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C.R.P.(MD).No.704 of 2026

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 26.03.2026

CORAM

THE HON'BLE MR.JUSTICE V.LAKSHMINARAYANAN

C.R.P.(MD).No.704 of 2026

and

C.M.P.(MD).No.3251 of 2026

Suseela

.. Petitioner/Petitioner/Plaintiff

Vs.

1.M.Mahendiran

2.Nambirajan

3.Nagendiran

... Respondent/Respondent/Defendant

PRAYER: Civil Revision Petition filed under Article 227 of Constitution of India, to set aside the fair and decreetal order dated 23.02.2026 made in I.A.No.69 of 2026 in O.S.No.89 of 2019 passed by the learned Principal Subordinate Judge, Kumbakonam and allow the above Civil Revision Petition.

For Petitioner : Mr.R.Mohamed Riyaz

For R-1 & R-2 : Mr.Vishnu Ram
for Mr.R.Sreenivasan

ORDER

Heard Mr.R.Mohamed Riyaz for the petitioner and Mr.Vishnu Ram for the respondents 1 and 2.



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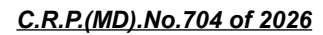
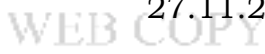
2. The plaintiff is the civil revision petitioner. She impugns the order passed in I.A.No.69 of 2026 in O.S.No.89 of 2019 on the file of the learned Principal Subordinate Judge at Kumbakonam.

3. For the sake of convenience, the parties are referred to as their rank in the suit.

4. O.S.No.89 of 2019 is a suit for permanent injunction. The plaintiff claimed that she had purchased the suit schedule mentioned property from one Ulaganathan, by way of a registered sale deed dated 22.11.2004. She claimed, as the defendants were interfering with her possession, she presented the suit for the aforesaid relief.

5. The defendants have filed their written statement. It is also claimed that they have filed a counter claim for an area encroached by the plaintiff. However, the typed set does not reveal the same.

6. On the basis of the pleadings, issues were framed and the matter was referred to trial. The plaintiff completed her examination and the matter was listed for evidence on the side of the defendants. D.W.1 entered the witness box and deposed in chief. The matter was listed for his cross-examination. The plaintiff did not cross-examine D.W.1. Hence, D.W.1's evidence was closed on 17.07.2025. The same was the situation with respect



7. The plea of the plaintiff was that she is diabetic accompanied by hypertension. She urged that she is undergoing treatment for cardiac disease. She also pleaded that she was suffering from jaundice and hence, could not instruct her lawyer to proceed with the cross-examination. On these grounds, she sought re-opening of evidence.

8. The learned Judge called upon the defendants to file a counter. The defendants took the usual plea that it is an attempt on the part of the plaintiff to drag on the proceedings.

9. The learned Judge, on the basis of the affidavit and counter, took up the application for disposal. The learned Judge found that no proof has been adduced by the petitioner that she is suffering from any of the aforesaid debilitating disease. Hence, he concluded that the petition has



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been filed only to prolong the litigation and prevent the Court from passing the final judgment in the suit. Hence, this revision.

10. Mr.R.Mohamed Riyaz pleads that if an opportunity is given to the plaintiff, the cross-examination will be completed by 17.04.2026. He states that it is only on account of the aforesaid diseases that the plaintiff was not in a position to instruct her counsel for cross-examination.

11. Per contra, Mr.Vishnu Ram states that the suit has been pending from 2019 and it is the plaintiff, who had encroached upon the property, constraining the defendants to file a counter claim seeking the relief of mandatory injunction. Knowing that she has no case on merits, she is dragging on the matter.

12. I have carefully considered the submissions of both sides. I have gone through the records.

13. The suit has been pending for over seven years. Hence, the defendants cannot be found fault with for pleading that the plaintiff is attempting to lengthen the litigation for a period more than it actually deserves. It is not in dispute that both D.W.1 and D.W.2 were not subject to cross-examination. Where an evidence of a party goes without cross-examination, the evidence will be deemed as uncontroverted and as if it is



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an admission. When the defendants have claimed mandatory injunction, if an opportunity is not granted to the plaintiff to subject the defendants to cross-examination, she will be put to irreparable loss and prejudice.

14. The applications were filed to reopen and recall the evidence. In such an application, the party, though could have produced the medical records, it cannot be held to be as strict as a standard, as in the case of an application for condonation of delay to set aside the *ex parte* decree. If the plaintiff does not cross-examine the defendants' witnesses, she runs the risk of not only losing the suit, but also suffering the relief of mandatory injunction. Even if an appeal were to be filed, there will be nothing on record to enable the Appellate Court to hold in favour of the plaintiff. On the contrary, it will give an opportunity to the plaintiff to urge that fair opportunity had not been given to her during the course of trial and also make a plea for remand. Such a course of action will not be in the interest of either parties. To obviate the said plea, I am of the view that, if the plaintiff is given an opportunity to cross-examine the defendants, it will be in the interest of justice.

15. In the light of the above discussion, this revision is allowed on the following terms:

(i) The order passed in I.A.Nos.69 and 70 of 2026 in O.S.No.89 of 2019 dated 23.02.2026 is set aside on the condition that the plaintiff pays a sum



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of Rs.7,500/- (Seven Thousand and Five Hundred only) per application to the defendants. In all, the plaintiff will pay a sum of Rs.15,000/- (Rupees Fifteen Thousand only) to the defendants.

(ii) On such payment, the evidence of D.W.1 and D.W.2 will stand reopened. The plaintiff would cross-examine the defendants and close their side and make the submissions in the suit itself.

(iii) In case, the aforesaid cost is not paid, this Civil Revision Petition will stand dismissed without further notice to this Court.

16. Both sides informed that the suit is listed for hearing on **10.04.2026**. The plaintiff will pay the aforesaid sum on or before **09.04.2026**. The learned Subordinate Judge shall confirm the payment of cost and thereafter, shall call upon D.W.1 and D.W.2 to grace the witness box. The plaintiff is granted time till **17.04.2026** to cross-examine both D.W.1 and D.W.2. The learned Subordinate Judge, Kumbakonam is requested not to adjourn the matter beyond 17.04.2026 to enable the plaintiff to cross-examine the defendants. Once the evidence is closed, the learned Judge shall hear the arguments and pronounce the judgment in the suit on or before **25.06.2026**. Compliance thereof shall be reported to this Court by way of a report on **30.06.2026**. At the time of sending the compliance report, a copy of the judgment in the suit and the counter claim must be enclosed.

No costs. Consequently, connected miscellaneous petition is closed.



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17. Post the matter 'for reporting compliance' on 30.06.2026.

26.03.2026

NCC : Yes / No
Index : Yes / No
Internet : Yes / No
Lm

To
The Principal Subordinate Judge,
Kumbakonam.



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V.LAKSHMINARAYANAN,J.

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