

IIN THE COURT OF THE DISTRICT MUNSIF, SANKARI

Present: Tmt. R. ELAMATHI, B.A., B.L.,
District Munsif, Sankari

Thursday, the 16th day of April 2026

திருவள்ளூர்வராண்டு 2057, பராபவ வருடம், சித்திரை திங்கள் 03-ம் நாள் வியாழக்கிழமை

I.A. 15/2026 in O.S.243/2004

Malaiyadi Muniappan Temple. Ellapalayam

by its Oor Moopar P. Ponnusamy

... Petitioner / 8th Defendant

//Versus//

1. Nallamuthu

... Respondent / Plaintiff

2. The Govt.of Tamilnadu rep.by
The District Collector, Salem.

3. The Revenue Divisional Officer, Sankari.

4. The Tahsildar, Sankari.

5. Sithan (Died)

6. Raju

7. Selvam

8. Sabapathi

... Respondents / Defendants

This Petition came up for final hearing before me in the presence of Thiru. M. Sakthivel Advocate for Petitioner and Thiru. A. Kailassanathan Advocate for 1st Respondent and 2nd to 4th Respondents were remained exparte and R5 was died and 6th to 8th Respondents were Exparte in main suit and upon perusing both side pleadings and records and having stood over till this day for consideration and this court passed the following:

ORDER

This Interlocutory Application has been filed by the Petitioner / 8th Defendant to recall DW3 for chief continuation.

2) The Gist of the Petition :-

2.1) The Petitioner submit that he is Oor moopar of the Ellapalayam. The Petitioner filed this affidavit for the Petitioner Temple.

2.2) The Petitioner submit that the suit posted for futher DWS by the side of his temple. The Petitioner had already filed the Order 1 Rule 10 petition after implead tha suit, Written Statement filed by the petitioner both stated supra the suspicion of alleged suit Will dated on 09.04.1999 is a created one and fabricated by the Plaintiff.

2.3) The Petitioner submit that his side DW3 chief examined in part and then posted for chief continuation. The DW3 was not present that on 07.08.2025 fresh witness batta was paid by him and the same was returned. That on 12.08.2025 DW3 was not present hence the chief continuation of DW3 was closed by this Court. In the mean time the D1 to D3 side recall petition filed for cross examination of PW1 and the same was closed on 27.01.2026. Hence in the interest of justice the petitioner have to continue of DW3 chief continuation which is an essential one. Therefore the DW3 has to be recall for chief continuation. If DW3 is not ordered to recall for chief continuation, The Petitioner will be put to great hardship. Therefore, prays this Court, to order to recall the DW3 for chief continuation.

3) The Brief of the Counter filed by the 1st Respondent :-

3.1) The Respondent denied the averments made by the Petitioner are false, incorrect, and not sustainable either in law or on facts. The allegations are denied except those expressly admitted herein.

3.2) The Respondent specifically denies all the allegations contained in the affidavit filed in support of the petition as false and misleading.

3.3) The Respondent admitted that the suit has been filed by the first respondent seeking declaration and permanent injunction, and the matter is presently posted for the petitioner/8th defendant's evidence.

3.4) The Respondent contended that though the petitioner was impleaded as the 8th defendant on 16.12.2006, he has been continuously protracting the proceedings for nearly two decades by filing one petition after another, thereby delaying the disposal of the suit.

3.5) The Respondent averred that sufficient opportunities were granted to the petitioner to examine DW3. The case was posted on multiple dates, namely 09.07.2025, 11.07.2025, 17.07.2025, 21.07.2025, 22.07.2025, 23.07.2025, 25.07.2025, 29.07.2025, 05.08.2025, 07.08.2025, and 12.08.2025. Despite repeated adjournments and opportunities, DW3 failed to appear before the Court. Hence, on 12.08.2025, this Honourable Court was constrained to close the chief examination of DW3.

3.6) The Respondent further averred that thereafter, the Petitioner did not take any immediate steps to file a petition to recall DW3. Even during the long adjournment period from 13.08.2025 to 07.02.2026, the petitioner remained inactive and did not file any application seeking recall of the witness.

3.7) The Respondents contends that the present petition has been filed belatedly on 07.02.2026, without assigning any valid or acceptable reason either for the repeated absence of DW3 or for the delay of nearly six months in filing the present application.

3.8) The Respondent submitted that it is well settled that recall of a witness cannot be permitted in a routine manner and must be supported by sufficient cause. The present case has been pending for past 26 years and the the petitioner has now filed this petition and failed to establish any bona fide reason warranting recall.

