

**IN THE COURT OF THE I ADDITIONAL DISTRICT MUNSIF,
NAGERCOIL.**

Present : Tmt. K. Chithra, B.A.,B.L., (Hons)

I Additional District Munsif (FAC), Nagercoil
Wednesday, on the 18th day of March, 2026

I.A. No. 11 of 2025

in

O.S. No.90 of 2018

Y. Kala

... Petitioner/ 1st plaintiff

-vs-

1. Augustin Selvakumar
2. T.Krishnan
3. Tamil Thangam

.. Respondents/Defendants

This petition is came up before me on 11.02.2026 in the presence of Mr.G. Prakash Edwin Kumar, Advocate for the Petitioner and Mr.C.Wesley, Advocate for the 2nd and 3rd Respondents and Mr.R.Ariharan, Advocate for the 1st Respondent and upon perusing the case records and having stood over for consideration till this day, this Court delivers the following:

ORDER

1. This petition was filed under Order XXVI Rule 1, 4 and S.151 of CPC, to appoint an advocate commissioner to examine the witness Dr.B.Nagarajan, Psychiatrist, Nagercoil to note the listed points in the petition.

2. CRUX OF FACTS IN PETITION:

The petitioner had stated that the petitioner is the 1st plaintiff and the plaintiffs have filed the suit for declaration. The defendant's counsel questioned the treatment given by Dr.B.Nagarajan, Psychiatrist, who examined the 1st defendant medically. The said doctor is the authority to state the medical condition of the 1st defendant and his mental disorder. It is essential for adjudication of this suit. The said doctor is unable to attend this court to give evidence due to old age, physical condition and ailments. Thus this petition was filed.

3. CRUX OF COUNTER ALLEGATIONS:

3.1) This petition is not maintainable under law and facts. The said doctor was summoned to depose, but he refused to receive the summon. It is improper to refuse the court summon on the ground of mere inconvenience or professional engagement. The doctor is not peruse exempted from appearance before the court of law. The petitioner did not plead any inability of the doctor to show prima facie case in this petition.

3.2) Further, the recording of evidence through a commissioner would prejudice the right of the respondent to cross-examine the witness effectively, since it restrict the valuable right of the respondent confer the witness as before the Court. The witness who refused to attend the court, would not give evidence through the recording of the Advocate Commissioner. The concept of

Interrogatories is not applicable to the examination of witness, other the party of the suit. The petitioner did not attach any interrogatory questions, along with the petition. Thus, he prayed to dismiss the petition.

4. POINT TO DETERMINE:

Whether this petition is to be allowed or not?

Heard petitioner side enquiry. Record perused.

5. REASON FOR DETERMINATION:

5.1) On perusal of case records, it is found that the I.A. No.10/2025 was allowed on 16.10.2025 by permitting the petitioner/plaintiff to examine the doctor B.Nagarajan on the plaintiff side evidence. The summon was issued to the doctor, who refused to receive and enclosed the medical certificate for his inability to come to court. Then the petitioner has filed this petition to examine the said Doctor through an advocate commissioner. Admittedly, the petitioner did not state the physical inability or medical condition of the doctor. But it is another dimension to approach this point is, how the petitioner knew the exact or approximate medical condition of the proposed witness-doctor.

5.2) Mere allegation that the said doctor is regularly attending Outpatient at his clinic in Tower junction, does not enough to defend this petition, without stating his age or outpatient numbers, location of his residence and his clinic, etc.

5.3) In this case on hand, the examination of doctor is vital to decide the

fact-in-issue. In order to adjudicate in fair and final, and in the interest of justice, this petition is allowed and Advocate Mr.K.Sankari [MS. No.954/2011 - 9994960355] is appointed as Advocate commissioner. Her remuneration is fixed as Rs.7,000/-, which is to be paid by the petitioner on the date of filing Deposition along with Report to the court. She is directed to examine the Doctor Mr.B.Nagarajan, as Plaintiff side 3rd witness in chief and in cross by following the Bharatiya Shakshya Adhinayam and other relevant provisions of law, and by recording the oral testimony in written; by receiving the available medical records listed out in the 3rd point of this petition; at the presence of both side counsels, upon due notice to both counsels. The petitioner is directed to serve copy of plaint, written statement, framed issues, this petition copy and counter copy to advocate commissioner within 3 days. The advocate commissioner is directed to complete this commission within period of two weeks. For commissioner report with deposition call on 26.03.2026.

Dictated to the Steno-Typist directly, and typed by her directly in the Computer, corrected and pronounced by me, in open court this, the 18th day of March, 2026.

(Sd/-K.Chithra)

I Additional District Munsif (FAC)
Nagercoil

Petitioner side witnesses and documents:- Nil

Respondents side witnesses and documents : Nil

(Sd/-K.Chithra)

I Additional District Munsif (FAC)
Nagercoil.

Fair/ Draft Order
I.A.No.11 of 2025 in
O.S.No. 90 of 2018
Date: 18.03.2026
IADM, Nagercoil.