



WEB COPY



A.No.781 of 2026

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 30-03-2026

CORAM

THE HON'BLE DR.JUSTICE A.D.MARIA CLETE

**A No. 781 of 2026
in C.S.No.837 of 2013**

Chennai Nanbargal Nala Mandram
By Its Secretary K M.Nithyanandam
No.39/22 Pillaiyar Koil St Saidapet Chennai 15
(amended In Pursuance Of The Order Dated
03.12.2025 Passed In A.No.5862/2025)

..Applicant(s)

Vs

1. Mrs. A.Rajakumari
2. A.Jeevagan
3. A.Arulnidhi
4. A.Sivan Raj
5. D.Karthikeyan

..Respondent(s)

Prayer : To eschew the evidence of Mr.K.Shanmugam, who had appeared as PW-1 in the above C.S.No.837 of 2013.

For Applicant(s): M/S.J. Thilagaraj

For Respondent(s) : Mr.K.Premkumar for R4



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ORDER

This Application has been filed by the plaintiff to eschew the evidence of PW1, Mr.K.Shanmugam, in C.S.No.837 of 2013. The docket also describes the nature of the application as one to eschew PW1 witness Mr.K. Shanmugam.

2. In the affidavit filed in support of the application, the deponent states that PW1 Mr.K.Shanmugam had earlier been authorised by the plaintiff Association, was examined as PW1, documents on the side of the plaintiff were marked as Exs.P1 to P12, and the defendant had also initiated cross-examination of PW1. It is further stated that Mr.K.Shanmugam was unwilling to appear before this Court to complete his cross-examination. On that basis, the present application has been filed to eschew PW1.

3. The question that arises is whether the evidence of a witness, already recorded on oath, can be eschewed merely because the said witness did not turn up for further cross examination on whose behalf he was examined and is unable to continue further evidence.



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4. This issue is no longer res integra in view of the judgment of the Division Bench of this Court in OSA No.187 of 2024 dated 17.10.2024, wherein this Court held that there is no provision in the Evidence Act / Bharatiya Sakshya Adhiniyam or the Code of Civil Procedure to eschew evidence already recorded on oath; at best, the Court may consider its admissibility, evidentiary worth or probative value at the appropriate stage. The Division Bench further held that objections of this nature must be raised before evidence is recorded and that previously recorded evidence cannot thereafter be eschewed.

5. In the present case, it is admitted by the applicant itself that PW1 has already been examined and documents have been marked through him, and that the defendant has also initiated cross-examination. Once evidence has thus been recorded on oath, this Court cannot direct that such evidence be eschewed merely because the witness is unwilling to appear to complete his cross-examination of the plaintiff Association. The subsequent inability of the witness to continue may be a circumstance relevant for any other procedural relief, if available in law, but it is not a ground to eschew what has already been recorded.



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DR. A.D.MARIA CLETE, J.

dpq

6. In such view of the matter, this Court is of the opinion that the relief sought in the present application cannot be granted.

7. Accordingly, this Application is dismissed. It is, however, open to the applicant/plaintiff to work out such other remedy as may be available to it in law for continuation of its evidence, if so advised. No costs.

30.03.2026

dpq

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