



WEB COPY

A Nos. 5253 & 5254 of 2



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 30-10-2025

CORAM

THE HON'BLE DR.JUSTICE R.N.MANJULA

A Nos. 5253 & 5254 of 2025 in

TOS.No.41 of 2021

A.Nos.5253 & 5254 of 2025

S.Sumathi
W/o.Shanmugam,
Old No.547, New No.746,
T.H.Road, Old Washermenpet,
Chennai - 600 021.

..Applicant /

5th defendant

Vs

1. T.Hemachalam
S/o.Late Thanikachalam, 11/4, Ramakrishna
Nagar Extn., Alwarthirunagar, Valasarawalkam,
Chennai - 600 087
2. Mahendravarman
S/o.Shanmugasundaram, No.287J, 2nd Floor,
35th Street, TVS Avenue, Anna Nagar Western
Extn, Tiruvallur - 600 101.
3. B.Rathina Kumari
W/o.Balasundaram, No.3, 7th Cross Street,
Murugesu Nagar, Thirunindravur, Tiruvallur -
602 024.
4. S.Natarajan
S/o.Shanmugasundaram, No.17, Thiruppur
Kumaran Street, Vysarpadi, Chennai - 600 039.

..Respondent(s)



PRAYER in both Applications : To recall the P.W.1 and to reopen the evidence of P.W.1 in order to cross examine P.W.1.

In both Applications:

For Applicant(s): M/S.K.R.GUNASHEKAR

For Respondent(s): MR. PRAVEEN ALEXANDAR

COMMON ORDER

These applications have been filed by the applicant / 5th defendant to recall P.W.1 and for granting an opportunity to the applicant / 5th defendant to cross examine P.W.1.

2. The learned counsel for the plaintiff / first respondent vehemently objected the prayer sought by the applicant saying that P.W.1 is 80 years old and his evidence has been completed due to the absence of the applicant, when he was present on 14.11.2024. P.W.2 entered in the box on 15.04.2025. Even then, the applicant has endorsed that he has no cross for P.W.2. Despite the same, he has chosen this application only during September 2025.

3. The learned counsel for the applicant submitted that the learned Master without granting an opportunity to cross examine P.W.1 by the fifth defendant, had closed the evidence.



4. P.W.1 was present at Court on 14.11.2024. The defendants ought to have made their presence and availed their opportunity to cross examine the witness. During the trial proceedings when the witness is present in the box, it is the duty of the defendants to watch the proceedings and cross the witness when their turn comes. If there was no representation on the side of the defendants even when the witness was present, the Court cannot have any other option except to conclude the evidence of the witness who was present. Even though there is a delay on the part of the applicant to file this application seeking to recall P.W.1, the hardship that might cause to P.W.1 also cannot be ignored.

5. The learned counsel for the first respondent / plaintiff submitted that P.W.1 is 80 years old senior citizen and it is not possible for him to come once again before this Court and depose evidence.

6. Though the learned counsel for the first respondent / plaintiff submitted that P.W.1 is bedridden, no document has been shown in support of the same. It appears that P.W.1 was able to make his appearance before the Court till the recent past. Hence, I feel this Application can be considered favourably by granting the applicant / fifth defendant one more opportunity to cross examine P.W.1. However, the applicant is also liable to pay the cost for the delay caused on his part.

7. In view of the same, the Application in A.No.5254 of 2025 is allowed on payment of cost of Rs.5,000/- and the said amount has also been paid immediately.



8. The other Application in A.No.5253 of 2025 has been filed to re-open the evidence of P.W.1. In fact, the trial has not been completed and this Application is unnecessary and the same is closed as unnecessary.

30-10-2025

Index: Yes/No

Speaking/Non-speaking order

Neutral Citation: Yes/No

GSK



To

1. T.Hemachalam

S/o.Late Thanikachalam, 11/4, Ramakrishna
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Chennai - 600 087

2. Mahendravarman

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DR.R.N.MANJULA, J.

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