



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 25-03-2026

CORAM

THE HON'BLE MRS.JUSTICE T.V.THAMILSELVI

CRP No. 1672 of 2026

AND

CMP NO. 7753 OF 2026

S.Shanmugavadivu
W/o. Late V.K.Senthil Subramanian,
34, V.C.T.V. Road,
Erode.

..Petitioner(s)

Vs

V.S.Prabhu
S/o. Late V.K.Sakthivel,
55-A, Madhavi Street,
Teachers Colony,
Erode.

..Respondent(s)

PRAYER : Civil Revision Petition filed under Article 227 of Constitution of India, to set aside the fair and final order dated 04.02.2026 made in I.A. No.2 of 2025 in O.S. No.173 of 2014 on the file of the II Additional District Court, Erode.

For Petitioner(s): Mr.T.Murugamanickam
Senior Counsel
for Mr.D.Sathya

For Respondent(s): Mr.M.Guruprasad

ORDER

Challenging the impugned order passed in I.A. No.2 of 2025 in O.S. No.173 of 2014 on the file of the II Additional District Court, Erode, the first defendant has preferred this revision.



2. Before the Trial Court, she filed an application seeking permission to examine one of the attesting witnesses to the Will as D.W.1 before examining herself as a witness on the defendants' side. The Trial Court dismissed the application on the ground that the defendant was attempting to fill up lacunae and that such a course is not permissible. Aggrieved by the same, the present revision has been filed.

3. The learned counsel for the revision petitioner submitted that the first defendant claims rights over the property based on a Will dated 16.09.2011 executed by her mother-in-law, Marudhapushpam. In order to prove the Will in accordance with law, she intends to examine one of the attesting witnesses as the first witness on the defendants' side, and thereafter examine herself.

4. The learned counsel for the respondent / plaintiff submits that, in order to fill up the *lacuna*, 1st defendant wants to examine the attestor and therefore, the trial court rightly not permitted to examine the attestor at earlier stage. Further he also submits that the alleged Will relied by the petitioner is a fabricated one.

5. On perusal of the records, it is seen that the first defendant has already



pleaded the execution of the Will in the written statement. As per Section 68 of the Indian Evidence Act, a Will must be proved by examining at least one attesting witness. Therefore, the request made by the first defendant is legally sustainable. The Trial Court failed to appreciate the legal position and erroneously dismissed the application.

6. Now with regard to proving the Will, the revision petitioner wants to cross examine the attesor. Admittedly, the Will has to be proved as per manner known to law by examining one of the attestors. Therefore, seeking permission to examine the attesor would not cause any prejudice to the respondent / plaintiff. If at all the Will is not true, liberty is already available to the respondent to cross examine the attesor. There is an submission on the side of the respondent that the first defendant might not have enter into the witness box to give evidence.

7. The learned counsel for the revision petitioner submits that after examination of the attesor she is inclined to examine herself as witness on the side of the defendant. So the liberty also available to the plaintiff to cross examine both attesor and the first defendant. It is not a matter, which one of them to be examined at the earlier stage. Therefore, objection is not acceptable. Therefore, the findings of the Trial Court is set aside.



8. Accordingly, the impugned order in I.A. No.2 of 2025 in O.S. No.173 of 2014 on the file of the II Additional District Court, Erode, is set aside, the interlocutory application is allowed, and the Civil revision is allowed. Consequently, connected miscellaneous petition is closed. No costs.

25-03-2026

Index: Yes/No

Speaking/Non-speaking order

Neutral Citation: Yes/No

MTL/rri



WEB COPY

CRP No. 1672 of 2



T.V.THAMILSELVI J.

MTL/rri

To

1. The II Additional District Court, Erode.

**CRP No. 1672 of 2026
AND CMP NO. 7753 OF 2026**

25-03-2026