



C.R.P. No. 338 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 03-12-2025

CORAM

THE HONOURABLE MR.JUSTICE S. SOUNTHAR

C.R.P No.338 of 2024

and

C.M.P.No.1571 of 2024

1. Rukmani,
W/o. (late) Thangaraj
D/o. Late. Podaran

2. P. Shanmugam,
S/o. Late. Podaran

...Petitioners/Plaintiffs/Petitioners

Vs

Selvi,
D/o. Muthu

...Respondent/3rd Defendant/Respondent

PRAYER: Revision filed under Article 227 of the Constitution of India praying to set aside the Fair and Decretal order dated 20.10.2023 made in I.A.No.6 of 2023 in O.S.No.303 of 2021 on the file of the learned Principal District Munsif, Erode by allowing this revision.

For Petitioner(s): Mr.C.Munusamy

For Respondent(s): Served – No appearance



C.R.P. No. 338 of 2024

WEB COPY

ORDER

This Civil Revision Petition is filed challenging the order of the Trial Court dismissing the application filed by the petitioners seeking a direction to conduct DNA test.

2.The petitioners herein have filed the suit seeking a declaration that they are the legal heirs of the deceased Podaran. It is the case of the petitioners that the 1st petitioner is the daughter and the 2nd petitioner is the son of the said Podaran. After the demise of Podaran, the petitioners applied for issuance of a Legal Heirship Certificate, which was granted by the Competent Authority recognising them as his children. In view of the dispute raised by the respondent, the present suit has been filed seeking the said declaration.

3.The suit was contested by the 3rd respondent by filing a Written Statement. During the pendency of the suit, the petitioners filed the present application seeking a direction to conduct DNA test. The said application was dismissed by the Trial Court. Aggrieved by the same, the petitioners have approached this Court by way of the present Civil Revision Petition.



C.R.P. No. 338 of 2024

WEB COPY

4.The learned counsel appearing for the revision petitioners submitted that the result of a DNA test would have a bearing on the adjudication of the suit. The petitioners seek a declaration that they are the legal representatives of the deceased Podaran. However, it is an admitted fact that the DNA material of the said Podaran is not available. In such circumstances, by merely conducting DNA test of the petitioners and the 3rd respondent, it cannot be conclusively determined whether the petitioners are the children of Podaran. At best, such a test could only indicate whether the parties are siblings or not?.

5.The learned counsel further submitted that the trial in the suit only just commenced and no oral or documentary evidence had yet been recorded. At this stage, the application seeking DNA test is a prematured one. Only after recording the evidence available on record is found insufficient to decide the paternity of the petitioner, it can consider direction for DNA test of the 3rd respondent which may help the Court to decide the sibling relationship. In this regard, it would be appropriate to refer to decision of this Court in **Dhinakaran v. Dhinaselvan in C.R.P.No.5597 of 2025** reported in **2026 (1) L.W.-71** wherein it was observed as follows:

“12.In this regard, I would like to rely on the judgment of the Apex Court in Ivan Rathinam Vs. Milan Joseph reported in



C.R.P. No. 338 of 2024

WEB COPY 2025 SCC Online SC 175, which reads as follows:

“First and foremost, the Courts must, therefore, consider the existing evidence to assess the presumption of legitimacy. If that evidence is insufficient to come to a finding, only then should the Court consider ordering a DNA test. Once the insufficiency of evidence is established, the Court must consider whether ordering a DNA test is in the best interests of the parties involved and must ensure that it does not cause undue harm to the parties. There are thus, two blockades to ordering a DNA test: (i) insufficiency of evidence; and (ii) a positive finding regarding the balance of interests.”

13. Therefore, only in a case, where the evidence available on record is insufficient, the Court can order DNA test. In the case on hand, recording of evidence has not yet started. Therefore, the trial Court ought not have ordered DNA test at this stage. Hence, the impugned order is set aside and the Civil Revision Petition stands allowed. However, it is made clear that after recording the evidence, if the trial Court finds that the evidence available on record is insufficient to decide controversy as to paternity and DNA test will be helpful to decide the controversy, it is always open to the trial Court to consider ordering of DNA test.”



C.R.P. No. 338 of 2024

6. Accordingly, this Civil Revision Petition is dismissed with liberty to the petitioners to file a fresh application at the appropriate stage of the suit, if so advised. Consequently, the connected Civil Miscellaneous Petition is closed.

No costs.

03-12-2025

mps

Index: Yes/No

Speaking/Non-speaking order

Internet: Yes

Neutral Citation: Yes/No

To

1. The Principal District Munsif,
Erode

2. The Section Officer,
V.R. Section,
Madras High Court.



WEB COPY



C.R.P. No. 338 of 2024

S.SOUNTHAR,J.

mps

C.R.P No.338 of 2024
and
C.M.P.No.1571 of 2024

03-12-2025