



A.Nos.1158 & 1159 of 2026

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 16-04-2026

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THE HON'BLE DR.JUSTICE A.D.MARIA CLETE

A Nos. 1158 & 1159 of 2026

in

C.S. NO. 63 of 2022

Vimal Gupta
S/o.Late Vidhyadhar Gupta, NO.20, KASTURI
RANGA ROAD,
ALWARPET,
CHENNAI - 600 018.

..Applicant(s) in both

Vs

M/s Victory Traders (p) Ltd
A Company Incorporated Under the Companies Act,
1956
Represented By Its Authorized Signatory
M.R.Lakshmunarayanan
Having Its Registered Office At 3rd Floor,
Neeladri Building, No.9, Cenotaph Road Alwarpet,
Chennai - 600 018.

..Respondent(s) in both

COMMON PRAYER: To Re-call the Respondent/Plaintiffs witness No.1 (PW-1) for being cross examined by the Petitioner/Defendant, in favour of the Applicant herein and to re-open the respondent/plaintiff's evidence in the present suit.

For Applicant(s): Mr.R.Venkatraman for M/s. Tatva Legal
Chennai

For Respondent(s): Mr.K.Gowtham Kumar.



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ORDER

These two applications are taken up together, since the relief sought in one is consequential to the other. A.No.1159 of 2026 has been filed by the defendant to reopen the plaintiff's evidence in the suit, and A.No.1158 of 2026 has been filed by the defendant to recall P.W.1 for further cross-examination.

2. The suit, is one for declaration, permanent injunction, mandatory injunction and damages. In the amended plaint, the plaintiff claims to be the absolute owner of the suit schedule property measuring 1240.2 sq.ft. comprised in R.S. No.1585/17 (part) and 1584/2 (part), Block No.32, Mylapore Division, and pleads that after purchase under Sale Deed dated 18.01.1993 registered as Document No.49 of 1993, it constructed a compound wall on the eastern boundary measuring 117 feet north to south; according to the plaintiff, the defendant commenced demolition of the wall on 09.03.2022 and thereafter continued demolition on later dates in April 2022.

3. The earlier orders in the suit show the course of proceedings. On 01.11.2022, this Court framed issues, P.W.1, namely Mr. M.R. Lakshminarayanan, filed proof affidavit on 21.12.2023. In chief examination continuation on 26.09.2024, Exs.P1 to P5 were marked, cross-examination of P.W.1 was undertaken on 23.04.2025 and



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continued on 20.06.2025, and on 20.06.2025 the cross-examination was completed and the plaintiff's side evidence was closed.

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4. After closure of plaintiff's evidence, the defendant appears to have sought to adduce evidence on his side, but from August 2025 till January 2026, the matter was adjourned on several dates for examination of defendant's side witness. The order sheet also records that on 03.11.2025 and 17.11.2025 the defendant represented that an application to receive additional documents would be filed or had been filed, and on 02.02.2026 the learned Additional Master recorded that the defendant's counsel represented that reopen and recall applications of P.W.1 were to be filed on that day. In the meanwhile, the defendant filed A.No.5865 of 2025 to receive additional documents. By order dated 09.01.2026, this Court allowed the said application,

5. In the affidavit filed in support of the present applications, the defendant states that the applications are filed under Section 151 C.P.C. and Order XVIII Rule 17 C.P.C. to reopen the plaintiff side evidence and to recall P.W.1 so that the suit may be effectually adjudicated. He reiterates his defence. He also states that he had filed written statement as early as on 22.06.2022 along with 17 documents. He states his health condition, that he suffered cardiac arrest in January 2022, angioplasty and stent implantation, further admission in June 2022 for another

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angioplasty and stent implantation, prolonged restricted activity from 2022 to 2024, and continued follow-up for cardiac evaluation. He states that only in the early part of 2025 did he regain stable health; thereafter he engaged his present counsel, who entered appearance through change of vakalat on 26.08.2025; and while preparing the defence, certain additional deeds and instruments were noticed which were material and were subsequently brought on record through A.No.5865 of 2025. He further states that since those additional documents were not earlier on record, his erstwhile counsel did not have an opportunity to cross-examine P.W.1 by inviting his attention to the same, and that those documents relate to title, boundary demarcation, survey, measurements and the location of the compound wall.

6. The question is whether, in the facts of the present case, the plaintiff's evidence should be reopened and P.W.1 should be recalled?

7. The applications cannot be allowed as a matter of course. At the same time, this Court, being the first Court of fact, must ensure that sufficient opportunity is afforded to the parties to adduce evidence and mark documents, unless it is found that the application has been filed with mala fide intention only to protract the proceedings, or that similar applications have repeatedly been filed. In the absence



of such circumstances, the Court should adopt a liberal approach in dealing with applications of this nature rather than a hyper-technical one.

8. In the affidavit filed in support of the recall application, the defendant has set out the broad reasons as to why he seeks to recall P.W.1 for further cross-examination. At this stage, the defendant cannot be expected to disclose in detail the entire line of cross-examination proposed to be adopted, since such disclosure may prejudice his defence. The additional documents, which have already been received by order in A.No.5865 of 2025, are stated to relate to title, boundary demarcation, survey, measurements and the location of the compound wall. The defendant has also explained the delay by referring to his medical condition and the subsequent change of counsel. While this Court is inclined to allow the applications in the interest of justice, however, the same can only be on terms.

9. Accordingly, A.No.1159 of 2026 is allowed and the plaintiff's evidence is reopened. Consequently, A.No.1158 of 2026 is also allowed and P.W.1 is recalled for further cross-examination by the defendant, on condition that the defendant shall pay costs of Rs.10,000/- to the plaintiff within a period of two weeks from the date of receipt of a copy of this order, failing which both the applications shall stand dismissed automatically without further reference to this Court.



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10. On proof of payment of costs being produced, the Registry shall post the matter before the learned Additional Master concerned, who had earlier recorded the evidence, for the purpose of recording the further cross-examination of P.W.1 expeditiously and without granting unnecessary adjournments.

16-04-2026

Index: Yes/No

Speaking/Non-speaking order

Neutral Citation: Yes/No

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DR.A.D.MARIA CLETE, J.

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