



C.R.P.No.1889 of 2016

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 06.07.2023

CORAM:

**THE HONOURABLE Mr. JUSTICE V. LAKSHMINARAYANAN**

Civil Revision Petition.No.1889 of 2016

and

C.M.P.No.9879 of 2016

1.L.M.Shah (died)

2.A.L.Shah

3.Karunamayi Prasad

4.Nishtha Prasad

... Petitioners

Petitioner-1 died. Petitioners 3 and 4 brought on record as Legal heirs of the deceased petitioner-1 viz L.M.Shah vide Court order dated 04.07.2023 ,made in C.M.P.Nos.5151, 5153 and 5156 of 2022 in C.R.P.No.1889 of 2016 by VLNJ.

Vs.

1.The Auroville Foundation,  
Rep. By its Secretary,  
ACUR, Administrative Area,  
Town Hall. Auroville, Vanur Taluk,  
Villupuram District. Tamil Nadu.

2.S.R.Chandrasekaran,  
Special Officer (Land) Auroville Foundation,  
ACUR, Administrative Area,  
Town Hall. Auroville, Vanur Taluk,



C.R.P.No.1889 of 2016

Villupuram District, Tamil Nadu.

3.M.Ramasamy

...Respondents

**Prayer:** Civil Revision Petition filed under Article 227 of Constitution of India, to set aside the order and decretal order dated 17.02.2016 passed in I.A.No.4 of 2015 in O.S.No.5 of 2012 on the file of the Hon'ble II Additional District Judge, Tindivanam.

For Petitioner : Mr.Prakash Adiapadam  
for M/s.Achari and Antoni

For Respondents : Mr.D.Ravichandar for R1

### ORDER

The plaintiffs are the Civil Revision Petitioners. They have filed a suit for recovery of money. The case of the plaintiffs is that amounts are due towards interest from the date of execution of the agreement of sale till the sale deed was executed. The relationship between the parties is not in dispute. The plaintiffs are the vendor and the defendants are the vendee.

2. The plaintiffs examined their side and closed their evidence. It was the turn of the defendants. According to Mr.Prakash Adiapadam, the defendants examined one Baptiste Paul Vincent. He would claim to be the Public Relations Officer of Auroville foundation. Mr.Prakash Adiapadam,



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would vehemently submit that Mr.Baptiste Paul Vincent has absolutely nothing to do with the suit transaction. He would state that the plaintiffs filed a memo that the defendants were examining a person who is unconnected with the case and still on the insistence of the Court, the said witness was cross examined. Due to the pressure of the litigation, the plaintiffs also cross examined P.W.1. Mr.Prakash Adiapadam, would say an incompetent witness has entered into the witness box and therefore his evidence has to be eschewed. The application moved for eschewing the evidence was dismissed. Hence, this revision.

3. Rebutting the argument, Mr.D.Ravichandar, would submit that it is the discretion of the defendants to examine who ever they want in order to substantiate the case and it was in that light, Mr.Baptiste Paul Vincent was examined.

4. I have carefully considered the arguments of either side and perused the material available on record.

5. Neither the Code of Civil Procedure nor the evidence Act demand that the parties to the proceedings must examine themselves in all cases.



Whether the witness is a competent witness or otherwise would have to be judged at the time of marshaling of evidence, before the Court enters upon a judgment. Neither the plaintiff can insist on who the defendant has to examine nor can the defendant can insist that the plaintiff has to examine a particular person.

6. The rules of the game are clear. It is up to the respective parties to examine who ever they want in order to substantiate their case. If an incompetent witness has been examined, as alleged by Mr.Prakash Adiadam, it is always open to him to cross examine the witness in detail and expose that the witness is unconnected to the proceedings. In such a event, the Court will obviously see, if the witness is incompetent or whether his evidence should be relied upon. This does not mean that the plaintiff can move an application to eschew the evidence from record.

7. By eschewing the evidence, I am afraid, it will not be detriment to the defendant but will go to the benefit of the defendant in this case. Assuming that D.W.1 is an incompetent witness and his evidence is eschewed, the defendant will always set right the situation while examining the competent witness. In any event, the defendant's witness having been



C.R.P.No.1889 of 2016

cross examined by the plaintiff nothing further remains to be dealt with in the matter.

8. As I have already held that the plaintiffs does not have right to insist as to who the defendants must examine, the order of the Trial Court necessarily has to be confirmed and accordingly, it is confirmed. Civil Revision Petition No.1889 of 2016, is dismissed.

9. It is also made clear that it is open to the plaintiffs to discredit D.W.1, by questioning him on his competency as well as his knowledge of the suit. It is entirely up to the Trial Court to consider the competency and relevancy of evidence at the time of disposal of the suit. No costs. Consequently, connected miscellaneous petition is closed.

06.07.2023

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Index:Yes/No

Internet Case:Yes/No

Speaking Order: Yes/No



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C.R.P.No.1889 of 2016

**V. LAKSHMINARAYANAN**

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To

1. The II Additional District Judge, Tindivanam.
2. The Auroville Foundation,  
Rep. By its Secretary,  
ACUR, Administrative Area,  
Town Hall. Auroville, Vanur Taluk,  
Villupuram District. Tamil Nadu.
3. S.R. Chandrasekaran,  
Special Officer (Land) Auroville Foundation,  
ACUR, Administrative Area,  
Town Hall. Auroville, Vanur Taluk,

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