

IN THE IV ADDITIONAL CITY CIVIL COURT, CHENNAI-104

**Present: Tmt. R.K.P. Tamilarasi, M.L.,
IV Additional Judge.**

Tuesday, the 7th day of April 2026

I.A.No. 6 of 2024

in

O.S.No.5077 of 2019

C.N.R.No.TNCH01-022017-2019

1. Mrs. S.P.Meharnisha
W/o. Ponniah
No.3/555, Kaveri Street
Rajeshwari Avenue
Madanagar, Madanandapuram
Chennai- 125.

2. Reenu Ponniah
W/o. Apparajth Dinakaran
No.B-3, Saraswathi Nagar
1st Street, Rajakilpakkam
Chennai-073.

...Petitioners/Plaintiffs

/versus/

1. M/s. Fortis Malar Hospital
represented by its Dean
No.52, 1st Main Road, Gandhi Nagar
Adyar, Chennai.

2. Dr. Nithyaa Ramamurthy, M.B.B.S., D.G.O.
Obstetrician and Gynecologist,
Fortis Malar Hospital, No.52, 1st Main Road,
Gandhi Nagar, Adyar, Chennai.

3. Dr. Janani, MD., RD.,
Radiologist, Fortis Malar Hospital
No.52, 1st Main Road, Gandhi Nagar
Adyar, Chennai.

..Respondents/Defendants

This petition came up before me for final hearing on 18.03.2026 in the presence of M/s.N.Kavitha Rameshwar and R.Ramachandran Counsels appearing for the petitioners/plaintiffs and of M/s.Rahul Balaji, Madhan Babu, Vishnu Mohan

and V.Uma Rekha Counsels appearing for the respondents 1 and 2, the counter of 1st respondent not filed and he was set exparte and the 2nd respondent made an endorsement as “ no counter” and of M/s. Anita Suresh, Bhagavath Krishnan PMN Counsel appearing for the 3rd respondent upon hearing the arguments from the counsels for both side, upon perusing the records of this case and having stood over for consideration till this day, this Court passed the following

ORDER

This petition is filed under Order XVI Rule 7 of CPC by the petitioners/plaintiffs to issue subpoena summons to Dr.Selvi Radhakrishnan, Consultant Oncoplastic Breast Surgeon, at Chennai, Breast Centre, MRC Nagar, Chennai, to offer her expert opinion on the medical certificate and documents relating to the 1st plaintiff and for giving further oral evidence.

2.Brief averments made in the petition as follows:

2.1) The 2nd petitioner is the daughter of the 1st petitioner. His mother has attained Menopause at the age of 43 years. In June, 2015 she had noticed some pain in her right breast and this petitioner take her mother to the 1st respondent hospital. This petitioner is working in Wipro Technologies, Chennai earning Rs.45,000/- per month and the medical expenses for the above treatment have been spent to her mother. The series of events stated in the petition would clearly go to prove that the 2nd and 3rd respondents done a proper diagnosis and detected the malignancy earlier, especially when her mother had consulted them well within time and without any delay, she would not have suffered so much of mental agony, trauma and physically pain and suffering. The cancer would have detected early and probably only the cancerous tumor/lump would have been done by the procedure of lumpectomy instead of mastectomy (Removal of breast).

2.2) This petitioner further stated that the standard of care and skill exercised by the 2nd and 3rd respondents were not of that of an ordinary competent medical practitioner exercising an ordinary degree of professional skill in the field. Therefore, the case on hand is a classic one of Medical Negligence on the part of 2nd and 3rd respondents making the 1st respondent hospital also vicarious liable for the acts, and omissions of the 2nd and 3rd respondents. The respondents are thus liable to pay damages to her mother for their acts, and omissions in medical negligence by their breach of duty to exercise care, caution and diligence as medical practitioner.

