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A NO. 2674 of 2025

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 11-08-2025

CORAM

THE HONOURABLE MR JUSTICE C.V. KARTHIKEYAN

A.Nos.2674 & 2675 of 2025 in

C.S.Nos.264 of 2006 and

C.S.No.648 of 2003

Summi Vajrapani Saraswathi
Door Nos.14 and 16 Avadanam Pappier Road,
Choolai, Chennai 600 112.

Applicant(s)

Vs

Shiv Darshan Yoga Vidyalaya
Rep.by its Chairman H.Nemichand.

Respondent(s)

For Applicant(s):

Mr.R. Ramanlal, Additional Advocate General,
assisted by
S.Selvaraj

For Respondent(s):

Mr.K.V.Bashyam Cheri

ORDER

These applications have been filed by the defendants in C.S.No.264 of 2006 under Order XVIII Rule 17 of CPC seeking to reopen the evidence of P.W.1 which had been closed on 03.01.2025 and to recall P.W.1 for further cross examination.



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2. The suit in C.S.No.264 of 2006 had been filed by the respondents / Plaintiffs seeking among other reliefs, to frame a scheme of management for the first plaintiff Trust and also to declare that the meeting said to have been held by the first defendant on 03.08.2003, 09.08.2003 and 02.09.2003 and the resolutions passed therein are without authority and illegal. Several other consequential reliefs have also been sought in the plaint. The plaintiffs primarily focused on the removal of the first and the second defendants from the office of the Trusteeship of the first plaintiff Trust.

3. It is contended that a joint trial had been conducted in C.S.No.264 of 2006 and an earlier suit filed by the defendants in C.No.648 of 2003. The seventh plaintiff H.Nemichand had grazed the witness box as P.W.1. At the time of institution of suit, he had been termed as a Trustee but later he assumed the post of Chairman of the first plaintiff Trust. He had filed his proof affidavit and was cross examined quite extensively. The evidence had been closed. At that juncture, these applications have been filed by the defendants to reopen the evidence and recall P.W.1 for further cross examination. The reason given why the said evidence should be reopened and recalled had been given in paragraph No.3 of the affidavit filed in support of the Judges Summons of these applications which is as follows:

"3. I humbly submit that Mr.H.Nemichand was examined as P.W.1 and his cross examination was completed. While cross examining the P.W.1 some vital questions regarding the plaint allegation regarding the



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meeting which was held on 03.08.2003, 09.08.2003 and 03.09.2003 and also some other allegations made against me as well as 2nd defendant / 2nd petitioner that aspects were not covered in cross examination inadvertently and since the evidence on the side of P.W.1 was closed and posted for evidence on my side, the evidence may be reopened and P.W.1 may be roopened and P.W.1 may be recalled. If the suit was not reopened and the witness was not recalled, I will be greatly affected. On the other hand, no prejudice is going to be caused to the respondents."

4. A counter has been filed by P.W.1 / H.Nemichand, wherein, he had stated the law relating to Order XVIII Rule 17 of CPC and thereafter with respect to the reason given, he had stated that except making a bald statement of omission to put some crucial questions, there are absolutely no convincing reasons and on those grounds, the evidence should not be reopened and he should not be recalled for further cross examination. It had also been stated that it is an attempt to fill up the gaps or lacuna in the evidence which according to him had been admitted in paragraph 2 of the affidavit filed in support of the Judges Summons in these applications.

5. In paragraph No.2 of the said affidavit, I do not find any lacuna having been admitted by the applicants. But at any rate, I shall extract paragraph No.2 of the affidavit filed in support of the Judges Summons which is as follows:

"2. I humbly submit that the respondents and others filed the above suit for framing of scheme and other related prayers and I along with others, filed C.S.No.648 of 2003



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there is a joint trial of the suit in C.S.No.648 of 2003 and C.S.No.264 of 2006. Since C.S.No.264 of 2006 is a comprehensive suit, evidence was let-in in the above suit and so I am filing this application in C.S.No.264 of 2006 alone."

6. In the counter affidavit, he had further stated that the applications have been filed only to drag on the trial and that, no prima facie case has been made out to consider the above applications.

7. Heard Mr.R.Ramanlaal, learned Additional Advocate General, assisted by the learned counsel for the applicants and Mr.K.V.Bashyam Cheri, learned counsel for the respondents.

8. The learned counsel for the applicants pointed out the reason given in the affidavit filed in support of the applications that a few questions have been omitted to be asked with specific reference to the meeting which was held on 03.08.2003, 09.08.2003 and 03.09.2003 and also regarding the allegations raised against the first and second defendants and argued that the evidence has to be re-opened.

