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CRP. Nos.2135 & 2136 of 2025



IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on:07.08.2025

Pronounced on:04.09.2025

CORAM

**THE HONOURABLE MR.JUSTICE P.B.BALAJI**

**CRP. Nos.2135 & 2136 of 2025  
and CMP. No.12512 of 2025**

1.Mr.T.D.Saravanan  
2.Mrs.S.Pushpavalli

Petitioners in both CRPs

Vs

Mr.T.S.Balasubramanian

Respondent in both CRPs

**COMMON PRAYER:** This Civil Revision Petition is filed under Article 227 of the Constitution of India, to set aside the order and decreetal order dated 26.02.2025 passed in I.A. Nos.01 & 02 of 2024 in O.S. No.373 of 2021 pending on the file of the Sub Court, Alandur.

For Petitioners : Mr.T.Easwaradhas in both CRPs

For Respondent : Mr.R.Thiagarajan

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**COMMON ORDER**

These revisions have been filed by the plaintiffs in O.S. No.373 of 2021, aggrieved by the orders in I.A. Nos.1 & 2 of 2024.



2. I have heard Mr.T.Easwaradhas, learned counsel for the petitioners and Mr.R.Thiagarajan, learned counsel for the respondent.

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3. I.A. No.1 of 2024 has been filed under Order XVI Rule 1 CPC r/w 151 CPC and Rule 75 C.R.P, for summoning the Tahsildar concerned to speak about the legal heirship certificate that has been produced on the side of the respondent. I.A. No.2 of 2024 has been filed seeking a direction to the respondent to furnish names and addresses of the attesting witnesses to the Will that has been projected by the respondent.

4. The learned counsel for the petitioner, Mr.T.Easwaradhas, would first and foremost contend that the respondent has played fraud and created a fake Will as well as legal heirship certificate and based on the same, has obtained Probate before this Court in the Original Side, behind the back of the revision petitioners. The learned counsel would further state that the revision petitioners have purchased the properties for valuable sale consideration, investing their hard-earned savings from the power agent of the original owner. He would state that despite there being several litigations between the parties, at no point of time, the respondent has mentioned about the alleged Will. He would also invite

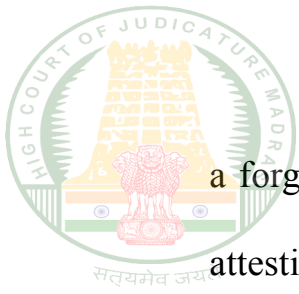


my attention to the cross examination of the respondent and point out to the conduct of the respondent in even refusing to disclose the names and addresses of the attesting witnesses to the alleged Will.

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5. The learned counsel would also take me through the written statement filed in the suit, where also the defendant, according to the learned counsel for the petitioner, has suppressed material facts and proceeded to play a fraud upon not only the Court, but also the revision petitioners. The learned counsel would therefore state that in order to expose the fraud played upon the Court as well as the parties, the Tahsildar had to be necessarily summoned, since according to the revision petitioners, the said Tahsildar who issued the legal heirship certificate had no jurisdiction to issue the said legal heirship certificate and only in order to establish that the legal heirship certificate was forged, the Application was taken out.

6. Insofar as the other Application, Mr.T.Easwaradhas, the learned counsel for the petitioner would state that the respondent has never disclosed the factum of the Will having been executed by one T.S.Sambandam Pillai, and only in order to establish that the Will is also



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a forged document, the petitioners have been attempting to examine the attesting witnesses to the said Will and conveniently, the respondent has refused to furnish the address of the attesting witnesses, only because the truth will be established, if the attesting witnesses are summoned or called upon to give evidence before this Court. The learned Counsel would therefore state that the Trial Court has erroneously dismissed the Applications and since fraud can be pleaded and established before any Court, it was incumbent on the Trial Court to allow the Applications.

