



WEB COPY

A No. 2431 of 2025



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 10-09-2025

CORAM

THE HONOURABLE DR.JUSTICE R.N.MANJULA

A No. 2431 of 2025

AND

**A NO. 2981 OF 2025, TOS NO. 23 OF 2003, TOS NO. 36 OF 2006, A NO.
2432 OF 2025**

1. Abraham Samarendranath Sarkar
S/o.Late Amarendranath Sarkar, 1st
West Main Road, Katpadi Township,
Gandhinagar, Vellore 6. now residing at
No.1/1, 4th Street, Thiruvengadam
Nagar, Vellore 6.

Applicant(s)

Vs

1. Sadhu A.N.Sarkar Foundation
Rep.by its Board of Trustee
E.Nandakumar, S/o.Elumalai, No.247,
Rajarathinam Nagar, 2nd Street,
Kodungayur, Chennai 600 118.

Respondent(s)

A No. 2981 of 2025

1. Abraham samarendranath Sirkar
S/o.Late Amarendranath Sirkar, 1st
West Main, Katpadi Township,
Gandhinagar, Vellore 6.



A No. 2431 of 2025



Applicant(s)

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Vs

1. Sadhu A.N.Sarkar Foundation
Rep.by its Board of Trustee,
E.Nandakumar, S/o.Elumalai, No.247,
Rajarathinam Nagar, 2nd Street,
Kodungayur, Chennai 600 118.

Respondent(s)

TOS No. 23 of 2003

1. Sadhu A.N.Sircar Foundation

Applicant(s)

Vs

1. Abraham Sama Resdiranath Sirca

Respondent(s)

TOS No. 36 of 2006

1. A.N.Sarkar (decd)

2.Sr.Sadham Hussain Alias Rajsin

Applicant(s)

Vs

1. Sadhu A.N.Sarkar Foundation
Rep By Its Board Of Trustee
E.Nandakumar 247, Rajarathinam
Nagar 2nd Street, Kodungaiyur,
Chennai-118.



A No. 2431 of 2025



Respondent(s)

A No. 2432 of 2025

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1. Abraham Samarendranath Sarkar
S/o.Late Amarendranath Sarkar, 1st
West Main Road, Katpadi Township,
Gandhinagar, Vellore 6.

Applicant(s)

Vs

1. Sadhu A.N.Sarkar Foundation
Rep.by its Board of Trustee
E.Nandakumar, S/o.Elumalai, No.247,
Rajarathinam Nagar, 2nd Street,
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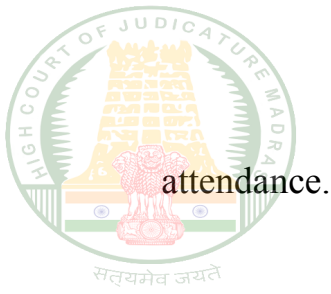
PRAYER

This application is filed under Order XIV Rule 8 of Original side Rules read with section 151 of CPC praying to reopen the evidence on the side of the Plaintiff in T.O.S.No.36 of 2006.

A No. 2981 of 2025

PRAYER

This application is filed under Order XIV Rule 8 of Original side Rules read with section 151 of CPC praying to permit the Applicant to examine S.Jeevara, S/o.Savaria Pichai, residing at No.12/66, South Street, Agasteeswaram (vg) Kanyakumari District 629 701, one of the Attesting witnesses to the Will of Sadha A.N.Sircar dated 09/03/2002 by issue of Subpoena to procure his



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A No. 2432 of 2025

PRAYER

This application is filed under Order XIV Rule 8 of Original side Rules read with Order XVI Rule 1 of Original side Rules, praying to examine P.John, S/o.Late Ponnu Pillai, residing at 51/3, Keezha Kalkurichy, VTC Kalkulam, P.O.Thuckalay Kanyakumari District 629 175 as a witness on his side.

