the Petitioner / 2nd Defendant is under the care and custody of her brother the 2nd Respondent/1st Defendant. This petition has been filed to fill up lacunae in the case of 1st Defendant and to nullify the cross examination of 1st Defendant/DW1 and to develop the case. There is no objection for the petitioner to get into the box and tender evidence with regard to her case. She cannot be permitted to nullify

the valuable admission of DW1 at the time of cross examination by the Plaintiff. Hence the petition is liable to be dismissed.

4) On the side of the 2nd respondent/1st defendant endorsement has been made that the 2nd respondent is not having any objection in this petition. The 3rd respondent (D3) remained exparte.

5) In the enquiry no witness was examined and no document was marked on either side.

6) The point for consideration are

1) Whether the petitioner has to be permitted to recall PW1 and DW1 for cross examination?

2) Whether the petition has to be allowed?

7) Answer to the Point Nos.1 & 2: -

a) Heard arguments on both sides and perused the records.

The learned counsels appearing on either side, at the time of their arguments, reiterated the very same averments made in the petition and the counter, respectively. The learned counsel for the petitioner contended that

as already exparte order passed against the petitioner has been set aside and she has filed written statement, an opportunity has to be granted to her to recall the plaintiff's and 1st defendant side witnesses, for the purpose of cross examination.

b) Per contra, the learned counsel for the 1st respondent contended that no reason has been whispered in the petition for non appearance of the petitioner and non cross examination of the witnesses, that this petition has been filed only to get over the admission already made by DW1 (1st defendant) at the time of cross examination, that the petitioner is a retired teacher and spinster and she is under the care and custody of the 1st defendant and she has come out with this petition only to fill up the lacunae at the behest of the 1st defendant, and that therefore she cannot be permitted to cross examine DW1.

DISCUSSIONS:

8) The suit has been filed for partition and other reliefs. The Plaintiff and the 2nd defendant are the daughters of Ananthanadha Nainar and the 1st defendant is his son. The father and mother died long back leaving the plaintiff and the defendants 1 and 2 as their only legal representatives. The suit was filed in the year 2022. The defendants 1 and

2 entered appearance on 16.08.2022 by engaging a same counsel for them. However, the 1st defendant only filed written statement on 26.10.2022. This petitioner/2nd defendant did not file written statement and so she was called absent and set exparte on 13.12.2022. It is to be noted that the defendants 1 and 2 are residing in the same address. In the applications filed by this petitioner also she has mentioned the same address. So, it is clear that the defendants 1 and 2 are residing in the same house, as pointed out by the learned counsel for the Plaintiff.

9) The Plaintiff was examined as PW1 on 09.08.2023. The Plaintiff's side evidence was closed on 13.12.2023. 1st defendant was examined as DW1 on 28.03.2024 and he was cross examined on the same date. When the matter was posted for further DWs, this petitioner came up with an application under order 9 Rule 7 of CPC on 10.04.2024 and the same was returned for the defects and it was again represented on 06.06.2024 and it was allowed on 22.01.2025. Thereafter, additional issues were framed and when the matter was pending for further evidence on additional issues, and for 2nd defendant side evidence, after availing 4 adjournments, the petitioner has come up with this present application on 20.03.2025. She has not filed

this application immediately after the order passed in her application to set aside the exparte order. It is also to be noted that the 1st defendant has also allowed the matter for exparte order on two occasions and caused delay and chosen to cross examine PW1, and to depose his evidence after filing two applications under order 9 Rule 7 of CPC. So, it is clear that the conduct and attitude of the defendants 1 and 2 is to prolong the case which is now at the fag end of the Trial.

10) As rightly pointed out by the learned counsel for the 1st respondent/Plaintiff, the petitioner has not stated any reason in the application. She is a retired teacher and she might be well aware of the proceedings. It is relevant to mention that the 1st defendant as DW1 during cross examination has admitted as follows, which has been clearly mentioned in the counter statement of the 1st respondent.

"இரண்டாவது சகோதரிக்கு மனநிலை
உடல்நிலையும் சரியில்லை என்றால் உடல்
நிலைதான் சரியில்லை மனநிலை நன்றாக உள்ளது
சரிதான். அவருக்கு திருமணம் ஆகவில்லை
என்றால் சரிதான். அவர் என் பராமரிப்பில்தான்

உள்ளார். அவருக்கு இந்த வழக்கை பற்றி தெரியாது
என்றால் சரியல்ல. "வாதிக்கு சேரவேண்டிய
பாகத்தை நான் கொடுக்க தயாராக உள்ளேன்".

11) The main contention of the learned counsel for the 1st Respondent is that now the intention of the petitioner is to get over the admission made by DW1 and to fill up the lacunae in the case of DW1.

12) While perusing the above aspects and the evidence of DW1, this court finds merits and substance in the contention of the 1st respondent. The Petitioner cannot be permitted to fill up lacunae and so, this Court finds no merits in the request made by her to recall the 1st defendant's side evidence. At the time of arguments, no serious objections was raised with regard to the request of the petitioner to reopen the Plaintiff side evidence(PW1) for cross examination. Of course, though the petition is belated, to advance substantial justice, the petitioner can be permitted to reopen the Plaintiff side evidence to cross examine PW1, on imposing reasonable terms. Already the petitioner has been given opportunity to adduce evidence on her side. Therefore, considering the totality of the circumstances, this

Court is inclined to allow this application in part, permitting the Petitioner to recall PW1 alone for the purpose of cross examination. This Court is not inclined to grant permission to the Petitioner to recall DW1 for cross examination. The Point No.1 & 2 are answered accordingly.

RESULT

In the result, this petition is allowed in part, permitting the Petitioner to recall the Plaintiff's side evidence (PW1) on condition that the petitioner should pay a sum of Rs.2500/- (Rupees Two thousand Five Hundred only) to the 1st Respondent towards cost to be payable on or before 08.08.2025, failing which the petition will be dismissed automatically. Call on 11.08.2025.

This petition is dismissed in respect of recall of the 1st defendant's side evidence (DW1).

This order was dictated by me to the Stenographer, transcribed by her on the Computer, corrected and pronounced by me, in open court, on this 2nd day of August 2025.

Principal District Judge,
Villupuram.

List of witness examined and document

marked on the side of the Petitioner /2nd defendant :-

- Nil -

List of witness examined and document marked on the side
of the Respondents /Plaintiff and Defendants 1 & 3 :-

- Nil -

sd/A.M
P.D.J,
VPM.

Corrected

Draft / Fair Order :
I.A.No.7/2025 in
O.S.No.96/2022
Dated: 02.08.2025.