

IN THE COURT OF ADDITIONAL DISTRICT MUNSIF, ATTUR

PRESENT : **Tmt. D. JANSIRANI, MBA., LL.M.,**
ADDITIONAL DISTRICT MUNSIF, ATTUR.

Tuesday, 29th day of April 2025

I.A. No. 5/2024 in O.S. No. 108/2004

CNR No. TNSA13-000062-2004

1. Perumal (died)
2. Periyammal
3. Chellammal
4. Pavunu
5. Manigandan . . . Petitioners/Plaintiffs

/Versus/

Karuppanna Gounder . . . Respondent/Defendant

This petition is came up for final hearing before me on 29.04.2025 in the presence of Thiru.P.Ravindran, Advocate for the Petitioners/Plaintiffs and Thiru. R.Sankar, Advocate for the Respondent/Defendant upon hearing the arguments on either side, and upon perusing the materials records, and having stood over till this day for consideration, this date, this court delivers the following,

ORDER

The Petitioners/Plaintiffs has filed this petition u/o. 26, Rule 1 and Section 151 of CPC praying to pass an order of exempting the witness and appoint commissioner for the examination of petition mentioned witness.

2. Brief averments made in the petition :

The Petitioner / Plaintiff has stated that in his affidavit that, His father Perumal had filed the suit for Specific Performance against the Respondent/Defendant. His father Perumal died on 23.01.2018 and intestate leaving the petitioners No 2 to 5 / Plaintiffs No.2 to 5 as the legal heirs of the deceased perumal. He already gave evidence before this Honourable Court as Pw1. The above suit is posted for further evidence.

The petitioners/plaintiffs have to examine one of the Attestor of the sale Agreement Deed Ex.A1 namely Mr.Perumal son of Chinnasamy Gounder, Sadasivapuram through Commissioner since the above said Attestor is suffering from severe Heart Decease as LM with Double Vessel Disease and also he is bedridden. The petitioners/plaintiffs produced Perumal's Coronary Angiogram Report (xerox copy) for reference. That the above said Attestor is unable to travel and give evidence before this Honourable Court due to his Double Vessel Block in Heart Problem.

Hence the petititoners/plaintiffs filed this petition for seeking permission to examine the above Attestor by Commissioner at Attestor's Place and at the time of the examination of the Attestor Perumal by Commissioner with Ex.A1 (Sale Agreement Deed). Hece this petition.

2. Brief averments made in the counter

The respondent / Defendant objected the petition that this petition is not maintainable and the averments stated in the affidavit are false and denied. There is no strong ground and acceptable reason for appointing commissioner to examine, the alleged witness namely Perumal attestor in Ex.A1, who is said to have been suffering from chronic heart decease and exempting from attending this Honourable Court.

The deceased Perumal, the first petitioner filed the suit for alleged specific performance againgst the respondent/defendant. It is not correctly

mentioned in the short cause title in this petition and the affidavit after the name of the first petitioner/first plaintiff with in the brackets as (“died”). Hence without the said corrections this petition cannot be entertained.

The alleged Perumal did not sign in the alleged sale agreement Ex.A1 in the presence of the defendant. As alleged by the petitioner the attestor is not suffering, from any alleged illness heart decease as LM, with double wessel decease, who is not bedridden. The report produced, by the petitioners /Plaintiffs can be entertained, only after verification and proof of th Genuiness of the report. It is baseless to say the alleged attestor is unable to travel and give evidence, before this Honourable Court, due to the alleged problem.

There is no justification or necessity for permitting the petitioners/Plaintiffs to examine the alleged attestor, by any commissioner of this Honourable Court, at the alleged place of the alleged attestor. It is not necessary to examine to above said to attestor by the commissioner along with Ex.A1. The respondent met with an accident and suffering due to permanent disabillity and hence, it will not possible for him to be present at the time of trial by any Commissioner. Hence prayed to dismiss the petition.

3. *Now the point for consideration is Whether the petitioners/plaintifs are entitled to get the relief prayed in the petition?*

4. Both side argument heard. The petition, counter and records are carefully perused.

As per the petition on the side of petitioners/Plaintiffs Pw1 was examined and Ex.A1 was marked. Ex.A1 is the sale agreement between the plaintiffs and defendant. The petition mentioned witness Perumal is one of the attestor of Ex.A1. Presently the above said perumal is suffering from

heart disease as LM, with double vessel disease. Hence is unable to attend the Court in person.

Per contra according to the counter averment the attesting Perumal did not sign in Ex.A1 in the presence of Respondent/defendant. The petitioners/plaintiffs filed the fake medical reports. There is no valid and strong reason for appointing Advocate commissioner to examine the above said witness.

As per O.26 R.1 of CPC the Court may in any suit issue a commission for the examination on interrogatories or otherwise of any person resident within a local limits of its local jurisdiction who is exempted under this code from attending or who is from **sickness** or infirmity unable to attend the court.

In this case the petitioners/plaintiffs seeking permission to examine one of the attesting of Ex.A1 namely Perumal. The witness who is going to be examined by the commission is residing within the local limits of this court. He is suffering from chronic Heart disease and relevant medical reports were filed. The suit is filed on 2004. On considering the facts and circumstances of the petition and the year of the suit it is just and necessary to examine petition mentioned witness by commission. The appointment of the commission would not give any prejudice to the respondent/defendant. Hence this petition is allowed without cost.

Hereby Mr.M.Senthilkumar Advocate is appointed as Advocate commissioner to examine the petition mentioned witness. He is directed to examine the witness at his residence along with both plaintiff and defendant counsel. He is also directed to get Ex.A1(Sale Agreement between plaintiff and defendant dt.30.09.2002) from the court on the day fixed for the

examination of the witness. He is entitled for the fees of Rs.8,000/- after recording the deposition of the witness.

Dictated to the Steno typist directly, typed by her, corrected and pronounced by me in the open court on this the 29th day of April 2025.

Sd/-D.Jansirani
Additional District Munsif
Attur

List of Documents and Witnesses on Both side:

Nil.

True copy

Sd/-D.Jansirani
Additional District Munsif
Attur

A.D.M. Court, Attur.
DRAFT / FAIR ORDER
I.A. No. 5/2024 in O.S. No. 108/2004
Dated : 29.04.2025