



WEB COPY

A No. 5537 of 2



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 30-01-2026

CORAM

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

A No. 5537 of 2025 & 5538 OF 2025

in

TOS NO. 4 OF 2021

A No. 5537 of 2025

1. Chitra Mahesh and 2 others

W/o.Late V.Mahesh, All are residing at Flat
No.1-D, Coral Classic No.36, Prithvi Avenue
2nd Street, Abhiramapuram, Chennai 600 018.

2. Meera Mahesh

S/o.Late V.Mahesh

3. Rahul Mahesh

S/o.Late V.Mahesh

..Applicant(s)

Vs

1. Mrs.Kausalya Venkateswaran (Deceased)

1.Mrs.Pramila Ramakrishnan and 2 others
D/o.R.Venkateswaran, All are residing at New
No.106, Old No.184, St.Marys Road, Chennai
600 018.

2. Ramachandran

S/o.R.Venkateswaran



3. Mrs.Jayashree George
D/o.R.Venkateswaran

..Respondent(s)

A No. 5538 of 2025

1. Chitra Mahesh and 2 others

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2nd Street, Abhiramapuram, Chennai 600 018.

2. Meera Mahesh

S/o.Late V.Mahesh

3. Rahul Mahesh

S/o.Late V.Mahesh

..Petitioner (s)

Vs

1. Mrs.Kausalya Venkateswaran (Deceased)

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S/o.R.Venkateswaran

3. Mrs.Jayashree George

D/o.R.Venkateswaran



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Prayer in A No. 5537 of 2025:

Application filed under Order XIV Rule VIII of O.S.Rules r/w.Order XVIII Rule 17 of C.P.C., to recall DW1 for letting further evidence.

Prayer in A No. 5538 of 2025:

Application filed under Order XIV Rule VIII of O.S.Rules r/w. Order VIII Rule 9 of C.P.C., to permit the Applicant/1st Defendant to file Additional Written Statement along with documents and Adoption Memo of D3 in T.O.S.No.4 of 2021.

in both applications:

For Applicant(s): Mr.R.Gururaj

For Respondent(s): Ms.Vasudha Thiyagarajan

COMMON ORDER

The application in [A.No.5538/2025](#) is filed to permit the applicant to file an additional written statement along with documents and the adoption memo of the 3rd defendant in [TOS.No.4/2021](#) and the application in [A.No.5537/2025](#) is filed to recall DW1 for further evidence.



2. The applicants are the defendants filed OS.No.605 of 2018 was originally filed by the 1st defendant's mother-in-law by relying on the Will dated 07.08.2002 executed by her husband. The 1st defendant's husband was the 4th respondent in the original petition and he died on 31.12.2018. Apart from the original petition, the 1st defendant's mother-in-law has also filed a suit in CS.No.76/2018 on the file of the 6th Additional Judge, City Civil Court, Chennai.

3. The original petition has been converted into a testamentary original suit in view of the caveat filed by the defendants. The evidence on the side of the plaintiff was closed. The 1st defendant has been examined as DW.1 and his cross-examination was also over. The 1st defendant has come across some valuable records and two Wills executed by her father-in-law dated 10.9.1985 and 4.12.1989. He has also got records with regard to the deposits made by her father-in-law and other investments and jewels and movables. In view of the tracing of the records, the 1st defendant should be permitted to file an additional written statement along with the additional documents and to recall herself to depose the additional evidence on the basis of the records.

4. The original testamentary suit, after the completion of the evidence, arguments have been heard. The written statement has been filed by the



defendants in the year 2018. After the demise of the 1st plaintiff, the 1st defendant re-entered the premises without any permission or authority. So it is false to state that she had come across certain documents only recently.

5. The applicant tries to introduce a new case by filing some 37 unconnected documents. Earlier an application had been filed to receive the additional documents in [A.No.105/2024](#) by the very same applicant, and the same was allowed. However, the application in [A.NO. 2831/2024](#) filed to recall DW.1 was dismissed on 11.07.2024, and the order has become final. Hence, the applicant cannot be once again allowed to delay the proceedings.

6. The applicants/defendants had denied the genuineness of the Will dated 07.08.2002, which is the subject matter of the testamentary original suit in [TOS.NO. 4/2021](#). It is stated by the applicant/defendants that by tracing certain new documents they came to know that the 1st defendant's father-in-law had executed two Wills in the year 1985. During the course of the arguments, the learned counsel for the applicant/1st defendant submitted that even though the Wills of the year 1985 are said to have been traced out, the applicants do not intend to file any original petition for seeking Probate or Letter of Administration.



7. It is claimed that the applicants are in possession of the suit property and hence, probate of any alleged Will is unnecessary. It is further submitted that even if they denied the execution of the suit Will, they do not intend to file any suit for partition also. It is up to the applicants/defendants either to file a partition suit or not. But in the event of making a claim, on the basis of some other Will allegedly found out, their spontaneous action would be to file any original petition for seeking appropriate relief under the Indian Succession Act on the basis of those Will. But the applicants/defendants have only chosen to seek permission to file an additional written statement and thereby tried to introduce another civil suit or testamentary original suit in the existing testamentary original suit and that cannot be allowed.

8. It is relevant to note that the earlier application filed by the 1st defendant to recall DW1 has also been dismissed and the order has attained finality. When the crux of the matter revolves around the genuineness of the suit Will and the relief depends on the proof of the same. It is unnecessary to travel beyond the scope of the suit and delay the proceedings on the whims of either of the parties.

9. In this regard it is relevant to refer to the judgement of the Hon'ble Supreme Court held in *Vadiraj Naggappa Vernekar (D) through Lrs. & Others*



Vs. Sharad Chand Prabhakar Gogate, reported in **2009 Supreme (SC) 357**. In the said judgement it is held that no recalling of witnesses can be allowed just to fill up the gaps after the cross-examination of the said witnesses, whoever. It is further stated that the recalling of witnesses after cross-examination would arise only in some exceptional and inevitable circumstances, and it cannot be done in a routine fashion. The relevant Nos. 16 and 17 of the above judgement are extracted for better understanding:

*“16. 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. As indicated by the learned Single Judge, 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. In the instant case, Sadanand Shet was shown to have been actively involved in the acquisition of the flat in question and, therefore, had knowledge of all the transactions involving such acquisition. It is obvious that only after cross-examination of the witness that certain lapses in his evidence came to be noticed which impelled the appellant to file the application under **Order 18 Rule 17 CPC**. Such a course of action which arises out of the fact situation in this case, does not make out a case for recall of a witness after his examination has*



been completed. 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*.

17. 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. Of course, if the evidence on re-examination of a witness has a bearing on the ultimate decision of the suit, it is 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. Some of the principles akin to *Order 47 CPC* may be applied when a party makes an application under the provisions of *Order 18 Rule 17 CPC*, but it is ultimately within the Court's discretion, if it deems fit, to allow such an application. In the present appeal, no such case has been made out.”

10. The parties to the testamentary original suit cannot be allowed to agitate the matters which they can plead in the civil suit. For that purpose this Court cannot permit the defendants to file any additional written statement or to file any additional documents and to drag the proceedings. By permitting the defendants to do the above



acts would only prejudice the respondents and affect the interest of justice by deviating and extending the scope of the suit beyond the issues involved therein. As I do not find any merits in these applications, these applications are liable to be dismissed.

In the result, these applications stand **dismissed**. No costs.

30-01-2026

Index: Yes/No

Speaking/Non-speaking order

Neutral Citation: Yes/No

JRS

To

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DR.R.N.MANJULA J.

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