

IN THE COURT OF ADDITIONAL DISTRICT MUNSIF, KULITHALAI

Present : Selvi.A.Yughathymariya, B.Com, L.L.B.(Hons.,)

Additional District Munsif, Kulithalai.

Dated Friday, the 14th day of November 2025

I.A No.04/2025 in O.S No.114/2023

1) V.Rengammal

2) S.Palanisamy

3) S.Thangavel

4) S.Palanisamy

...Petitioners/Plaintiffs

- Vs -

P.Ramasamy

...Respondent/Defendant

This petition has come up for final hearing on 01.11.2025 before this Court in the presence of Mr. A.R.Sadhasivam, the Learned Counsel appearing for the Petitioners and in the presence of the Mr. M.S.Vinodh, the Learned Counsel appearing for the Respondent, upon perusal of material records and having stood over for consideration till this day, this court delivers the following:

ORDER

This petition is filed by the Plaintiffs/Petitioners under Order 26, Rule 1 r/w Section 151 of CPC seeking the permission of this Court to appoint a Court Commissioner for the purpose of cross examining the Plaintiff side witness namely PW1 at her residence.

Brief averments in the affidavit:

2) The 1st Petitioner is the 1st Plaintiff in the above suit. This petition is filed on behalf of the other Petitioners as well. The above suit is posted for the cross examination of PW1, after completion of the chief examination of PW1. As due to

bad health conditions and due to the tender age, PW1 could not be able to come to depose before this Court for her cross examination. Hence, in the interest of justice and for the above reasons stated, it is deemed necessary to appoint a Court Commissioner for the purpose of cross examination of PW1. If this petition is not allowed, the Petitioners will be put to irreparable loss and hardships. Hence, this petition.

Brief averments in the counter filed by the Respondent:

3) This petition is not maintainable in law or on facts and is liable to be dismissed in limine. The averments in the affidavit of the Petitioner are specifically denied except those are expressly admitted by the Respondent. The Petitioners are put to strict proof of the same. The reasons stated in the petition affidavit on a bad reading that the 1st Petitioner is unable to climb the steps of the Court is not acceptable. Admittedly, there are only three steps to climb and wheelchair ramp is also available almost in all the Courts in Tamil Nadu. It is needless to state that it is quite natural that since PW1 is 82 years, such old age people could not easily walk, but can walk slowly.

4) It is a settled law that the aid of commissions could be used in cases where the witnesses are unable to attend the Court. But, in this case, no documentary evidence or medical certificate was produced to show the health condition of the PW1. The Photographs and the video record of the 1st Petitioner submitted by the Respondent would show that the 1st Petitioner is very much mobile and walks on her own, without support sits and gets up without support, having a clear eye sight etc. When such is the status of the 1st Petitioner, the allowance of this petition for appointment of commission for examination of such witness would result in manifest injustice and would be an abuse of process of law. Even where there is a statutory right, it is open to the Court to refuse the same. Under such circumstances, the prayer prayed for can not be granted. Hence, this petition is liable to be dismissed with Costs.

Point for consideration:

5) Whether this petition is entitled to be allowed or not?

Evidence:

6) There is no oral and documentary evidence on the side of the Petitioners. However, on the side the Respondents, there is no oral evidence but, Ex.R1 to Ex.R3 were marked.

Discussion:

7) Heard both sides. Perused records. Upon perusal of records, it is seen clear that the Petitioners/Plaintiffs have filed the above suit against the Respondent/Defendant for the relief of declaration of sale deeds as null and void and also for the relief of Permanent Injunction against the Defendant in respect of the suit property.

8) Admittedly, the age of the 1st Petitioner/1st Plaintiff is 82. It is also seen that on 22.04.2025, the 1st Petitioner/the 1st Plaintiff was present and examined as PW1 in chief on the side of the Plaintiffs in the above suit. Through PW1, Ex.A1 to Ex.A5 were marked and the above suit was further posted for chief continuation of PW1. Thereafter on 17.06.2025, PW1 was present before this Court and at request of the counsel for the Plaintiff, the chief examination of PW1 was closed. Thereafter, the above suit was posted for cross examination of PW1 on 17.06.2025 itself.

