

**IN THE HIGH COURT OF JUDICATURE AT MADRAS**

**DATED: 17.09.2021**

**CORAM:**

**THE HONOURABLE Mr. JUSTICE G.CHANDRASEKHARAN**

**C.R.P.(PD)No.859 of 2021**  
**and C.M.P.No.7077 of 2021**  
(Through Video Conference)

D. Vasanthi

...Petitioner

Versus

1. D. Loganathan

2. K. Dhanalakshmi

...Respondents

**PRAYER:** Civil Revision Petition filed under Article 227 of the Constitution of India to set aside the Fair and Decretal Order in I.A.No.943 of 2019 in O.S.No.104 of 2019 dated 19.02.2021 on the file of the Additional District Munsif at Gingee, Villupuram district.

For Petitioner : Mr.C.Samadharmarasu

For Respondents : Mr.R.Thanjan

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**ORDER**

This Civil Revision Petition is filed challenging the order in I.A.No.943 of 2019 in O.S.No.104 of 2019 by the learned Additional District Munsif, Gingee dated 19.02.2021.

2. This Interlocutory Application was filed under Section 151 of the Civil Procedure Code read with Order XVI Rule 1 and 2 of the Civil Procedure Code to issue sub-peona to Immigration Authority, Chennai for furnishing travel details of the 1st respondent/plaintiff with passport No.DK 0807557 [D. Loganathan S/o. K.Desingu] to foreign countries from 2018 till date and to give evidence.

3. The reason for filing this petition, according to the learned counsel for the petitioner is that the respondents filed a suit in O.S.No.104 of 2019 against the petitioner seeking permanent injunction restraining the petitioner from interfering with the possession and enjoyment of the suit properties by the respondent in Item 1-32 of the suit properties. It is further submitted by the learned counsel for the petitioner that the respondents/ plaintiffs are residing in No.3815, Rock Bay Drive, Louis Ville, KY 40245, United States of America (USA). In the plaint and affidavit filed before this Court on 29.04.2019, it is claimed that they are residing at Thenputhur Village, Gingee T.K. Villupuram District. Both the respondents/plaintiffs are residing at USA and they never visited India, particularly to Gingee in the year 2019. The signatures alleged to have been made by them in the presence of attesting witness, are false and

vexatious and when they are in USA, they cannot allege that they are in Gingee and signed the affidavit and plaint. This amounts to fraud played on the Court. Therefore, it is necessary that the travel details of the 1st respondent D. Loganathan S/o. K.Desingu, holding passport No. DK 0807557, summoned to be produced by the Foreigner Regional Registration Office [FRRO], Chennai from 2018 till date.

4. The learned counsel for the respondents opposed this petition. It is found that counter has not been filed before the Trial Court.

5. On hearing the submissions made by the learned counsel appearing for the petitioner, the learned Additional District Munsif, Civil Judge, Gingee dismissed the petition on the ground that the Court cannot go in aid of the petitioner for the reasons stated by the petitioner for issuing summons to Immigration Authorities, as they are not in tune with the relief prayed for in the suit, nor it can help in deciding the issue involved in the suit. Against the said order, present Civil Revision Petition is preferred.

6. Reiterating the submissions made in the affidavit, the learned counsel for the petitioner submitted that the respondents have committed serious fraud in filing the suit, as they were in USA when the suit was filed in India. The plaint and the injunction application have signatures of the

plaintiffs/respondents as if they made their signature in the plaint on 25.04.2019 in India. He also brought to the notice of this Court that a memo was filed by the learned counsel for the plaintiffs before the Trial Court, that the plaintiffs/respondents are in foreign country and they have not come to India and therefore, they do not want to continue to appear on behalf of the respondents and prayed for dismissal of the suit. This memo, according to the learned counsel for the petitioner supports the case of the petitioner that the signature in plaint and other documents filed along with the plaint are fabricated and forged in the case which was filed against the petitioner.

7. The learned counsel for the respondents is not able to confirm as to whether this memo was filed by trial Court Advocate or not. However, his objection to this petition is that the Trial Court has rightly found that the petitioner cannot use the Court for collecting evidence by sending summons to the Foreigner Regional Registration Office [FRRO], Chennai. Petitioner has to independently prove his case by producing evidence to show that the respondents did not come to India and did not sign the plaint and other documents.

8.Considered the rival submissions made by the learned counsel and perused the records.

9. The specific allegations made by the petitioner against the respondents is that they were not in India at the relevant point of time, when the suit was filed. They have not signed in the plaint and other documents filed along with the plaint. The signatures are forged by some one impersonating them as plaintiffs and the suit was filed against the petitioner. Therefore, it is necessary for the petitioner to prove whether the respondents were in India at the relevant point of time or not.

