

In the Court of the Principal District Judge, Villupuram

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

Wednesday, the 3rd day of June 2026

**I.A.No.9/2025**

**and**

**I.A.No.10/2025**

**in**

**O.S.No.243/2022**

.....

**I.A.No.9/2025**

Jayachandran

... Petitioner/  
3rd Defendant

/Vs/

- 1) Kasthuri
- 2) Sivasankaran
- 3) Kanagavalli

... Respondent/  
Plaintiff/  
Defendants 1 & 2

**I.A.No.10/2025**

Jayachandran

... Petitioner/  
3rd Defendant

/Vs/

- 1) Kasthuri
- 2) Sivasankaran

3) Kanagavalli

... Respondent/  
Plaintiff/  
Defendants 1 & 2

These Petitions are coming on 16.04.2026 before me for final hearing in the presence of Tr.I.Karunakaran, Advocate for the Petitioner; and of Tr.K.Shankar, Advocate for the 1st Respondent; and Tr.A.K.A.Selvarajan, Advocate for the 2nd Respondent in both the petitions; and the 3rd Respondent in both the petitions remained exparte in the main suit; 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...

### **COMMON ORDER**

These petitions have been filed by the Petitioner/3rd Defendant under Order XVIII Rule 17 of CPC., and under Order VIII Rule 1A (3) of CPC., seeking the recall of his evidence as DW2 ( **I.A.No.9/2025**) for the purpose of further chief - examination to mark certain essential documents (**I.A.No.10/2025**).

**2) The case of Petitioner is that,** the above suit has been filed by the 1<sup>st</sup> Respondent /Plaintiff for partition and separate possession. The Petitioner purchased the suit property out of his independent income and

by selling the jewels of his wife, through a registered sale deed dated 24.01.2011. Subsequently, a rectification deed was also executed to correct an error in the sale deed with regard to the electricity service connection. He obtained an agricultural loan of Rs.3,00,000/- from the Central Bank, Mandagapattu, by mortgaging the suit property, along with a legal opinion from Advocate Tr.Sampath Kumar, with regard to his title over the suit property. He discharged the said loan on 04.08.2021. The patta and "A" Register extracts stands in his name. He was working as Mason (Building Maesthri) and he had registered his name as a member of Pudhucherry Building and Construction Workers Welfare Board. His sister (Plaintiff) is residing at her husband's house from the date of her marriage. He is producing his marriage Registration Certificate and his sister's marriage invitation to establish their residence. He was examined as DW2 and his evidence was closed on 22.09.2025. The failure to mark these documents earlier, was neither wilful nor intentional, because the documents could be traced out only recently. Unless he is recalled for the purpose of marking these vital documents, he would be put to severe hardship and irreparable loss. Hence, these petitions.

**3) The case of the 1<sup>st</sup> Respondent/Plaintiff in brief:**

**a)** It is evident that the Petitioner and the Defendants 1 and 2 are

colluded together from the very fact that the Defendants 1 and 2 have neither been added as parties to these petitions nor notice have been served to them. These petitions ought not to have been taken on file, since the endorsement has not been obtained from the 1<sup>st</sup> Defendant as to whether he has any objection or no objection in this petition. The averments made in the petitions are denied as false.

**b)** In reality, the suit property is being enjoyed and possessed jointly by the Respondent/Plaintiff and the other Defendants. Thus, the Respondent/Plaintiff has  $\frac{1}{4}$  share of right, title and enjoyment in the suit property. The 1<sup>st</sup> Defendant, with the consent of the Plaintiff and the Defendants 2 and 3, executed a registered Power of Attorney Deed in favour of one Palani S/o Subramaniyan on 13.09.2010 authorising him to sell the property and purchase the suit property situated at Kongampattu village. Pursuant to the same, the suit property was purchased on 24.01.2011 in the name of the Petitioner/3<sup>rd</sup> Defendant, he being the only male heir in the family.