9) This being so, after one month on 17.07.2025, this petition to appoint commissioner for examination of PW1 was filed on behalf of the Plaintiffs. The major contentions that have been raised on the side of the Petitioners is that the health condition of the 1st Petitioner who is PW1 was not good and she being very old lady she could not be able to climb the steps of this Court and come before this Court for

her cross examination. Hence, the Petitioners sought this Court to allow this petition in the interest of justice.

10) Per contra, the major objections that have been raised on the side of the Respondent are that since because PW1 is a 82 years old lady, it can not be said that she cannot move or she is immobile. Further, the Respondent has objected to this petition that no medical records or documents in support of the health condition of the 1st Petitioner has been filed on the side of the Petitioners, showing that her health condition will not let her to come to this Court to adduce evidence. This apart, the Respondent further alleged that the videos and photographs of the 1st Petitioner would show that she is very mobile and walks and sits and gets up on her own without any support. Also, the Respondent has alleged that allowance of this petition would result in abuse of process of law and hence prayed for dismissal of this petition.

11) In support of the contentions of the Respondents, the Respondents have exhibited Ex.R1 to Ex.R3 on their side. Ex.R1 is the Photograph which has been taken on GPS Map Camera showing the pictures of the 1st Petitioner (3 Nos.). Upon perusal of the said Photographs, it is seen that the said Photographs were taken on 30.07.2025 and on 17.07.2025 during the time specified therein in Sundukulipatty Village, Tamil Nadu. It also shows the image of an old lady who is walking with a stick and sitting under a tree. The Respondent has alleged that the lady in the Photographs is the 1st Petitioner who is PW1. Ex.R2 is the Pen drive containing the said image in Ex.R1 and also containing a video record showing the lady in Ex.R1 walking slowly with the help of a stick and talking to a passerby.

12) Ex.R3 is the certificate which is filed under section 65(B) of the Indian Evidence Act. Upon perusal of the said certificate, it is seen that the Respondent has filed the above certificate in his name thereby certifying that the Photographs and the video record in Ex.R1 and Ex.R2 are taken in his mobile and he also certified as to the information regarding his mobile name, model, IME number, serial number, mobile number and so on. It is also seen that the Respondent has further certified that

the above photographs and video record are taken through the mobile owned and operated by him. He further certified that the said photographs and video record are true copies/reproduction of the original electronic records and there is no distortion in the accuracy of the contents of the document.

13) However, upon perusal of the said certificate it could be seen that the Respondent has certified that he has produced the photos of the suit property. However, Ex.R1 and Ex.R2 shows the photographs of the 1st Petitioner only. Moreover, on the side of the Petitioners there is no objection as to the identity of the lady as shown in the said photographs that she is not the 1st Petitioner herein. Therefore, this Court is of the view that the said photographs and the video record shows the image and video of the 1st Petitioner only, as the identity of the 1st Petitioner in the said photographs and the said video record was not disputed by the Petitioner.

14) But, however upon perusal of the Ex.R3 certificate, it is very silent about the hash value information of the data which is been replicated as photographs and video record in Ex.R1 and Ex.R2. Moreover, this certificate is filed under section 65(B) of the Indian Evidence Act which is the old act. However, as per section 63(4)(c) and the Schedule to the Bharatiya Sakshya Adhinyam, 2023 which is the new law in force as of now, it mandates the requirements of the certificate which are to be given by the owner who owns the electronic device as well as the certificate from the expert who reproduced the same. The main scope and object of the certificate under section 63 of the Bharatiya Sakshya Adhinyam is that the electronic record produced before this Court is accurate and is not tampered or distorted by any one. However, such accuracy of electronic records and to find out the tampering of such electronic records, usually the hash value of such data has to be calculated and the same has to be compared with the original data and as well as with the hash value of the reproduced data. Therefore, both hash values have to be remain same and should not be differed.

