

**IN THE COURT OF THE DISTRICT MUNSIF AT MADURANTAKAM**

**PRESENT:** Tmt. V.Devapriya, B.Sc., M.L.,  
District Munsif, Madurantakam

Wednesday, the 28<sup>th</sup> day of August, 2024

I.A.No.11/2024

in

O.S.No.38/2021

T.Rajan Iyer  
represented by his power of attorney M.K.Ramesh

...Petitioner/Plaintiff

**-vs-**

1. Elumalai  
2. Siva

...Respondents/Defendants

This petition coming up before me on 09.08.2024 for final hearing in the presence of, Thiruvallargal. S.Subramanian,V.Ranganathan and P.Praveen Kumar, counsels for Petitioner/Plaintiff and Thiruvallargal. S.Premkumar, Arunamunusamy,V.Ramalingam and P.Vasudevan, counsels for the Respondents/Defendants and after hearing the arguments on both sides and upon perusing the materials placed on record and having stood over for consideration till this day, this court delivers the following,

**ORDER**

This petition has been filed by the Petitioner/Plaintiff under Section 151 of Code of Civil Procedure, to scrap the proof affidavit of Govindaraj (PW2).

**2.The averments stated in the petition, in brief :**

The Petitioner/Plaintiff had filed the above suit for permanent injunction.

The Petitioner/Plaintiff was examined as PW1. Thereafter, the Petitioner/Plaintiff examined one Govindaraj as PW2, in Chief. The Respondents/Defendants were not ready to cross examine PW1 and PW2 and the evidence of Plaintiff side was closed. The Respondents/Defendants had filed petition for cross examination of PW1 and PW2 and PW1 was cross examined and the case was posted for cross examination of PW2. But PW2 is not co-operating with the Petitioner/Plaintiff for further proceedings. The Respondents/Defendants influenced the PW2 for non-appearance before this court. Hence it is necessary to scrap the proof affidavit of Govindaraj (PW2). Hence the petition.

**3. The averments stated in the counter filed by the 1<sup>st</sup> Respondent/1<sup>st</sup> Defendant and adopted by 2<sup>nd</sup> Respondent/2<sup>nd</sup> Defendant, in brief :**

This petition is not maintainable in law and on facts. The averments in the affidavit, are false. The oral evidence in the form of proof affidavit cannot be scrapped as it forms part and parcel of evidence. The Petitioner/Plaintiff had not filed any police complaint for the alleged incident. Hence it is false. There is no merits in the petition. Hence this petition is liable to be dismissed with costs.

4. The point for determination is whether this petition is to be allowed or not?
5. No exhibits were marked and no witnesses were examined on both sides.
6. Heard both sides and perused the records.

7. The Petitioner/Plaintiff had filed this petition to scrap the evidence of the PW2, Govindaraj, on the ground that he is not cooperating with the Petitioner/Plaintiff. The Respondents/Defendants resisted the petition stating that proof affidavit of PW2 cannot be scrapped as it forms part and parcel of evidence.

8. Perusal of records show that, on the side of the Petitioner/Plaintiff, one Govindaraj was examined as PW2 and thereafter his cross examination was closed since the Respondents/Defendants were not ready to cross examine him, even after affording sufficient opportunity. Thereafter, the Respondents/Defendants had filed petitions to recall PW1 and PW2 in the above suit, to cross examine them and the same was allowed.

9. Accordingly, the PW1, Ramesh, was present on 22.02.2024 and his cross examination was completed and the above suit was posted for appearance of PW2 and for cross examination of PW2. At this stage, the Petitioner/Plaintiff had filed this petition stating that the PW2 is not cooperating with him. The reason stated by the Petitioner/Plaintiff, is sufficient. The PW2, Govindaraj, was examined in chief and he was not yet cross examined. Therefore, no prejudice will be caused to the Respondents/Defendants. Hence for the foregoing reasons, this court is inclined to allow this petition.

**10. In the result, this petition is allowed. No costs.**

Partly dictated to the Stenographer, typed by him and partly typed by me in my laptop, corrected and pronounced by me in open court on this the 28<sup>th</sup> day of August, 2024

District Munsif  
Madurantakam

**Petitioner side witnesses and documents:**

**Nil**

**Respondents side witnesses and documents**

**Nil**

District Munsif  
Madurantakam