

IN THE COURT OF THE PRINCIPAL DISTRICT JUDGE,  
TIRUVANNAMALAI.

PRESENT : Tr. **P. Mathusuthanan**, B.A., B.L.,  
Principal District Judge,  
Tiruvannamalai.

Friday, the 08th day of November- 2024.

**I.A.No.03/2024 in O.S.No.175/2022**

Vijayalakshmi @ Viji		.. Petitioner/1st plaintiff
	Vs	
1. Krishnamoorthy 2. Venkatesan		.. Respondent/defendants

This Interlocutory Application has been came up for final hearing before me today (on 08.11.2024) and upon hearing the arguments of Tr.Ashokmenan, Learned Advocate appearing for the Petitioner and Tr.Y.P.Ganesan learned Advocate appearing for the respondents and upon perusing the available records and having stood over for consideration till this day, this court passed the following...

**ORDER**

The petitioner filed this petition u/s 120 of BNS seeking to permit the petitioner's/ plaintiff husband to give evidence on behalf of the petitioner.

2) **Brief averments of the petition:**

The petitioner is the 1st plaintiff. The above suit has been filed for recovery of money as against the defendants. The 2nd and 3rd are stammer,

hence the petitioner lead case on behalf of them. Now the petitioner is not able to give evidence due to diabetic, unstable health and frequent fainting. The petitioner's husband Gunasekaran is well known all the facts of this case and all the relevant facts of the transaction involved in this case. Hence, permit the petitioner's husband to give evidence on behalf of the petitioner. Hence, this petition.

3) **Brief averments of the counter filed by the 1st respondent and adopted the same by 2nd respondent:-**

The petition filed by the petitioners is false, frivolous, untenable, either in law or on facts. The reason for filing this application is not acceptable since the petitioner can adduce evidence before this court by entering into the witness box and she is not suffering with any ailment as alleged in the petition. The 2nd plaintiff is alone stammer. 3rd plaintiff is able to speak normal. If the petitioner is entering into witness box, the real fact will be brought into light, hence in order to concealing the fact, the petitioner has come forward with this application for examine her husband who was directly not aware any of the transaction involved in the above case. Hence, he requested to dismiss the petition with the cost of these respondents.

4) **Point that arises for consideration in this Petition is that**

Whether this petition is to be allowed as sought for?

5) **Point:** The learned counsel appearing for the petitioner would submit that she has filed the main suit as against the respondents herein for recovery of money. He would further submit that the 2nd and 3rd plaintiffs are suffering with a stammering by birth. The petitioner due to her ill-health is not able to adduce evidence before this court. He would further submit that the husband of the petitioner knows all the relevant facts of above transaction involved in this case, hence he requested to allow this application to examine the husband of the petitioner herein on behalf of the petitioner.

6) **Per contra**, the learned counsel appearing for the respondents would submit that the reason for filing this application is not acceptable. Since the petitioner can adduce evidence before this court by entering into the witness box and she is not suffering with any ailment as alleged in the petition and though the 2nd plaintiff suffering with stammering by birth, 3rd plaintiff is able to speak as normal. He would further submit that if the petitioner is entering into witness box, the real fact will be brought into light, hence in order to concealing the true fact, the petitioner has come forward with this application for examining her husband who was directly not aware any of the transaction involved in the above case, hence he argued for dismissal of the application.

**7) Heard. Perused the records.**

8) Admittedly, the 2nd and 3rd plaintiffs suffering with a stammering by birth. The petitioner/ 1st plaintiff has filed this application to examine her husband

on behalf of her as she is not able to enter into witness box to adduce evidence as she is suffering from illness. As per section 120 of Evidence Act ( 126 of BSA 2023) in all civil proceedings parties to the suit and the husband or wife of any party to the suit, shall be competent witnesses. Hence, so far as the examination of husband of the petitioner/1st plaintiff on behalf of her is not barred whatsoever by procedure established under law. Similarly, competency of the husband of the petitioner/1st plaintiff to adduce evidence before this court on behalf of her also cannot be questioned as it is saved by procedure established under law. Hence, the husband of the petitioner/1st plaintiff being a competent witness can enter into the witness box to adduce necessary evidence instead of wife/petitioner/1st plaintiff . It is therefore, this court do not find any illegality or infirmity in the contention of the petitioner to allow this application, hence this court is inclined to allow this petition. Thus the point is answered accordingly.

**In fine, this petition is allowed. No cost.**

This Order is dictated by me to the Stenographer Grade-I of this Court, transcribed by her in the Computer, corrected and pronounced by me in open court, this the 08th day of November- 2024.

**Principal District Judge,  
Tiruvannamalai.**