9. The learned counsel for the respondents / plaintiffs however took serious umbrage in the filing of these applications. The learned counsel was quite vociferous in his arguments by stating that no adequate reason had been given to re-open and recall P.W.1 for further cross examination. The learned counsel placed strong reliance on the judgment of the Hon'ble



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Supreme Court reported in **2016 (4) LW 447 : AIR 2016 SC 1343 (Ram Rathi Vs. Mange Ram)** for which, the copy reported in **CDJ 2016 SC 216** had been forwarded to the Court. The learned counsel pointed out that the Hon'ble Supreme Court in that particular case had placed reliance on the judgment of the Hon'ble Supreme Court in an earlier case reported in **(2009) 4 SCC 410 (Vadiraj Naggappa Vernekar Vs. Sharadchandra Prabhakar Gogate)** and yet another judgment of the Hon'ble Supreme Court reported in **(2011) 11 SCC 275 (K.K.Velusamy Vs. N.Palanisamy)** and contended that the evidence should not be reopened to fill up the gaps or lacunae and that there must be some acceptable and credible reasons forwarded for reopening the evidence of a witness which had already been closed.

10. In the judgment referred in the case of **Ram Rathi Vs. Mange Ram**, the Hon'ble Supreme Court while examining the scope of Order XVIII Rule 17 of CPC had stated as follows:

"10. Order 18 of CPC deals with hearing of the suit and examination of witnesses. By an amendment introduced thereunder with effect from 01.02.1977, Rule 17A was introduced permitting production of evidence not previously known or which could not be produced despite due diligence. It appears, the amendment only caused unnecessary protraction of the litigation, and hence, the said provision was omitted by The Code of Civil Procedure (Amendment) Act, 1999 with effect from 01.07.2002. However, Rule 17 was retained which reads as follows:

"17. Court may recall and examine witness.- The court may at any stage of a suit recall any witness who has been examined and may (subject to the



law of evidence for the time being in force) put such questions to him as the court thinks fit.”

11. The respondent filed the application under Rule 17 read with [Section 151](#) of the CPC invoking the inherent powers of the court to make orders for the ends of justice or to prevent abuse of the process of the court. The basic purpose of Rule 17 is to enable the court to clarify any position or doubt, and the court may, either suo motu or on the request of any party, recall any witness at any stage in that regard. This power can be exercised at any stage of the suit. No doubt, once the court recalls the witness for the purpose of any such clarification, the court may permit the parties to assist the court by examining the witness for the purpose of clarification required or permitted by the court. The power under Rule 17 cannot be stretched any further. The said power cannot be invoked to fill up omission in the evidence already led by a witness. It cannot also be used for the purpose of filling up a lacuna in the evidence. ‘No prejudice is caused to either party’ is also not a permissible ground to invoke Rule 17. No doubt, it is a discretionary power of the court but to be used only sparingly, and in case, the court decides to invoke the provision, it should also see that the trial is not unnecessarily protracted on that ground.

12. In Vadiraj Naggappa Vernekar (Dead) Through LRs. v. Sharadchandra Prabhakar Gogate¹, this principle has been summarized at paragraphs- 25, 28 and 29:

“25. In our view, though the provisions of [Order. 18 Rule 17 CPC](#) 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



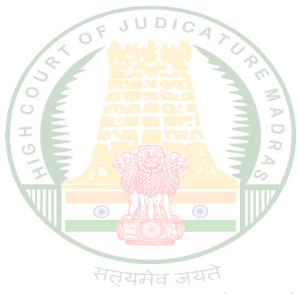
the evidence of a witness who has already been examined.

28. 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 1 (2009) 4 SCC 410 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.

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.””

11. Thereafter, the scope of Section 151 of CPC as enumerated in the case of ***K.K.Velusamy Vs. N.Palanisamy, reported in (2011) 11 SCC 275*** had been referred and it had been held as follows:

”18. The settled legal position under Order 18 Rule 17 read with Section 151 of the CPC, being thus very clear, the impugned orders passed by the trial court as affirmed by the High Court to recall a witness at the instance of the respondent “for further elaboration on the left out points”, is wholly impermissible in law. ”



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12. It had been very categorically held by the Hon'ble Supreme Court that there cannot be recall of a witness to elaborate the prints left out during cross examination.

13. It is contended by the learned counsel for the applicants / defendants that the very same reason had been given in paragraph No.3 of the affidavit that questions relating to the meetings which were held on 03.08.2003, 09.08.2003 and 03.09.2003 had not been covered during the cross examination and inadvertently the cross examination was closed and he therefore urged that the applications may be allowed.

14. To examine further the reason given, it would only be appropriate and prudent to examine the pleadings in C.S.No.264 of 2006. The suit had been filed for framing a scheme for the first plaintiff Trust. In the plaint, the plaintiffs have raised allegations against the first and second defendants and have contended that they cannot be recognised to continue to function as Trustees of the first plaintiff and that, the plaintiffs had reposed great confidence on first and second defendants since there were Sanyasis.

