

IN THE COURT OF THE DISTRICT MUNSIF, DEVAKOTTAI

PRESENT: Thiru. A. DHARANIDHARAN, B.Sc., M.L., M.A., LL.M.

District Munsif, Devakottai

Wednesday, the 20th day of April, 2022

I.A. 03/2022

in

I.A. No. 01/2021

in

O.S. No. 141//2013

Murugesan 56/2021,
S/o Adhinamilagi
(Through his wife and Power Agent
Manimegalai 51/2021)
Thrani Village, Sarugani,
Devakottai Taluk

Petitioner/Plaintiff

Vs

1. Selvi @ Seethalakshmi, 50/2021
W/o Sundaram
2. Lakshmanan, 68/2021
W/o Karuppaiah
3. Vellaikannu 58/2021
S/o Thanarasu
4. Irulappan 68/2021
S/o Nachiyappan,

Respondents/Defendants

This petition having been finally heard on 20.04.2022 in the presence of Mr. N. Sekar, the learned counsel for the petitioner/plaintiff and in the presence of Mr. A. Ganesan, learned counsel for the respondents/defendants and after perusal of the

entire records and having stood over for my consideration till this day, this Court delivers the following:

ORDER

This is a petition filed under Order VII Rule 14 (3) to condone the delay in receiving the documents.

2. The averments set out in the petition/affidavit filed by the petitioner is as follows:

2.1 The Petitioner states that she is the Power Agent and the wife of the Petitioner/Plaintiff.

2.2 The Petitioner states that the suit has been filed for the relief of permanent injunction against the defendants. The petitioner states that her husband was a Military man and during his tenure in Military, he suffered paralysis of his upper and lower limbs and he was unable to speak; and was bedridden for a quite a long period of time. The petitioner states that in order to contest the case, her husband had executed a general power of attorney in her favor in the presence of a notary public and prays to recognize her as his agent. The petitioner further states that the medical records could not be furnished on time before this Court which is neither wanton nor willful.

2.3 The Petitioner further states that it is just and necessary to allow this application and to peruse the medical records and it does not cause any prejudice to the respondents.

3. The averments set out in the counter filed by respondents are as follows:

3.1 The respondents denies that the petitioner is a military man and he does not possess any qualification for it. The respondents further states that the petitioner didn't mention when he had suffered paralysis during the course of his tenure in Military and does not furnish any documentary evidences with respect to it. The respondents further states that the medical records furnished were generated and fabricated in the recent past without showing sufficient cause as to how it was caused during his military tenure. The respondents further states that the plaintiff is not willing to conduct the case since 2013 and trying to adopt dilatory tactics to drag the case wantonly and this present petition is liable to be dismissed with costs.

4. Now the point for consideration is, whether this petition for condoning the documents is to be allowed or not?

5. The medical records such as list of prescription and Laboratory results were furnished by the petitioner for the year 2020 and 2021 along with this petition and no documentary evidences were let in on the side of the respondent.

6. Both side arguments were heard. Both side learned counsels have contended by reiterating the averments made in the petition, affidavit and counter.

7. On perusal of the records, it comes to know that, the suit has been filed for the relief of permanent injunction over the suit property. The present petition has been filed to condone the delay in filing the document, which the petitioner is

relied upon to support her claim.

8. Section 101 of Indian Evidence Act lays down that the burden of proving a fact, rests on the party who substantially asserts the affirmative of the issue. The burden of proving a fact always lies on the person who asserts, until such burden is discharged, the opposite party is not to prove his case.

9. POINTS FOR CONSIDERATION

9.1 Reception of Document:

The Petitioner has filed a MRI Brain (Plain) report from Madurai Scans Pvt. Ltd dated 16/10/2020, lab investigation report dated 17/10/2020, list of medications dated 31/10/2020, and list of medication dated 09/12/2021 before this Court along with the petition.

This Court relies upon Sugandhi (Dead) Vs P. Rajkumar Rep. By Power Agent, 13/10/2020, in which the Hon'ble Court held that:

Para 9: It is often said that procedure is the handmaid of Justice. Procedural and technical hurdles shall not be allowed to come in the way of the Court while doing substantial Justice. If the procedural violation does not seriously cause prejudice to the adversary party, courts must lean towards doing substantial justice rather than relying upon procedural and technical violation. We should not forget the fact that litigation is nothing but a journey towards truth which is the foundation of justice and the Court is required to take appropriate steps to thrash out the underlying truth in every dispute. Therefore, the Court should take a

lenient view when an application is made for production of the documents under Sub-Rule (3).

10. However, this Court after perusing the medical records is of the considered opinion that most the documentary evidences were given by a private laboratory and even during the enquiry when the Counsel for the petitioner was questioned about its validity, he had stated that the doctor who had issued this lab results died recently. The overall impression given for the MRI Brain appears to be normal and for the CT Chest (Plain) the impression given was mild cardiomegaly which means mild enlargement of the heart and the other impression is that there is no evidence of active lung infection. Hence, the contention of the petitioner and the lab investigation report varies entirely.

11) It is also pertinent to state that the petitioner have not produced any relevant documentary evidences to substantiate her claim of acute medical illnesses and his inability to appear before this Court.

12) **The shady ground upon which the petitioner try to rest the case would not help the petitioner. This Court does not find any merit in this application.**

Hence, this petition is dismissed. No order as to costs.

This Order was directly typed by me in my official laptop, corrected by me and pronounced by me in the open Court on this the 20th day of April, 2022.

District Munsif,

Devakottai

Annexure:

List of witnesses on the side of the Petitioner/Plaintiff
NIL

List of documents on the side of the Petitioner/Plaintiff
NIL

List of witnesses on the side of the Respondents/Defendants
NIL

List of documents on the side of the Respondents/Defendants
NIL

District Munsif,
Devakottai