**c)** Eventhough the suit property was purchased in the name of the Petitioner, it has treated as joint family property and is in joint possession and enjoyment of the Plaintiff and Defendants. The suit property was purchased within 100 days from the date of sale of the joint family property

situated at Keezhur on 13.09.2010 and so it would clearly reveal that the suit property is the joint family property.

**d)** The 1<sup>st</sup> Defendant, who is the father of Plaintiff and Defendants 2 and 3, was seriously ill, and the 3<sup>rd</sup> Defendant was the only male heir in the family, and therefore the suit property was purchased in his name on 24.01.2011. Hence, the suit property cannot be considered as the separate property of 3<sup>rd</sup> Defendant. The evidence of DW2 was closed on 22.09.2025. There is no necessity to recall him for the purpose of marking the proposed documents, which have been subsequently created and fabricated by the Petitioner. The said documents are not valid under law. This petition has been filed to delay and prolong the case and to waste the time of this Court. The suit was posted for examination of further DWs on 07.10.2025, 16.10.2025, and 28.10.2025. While the suit was pending at that stage, the present petitions has been filed seeking permission to adduce additional evidence.

**e)** If the petitions are allowed, it would nullify the cross examination done by the Respondent/Plaintiff. At the time of cross examination, the Petitioner (DW2) admitted that these documents are in his possession. After accepting the same, the present petitions are unacceptable. Generally, after a witness undergoes cross examination, a

civil Court would normally permit to re-examine only if there is due diligence while exercising care and caution. This aspect has been clearly stated by the Hon'ble Apex Court and various High Courts in various verdicts. There is no merit in the present petitions, which have been filed with the sole intention of dragging out the proceedings, causing unnecessary mental agony, hardship and intentional loss to the 1<sup>st</sup> Respondent. Hence, the petitions are liable to be dismissed with exemplary costs.

4) The learned counsel for the 2<sup>nd</sup> Respondent endorsed "No objection". The 3<sup>rd</sup> Respondent remained *ex parte* in the main suit.

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

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

7) **The points for consideration are :-**

1. Whether the Petitioner has shown sufficient cause to recall him for further examination(DW2) / marking of documents ?
2. Whether the Petitioner has shown sufficient cause to receive the proposed documents on his side; for non- production of the documents earlier, and whether

the documents are relevant and essential for the just and proper adjudication of the suit?

3. Whether the Petition to recall DW2 for further chief-examination/ for marking of documents are to be allowed?
4. Whether these petitions are bona fide one and deserves to be allowed?

### **DISCUSSIONS:**

#### **8) Answer to the Point Nos.1 to 4:**

a) The Petitioner is the 3<sup>rd</sup> Defendant; the Respondents 2 and 3 are the Defendants 1 and 2; and the 1<sup>st</sup> Respondent is the Plaintiff in the above suit which has been filed for Partition. The 1<sup>st</sup> Defendant is the father, 3<sup>rd</sup> defendant is his son, and the Plaintiff and the 2<sup>nd</sup> Defendant are the daughters of 1<sup>st</sup> Defendant. PW1 to PW3 have been examined on the Plaintiff's side. The 1<sup>st</sup> Defendant deposed as DW1. The 2<sup>nd</sup> Defendant remained *ex parte* in the suit. The 3<sup>rd</sup> Defendant was examined as DW2. He was duly cross examined by the Plaintiff and his evidence was closed on 22.09.2025. The suit was posted for the examination of further witnesses on the 3<sup>rd</sup> Defendant's side. At this stage, the present petitions have been filed.

b) The contention of the Petitioner ( D3) is that, he was able to trace

out the proposed documents only recently; the said documents are very vital to prove his defence that the suit property is his self acquired property and that he is in possession and enjoyment of the same; and that therefore these petitions are to be allowed by giving an opportunity to him to prove his defence.

c) The main grievance of the 1<sup>st</sup> Respondent(Plaintiff) is that the evidence of D3/DW2 was closed on 22.09.2025; the that the trial had already advanced significantly; the proposed documents were already available with the petition, but he has not produced the same while he was examined as DW2; and that the present petitions have been filed only to protract the proceedings; and that therefore the petitions are liable to be dismissed.