15. Various allegations have been raised against the first and second defendants. It must also be noted that during the pendency of the suit, the 7th plaintiff who was examined as P.W.1 had assumed charge as Chairman of the first plaintiff. It must also be mentioned that the earlier suit filed in C.S.No.648 of 2003 wherein, P.W.1 is not a party, but it had been filed for



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permanent injunction restraining the defendants therein from interfering with the functioning of the first plaintiff Trust.

16. The Trust in both the suits are same. It is obvious that there are two rival groups which are trying to take control of the Trust. The Trust has properties of quite substantial value. The income also runs to a substantial amount. It is thus seen that the entire issue is not out of any interest in the Trust, but rather the interest in the money which could be generated as Trustees or Office Bearers of the Trust. Therefore, evidence in entirety is required in such matters.

17. The Court has to discharge the responsibility to frame a scheme for the Trust and more particularly, also ensure that the correct persons are placed as Trustees to the Trust. The evidence, which was not complete in the eyes of any of the parties, would not be to the advantage of any party when the scheme is framed for the Trust and when the relevant *bonafide* of all the parties are balanced, to examine whether they should continue as Trustees or they should be removed as Trustees and fresh Office Bearers will have to be appointed. Neither the plaintiffs nor the defendants can claim that they are also capable and honest to run the Trust.

18. Allegations have been raised by both of them against both of them. The allegations *prima facie* shows that all should be disqualified to be continued as Trustees of the Trust. But, that is a subject matter of decision

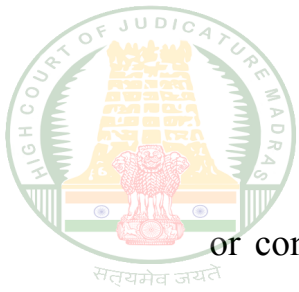


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making process. If the evidence is incomplete in any of the matters of the Trust, then, an opportunity must be given to complete the evidence.

19. In the judgment relied on by the learned counsel for the respondents / plaintiffs, two suits had been taken up for joint trial in C.S.No.43 of 2009 and in C.S.No.44 of 2009. The plaintiff in C.S.No.43 of 2009 was no longer a party in C.S.No.44 of 2009. It had also been stated that the past evidence of the plaintiff in C.S.No.44 of 2009 which had already been recorded to be treated as the main suit. Thereafter, it had been stated that the plaintiff in C.S.No.44 of 2009 had filed a suit for declaration of the suit property and therefore, both the suits had been consolidated together and trial was conducted jointly. In those circumstances, an application had been filed to cross examine P.W.1 who was the fifth defendant in the suit in C.S.No.43 of 2009. Therein, it had been contended that after the evidence had been over and practically the evidence in both the suits had been completed, re-opening of the evidence on the basis of the evidence recorded by the other witnesses, is impermissible and would definitely come within the purview of filling of gaps or filling of lacunae.

20. Here, the defendants have not yet grazed the witness box. The evidence of P.W.1 alone had been recorded. He had also been cross-examined. No further evidence is available to examine the creditworthiness of P.W.1 or other parties to the suit. In a suit filed under Section 92 of CPC., the *bonafide* of each and every individual who claims a right to be a Trustee



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or continue as Trustee or further claims that any other Trustee should be removed from the post of trusteeship, should be examined in entirety for the benefit of the Court and also for the benefit of the parties concerned.

21. The Court will have to balance the evidence relating to the *bonafide* of the individuals, keeping in mind the objects of the Trust and not the individuals in mind. Taking that view into consideration, though the Hon'ble Supreme Court in that particular case had held that for filling up the gaps, witness should not be recalled, here, since one of the relief sought in C.S.No.264 of 2006 is to set aside the resolutions passed in the meeting dated 03.08.2003, 09.08.2003 and 03.09.2003, on which, P.W.1 is sought to be further cross examined, I would allow these applications. The facts stated in the cases cited by the learned counsel for the respondents /plaintiffs are totally different and this case is unique and distinct.

22. Accordingly, these applications are allowed. P.W.1 to appear before the Additional Master - IV on 26.08.2025. The Additional Master - IV may call this matter at 2.30 p.m. and further cross examination be completed before 4.30 p.m. on the same day. No further time would be granted. Thereafter, the Additional Master - IV may continue to record further evidence.

11.08.2025

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C.V.KARTHIKEYAN, J.

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To
1. Shiv Darshan Yoga Vidyalaya
Rep.by its Chairman H.Nemichand.

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C.S.Nos.264 of 2006 and
C.S.No.648 of 2003

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