

**IN THE COURT OF ADDITIONAL DISTRICT MUNSIF, KULITHALAI****Present : Selvi.A.Yughathymariya, B.Com, L.L.B.(Hons.,)****Additional District Munsif, Kulithalai.****Dated Wednesday, the 18<sup>th</sup> day of March 2026****I.A No.9/2025 in O.S No.162/2020**

R.Manarmannan

**...Petitioner/1<sup>st</sup> Defendant****- Vs -**

K.Senthilkumar

**...Respondent/Plaintiff**

This petition has come up for final hearing on 09.03.2026 before this Court in the presence of Mr.R.Madhu, the Learned Counsel appearing for the Petitioner and Respondent No.2 called absent and set exparte and in the presence of Mr.R.M.Senthil, the Learned Counsel appearing for the Respondent No.1 and upon perusal of material records and having stood over for consideration till this day, this court delivers the following:

**ORDER**

This petition is filed under Order 18, Rule 17 r/w section 151 of CPC seeking permission of this Court to recall the Defendant side witness namely DW1 in the above suit.

**Brief averments in the affidavit:**

2) The Petitioner is the 1<sup>st</sup> Defendant in the main suit. The above suit has been filed by the Plaintiff for the relief of Declaration and Permanent Injunction. The above case had been posted for Defendant side arguments. The 1<sup>st</sup> Defendant was examined himself as DW1 on the side of the Defendant in the above suit. Unfortunately, some of the documents were not available at the time of examination of DW1 in the above suit. Now only, the Petitioner had got the petition mentioned documents. Hence, this petition has been filed by the 1<sup>st</sup> Defendant/Petitioner for the

purpose of recalling the Defendant side witness namely DW1 and examine him. Unless DW1 is recalled, the Petitioner will be put to irreparable loss and hardships. Hence, this petition.

**Brief averments in the counter objection filed on behalf of the Respondents:**

3) This petition is false, frivolous and unsustainable in law. All the allegations except that are admitted by the Respondents are false, specifically denied and the same is put to strict proof by the Petitioner. The allegations in Paragraph No.2 of the affidavit that though the suit is posted for arguments and the Petitioner was examined as DW1, unfortunately the documents were not available at the time of examination of DW1 is absolutely false and is specifically denied.

4) Further allegations that the Petitioner has got documents recently are all false and specifically denied. Further allegations that for the above purpose, the Petitioner has come forward with this petition to recall the Defendant side witness namely DW1 his case are all false and specifically denied. The Petitioner has filed this petition at a belated stage as the Plaintiff side arguments was completed and therefore the Petitioner is trying to fill up the lacuna in his case for which this petition deserves to be dismissed in limine. There are no valid reasons said out in the affidavit for filing this petition. Hence, this petition is liable to be dismissed with costs.

**Point for consideration:**

5) Whether this petition is entitled to be allowed or not?

**Evidence:**

6) No oral and documentary evidence adduced on either side.

**Discussion:**

7) Heard both sides. Records perused. Upon perusal of records, it is seen clear that the above suit has been filed by the Respondent/Plaintiff for the relief of Permanent Injunction in respect of the suit property against the Petitioners/Defendants. It is also seen that in the above suit, both side evidence was closed and Plaintiff side arguments was also heard and when the above suit was posted for Defendant side arguments, this petition has been filed by the 1<sup>st</sup> Defendant/Petitioner herein for the purpose of recalling the Defendant side witness namely DW1 in the above suit.

8) The major contention that has been raised on the side of the Petitioner is that certain documents are available to the Petitioner by now only and the same were not available unfortunately at the time of examination of DW1 on the side of the Defendants in the above suit. Hence, the Petitioners sought this Court to allow this petition thereby recalling the Defendant side witness namely DW1 in the above suit to render justice. Per contra, the major objection that has been raised on the side of the Respondent is that the Respondent had denied the petition averments as false and the more specifically the Respondent had contended that this petition has been filed at a belated stage, since, the Plaintiff side arguments were completely heard by this Court and the Respondent has contended that the Petitioner is trying to fill up the lacuna occurred in their case and hence, the Respondents sought this Court to dismiss this petition.

9) Upon careful consideration of the material records available on hand, it is seen clear that on the side of the Defendants, the 1<sup>st</sup> Defendant was examined as DW1 in the above suit and Ex.B1 was marked through his chief examination. Subsequently, DW1 was also cross examined in full on the side of the Plaintiffs in the above suit. It is also seen that thereafter for several occasions this Court had posted the above suit for further Defendant side evidence. However, the learned counsel for the Defendant

had stated and endorsed before this Court that there is no further Defendant side evidence in the above suit and hence, the above suit was posted for arguments.

**10)** It is also seen that when the above suit was posted for arguments the Plaintiff side arguments were fully heard by this Court and subsequently the above suit was posted for Defendant side arguments on few occasions thereafter. Pending the same this petition along with other petitions were filed by the Petitioner/1<sup>st</sup> Defendant to recall the Defendant side witness namely DW1 in the above suit for the purpose of marking certain documents on their side.

**11)** This being so, this Court is of the considered view that opportunities must be given to every parties to prove their case respectively by way of oral and documentary evidence and sufficient chances have to be given and it is the duty of the Court to give the parties sufficient time and opportunities to prove their case respectively. This Court is also of the view that to render complete justice such technical irregularities such as the delay caused on the side of the Petitioner/Defendant in the above suit may be condoned in the interest of justice, rather than allowing this petitioner to be defeated on his weakness. Therefore, to meet out the ends of justice this Court is inclined to give one more opportunity to the Petitioner herein to prove his case in the above suit thereby allowing this petition.

**Result:**

In the result, with the above observations, this petition is allowed on terms. The Defendant side witness namely DW1 is hereby recalled. It is further ordered that the Defendant side witness namely DW1 shall present before this Court on 26.03.2026 and it is further directed that the chief examination of the Defendant side witness namely DW1 shall be completed on the very same day on their side without seeking any further adjournments before this Court. No costs.

Dictated to my steno-typist, taken down by her in short hand and typed by her in the Computer, corrected by me and pronounced by me in the open court on this the 18<sup>th</sup> day of March 2026.

**Additional District Munsif,  
Kulithalai.**

Petitioner side witness and documents	-	Nil.
Respondent side witness and documents	-	Nil.

**Additional District Munsif,  
Kulithalai.**