10. Admittedly, the first respondent D.Loganathan has the passport bearing No.DK 0807557. The verification of the passport details will bring the truth to light, as to whether D. Loganathan was in India or not at the time of filing this suit and at the time of signing the plaint and other documents. The allegations made by the petitioner is that the respondents were not in India at that relevant point of time and it is supported by memo filed by the learned counsel appearing for the respondents before the trial Court.

11. The learned counsel for the respondents submitted that he has to get instructions from his counsel appearing before the lower Court whether this memo was filed before the Court or not. This memo dated 28.06.2019 lends support and assurance to the case of the petitioner that the respondents were in a foreign country at the relevant time. That is the reason why the counsel for the respondents mentioned in the memo that they will not be able to continue to appear for the respondents and so prayed for dismissal of the suit. Daily status report dated 28.06.2019 also reveals the details pertaining to the filing of the memo. It confirms that the aforesaid memo was indeed filed by the respondents advocate before the Trial Court.

12. In the said circumstances, this Court is of the considered view that to find out as to whether the respondents were in India and whether they signed in the plaint and other relevant documents, the travel details should be summoned from the Authorities. This will not amount to collection of evidence, but will help in unearthing the truth. Trial is a voyage in search of truth. These details are essentially required to find out whether the suit was filed at the instance of the respondents and whether they signed the plaint and other documents. It goes to the root of the matter and the very foundation of the case. The learned

Additional District Munsif, Gingee without considering these vital aspects had dismissed the petition.

13. In view of the reasons aforesaid, this Court set asides the order in I.A.No.943 of 2019 in O.S.No.104 of 2019 dated 19.02.2021 and allow the petition and directs the learned Additional District Munsif, Gingee to issue sub-peona to the Foreigner Regional Registration Office [FRRO], Chennai to furnish the travel details of the 1st respondent/plaintiff, D.Loganathan, holder of Indian passport No.DK 0807557 as to his visit to foreign countries from 2018 to till date and give evidence through either by his personal appearance or through his subordinate holding a responsible position.

14. Accordingly, with the above directions, this **Civil Revision Petition is allowed**. No costs. Consequently, connected miscellaneous petition is closed.

sts/jai

17.09.2021

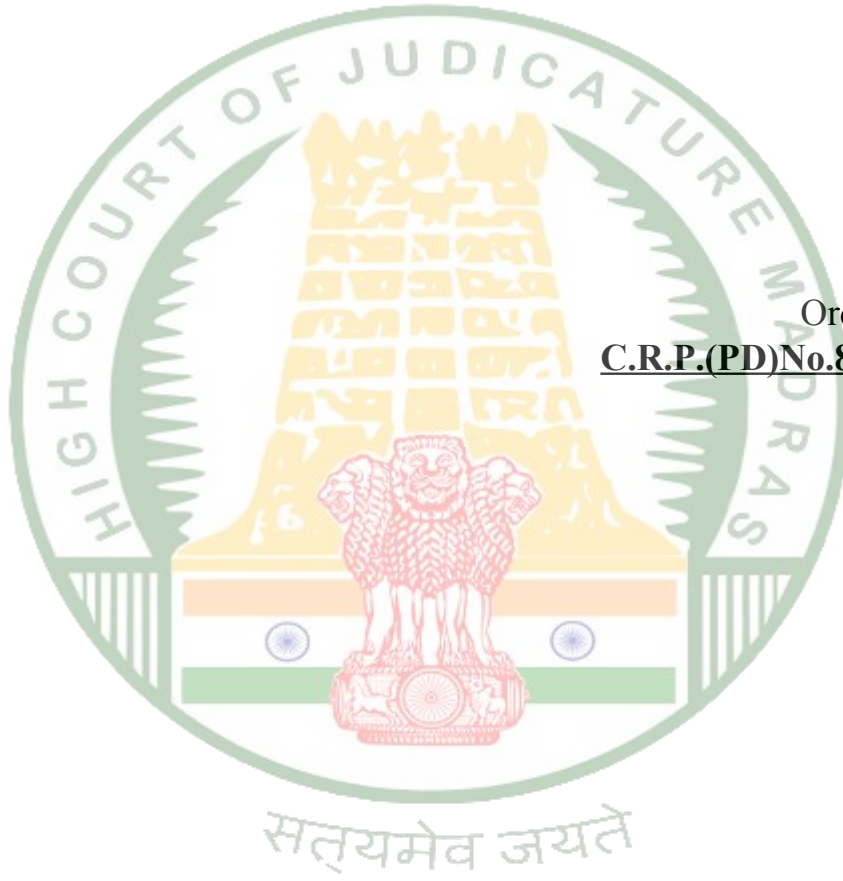
Index: Yes/ No  
Speaking Order / Non-Speaking Order

To:

The Additional District Munsif,  
Civil Judge (Junior Division)  
Gingee.

**G.CHANDRASEKHARAN, J.,**

sts/jai



Order made in  
**C.R.P.(PD)No.859 of 2021**

Dated:  
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