

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

Present : Selvi. V. Sivaranjani, B.A., L.L.B.,

II Additional District Munsif, Nagercoil

Monday, on the 16th day of June, 2025.

I.A. No.3 of 2025 in O.S. No.218 of 2022

CNR No.TNKK04-000305-2022

1. Manikandan

2. Sankar Raja

3. Vaikundan

... Petitioners / Defendants

-VS-

1. Krishnancoil Yathava Samuthaya

Vagai Arulmigu Sri Maragathavalli Amman Thirukovil

Nagercoil, rep. by its 2nd Plaintiff

2. S. Muthukrishnan

... Respondents / Plaintiffs

This petition came before this court on 13.06.2025 for a final hearing in the presence of Mr. B. Lakshmi Narayanan, Learned Counsel for the Petitioners / Defendants 1 to 3 and in the presence of Mr. V. Parameshwara Presad, Learned Counsel for the Respondents / Plaintiffs and upon hearing both sides, perusing the case records, and having stood over for consideration till this day, this court hereby delivers the following:

ORDER

The Petitioner had filed under Order VIII Rule 17 and Section 151 of the Code of Civil Procedure, seeking to pass an order to recall PW3 and to permit petitioners / Defendants to cross examination.

Gist of Averments in the Petitioners Petition :

2. The Petitioner is the 1st defendant. The petitioner was filing this affidavit for petitioner and 2nd and 3rd petitioner / 2nd and 3rd defendant. The respondent / plaintiff have filed this suit for Permanent injunction and other reliefs. It is submitted that the case posted for cross examination of PW3 on 24.02.2025, on that day petitioner's advocate was engaged in Thuckalay Court. Due to the above said reason, petitioners are unable to cross examine the PW3. Under these circumstances, it is just and necessary to recall PW3 for enabling us for cross examination, if not so, much prejudice will be caused to us. So, it is humbly prayed that this court to pass an order to recall PW3 for enabling us to cross examine the PW3, otherwise, petitioners will be put to irreparable loss and injury which cannot be compensated in any manner later. Hence, this petition is to be allowed.

Gist of Averments in the Respondents / Plaintiffs Counter:

3. The Respondents / Plaintiffs have filed a counter stating that the petition is not maintainable in law and facts. The respondent's ultimate aim of

the petition is to harass the plaintiffs and delaying the court proceeding. There is no merit in this petition. It is liable to dismiss. The evidence is closed after the extension time granted by the court only drawn on the matter. The records which must be filed at the time of filing the written statement and filing at the time of DWs shows is a fabricated and not admissible. There is no valid ground to allow the petition. The petition is frivolous. This petition is not maintainable in law and no scope for this petition. There was no merit in the petition. Hence to accept the counter and dismissed the petition.

4. The point for consideration is whether the above petition has to be allowed or not?

5. Point:

Heard both sides. Records perused. The petitioner / 1st defendant for him and on behalf of 2nd and 3rd defendants filing this petition, the respondent / plaintiff had filed the suit for Permanent injunction. On 24.02.2025, since the petitioner's advocate was engaged in Thuckalay Court, could not cross examine PW3. To give the petitioners a fair chance to cross examine the witness PW3 as it may help preventing any prejudice and supports a fair hearing. In the light of above facts, this court is inclined to allow this petition on conditional cost.

As a result,

This petition is allowed, on the condition that the petitioners shall pay a sum of Rs.500/- (Rupees Five Thousand only) payable to the Mediation and Conciliation Centre, Kanniyakumari at Nagercoil on or before 23.06.2025. otherwise, this petition would be dismissed. Call on 23.06.2025.

Dictated to the steno-typist, typed by her in the Computer directly, printed, corrected and pronounced by me in open court this the 16th day of June, 2025.

II Additional District Munsif
Nagercoil.

List of witness and documents for Petitioners side : Nil

List of witness and documents for Respondents side : Nil

II Additional District Munsif
Nagercoil.

*II ADM, Nagercoil.
Draft/Fair Order
I.A.No.3/2025 in
O.S.No.218/2022
Date: 16.06.2025.*