2.3) Apart from the physical pain, suffering and mental agony and trauma suffered by her mother, she had also been put to huge financial loss. Her surgery had cost a sum of Rs.1,05,000. The investigations and other tests cost a sum of Rs.60,000/- approximately. The first four sessions/cycles of Chemotherapy performed at the Apollo Specialty Hospitals, Teynampet, Chennai, have cost Rs.25,000/- per session, totally to Rs.1,00,000/- The next seven sessions have cost Rs.15,000/- each. The costs suffered by the plaintiffs till filing the suit in total Rs.3,70,000/- apart from doctor's charges. As such, the petitioners claim damages, from the respondents for their medical negligence as stated as follows:

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| a) From 1 st respondent namely M/s. Fortis Malar Hospital | = Rs.05,01,000/- |
| b) From the 2 nd respondent namely Dr. Nithyaa Ramamurthy | = Rs.15,00,000/- |
| c) From the 3 rd respondent namely Dr. Janani, | = <u>Rs. 5,00,000/-</u> |
| Total | = <u>Rs.25,01,000/-</u> |

Therefore, in the interest of justice, it is necessary that the evidence of Dr.Selvi Radhakrishnan, Consultant Oncoplastic Breast Surgeon is important to demonstrate the medical negligence of the respondents/defendants. Hence the petition.

3. Brief averments made in the Memo objection filed by the 3rd respondent:

3.1) The present Application is ill-conceived and not maintainable under Order XVI Rule 7 of the CPC. The present application fails to state or indicate the purpose for which Dr.Selvi Radhakrishnan, Consultant Oncoplastic Breast Surgeon, is proposed to be summoned. As such, the application fails to specify the need for the evidence of the said Dr. Selvi Radhakrishnan. Further, it is seen that the Dr. Selvi Radhakrishnan who is sought to be summoned is seen to be the very same doctor from whom the 1st plaintiff is stated to have availed medical treatment. This being the case, it is neither fair nor proper for the very same Dr. Selvi Radhakrishnan to be examined for her “expert opinion on the medical certificates and documents relating to the 1st plaintiff as prayed for in the present application.

3.2) The 1st plaintiff has tendered her evidence as PW1 on 10.06.2022, 04.07.2022 and on 16.12.2022 and plaintiff’s evidence was closed on 09.02.2023. Therefore, at the instance of the present Applicant, the plaintiff’s evidence was reopened and the Applicant herein was examined as PW2 on 18.06.2024, 05.07.2024 and 15.07.2024. It is only thereafter, that the Applicant has taken out the present application. The present application has been filed solely to bridge the lacuna in the evidence given by PW1 and PW2. There is no merit in the present application and the same is liable to be dismissed.

4. On either side no oral evidence adduced and no documents marked.

5. Point for consideration:

Whether subpoena to be issued to summon to Dr.Selvi Radhakrishnan, Consultant Oncoplastic Breast Surgeon, at Chennai, Breast Centre, MRC Nagar, Chennai, or not?

6. Answer to the Point:

Heard both side arguments and records perused. This suit was originally filed by the plaintiffs before the Hon'ble High Court, Madras, in C.S.No.183/2016 seeking for the relief of damages of Rs.25,01,000/- from the defendants 1 to 3 with interest at 24% per annum. Subsequently, the said suit was transferred to this Court for enhancement of pecuniary jurisdiction and renumbered as suit in O.S.No.5077/2019.

07. In this suit, summons were served to the defendants 1 to 3 and they filed their written statement and after framing the issues, the suit was posted for Trial stage. On the side of the plaintiff, PW1 witness was examined and posted for defendants side evidence. At this stage, the petitioners/plaintiffs filed reopen and receive documents petitions in I.A.No.3/2023 and I.A.No.4/2023 and the same was allowed. The 2nd plaintiff was examined as PW2 through her Ex.A25 to Ex.A33 documents were marked and cross examined by the defendants 1 to 3 and the matter is posted for further plaintiffs side evidence.