3.9) The Respondent stoutly alleges that the affidavit is completely silent as to how the further examination of DW3 is essential for adjudication of the dispute. The petition is filed only with the intention to delay the proceedings and to harass the aged first respondent, who is 82 years old.

3.10) The Respondents opposed that, the present petition is devoid of merits, lacks bona fides, and is liable to be dismissed with costs.

4) Point for Consideration:-

Whether the Petitioner/ 8th Defendant is entitled for the relief as prayed for?

5) No oral and documentary evidences were adduced on both sides.

6) Heard, both sides learned counsels. This Interlocutory Application has been filed by the Petitioner / 8th Defendant Under Order XVIII Rule 17 of Code of Civil Procedure, 1908 seeking an order to recall DW3 for continuation of chief examination, which was closed by this Court on 12.08.2025 owing to the non-appearance of the said witness on multiple occasions. The case of the Petitioner in brief as, the Petitioner submits that the suit pertains to a disputed Will dated 09.04.1999, which the Petitioner alleges to be fabricated and created by the Plaintiff. The Petitioner contends that the evidence of DW3 is essential to establish the defence and to bring out the truth in the matter. The Petitioner further submits that on 07.08.2025, fresh witness batta was paid, which was subsequently returned, and that the non-appearance of DW3 was not attributable to any deliberate default on the part of the Petitioner. It is pleaded that in the absence of an opportunity to complete the chief examination of DW3, the Petitioner would be put to great hardship and irreparable prejudice, thereby affecting the just adjudication of the suit. Per contra, the respondent contends that, the Petitioner has been systematically delaying the trial of the suit for over 20 years through a series of petitions filed one

after another. It is specifically averred that from 09.07.2025 to 12.08.2025, DW3 failed to appear on eleven consecutive occasions on 09.07.2025, 11.07.2025, 17.07.2025, 21.07.2025, 22.07.2025, 23.07.2025, 25.07.2025, 29.07.2025, 05.08.2025, 07.08.2025, and 12.08.2025 without any explanation whatsoever. The 1st Respondent further submits that after the closure order dated 12.08.2025, the Petitioner did not file any recall petition for a period of approximately six months, until 07.02.2026, and that no explanation has been offered either for the non-appearance of DW3 on those eleven dates or for the inordinate delay of six months in filing the present petition. The 1st Respondent contends that the affidavit filed in support of the petition is conspicuously silent on both these crucial aspects, and that the petition is filed with the malicious intent to delay the trial and to cause harassment to the 82-year-old Plaintiff. It is submitted that the petition is liable to be dismissed with costs as it is not maintainable either in law or in equity.

6.1) Upon careful consideration of contentions of both sides. At this juncture, it is relevant to consider the scope of recall of witnesses Under Order XVIII Rule 17 CPC, 1908 the power to recall a witness is discretionary and is to be exercised sparingly. This court could seen from the records that, DW3 failed to appear on multiple consecutive dates of hearing from 09.07.2025 to 12.08.2025. The closure order dated 12.08.2025 was passed only after granting repeated and adequate opportunities. On the perusal of the petition affidavit, it does not contain any explanation for DW3's non-appearance on the multiple hearing dates. The solitary reference to payment and return of batta on 07.08.2025 does not account for the remaining defaults. An affidavit that is silent on the very default that led to the closure order cannot satisfy the judicial conscience. Further it could be seen that, the petition was filed on 07.02.2026, nearly six months after the closure order dated 12.08.2025, without any explanation for the delay. The legal maxim *vigilantibus non dormientibus jura subveniunt* squarely applies to this present case in hand. Moreover the affidavit does not specify what evidence DW3 is expected to give,

how it is material to the issues in the suit, and in what manner its absence prejudices the Petitioner. A bald assertion of hardship without particulars does not meet the legal threshold. The suit is of the year 2006 and it has been pending for over 22 years. In such circumstances recalling DW3 for chief continuation without sufficient cause would further postpone the adjudication and it will cause delay which would defeat the very object of expeditious disposal of the case and also cause prejudice to other side. Based upon the cumulative discussions made above, this interlocutory application is not deserve to be allowed.

7) In result, this Interlocutory Application is dismissed . No cost.

This order is dictated to the typist, typed by her, corrected by me and pronounced in the open court in the 16th day of April, 2026.

**District Munsif,
Sankari.**

Encl.:

Petitioners side Witnesses & Exhibits:- NIL

Respondents side Witnesses & Exhibits:- NIL

**District Munsif,
Sankari.**