

IN THE COURT OF THE ADDITIONAL DISTRICT MUNSIF, TITTAGUDI

Present: Selvi.N.Shalini, B.Com.LL.B.(Hons.)

Additional District Munsif, Tittagudi

On Wednesday, the 25th day of June 2025

IA.No.71/2024 in O.S.No.54/2019

Rajamani Ammal

...Petitioner/ Plaintiff

/Vs/

1. Mallika,
2. Amirtham,
3. Ramasamy Konar,
4. The Thasildar, Thittagudi
5. The Revenue Divisional Officer, Virudhachalam
6. The District Collector, Cuddalore.

...Respondents/Defendants

This petition was filed on 26.02.2024 and coming before me for final disposal on 12.06.2025 in the presence of Mr.E.Durai, the counsel for petitioner and Mr.E.Selvabharathi and Mr.G.Kumar, Counsel for 1st and 2nd Respondents, and Mr.R.Manivannan, counsel for 3rd Respondent and learned Government pleader for Respondents 4 to 6, Respondents 4 to 6 set exparte for non filing of their counter. Upon hearing the arguments of both sides and upon perusing the materials on record, this court doth hereby pronounce the following;

ORDER

1. This petition has been filed under Section 151 of CPC, seeking to eschew the chief examination and cross examination of PW-1 and to permit the daughter of the

plaintiff Pooval to let in evidence as PW-1 is unable to appear before this court and let in evidence.

2. On perusal of the petition, it has been mentioned that the Petitioner has filed the above suit for declaration and permanent injunction. The Petitioner has been examined in chief and cross-examined in part. The case is posted for continuation of cross examination of PW-1. For the past 1 month, the Petitioner is having breathing difficulties, unable to breathe properly and she is unable to stand or walk as she has been fainting frequently and thereby the Petitioner is bedridden at home. Hence the Petitioner is unable to appear before this court. In such circumstances, the daughter of the Petitioner Pooval is aware about the case and she will let in evidence before this Hon'ble Court. Therefore, it is just and essential to eschew the chief examination and cross examination of PW-1, failing which the petitioner will be put to very great loss and hardship.

3. On perusal of the counter filed by 1st Respondent, it has been mentioned that the Respondent denies the entire averments mentioned in the petition. It is completely false to state that the petition is having breathing difficulties, unable to breathe properly and she is unable to stand or walk as she has been fainting frequently and the Petitioner is bedridden at home. In fact the Petitioner was almost fully cross examined by the Respondent and only very questions were left. Since the petitioner is not having a good case on merits, the petitioner has filed the present petition and thereby wasting the precious time of this Hon'ble Court. The Petitioner has not

specifically mentioned the name of the disease and from which hospital she has been taking treatment. No medical records have been produced before this court. The petitioner has not filed any document to show that Pooval is the daughter of the Petitioner. Moreover, the petitioner has not executed any power of attorney in favour of her daughter to conduct the present suit. Since the petitioner has already been cross examined in part and that only a very few questions are left, this petition is liable to be dismissed with cost. The 2nd Respondent has adopted the counter filed by the 1st Respondent.

4. On perusal of the counter filed by 3rd Respondent, it has been mentioned that the Respondent denies the entire averments mentioned in the petition. It is completely false to state that the petition is having breathing difficulties, unable to breathe properly and she is unable to stand or walk as she has been fainting frequently and the Petitioner is bedridden at home. In fact the Petitioner is leading a normal life by doing her day-to-day activities. Since the petitioner is not having a good case on merits, the petitioner has filed the present petition. Moreover, the Petitioner was almost fully cross examined by the Respondent and only very questions were left. The Petitioner with a view to cause undue loss and hardship to the Respondents has filed the present petition and thereby wasting the precious time of this Hon'ble Court. Hence, this petition is liable to be dismissed with cost.

5. The learned counsel for the Petitioner already filed their written arguments and heard the learned counsel for the Respondents and perused the materials on record before this court.

6. Upon perusal of records, this court finds that the petitioner has been examined as PW-1 on 14-11-2022 and cross examined in part on 09-12-2022 and 07-01-2023. This court finds that PW-1 has already been cross examined during two hearings.

7. In the case of *D.F.Philips vs. Damayanthi Kailasam & others* (2009 MLJ 6667), the Hon'ble Madras High Court already held that there is no provision for eschewing the evidence that has been recorded on oath in court; instead of eschewing the evidence, the court may consider the evidence at the appropriate stage of the case.

8. Recently, the Division Bench of the Hon'ble Madras High Court in *S.Nirmala & Ors. vs. Shanthi Harikrishnan & Ors.* (OSA.No.187/2024 dated 17-10-2024) that *"The law regarding eschewing evidence is closely tied to and entrenched in the principles aimed at ensuring fair trials and justice. Eschewing evidence in law is not only a procedural misstep but can also have profound implications for justice, fairness, and the integrity of the legal system and a compromise to the court's due integrity too. Justice is served through careful consideration of all relevant evidence."*

9. The contention of the petitioner that she is sick and bedridden is not supported by documentary evidence. Even in the affidavit it has not been mentioned when the

Petitioner fell sick and where the Petitioner has been taking treatment. Hence this court is not convinced with the fact that the petitioner is actually sick and bedridden. The petitioner has not filed any document to show that the said Pooval is her daughter. Furthermore, the Petitioner has not executed any power of attorney in favour of her daughter Pooval to conduct the present suit.

10. Therefore, in light of the above discussions and decisions of the Hon'ble Madras High Court, this court is inclined to dismiss this petition to eschew the evidence of PW-1.

In the result, this petition is dismissed. No costs.

Directly typed by me in my laptop, formatted by Typist, corrected and pronounced by me in the open court, on this the 25th day of June 2025.

Additional District Munsif,
Tittagudi.

Oral and documentary evidence on the side of the Petitioners : NIL
Oral and documentary evidence on the side of the Respondents: NI

Additional District Munsif,
Tittagudi.

Draft Order/Fair Order
IA.71/2024 in
O.S.No. 54/2019
Date: 25.06.2025