



WEB COPY

A No. 6349 of 2



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 23-02-2026

CORAM

THE HON'BLE MR.JUSTICE P. DHANABAL

A No. 6349 of 2025

in

C.S.No.713 of 2019

1.A.Gowri Bai

No.11, 2nd Street, Bharathi Nagar, T.Nagar, Ch-17

2.A.Jaishankar

No.11, 2nd Street, Bharathi Nagar, T.Nagar, Ch-17

..Applicant(s)

Vs

M.K.Chandran (Deceased),

1.M.C. Chandra Kumar,

N.No.109, Iyyamudali Street, Chintadripet, Ch-2

2. M.C.Banugopan

Flat No.F-4, No.80-82, Nattu Subaraya Street,
Mylapore, Ch-4

3. M.C.Mageshwar

Flat No.F-4, No.80-82, Nattu Subaraya Street,
Mylapore, Ch-4

4. Sampooranam

Flat No.7, Nehru Street, Choolaimedu, Ch-94

5.M.K.Kathirvelan(deceased)

6..Arul Jothi

No.14/13, Rajiv Gandhi Street, Muthulakshmi
Nagar, Chitlapakkam, Ch-64

7. Annaporani

No.271/3, Mudhaliyar Thottam, Old
Suramangalam, Salem-636 005



8. Sampoorani
Flat No.7, Nehru Street, Choolaimedu, Ch-94

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..Respondent(s)

PRAYER: This petition has been filed seeking to issue summons to the 2nd and 3rd plaintiffs and examine them as witnesses.

For Applicant(s): Mr.R.Suresh Kumar for M/S.K.M. Vijayan & Associates

For Respondent(s): Mr.P.N.George Grahan for M/s.Devadasan and Sagar

ORDER

This application has been filed by the applicants to issue summons to the second and third plaintiffs and examine them as witnesses.

2.The main suit is filed for partition and declaration, to declare the settlement deeds as null and void.

3.According to the applicants, they are the defendants 1 & 2. The deceased plaintiff filed the suit for partition as against the defendants and during the pendency of the suit, the original plaintiff died and his sons were impleaded as the plaintiffs 2 & 3. Already the evidence of plaintiffs' side was closed and now the case is posted for defendants' side witnesses. During the pendency of



the suit, the first plaintiff died on 07.10.2025 and thereafter, the second and the third plaintiffs were impleaded as parties. The applicants/defendants claimed that though they had acquired the property through valid transactions, but they were put to unnecessary sufferings by the plaintiffs under the guise of the present suit. Therefore, the examination of the plaintiffs 2 & 3 is very essential for full-fledged trial and for proper appreciation of the facts of the case. The examination of the second and third plaintiffs is very relevant to bring out all the earlier claims of the plaintiffs by filing the suit with false averments. Therefore, the second and the third plaintiffs have to be examined as witnesses and summons have to be issued to them.

4.The respondents filed a counter, denying all the allegations levelled in the affidavit filed in support of the application and that the application is not maintainable. The second plaintiff has not produced any authorisation from the first plaintiff to file the application. In fact, after examination of plaintiffs' side witnesses, the case was posted for defendants' side evidence. The first defendant also filed the written statement and the same was adopted by the second defendant. The person, who sworn to the affidavit, was examined as DW1 without obtaining any leave from the Court. After examination of DW1 and at the stage of continuance of cross examination, the original plaintiff died and thereafter, the plaintiffs 2 & 3 were impleaded. In the meanwhile, the fourth defendant also died and thereafter, steps have been taken and now the



matter is posted for cross examination of DW1. At this stage, the present petition is filed. Already the original plaintiff was examined as PW1 and all the questions put to him by the defendants, were answered by him. After the examination of PW1, he died on 07.10.2023. The other plaintiffs and the defendants are children of the first plaintiff. The petitioners should have examined the first defendant as a witness to cull out the truth. Without doing so, they have chosen to file this application to examine the plaintiffs 1 and 2 as witnesses. They cannot compel the second and the third plaintiffs to examine as witnesses and only in order to harass the respondents, they are attempting to fill up the *lacunae* under the guise of present application, which is impermissible. Therefore, this petition is liable to be dismissed.

