

**IN THE COURT OF THE II ADDITIONAL DISTRICT MUNSIF,
NAGERCOIL.**

Present : Selvi. V. Sivaranjani, B.A., L.L.B.,

II Additional District Munsif, Nagercoil.

Monday, on the 14th day of July, 2025.

I.A. No. 7 of 2025 in O.S. No. 32 of 2020

CNR No.TNKK04-000063-2020

C. Yesudhason

... Petitioner / Plaintiff

-vs-

1. C. Xavier Pushpharaj

2. C. Yesu Mariya Selvaraj (died)

Addl. 3. Maria Thangam

Addl. 4. John Britto

Addl. 5. Yesu Thangaraja

(Addl. Defendants 3 to 5 are impleaded

as per in I.A.No.5 of 2022 dated 24.08.2022)

... Respondents / Defendants

This petition came before this court on 11.07.2025 for a final hearing in the presence of Mr. R. Radhakrishnan, Advocate for the Petitioner / Plaintiff and Mr. Anand A. Wilson, Advocate for the 1st Respondent / 1st defendant and Addl. Respondents 3 to 5 were set exparte in the suit and 2nd respondent is died and upon hearing both sides, perusing the case records, and having stood over for consideration till this day, this court hereby delivers the following:

ORDER

The petitioner has filed the above petition under section 151 of the Code of Civil Procedure, seeking to scrap the chief affidavit filed by the PW1 C. Yesudhasan and to accept the fresh proof affidavit of the plaintiff.

2. Gist of Averments in the Petitioner / plaintiff's Petition :

The petitioner is the plaintiff in the suit. The petitioner have filed this suit is for Permanent injunction and other reliefs. The defendants were set exparte by this court on 21.02.2024. After that petitioner was examined as PW1 by this court and the proof affidavit was filed on 06.08.2024 and the documents were marked. In the meantime the defendant filed exparte set aside petition, which was numbered as I.A.No.6 of 2024 and that has been allowed on 27.02.2025. In the above circumstances now the fresh chief affidavit of plaintiff is highly necessary for fair disposal of this case. Hence, now petitioner have to conduct the case by filing fresh chief affidavit in this suit. So a fresh chief affidavit is warranted now through the plaintiff. In such circumstances the Chief affidavit filed by petitioner is to be eschewed and fresh chief affidavit of petitioner is necessary to prove the actual fact of this suit. In these circumstances it is just and proper to scrape the earlier chief affidavit filed by the PW1 in the interest of justice. If the chief affidavit filed by petitioner earlier is not scrapped, petitioner will be put to irreparable loss and hardship. Hence, the petition is to be allowed.

3) **Gist of Averments in the 1st Respondent's Counter:**

The 1st Respondent had filed a counter stating that the petition to scrap the evidence of PW1 proof affidavit is not maintainable in law and on facts. The plaintiff was examined as PW1 and document were marked and it is posted for further evidence. This respondent filed application to set aside the ex parte order along with the written statement and it was allowed on terms. This respondent stated that there is no valid provision in the civil procedure code to withdraw the proof affidavit once it is filed before the court. The plaintiff can file additional proof affidavit on the basis of the written statement filed by the respondent / 1st defendant. So, the plaintiff application to withdraw the proof affidavit filed by the PW1 is barred under law. Hence to accept the counter and dismissed the petition.

4) The point for consideration is whether the above petition has to be allowed or not?

5) Point:

Heard both sides. Records perused. The petitioner / plaintiff has filed this suit for Permanent injunction and other reliefs. On 21.02.2024, the 1st defendant were set ex parte. On 06.08.2024, the PW1 was examined in chief, proof affidavit filed and Exs.A1 to A4 were marked. Subsequently the ex parte order against the 1st defendant were set aside and written statement filed on

27.02.2025. On 09.04.2025, issues were framed and posted for trial. The exparte trial had already commenced and is in chief continuation. There is no kind of legal requirements that differing give evidence in contesting and exparte cases accordingly. Therefore, the court finds no justification to discard the previously filed proof affidavit merely because it was submitted during exparte proceedings. Furthermore, the plaintiff still has the opportunity to present additional evidence through a supplementary proof affidavit and additional documents, if necessary. In the light of the above said facts, this court is not inclined to allow this petition.

As a result,

This petition is dismissed. No cost.

Dictated to the Steno-Typist, and typed by her directly in the Computer, corrected and pronounced by me, in open court this, the 14th day of July 2025.

II Additional District Munsif,
Nagercoil.

Petitioner side witnesses and documents : Nil.

Respondent side witnesses and documents : Nil.

II Additional District Munsif
Nagercoil.

Draft/Fair Order
I.A.No. 7/2025 in
O.S.No.32/2020
Date: 14.07.2025.
II ADM Court, Nagercoil.