



C.R.P.(PD) No.4453 of 2025 and
C.M.P.No.22771 of 2025

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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 18.09.2025

CORAM:

THE HONOURABLE MR. JUSTICE M.JOTHIRAMAN

C.R.P.(PD) No.4453 of 2025
and
C.M.P.No.22771 of 2025

Periyasamy,
S/o.Krishnan,
Sirunesalur Village, Veppur Taluk,
Cuddalore District.

...Petitioner

..Vs..

Periyasamy,
Rep.by Power Agent Muniyapillai,
S/o.Paramasiva Servai,
Kilakurichi Village, Veppur Taluk,
Cuddalore District.

...Respondent

PRAYER: Civil Revision Petition filed under Article 227 of Constitution of India, to set aside the fair and decreetal order of the learned II Additional District Munsif Judge, Virudhachalam, passed in I.A.No.229 of 2024 in O.S.No.278 of 2004, dated 31.07.2025.

For Petitioner :Mr.J.Antony Jesus

ORDER

The unsuccessful defendant has preferred this petition.



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2. The suit in O.S.No.278 of 2004 was filed for recovery of money based on a promissory note. The defendant filed a written statement, and necessary issues were framed. The plaintiff's side trial commenced, and their evidence was completed. Thereafter, the case was posted for the defendant's side evidence. At this stage, the defendant filed an application in I.A.No.229 of 2024 in O.S.No.278 of 2004 under Section 65 A & B of Indian Evidence Act, 1872 and Section 72 (A) of Information Technology Act, 2000, seeking to compare the voice available in a micro cassette with the sample voice of the plaintiff. Considering both sides, the trial court, by order dated 31.07.2025, dismissed the application on the ground that the suit was restored on 04.03.2022, i.e., after 15 years. After restoration of the suit, the defendant did not come forward to file such a petition, though the alleged recording was made in 2011 itself, and the case was posted for the defendant's evidence on 05.04.2023. Even after sufficient opportunities were given, the petitioner did not conduct his case. Aggrieved by the same, the petitioner has preferred the present Civil Revision Petition.

3. The learned counsel for the revision petitioner submitted that the court below erred in law in dismissing the application. According to him, the



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voice recording is crucial to the defence and there is no reason why it cannot be permitted to be marked as evidence on the side of the defendant.

The court below wrongly dismissed the application on the ground that it was filed 13 years after the institution of the suit. In order to establish the defence, an opportunity ought to have been given to mark the voice records available in the case.

4. It is seen from the records that the suit was filed for recovery of money based on a promissory note. Originally, the suit was filed in the year 2004. Due to the non-appearance of the defendant, an ex parte decree was passed on 07.09.2004. The defendant then filed a petition under Order IX Rule 13 CPC to set aside the ex parte decree, which was allowed on 03.11.2004. However, once again, due to the non-appearance of the defendant, another ex parte decree was passed on 29.11.2004. The suit was later restored on 11.12.2006. Again, the defendant was set ex parte, and another decree was passed. Subsequently, the suit was restored once more on 04.03.2022, after completion of the plaintiff's side evidence. The case was then posted for the defendant's evidence, and at this stage, the present application was filed.



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5. In the affidavit filed in support of the petition before the trial court, it was stated that a compromise was made in the year 2011 and that the records could be filed at this stage. However, no acceptable reason has been given in the affidavit. The defendant was already given sufficient opportunity to establish his case. The reasons stated in the affidavit are not convincing. If, in fact, there was a negotiation for settlement which later failed, the defendant could very well have established the same by examining an independent witness. For that purpose, there is no need to interfere with the order of the court below.

6. In the result, ***this Civil Revision Petition is dismissed.*** No costs. Consequently, the connected C.M.P. is closed.

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Index: Yes/No

Speaking Order: Yes/No

To

The II Additional District Munsif Judge, Virudhachalam.



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M.JOTHIRAMAN,J.,

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