08. At this stage, the petitioners/plaintiffs filed this petition to issue subpoena summons to the witness Dr.Selvi Radhakrishnan, Consultant Oncoplastic Breast Surgeon, at Chennai, Breast Centre, MRC Nagar, Chennai, to offer her expert opinion on the medical certificates and documents relating to the 1st plaintiff and for giving further oral evidence. In this case, Counter of 1st Respondent not filed and he was called absent and set exparte. The 2nd Respondent made an endorsement as "No counter". Memo filed by the Counsel for the 1st and 2nd defendants stating that the 2nd defendant Dr. Nithya Ramamurthy died on 26.09.2025, stating that since 2nd defendant died, defendants 1 and 2 are to be exonerated of their liability in the present suit. Memo filed by the Counsel for the 3rd defendant stating that, the plaint does not disclose any independent cause of action as against the 3rd defendant. Therefore, the suit cannot be continued as against the 3rd defendant and this Court has to decide whether the right to sue survive in the present matter.

09. Reply objections filed by the petitioners/plaintiffs objecting to the memo filed by the 1st and 2nd defendants that, the suit has been filed for damages, on the basis of negligence alleged as against the 1st and 2nd defendants in vicarious capacity, as the 2nd defendant was working in the 1st defendant Hospital, when the cause of action for the suit arose. The case of the plaintiffs can be proved by adducing evidence and chief and cross examination of the 1st plaintiff witness has also been completed. If through evidence, the plaintiff makes out the case, the relief of damages can be enforced as against the legal representatives of the 2nd defendant and vicarious liability can also be enforced as against the 1st defendant. Thus, death of the 2nd defendant does not mean that the defendants stand automatically exonerated. The plaintiffs are taking steps to implead the legal representatives of the 2nd defendant in the above suit in order to proceed further.

10. This petition is filed to issue subpoena summons to Dr.Selvi Radhakrishnan, Consultant Oncoplastic Breast Surgeon, at Chennai, Breast Centre, MRC Nagar, Chennai, to offer her expert opinion on the medical certificates and documents relating to the 1st plaintiff and for giving further oral evidence. Therefore, it is not the stage of deciding whether the defendants 1 and 2 are exonerated from this case. The petitioners/plaintiffs stated in their affidavit that, 2nd petitioners/plaintiffs' mother has once again went to consult the 2nd respondent along with her brother Mr.Ponraja on 10.10.2015, at that time, the 2nd respondent grew suspicious of her mother own diagnosis earlier and suggested to her that they conduct a biopsy by consulting Dr.Selvi Radhakrishnan M.B.B.S., DNB., FRCS., Consultant Oncoplastic Breast Surgeon, at Chennai Breast Centre, MRC Nagar, Chennai-600 028. Therefore, they went to consult Dr.Selvi Radhakrishnan in the Chennai Breast Centre on 17.10.2015. The said doctor examined all earlier reports including the X-ray film of the mammography done on 25.06.2015 and immediately recommended that a biopsy of the lump/tumor was malignant/cancerous. Infact, to the utter shock and dismay for them, the said

Dr.Selvi Radhakrishnan observed that the lump was visible even in the X-Ray mammography film dated 25.06.2015 and as to how the respondents had neglected it.

11. For the above averments, it is necessary to examine the Dr.Selvi Radhakrishnan, Consultant Oncoplastic Breast Surgeon, at Chennai, Breast Centre, MRC Nagar, Chennai, to give evidence on behalf of the petitioners/plaintiffs by offer her expert opinion on the medical certificates and documents relating to the 1st plaintiff and for giving further oral evidence. In the interest of justice, to give an opportunity to the petitioners/plaintiffs to prove their case by examining sufficient witnesses. Hence, this Court is inclined to allow this petition.

In the result, this petition is allowed. No costs.

Dictated to the steno-typist directly and computerized by her, corrected and pronounced by me in the open Court, this on Tuesday, the 7th day April 2026.

IV Additional Judge,
City Civil Court, Chennai.

Both side witness and exhibits: Nil.

IV Additional Judge,
City Civil Court, Chennai.

Draft/Fair Order

in

I.A.No.6 of 2024

in

O.S.No.5077/2019

Dated: 07.04.2026

IV Additional

City Civil Court,

Chennai.