15) In that way, being the owner of such mobile phone on which the photographs and video has taken place, the Respondent alone has produced the certificate that too without mentioning the hash value of the same. Therefore, this Court is of the view that how the Photographs and video record which were taken on the phone of the respondent herein is reproduced as such photographs and such video record in a Pen drive, has not been stated by him. Moreover, the certificate of the expert who reproduced the same was also not obtained by the Respondent. Therefore, this Court is of the view that the requirements of section 63(4)(c) of the Bharatiya Shakshya Adhiniyam are not complied with by the Respondent.

16) The next aspect which this Court would like to see in deciding this petition is, the scope of the provision contained under Order 26, Rule 1 of CPC. It has been categorically provided under Order 26, Rule 1 of the Civil Procedure Code that any Court may, in any suit issue a commission for the examination on interrogatories or otherwise of any person resident within the local limits of its jurisdiction, who is from sickness or infirmity unable to attend it. Provided that a commission for examination on interrogatories shall not be issued unless the Court for reasons to be recorded thinks it necessary so to do. In the explanation portion to the said Rule 1, it has been stated that the Court may for the purpose of this rule accept a certificate purporting to be signed by a registered medical practitioner as evidence of the sickness or infirmity of any person, without calling the medical practitioner as a witness.

17) In this regard, the Learned Counsel for the Respondent has relied on the decision of the Hon'ble High Court of Madras, Madurai Bench in **C.R.P.(PD) (MD) No.1243 of 2018**, wherein it has been observed by the Hon'ble High Court that it is a settled law that the aid of commission could be used in case where the witnesses are unalbe to attend the Court, but in the above case as no documentary evidence or medical certificate has been produced to show the health condition of the old lady which will not let her to come to court to adduce evidence and therefore, the order passed by the Additional District Munsif, Tirunelveli who allowed the petition under

Order 26, Rule 1 of CPC thereby appointing an Advocate Commissioner to examine the mother of the Petitioner on her house holding that no prejudice will be caused to the other side, was set aside.

18) Upon considering the same, this Court is of the view that the provision has categorically stated about the requirements for allowing this petition for appointment of a commissioner for the purpose of examination of a witness. It is the case of the Petitioners that the 1st Petitioner who was examined as PW1 in chief in the above suit, could not be able to come to depose before this Court by climbing the steps, for her cross examination as she has been suffered from bad health condition and due to her old age. Admittedly, the age of the 1st Petitioner is 82. There are no medical records or any documentary evidence produced on the side of the Petitioners showing the ill health condition of the 1st Petitioner and also showing how such bad health condition of the 1st Petitioner is stopping her from come to this Court to depose in her cross examination.

19) Therefore, the Petitioners have failed to obtain proper medical records from the registered medical practitioner as to the inability or immobility or infirmity of the 1st Petitioner to come to depose before this Court for her cross examination. Therefore, without any sufficient medical records as to the infirmity of the 1st Petitioner, this Court finds it not necessary to appoint a Court commissioner for the purpose of cross examination of PW1. This apart, this Court is also of the view that if this petition is allowed, it would prejudice the Respondent herein by not allowing him to participate in a fair trial. Therefore, this Court is not inclined to allow this petition.

Result:

In the result, with the above observations, this petition is stands dismissed. No costs.

Dictated to my steno-typist, taken down by her in short hand and typed by her in the computer, corrected by me and pronounced by me in the open court on this the 14th day of November 2025.

**Additional District Munsif,
Kulithalai.**

Petitioners side witness and documents - Nil.

Respondents side witness - Nil.

Respondents side documents:

Ex.R1	30.07.2025 and 17.07.2025	Photograph (3nos.)
Ex.R2	-	Pen drive
Ex.R3	-	The Certificate under section 65(B) of the Indian Evidence Act.

**Additional District Munsif,
Kulithalai.**