



OSA Nos. 69 & 78 of 2025

IN THE HIGH COURT OF JUDICATURE AT MADRAS

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Reserved on 27.06.2025	Pronounced on 14.07.2025
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CORAM

THE HONOURABLE DR.JUSTICE ANITA SUMANTH
and
THE HONOURABLE MR.JUSTICE N.SENTHILKUMAR

OSA No.69 of 2025 & OSA No.78 of 2025
and
CMP No.4666 of 2025 & CMP No.5061 of 2025

D. Rajesh
S/o.Devairakkam,
No.9/29, Sornammal Street,
Koodankulam, Thirunelveli District

Appellant in both Appeals

Vs

C. Jones Chelliah (deceased)
Sheila Jones (deceased)
1.Timothy Jones,
S/o.Late C.Jones Chelliah,
Rep. by his guardians
1. Pamela Thomas and
2. C.R.Thomas
No.101-B, 3rd Street, Gill Nagar,
Choolaimedu, Chennai-600094

Respondent(s) in both Appeals



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OSA No. 69 of 2025

PRAYER

Appeal filed under Order XXXVI Rule 9 of OS Rules to set aside the order dated 25.11.2024 made in Appln. No.4536 of 2024 in CS No.639 of 2012 and allow the said Application.

OSA No. 78 of 2025

PRAYER

Appeal filed under Order XXXVI Rule 9 of OS Rules to set aside the order dated 25.11.2024 made in Appln. No.4537 of 2024 in CS.No.639 of 2012 and allow the said Application.

For Appellant(s): Mr.K.Shanmugakani
(in both appeals)

For Respondent(s): Ms.Lita Srinivasan
(in both appeals)

COMMON JUDGMENT

N.SENTHILKUMAR, J.

These Appeals are filed by the appellants to set aside the order dated 25.11.2024 made in Appln. Nos.4536 of 2024 and 4537 of 2024 respectively, in CS No.639 of 2012 and to allow the said Applications. The appellant is the



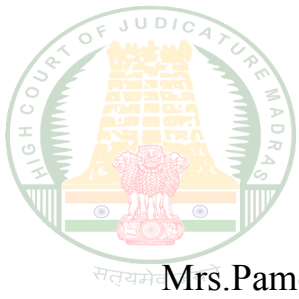
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plaintiff and the respondents are the defendants.

2.Appln.Nos.4536 & 4537 of 2024 have been filed by the Plaintiff to recall DW1 Mrs.Pameela Thomas, W/o.C.R.Thomas for further cross examination and reopen the evidence of the plaintiff.

3.The case of the Appellant is that the appellant/plaintiff entered into an agreement of sale with the defendants 1 & 2 on 16.07.2012 to purchase the suit property for a sale consideration of Rupees two crores and fifteen lakhs (Rs.2,15,00,000/-). The defendants 1 & 2 were senior citizens. The second defendant's sister's husband Mr.C.R.Thomas, who is one of the guardian of the third defendant, finalised the terms of the contract and he had attested the said sale agreement dated 16.07.2012. Subsequently the defendants 1 & 2 entered into another agreement of sale with a third party in respect of the same suit property. The plaintiff, on knowing the same, issued a legal notice to the defendants 1 & 2, calling upon them to execute the sale deed after receiving the balance sale consideration. Therefore, the appellant/plaintiff had filed the suit in C.S.No.639 of 2012. The third defendant is autistic and during the life time of defendants 1 & 2, two guardians were appointed namely (1) Mr.C.R.Thomas and (2) Mrs.Pameela Thomas. The said Mrs.Pameela Thomas is the own sister of the second defendant and Mr.C.R.Thomas is the husband of the said



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Mrs.Pameela Thomas. The defendants 1 & 2 died on 13.03.2018, leaving behind the third defendant as their legal heir. Thereafter, the plaintiff filed an application to bring on record the third defendant.

4.The learned single Judge, by taking into consideration that the appellant after cross examination of DW1, had filed the said applications to recall DW1 and reopen the evidence of the appellant, dismissed the said Applications.

5.Heard Mr.K.Shanmugakani, learned counsel for the Appellant and Ms.Lita Srinivasan, learned counsel for the respondent.

6.DW1 was examined on 08.01.2024 before the learned Additional Master IV and her statements were recorded and after completion of evidence in full, an endorsement has been made by the learned counsel on either sides and thereafter, the case was listed before the regular Court for arguments.

