



WEB COPY



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 06-08-2026

CORAM

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

A NO. 1752 OF 2026 & A NO. 1751 OF 2026

in

TOS NO. 29 OF 2011

in

OP.No.219 of 2009

A No. 1752 of 2026

Mrs.D.Priscilla

No.20/1, Vadamalai Pillai St., Purasawalkam, Ch-7

..Applicant(s)

Vs

MRS.EASTHER DANIEL (Deceased)

1. Benjamin

2. Ruby

Chennai

Both are at No.20/1, Vadamalai Pillai Street,
Purasawalkam, Chennai 600 007.

..Respondent(s)

A No. 1751 of 2026

Mrs.D.Priscilla

No.20/1, Vadamalai Pillai St., Purasawalkam, Ch-7

..Applicant(s)

Vs

MRS.EASTHER DANIEL (Deceased)

1. Benjamin

2. Ruby

Chennai

Both are at No.20/1, Vadamalai Pillai Street,
Purasawalkam, Chennai 600 007.

..Respondent(s)



Prayer in A No. 1752 of 2026:

To Subpoena the Attesting Witness Mrs.A.J.Mercy, W/o.A.Joseph, residing at 50, Venkatathri Street, Kospet, Chennai 12, to appear and tender evidence before this Honble Court as Attesting witness to the impugned Will dated 15/07/1999 in the present suit.

Prayer in A No. 1751 of 2026:

To Subpoena the Attesting Witness Mr.Aaron Davies, S/o.Earnest Davies, residing at 28/1, Subarian 1st Street, Nammalwarpet, Chennai 600 012, to appear and tender evidence before this Honble Court as Attesting witness to the impugned Will dated 15/07/1999 in the present suit.

In both applications

For Applicant(s): M/S.P. Vivekanandhan

For Respondent(s): Mr.P.Vivekanandhan for RR2 and 3.

COMMON ORDER

These Applications have been filed by the plaintiff seeking issuance of summons to the two persons shown as attesting witnesses to Ex.P12, the Will dated 15.07.1999, executed by Mrs. Grace Devakanraj @ Grace Selvam Devakanraj.

2. In A.No.1751 of 2026, the plaintiff seeks summons to **Mr. Aaron Davies, S/o. Earnest Davies**, stated to be residing at No.28/1, Subarian 1st Street, Nammalwarpet, Chennai-600 012. In A.No.1752 of 2026, summons is sought to **Mrs. A.J. Mercy, W/o. A. Joseph**, stated to be residing at No.50, Venkatathri Street, Kospet, Chennai-12.



WEB COPY

3. The plaintiff states that she has been unable to secure the voluntary attendance of the said witnesses despite her efforts. According to her, their examination is necessary for proving the execution and attestation of Ex.P12. She further states that no prejudice would be caused to the defendants, as they would have the opportunity to cross-examine the witnesses.

4. Defendants 2 and 3 oppose the Applications on the grounds that the plaintiff did not file a list of witnesses, did not produce material showing the efforts allegedly made to secure the witnesses and had earlier proceeded to examine the Advocate who drafted the Will. It is also alleged that one attesting witness has died and that the other has shifted and is not traceable. The defendants further refer to the alleged withdrawal of an earlier affidavit of an attesting witness and contend that the present Applications have been filed to fill up lacunae in the plaintiff's evidence.

5. Heard the learned counsel appearing on either side and perused the materials placed on record.

6. The due execution and attestation of Ex.P12 are central issues in the suit. The examination of an attesting witness is therefore material for compliance with Section 68 of the Evidence Act. These Applications merely



seek the assistance of the Court to secure the attendance of the persons named as attesting witnesses.

WEB COPY

7. The defendants' assertion that one witness has died and the other is untraceable is unsupported by any death certificate, returned process or other objective material. For the above reasons , this court is inclined to allow the application.

8. Accordingly, the applications in **A.Nos.1751 and 1752 of 2026** are **allowed**, there shall be no order as to costs.

06-08-2026
[3/3]

JRS



WEB COPY



DR.A.D.MARIA CLETE J.

JRS

**A NO. 1752 OF 2026 & A NO. 1751 OF 2026
in
TOS NO. 29 OF 2011
in
OP.No.219 of 2009**

06-08-2026