d) It is a well settled principle of law that the power under Order XVIII Rule 17 of CPC., is discretionary and should be exercised sparingly. It is primarily intended to enable the Court to clarify any ambiguity or doubt arising from the evidence on record. However, the paraamount objective of any procedural law is to ensure that substaintial justice is rendered to both parties. The procedural technalities should not completely shut out a party from placing relevant documentary evidence before the Court, provided it does not cause serious prejudice to the opposite party.

e) Bearing the above aspects in mind, if the present petitions are analysed, the Petitioner seeks permission to recall himself for the limited scope of marking certain documents on his side. A perusal of the document listed by the Petitioner reveals that they consist of the sale deed standing in his name, rectification deed, the legal opinion of the Penal lawyer of the Central Bank, Bank loan records, and revenue records.

f) These documents are mostly public records /Bank documents, executed much prior to the filing of the suit. These document cannot be considered to have been manipulated or fabricated overnight to fill up the lacunae in the evidence. The crucial issue involved in the suit is whether the suit property is a joint family property or self acquired property of the 3<sup>rd</sup> Defendant. Hence, the proposed documents are very much necessary to decide the issue involved in the suit. No prejudice would be caused if the documents are received subject to proof and relevancy. The evidence on the Petitioner's side has not been closed sofar. The suit is pending for the examination of further witnesses on the Petitioner's side. There may be some lack of due diligence on the part of the Petitioner; however dismissing this application entirely would deprive this Court from adjudicating the Partition suit based on complete facts and relevant title records. The marking of the proposed documents is necessary for a just and

proper disposal of the suit.

**g)** However, the inconvenience caused to the 1st Respondent (Plaintiff) due to the delay and recall of DW2, cannot be ignored. The 1st Respondent can be adequately compensated by way of costs, and by granting opportunity to further cross examination of DW2/ to lead rebuttable evidence regarding the newly marked documents.

**h)** Therefore, this Court finds that to ensure a comprehensive trial, to avoid miscarriage of justice; to avoid multiplicity of proceedings; and in the interest of justice, the Petitioner must be given permission to file the proposed documents and opportunity to recall himself solely for the limited purpose of marking the said documents, subject to stringent terms of costs and time. The Petitioner has shown sufficient cause to allow these petitions. The point Nos.1 to 4 are answered accordingly.

## **RESULT**

In the result, the petitions In I.A. No.9 /2025 and I.A.No.10/2025 are allowed subject to the following conditions:

**i)** I.A.9/2025 (to recall DW2) is allowed on condition that the Petitioner shall pay cost of Rs.2500/- to the 1<sup>st</sup> Respondent/Plaintiff.

**ii)** I.A.No.10/2025 ( to receive document on the Petitioner's side) is allowed on condition that the Petitioner shall pay cost of Rs.2500/- to the

1<sup>st</sup> Respondent/Plaintiff.

**iii)** The cost shall be paid on or before 16.06.2026.

**iv)** Upon proof of payment of cost, DW2 shall be recalled for the limited purpose of further examination for marking of the documents specified in the petition.

**v)** The 1<sup>st</sup> Respondent (Plaintiff) is given liberty to cross-examine the witness on the documents so marked.

**vi)** If the cost is not paid within the stipulated time, both the petitions shall stand dismissed automatically.

**vii)** Call on 17.06.2026 for reporting compliance and further proceedings.

Order dictated by me to the Stenographer, transcribed by her in the Computer, corrected and pronounced by me, in the open court, this the 3rd day of June 2026.

**Principal District Judge,  
Villupuram.**

List of witness examined and document

marked on the side of the Petitioner / 3rd Defendant :-

- Nil -

List of witness examined and document marked on the side  
of the Respondents/ Plaintiff and Defendants 1 & 2 :-

- Nil -

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

**Corrected**

**Draft / Fair Order :**

**I.A.No.9/2025**

**&**

**I.A.No.10/2025**

**in**

**O.S.No.243/2022**

**Dated: 03.06.2026.**