

I.A.No.04/2025 in O.S.No.112/2023
Date : 12.11.2025

Additional District Court
Virudhunagar

IN THE COURT OF ADDITIONAL DISTRICT JUDGE, VIRUDHUNAGAR

**Present : Tmt.S.K.ANGALAESWARI, B.A., B.L.,
ADDITIONAL DISTRICT JUDGE,
VIRUDHUNAGAR.**

Wednesday, the 12th day of November, 2025

**I.A.No.04/2025 in
OS.No.112/2023**

1. Muniyasamy
2. Pandiyan
3. Kasirajan
4. Thangapandiyan
5. Muneeswari

... Petitioners/Plaintiffs

Vs

1. Neelavathi
2. Ambiraj
3. Raj

... Respondents/Defendants

This petition came up before me on 04.11.2025 for final hearing in the presence of Thiru.C.Haribalakrishnan, learned advocate for the Petitioners and Thiru.I.Ramamoorthy, learned advocate for the Respondents 1 to 3 and upon considering all material records in this case and having stood over till this day for my consideration, this court deliver the following :

ORDER

This Petition has been filed by the Petitioners/Plaintiffs under Order 18 Rule 17 and section 151 of CPC to recall the evidence of PW1.

2) The averments of the Petition affidavit in brief are as follows:

The 1st petitioner is the 1st plaintiff in the Original Suit. He was filing this affidavit on behalf of 2 to 5 petitioners as well. The Original Suit is filed by the petitioners for Partition and Declaration. The respondents filed Written Statement. In Original suit, on 20.03.2025 the PW1 was cross examined and

Ex.A1 to Ex.A6 were marked and the suit is posted for cross examination of PW1. In this situation, the petitioners/plaintiffs have to re-call PW1 and have some important documents marked by the above person. The reason for this is that the respondents/defendants are the only heirs of the deceased Gopal Naicker, and they stated that the petitioners/plaintiffs are no heirs of the deceased Gopal Naicker. Moreover, the respondents/defendants are trying to sell the property by fraudulently obtaining a Legal heirship certificate stating that the respondents/defendants are the only heirs of Gopal Naicker by giving false information. In order to prove this, these petitioners/plaintiffs are also proving through documents that they are the heirs of the deceased Gopal Naicker. Presently, some important government documents have been found during a search of the petitioners/plaintiffs' house, the documents are to be filed as additional documents in the original suit and are to be marked by PW1. The documents are very important documents for this suit. The documents are to be re-called by the PW1 on behalf of the petitioners/plaintiffs and marked. Only then will the truth of the case be clearly known to the court. Further, the additional documents are also filed along with this petition as per Order 7 Rule 14(A). There is no possibility of any objection by the respondents/defendants in this regard. On the contrary, if this petition is not allowed, the petitioners/plaintiffs will suffer great hardship and loss. Hence this petition.

3) The averments of the Counter affidavit filed by 2nd Respondent the same was adopted by Respondents 1 and 3 in brief are as follows:

The petitioners themselves must prove that the facts stated in the petition filed by the above petitioners are true, except for those specifically admitted by the respondent. The petition of the petitioners is not maintainable in law and on the merits and must be dismissed as is. The petitioners' Interlocutory Petition

should delay the original suit proceedings and thereby prevent the respondent from obtaining the remedies and the petition has been filed by the court only on the basis of bad intentions after a long time. In the original suit, the respondents have filed their respective written statement in the court. In that written statement, defendants 1 to 3 have stated very clearly that there is no connection between the plaintiffs and Gopal Naicker. The plaintiffs must have come to know that through their lawyer. At that time, the plaintiffs should have found additional documents on their side regarding that and immediately filed them in the court. The court has also given the plaintiffs adequate opportunities to file such documents after the framing of issues in the original suit. But the plaintiffs, who have deliberately wasted all of them, have now, after the examination of witnesses in the original case has begun, and especially after the first examination has been completed, found all these documents at home by themselves, and therefore, the court should allow them to be marked as their documents in court, and therefore, for that purpose, the plaintiff's witness should be allowed to be examined again at the chief examination, the petitioners have sought a remedy in the interlocutory application is absolutely not acceptable. Hence this petition should be dismissed with cost.

4. Point for consideration:

Whether this petition is to be allowed or not?

5. Points :

- i. Heard both side arguments. Petition affidavit and counter affidavit filed by petitioners and respondents and also records available in this case were perused.
- ii. For the sake of convenience the parties are arrayed as per their rank in the suit.

5.1) It is the case of the plaintiffs that they filed a suit for partition and declaration injunction against Defendants 1 to 3. While the suit posted for cross examination of PW1 they found some documents to support their case. Previously the failure to produce all those documents was accidental one and not intentional. They came to know that some of material documents were misplaced and those such document are very much essential in order to prove their case. Hence the contention of the defendants that this application to recall the evidence of plaintiff side to mark those document is just and necessary to the suit proceeding.

5.2) On contrary to the above said submission the contention of the defendant that the above suit in O.S.No.112/2023 so long posted for hearing this application is filed by the defendants with malicious intention to delay the case proceeding. Hence he contented that this petition is not maintainable both in law and infacts and purely devoid of merits.

5.3) Before going to the merit of this petition it is just and necessary to extract a law namely order 18 Rule 17 of CPC hereunder for better reference,

Order 18 Rule 17 of the Code of Civil Procedure (CPC) empowers the court to recall a witness who has already been examined, for the purpose of seeking clarification. This power is discretionary and should be exercised judiciously and sparingly. The court can recall a witness on its own motion or upon a party's application, but the provision is not intended to allow parties to recall witnesses for further examination or cross-examination, according to legal websites.

5.4) In the light of the above said provision and also facts and circumstances of the case this court finds that a fair opportunity has given to plaintiffs side.

5.5) Order 18, Rule 17 of the Civil Procedure Code empowers a court to recall any witness at any stage of a suit to ask them questions to clarify ambiguities. This power is discretionary and should be exercised by the court on its own motion, not to fill gaps in a party's evidence or for further examination or cross examination by the parties.

5.6) It is a settled proposition of law that the provisions of Order 18 Rule 17 of the Civil Procedure Code have been interpreted to include applications to be filed by the parties for recall of witnesses, the main purpose of the said rule is to enable the Court, while trying a suit, to clarify any doubts which it may have with regard to the evidence led by the parties. The said provisions are not intended to be used to fill up omissions in the evidence of a witness who has already been examined. The evidence now being sought to be introduced by recalling the witness in question, was available at the time when the affidavit of evidence of the witness was prepared and affirmed. It is not as if certain new facts have been discovered subsequently which were not within the knowledge of the applicant when the affidavit evidence was prepared. The power under the provisions of Order 18 Rule 17 CPC is to be sparingly exercised and in appropriate cases and not as a general rule merely on the ground that his recall and re-examination would not cause any prejudice to the parties. That is not the scheme or intention of Order 18 Rule 17 CPC. The merit of this petition is not to fill up the lacuna and as discussed above this application is deserve to be allowed.

5.7) In the light of the above said provision and also facts and circumstances of the case this court finds that a fair opportunity has given to plaintiff side.

5.8) In the result, This petition is allowed without cost.

Dictated to the steno-typist, directly typed by her in the computer, corrected and pronounced by me in open court, on this the 12th day of November, 2025.

Additional District Judge,
Virudhunagar.

Witness and Exhibits on the side of the Petitioners: Nil

Witness and Exhibits on the side of the Respondents: Nil

Additional District Judge,
Virudhunagar.