5. This Court heard both sides and perused the records.

6. In this case, it is admitted fact that already the plaintiffs' side evidence was closed. Now the case is posted for examination of DW1 and the chief was completed and the matter was adjourned for continuation of cross examination of DW1. At this stage, the applicants have filed the application to examine the plaintiffs 2 and 3 as witnesses. As per Order 16 Rule 14 of CPC, the Court has power to summon the witnesses where the Court thinks it necessary to examine any person other than a party to the suit and not called as a witness by the party to the suit, to give evidence or to produce any document in his possession. In



the case on hand, the applicants who are the defendants in the suit filed, the application to summon the plaintiffs 2 and 3 as witnesses. Therefore, it is for the Court to decide whether the examination of the plaintiffs 2 and 3 is necessary or not. The applicants have not stated any valid reasons to invoke the power under Order 16 Rule 14 CPC. At this juncture, it is relevant to refer Order 16 Rule 21 CPC which allows a party to a suit to summon another party to appear as a witness, to give evidence, or to produce documents and when summoned, the same provisions regarding witness attendance, expenses and penalties apply to the party. In the case on hand, already the plaintiffs' side evidence was closed and the original plaintiff was examined as PW1 and he was subjected to cross examination. Thereafter, the original plaintiff died and the plaintiffs 2 and 3 were added as parties and they stepped into the shoes of the original plaintiff. Once the original plaintiff was examined as witness, there is no need to examine the other plaintiffs who stepped into the shoes of the original plaintiff. More over, the reasons assigned by the applicants are not sufficient to invoke power under Order XVI Rule 14 of C.P.C,. Further, the defendants have not completed their evidence and only after completing the evidence of defendants' side if any valid grounds available, the Court can consider whether examination of particular person is necessary or not. Therefore, the defendants are not entitled to compel the plaintiffs 2 and 3 for their examination as witnesses.



7. At this juncture, the learned counsel appearing for the applicants relied on a judgment of this Court in the case of ***V.K.Periasamy @ Perianna Gounder Vs. D. Rajan*** reported in 2001 (2) MLJ 235 wherein, this Court held that the inclusion of provision under Order 16 Rule 21 CPC itself shows that there may be situations where a party may be called upon by another to give evidence as the witness. If there are very good reasons, the Court may exercise its discretion in favour of the party, seeking permission. In the case on hand also the applicants being the defendants, have filed this application to examine the plaintiffs 2 and 3 as witnesses. But they have not stated any valid reasons to examine the plaintiffs 2 & 3 as witnesses. Therefore, the said case law will not be applicable to the present facts of the case.

8. At the same time, the learned counsel for the respondent relied upon the judgments viz, (i) ***D.Babu Vs. K.A.Dinachandran*** in CRP(PD) No.3929 of 2012 (ii) ***Jortin Antony and Others Vs. Padmanabha Dasa Marthanda Varma and Others*** reported in AIR 2000 Kerala 369, (iii) ***Buddharaju Suryanarayana Raju Vs. Gugilla Gandadhara Sastry*** in CRP Nos.1337 & 1348 of 2019 and (iv) ***Kaliaperumal Vs. Pankajavalli and Others, (Madras)*** reported in 1999(1) LW 660.

9. On a careful perusal of the aforesaid judgments, it is clear that under Order 16 Rule 21 of CPC, the plaintiff seeking to compel opposite party to be



examined as witness, such practice is dis-approved by the Courts and the Privy Council and a party cannot, as a matter of right, compel the opposite party to be summoned or examined as a witness.

10. Further, it is clear that the power of Order 16 Rule 14 CPC should be an exception particularly when a party decides to call his adversary as a witness and merely because it is permissible when facts and circumstances of the case did not warrant such action, the Court need not to exercise discretion in that direction. Under Order 16 Rule 14 CPC, the plaintiffs cannot as a matter of force include defendants in his schedule of witnesses. It is for the Court to decide such necessity and then to compel a party to give evidence in exercise of power under Order 16 Rule 14 CPC. Therefore, it is clear that the Court has power to summon the witnesses including the parties to the proceedings when they were not already examined as witnesses by a party to the suit. To exercise such power, the Court first to form an opinion that it is necessary to examine such person to give evidence.

11. In the case on hand, the applicants had not stated valid reasons and the reasons that the plaintiffs unnecessarily filing the suit against the defendants and for full-fledged trial and for proper appreciation of facts, the examination of plaintiffs 2 & 3 is very essential, are not sufficient to invoke provisions of Order XVI Rule 14 CPC,. Already the original plaintiff was



examined as a witness and the applicants being the defendants have also cross-examined the said witnesses and now the case is posted for examination of defendants' side evidence. At this stage, without completing their evidence, the defendants, without assigning any reasons, are not entitled to compel the parties to appear and to give evidence. Therefore, this application has no merits and deserves to be dismissed.

12. Accordingly, this application is dismissed.

23-02-2026

Neutral Citation: Yes/No

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P.DHANABAL J.

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