

**IN THE COURT OF ADDITIONAL DISTRICT JUDGE, VIRUDHUNAGAR**

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

Saturday, the 25<sup>th</sup> day of October, 2025

**I.A.No.01/2025 in**  
**OS.No.272/2023**

1. G.Ramamoorthy
2. R.Vijaya
3. R.Sathyapriya
4. R.Karthikeyan

... Petitioners/Plaintiffs

Vs

1. R.V.Santha
2. V.Mahendhran
3. V.Nithya
4. P.Veerassamy

... Respondents/Defendants

This petition came up before me on 08.10.2025 for final hearing in the presence of Thiru.J.Raguraman, learned advocate for the Petitioners and Thiru.N.Surendran, learned advocate for the Respondents 1 to 3 and 4<sup>th</sup> Respondent remained exparte 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 1<sup>st</sup> petitioner is the 1<sup>st</sup> plaintiff in the Original Suit. He was filing this affidavit on behalf of 2 to 4 petitioners as well. The Original Suit is filed by the

petitioners for Partition and Declaration. The Original suit is posted for cross examination of 1<sup>st</sup> petitioner on the side of defendants. On 06.03.2025, on the side petitioner filed Proof Affidavit and documents 1 to 16 have been marked on behalf of him. Out of this, he had filed the copy of the Sale deed document No. 292/2011, which was executed to the 1st defendant and 4th defendant on 31.01.2011, along with the suit. The court, knowing that he had mistakenly written his name on the front page of the above document, said that it was not a copy of the Sub Registrar and that it was a Xerox and therefore could not be marked. Therefore, he left the above document alone and marked the other documents. The above mistake was not intentional. Since he have sought a remedy based on the above document, he can be proved his party if the above document is marked by the court. His lawyer has given him legal advice. Therefore, he have filed a fresh application with the Sub Registrar Copy of the above Sale deed. Therefore, it is necessary to recall him and to record the above document on behalf of him. Otherwise, his party will suffer a lot of hardship and loss without any reason. There is no possibility that the respondents will have any reasonable objection to allowing this application. He have also filed an application seeking permission to record the above Sale Deed. Hence this petition.

3) **The averments of the Counter affidavit filed by 1<sup>st</sup> and 2<sup>nd</sup> Respondents the same was adopted by 3<sup>rd</sup> Respondent in brief are as follows:**

The averments made in the petition are false and fictitious one. The petitioner must prove them. In fact, these plaintiffs do not have any reasonable party in the original suit. Due to this, while filing the original suit, the plaintiff has not filed the document mentioned in the petition and has filed it now with the intention of disruption the defendant. When the plaintiff filed the original suit, the 1st defendant filed a copy of the sale deed dated 31.01.2011 to the 4th

defendant, but deliberately concealed the first page and filed a copy of the said document. The plaintiff filed the original of the said copy of the document filed by the court, the truth of the case will be known to the court. The details of the sale deed executed by the 1st defendant to the 4th defendant were known to the petitioner/plaintiff at the time the said Sale deed were executed. Therefore, at that time he obtained the Sub Registrar copy of the above document and, on the grounds that it might be detrimental to him under the Limitation Act, he has filed it in the court hiding the first page. Now, after considering it, the document which the petitioner is filing after obtaining a fresh Sub Registrar copy is a document which is fraudulently obtained and filed in the case. They are not admissible in law. The document which the petitioner is now filing is a document which was produced by the petitioner for the purpose of the suit. Hence the petition should be dismissed with the cost of Respondents.

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 petitioner and respondent 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 plaintiffs that they filed a suit for partition and declaration injunction against Defendants 1 to 4. While the case was posted for Chief examination of plaintiffs on 06.03.2025 a Sale deed vide document no.295/2011 dated 31.01.2011 executed by 1<sup>st</sup> defendant to 4<sup>th</sup> defendant was not marked on behalf of plaintiffs for the reason that the name of the 1<sup>st</sup> plaintiff

wrote in the top of the above document. The court not marked the document and stated that it was xerox. But the plaintiffs contention that it was a certified copy only not a xerox copy. Therefore the plaintiffs prayer before this court that to recall of PW1 and marking of the above said document as their side Exhibit.

5.2) On contrary to the above said submission the contention of the defendants that the plaintiffs wantonly not filed the certified copy of the Sale deed 31.01.2011 before this court. Moreover the plaintiffs with evil intention to prolong the proceedings against the defendants. Hence they objected the above application.

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 on behalf of plaintiffs side a certified copy of sale deed dated 31.01.2011 was produced before this court. But the reason for believing certified copy as xerox copy is not found out. Therefore 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 as discussed above this application is deserve to be allowed.

5.7) 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 25<sup>th</sup> day of October, 2025.

Additional District Judge,  
Virudhunagar.

I.A.No.01/2025 in O.S.No.272/2023  
Date : 25.10.2025

Additional District Court  
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.