7.The learned counsel for the appellant contended that the above applications viz., Appln.Nos.4536 & 4537 of 2024 were filed taking into consideration that DW1 has to be cross examined, as there was change of counsel. The earlier counsel had not questioned the relevant factors to the present case and had left out so many vital questions. Therefore, if the said



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8.The learned counsel for the appellant further contended that the defendants 1 & 2, during their lifetime, had not denied the execution of the sale agreement dated 16.07.2012. DW1, Mrs.Pameela Thomas has also admitted in her cross examination that she was not aware of the facts of the case prior to her appointment as one of the guardians. The appellant's earlier counsel had failed to ask the material questions with the defendants' witness DW1. He has not asked any question on the statements in proof affidavit filed by DW1 and he has not even put any suggestion to DW1.

9.The learned counsel for the appellant had relied upon the order passed by this Court in C.R.P.Nos.743 and 744 of 1999 dated 28.07.1999 (*Muthukaruppan Vs. Suresh and Ors.*), reported in 1999(3)CTC491. In the above said case, at paragraph No.9 it was held as follows:

9.In Om Prakash V.Sarupa, MANU/PH/0122/1981, in para 4 of the judgment, learned Judge said thus,

“.. A party should not be allowed to suffer for any omission or lapse on the part of his counsel when it relates to the requirement of any law. Moreover, it is well known that the rules of procedure are meant to



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advance the cause of justice. In civil litigation for the lapse on the part of one party, the other party can be easily compensated by payment of costs...”

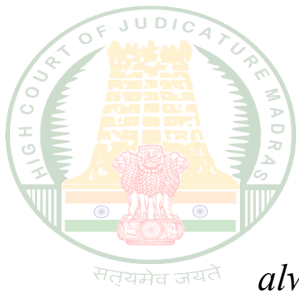
In that case, his Lordship said that omission on the part of counsel to put certain vital questions should not affect the party.”

On the question of circumstances, which warrant the Court to recall and reopen the evidence, the learned counsel for the appellant contended that the recall and reopen depends upon the facts and circumstances of every case.

10.The learned counsel for the appellant further relied upon the judgment of the Hon'ble Supreme Court in the case of *Vadiraj Naggappa Vernekar (Dead) through LRs Vs.Sharadchandra Prabhakar Gogate* reported in (2009) 4 SCC 410, on the same proposition. In the above said judgment at paragraph Nos. 29 & 30 it was held as follows:

“29.It is now well settled that the power to recall any witness under Order 18 Rule 17 CPC can be exercised by the Court either on its own motion or on an application filed by any of the parties to the suit, but as indicated hereinabove, such power is to be invoked not to fill up the lacunae, in the evidence of the witness which has already been recorded but to clear any ambiguity that may have arisen during the course of his examination.

30.Of course, if the evidence on re-examination of a witness has a bearing on the ultimate decision of the suit, it is



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always within the discretion of the trial Court to permit recall of such a witness for re-examination-in-chief with permission to the defendants to cross-examine the witness thereafter. There is nothing to indicate that such is the situation in the present case.”

11.However, the above judgment goes contra to the views expressed in the previous judgment cited by the learned counsel for the appellant. The Hon'ble Supreme Court in the above said judgment in Paragraph No.29 had observed that the power to recall any witness should not be exercised to fill up the lacunae.

12.Per contra, learned counsel for the respondent contended that the contentions in the applications were only an afterthought and these applications were filed only to protract the proceedings. The learned counsel further contended that these Applications are not only delayed but that there was no lacunae in the questioning. A look at the evidence would establish this position.

13.We have perused the cross examination of DW1 before the Additional Master Court IV in the above Suit. The Appellant had putforth 48 questions and it was submitted that there is no re-examination. After recording the same, the evidence was closed. Contradictorily, the applications were made on the ground that previous counsel, who has given change of vakkalath to the parties had not



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suggested most of the vital questions to DW1 during cross examination. However, there is no clarity on what are the issues untouched or questions unasked and hence, we believe that the Applications were filed only to protract the proceedings.

14. In view of the above facts and circumstances, we do not find any infirmity in the order passed by the learned single Judge dated 25.11.2024 in Appln. No.4536 & 4537 of 2024, in CS No.639 of 2012 and therefore, the Original Side Appeals are dismissed. No costs. Consequently, connected Miscellaneous Petitions are closed.

(A.S.M.,J)

(N.S.,J)

14.07.2025

Index: Yes/No

Speaking/Non-speaking order

Internet: Yes

Neutral Citation: Yes/No

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To
Timothy Jones, S/o.Late C.Jones Chelliah,
Rep. by his guardians

1. Pamela Thomas and

2. C.R.Thomas

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Choolaimedu,

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**Pre-delivery common Judgment made in
OSA No.69 of 2025 & OSA No.78 of 2025 and
CMP No.4666 of 2025 & CMP No.5061 of 2025**

14.07.2025