



(IA. No : 6/2026 in OS.No.45/2021)

IN THE COURT OF DISTRICT MUNSIF, AUNDIPATTI.

PRESENT: Thiru. E. Suganthan, B.A., L.L.M.,

District Munsif, Aundipatti.

Tuesday, the 30th day of June 2026

IA. No : 6/2026

in

OS. No : 45/2021

CNR:TNTH140000382021

Azhagammal

...Petitioner/Plaintiffs

..Vs..

1. Thayammal Alias Suppammal

2. Alagarsamy

3. Jayakumar

4. Kanagaraj

5. Madankumar

6. Sangeetha

7. Sasi

8. Vasuki

9. Pitchaimani

10. Pappathi

11. Amarvathi

12. Suresh

13. Joseph

14. Kalavathi

15. Kanmani

16. Subramanian

17. Palanisamy

...Respondents/Defendants



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This Petition came up on 30.06.2026 before this court for final hearing in the presence of Ms.K.Kanitha Advocate for the Petitioner and Upon hearing the arguments on petitioner side and having stood over till this day for my consideration, this court delivers the following...

ORDER

This petition has been filed by the petitioner/plaintiff under Order XVI Rule 1(3) of the Code of Civil Procedure seeking permission to examine her daughter on her behalf as a Plaintiff side witness in this suit.

1. The Petitioner is the sole plaintiff in the suit. The petitioner has stated that she is aged more than 75 years and is suffering from age-related infirmities. According to her, she is not in a position to travel from her residence to the Court for the purpose of giving evidence. Hence, she seeks permission to let her daughter depose on the side of the plaintiff.

2. Considering the nature of the petition, notice to the respondents has been dispensed with.

3. Perused the affidavit filed by the Petitioner. On perusal of the petition and the records, this Court finds that the provision quoted by the petitioner, namely Order XVI Rule 1(3) CPC, relates only to seeking permission to summon witnesses whose names were not included in the list of witnesses. The said provision does not empower the Court to permit substitution of a party as a witness.

4. Under the scheme of the Code of Civil Procedure and the Indian Evidence Act, a party to the suit is ordinarily required to enter the witness box to depose regarding facts within his or her personal knowledge. A third person,



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including a close relative, cannot be permitted to depose in place of the party in respect of matters which are exclusively within the personal knowledge of such party. However, such person may depose regarding facts personally known to him or her or acts performed by him or her in the course of the transaction. Therefore, the relief sought cannot be granted under Order XVI Rule 1(3) of CPC.

5. Nevertheless, considering the specific averment that the petitioner is more than 75 years of age and is unable to attend Court on account of old age and physical infirmity, this Court is of the view that the appropriate remedy available to the petitioner is examination on commission under Order XXVI Rule 1 CPC, subject to proof of her inability to attend Court.

6. However, insofar as the examination of the petitioner's daughter is concerned, there is no legal impediment to examining her as an independent witness on the plaintiff's side, provided that she deposes only with regard to facts within her own personal knowledge. Accordingly, permission is granted to examine the petitioner's daughter as a witness on the plaintiff's side, but not as a substitute for the plaintiff's own testimony. If the petitioner intends to place her own evidence on record, she is at liberty to file an appropriate application under Order XXVI Rule 1 CPC for her examination on commission.

In the result, the petition is allowed in part with the above observations. No costs.

Typed and corrected by me directly in my Laptop, printed by steno-typist and pronounced by me in open court on 30th Day of June 2026.

**District Munsif,
Aundipatti.**



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List of Petitioner side witnesses : Nil

List of Petitioner side documents: Nil

List of Respondents side witnesses: Nil

List of Respondents side documents: Nil

**District Munsif,
Aundipatti.**

**District Munsif Court, Aundipatti.
IA .No.6/2026
in
OS. No : 45/2021
Fair/ Draft Order
Dated: 30.06.2026**