IN all applications:

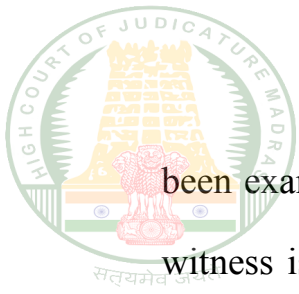
For Applicant(s): M/S. T.M. Hariharan

For Respondent(s): MR M.S Mani

COMMON ORDER

These applications have been filed to reopen the evidence on the side of the plaintiff in [TOS.No.36](#) of 2006 and to examine one P. John, S/o late Ponnu Pillai, residing at 51/3, Keezha Kalkurichy, VTC Kalkulam, P.O. P.O.Thuckalay Kanyakumari District 629 175, as a witness on his side, after issuing a subpoena to procure the attendance of one S. Jeevaraj, S/o Savaria Pichai, residing at No.12/66, South Street, Agasteeswaram (vg), Kanyakumari District 629 701, who is said to be one of the attesting witnesses to the will dated 09.03.2002.

2.The learned counsel for the appellant submitted that out of the two attesting witnesses, one of the attesting witnesses is no more, and his son has



been examined as PW.2. The applicant is not aware whether the other attesting witness is alive or not. However, one witness by name, Jhon, is known to the other attesting witnesses, and hence, if the attendant of the attesting witness cannot be procured even after issuance of the subpoena, a summons may be issued to the witness by name, John.

3.The learned counsel for the respondent stoutly objected to the application, stating that the plaintiff, having kept quiet for all these years, has come with these applications just in order to cause delay and hardship to the defendant. The will has not been marked as a document, and hence there is no question of proving the same by reopening the evidence which has already been closed.

4.It is learnt that the recording of evidence has not yet been over and it is still pending, though the plaintiff's evidence has been closed. Even according to the applicant, he is not aware of the status of other attesting witnesses by name S. Jeevaraj. The respondent is right in his objection that the plaintiff ought to have taken steps even before the plaintiff's evidence was closed. So the plaintiff is aware that the burden to prove the genuineness of the will is lying on his shoulder, and he ought to have examined all the witnesses relevant for that purpose.

5.Despite the applicant has the knowledge that there is one more attesting witness, he has not taken any efforts to bring his attendance. He had chosen to close his evidence and now he has filed all these applications to reopen his



evidence. However, the recording of evidence has not yet been over, and in the interest of justice, I feel these petitions can be allowed for the purpose of securing the best evidence for the purpose of effective disposal of the suit, but on the condition that the applicant should pay a cost of Rs.3,000/- to the respondent for the delay and hardship caused to him.

6. In the result, these applications are **allowed** and the subpoena is ordered to be issued to procure the attesting witness by name S. Jeevaraj, S/o. Savaria Pichai, residing at No. 12/66, South Street, Agasteeswaram (vg), Kanyakumari District 629 701, who is said to be one of the attesting witnesses to the will dated 09.03.2002. If the attesting witness appears, there need not be any necessity to examine the other witness by name P. Jhon, even if the summons is served on him.

8. The parties are required to appear before the Additional Master-II, on 24.09.2025. Cost, ordered above has been paid and the same is also recorded.

10-09-2025

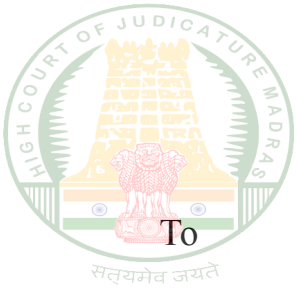
jrs

Index: Yes/No

Speaking/Non-speaking order

Internet: Yes

Neutral Citation: Yes/No



A No. 2431 of 2025



A No. 2431 of 2025

To

WEB 1.Sadhu A.N.Sarkar Foundation

Rep.by its Board of Trustee

E.Nandakumar, S/o.Elumalai, No.247,

Rajarathinam Nagar, 2nd Street,

Kodungayur, Chennai 600 118.

A No. 2981 of 2025

To

1.Sadhu A.N.Sarkar Foundation

Rep.by its Board of Trustee,

E.Nandakumar, S/o.Elumalai, No.247,

Rajarathinam Nagar, 2nd Street,

Kodungayur, Chennai 600 118.

TOS No. 23 of 2003

To

1.Abraham Sama Resdiranath Sirca

TOS No. 36 of 2006 & A No. 2432 of 2025

To

1.Sadhu A.N.Sarkar Foundation

Rep By Its Board Of Trustee

E.Nandakumar 247, Rajarathinam

Nagar 2nd Street, Kodungaiyur,

Chennai-118.



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R.N.MANJULA J.

jrs

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