

**IN THE COURT OF PRINCIPAL DISTRICT JUDGE,
CHENGALPATTU DISTRICT.**

Present : Tmt.J.Mavis Deepika Sundaravadhana, M.A.,M.L.,
Principal District Judge, Chengalpattu.

Monday the 19th day of August 2024

I.A.No.2/2024
in
O.S.No.25/2013

1. Venkatesan (died)
2. Hemavathy
3. Kamaladoss
4. Lavanya
5. Usha Rani . . . Petitioners / Defendants 2 to 5.

/Vs/

1. Senthil
2. Bagyalakshmi . . . Respondents / Plaintiffs.

This petition came up before me in this court for final hearing on 5.8.2024, in the presence of Thiru.N.Ravi, Advocate for the petitioners and Tvl.R.Ramanlaal, M.Yesurethnam and S.Selvaraj, Advocates for the respondents, upon hearing the arguments of petitioners' counsel, perusing the written arguments of respondents' counsel and entire records and having stood over for consideration till this day, this court delivers the following,

ORDER

This petition is filed under Section 151 CPC to eschew the evidence of DW1 Venkatesan.

2. The case of the petitioner in brief :

The petitioner herein is the 3rd defendant. The defendants 2, 4 are his sisters and 5th defendant is the mother. The petitioner is filing this affidavit for himself and on behalf of other petitioners also. The plaintiffs have filed the suit for specific performance and for other reliefs and the petitioners / defendants 2 to 5 are contesting the case. The 1st defendant, father of the petitioner filed a detailed written statement in the said case. After that the trial commenced. Plaintiffs; side has been examined and the petitioner's father filed proof affidavit, documents were marked, he has been partly cross examined. While so on 8.12.2021 the 1st defendant died leaving behind the petitioners as legal heirs at law. The death of petitioner's father has been recognized. Consequently the plaint has been amended. Since the petitioner's father is died, fresh evidence is required. Hence, this application to eschew the evidence of DW1-Venkatesan, petitioner's father.

3. The averments of counter filed by the respondents in brief :

The respondent herein is the 1st plaintiff in the suit. He is filing this counter on his behalf and on behalf of the 2nd respondent, who is none other than his wife. The application filed by the petitioners is not

maintainable. The petitioners cannot invoke Section 151 CPC to eschew the evidence of DW1. Without prejudice to the above said contention, the respondent deny all the allegation of petition affidavit. The DW1 in his cross examination admitted the sale consideration received pursuant to the sale agreement with the 1st respondent. The admissions made in cross-examination must remain as an evidence. If the evidence of DW1 is eschewed, the respondents will be put to irreparable loss, damage and injury. The evidence on petitioners / plaintiffs' side is over. The petitioners wanted to drag on the proceedings whereby causing much loss and financial hardship to the respondents. Hence, prayed for dismissal of petition.

4. The point that arises for consideration is whether the application is liable to be allowed.

5. Point :

This petition is filed to eschew the evidence of DW1-Venkatesan, father of the petitioner, since he died. The defendants' witness DW1 is partly cross examined. Therefore the admission in the cross examination holds good has to be accepted in evidence cannot be eschewed as prayed by the petitioner. If a witness dies before commencing cross examination then evidence in chief examination necessarily has to be eschewed because it has no evidenciary value. Admittedly DW1 was cross examined by the plaintiff, therefore, the

evidence cannot be eschewed as prayed by the petitioner / defendant. Therefore, the petition is liable to be dismissed for the reasons stated above.

6. As the result, petition is dismissed. No costs.

Dictated by me to the steno-typist, computerized by her directly, corrected and pronounced by me in open court, on this the 19th day of August 2024.

Principal District Judge,
Chengalpattu.

Both side witness and exhibits :
Nil.

Principal District Judge,
Chengalpattu.