7. Per contra, Mr.R.Thiagarajan, learned counsel appearing for the respondent would state that the petitioners have actually played fraud upon the Court colluding with one Kabali who had fabricated the original document of title in favour of T.S.Sambandam Pillai, by giving a false complaint as if the original documents have been lost. The learned counsel would further state that Criminal proceedings were also initiated and the said Kabali has also been convicted, though the revision petitioner was acquitted in the criminal case. It is therefore contended by Mr.R.Thiagarajan, that the petitioner cannot claim to be a bonafide purchaser. Further, he would specifically contended by that not only the Will, but entire typed set of papers have already been handed over to the



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learned counsel for the petitioner and therefore, to complain that the respondent has not given the particulars of the attesting witnesses is clearly false and baseless. The learned counsel would also point out to the conduct of the revision petitioners before the Trial Court in taking several adjournments.

8. With regard to the disclosure of the names and addresses of the attesting witnesses, Mr.R.Thiagarajan, would contend that Probate being a judgment in rem, it cannot be questioned before the City Civil Court and admittedly, the petitioner has not chosen to seek revocation of the grant till date. He would therefore state that it is totally unnecessary for the Court to issue summons to the Tahsildar or to direct the respondent to furnish the names and addresses of the witnesses. He would therefore state that the Trial Court has rightly dismissed the Applications and the same does not warrant interference in revisions.

9. I have carefully considered submissions on the learned counsel either side. I have also gone through the relevant records including the orders that are impugned in the present revision petitions.



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10. The property admittedly belonged to one T.S.Sambandam Pillai. It is the case of the respondent that the said T.S.Sambandam Pillai had executed his last Will and Testament on 27.12.1998. On his demise, O.P. No.840 of 2012 has been filed before the Original Side of this Court and Probate has been granted on 20.01.2014. Admittedly, the said order of probate has not been sought to be revoked under Section 263 of the Indian Succession Act. Being a judgment in rem, the only remedy open to the petitioners is to seek revocation of the said grant in favour of the respondent. However, no such steps have been taken by the respondent till date.

11. It is contended by the learned counsel for the petitioners since fraud is alleged, it is not necessary for the petitioner to challenge the probate proceedings and fraud can be established even in the present suit. I am unable to countenance the said submissions of the learned counsel for the petitioner. When a grant of Probate operates as judgment in rem, if at all, the grievance of the revision petitioners, is that the Will has brought about by the fraud, there is a specific avenue open to the revision petitioners to challenge the grant of probate, alleging fraud, forgery etc. Without seeking to revoke the said grant of probate, it is not open to the



petitioners to launch independent proceedings and contend that in the said proceedings, the petitioners can challenge the Will.

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12. Further, when according to the learned counsel for the respondent, the documents pertaining to the probate proceedings have already been filed not only before various Courts but also copies being handed over to the learned counsel for the petitioners, the request for the names and addresses of the attesting witnesses is a wholly unnecessary exercise. I find merit in the said submissions of Mr.R.Thiagarajan, learned counsel for the respondent. Even assuming for a moment, that the claim of the respondent that copies have already been given to the learned counsel for the petitioner and that copies of all relevant documents have also been filed in Court proceedings, even then, it is always open to the petitioners to move a third party Application before the learned Master, search the records and even seek certified copies of the affidavits and petitions in the Probate OP as well. When such a procedure is available to the petitioners, without resorting to the same, the petitioners cannot file an Application to compel the respondent to disclose the details of attesting witnesses.



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13. In any event, I find that the case of the petitioners is that they have purchased the property from the Testator T.S.Sambandam Pillai, himself through power of attorney agent. In a suit for declaration of title of the revision petitioner, what all is required to be established by the revision petitioners is that the purchase under the registered sale deed from the power agent of T.S.Sambandam Pillai is valid and that it is a bonafide transaction. If the plaintiff is able to establish the same, then the Will or consequent Probate granted will be of no avail since the plaintiff would be entitled to a decree declaring his title and the property being dealt with by the Testator himself during his lifetime, would straightaway invalidate the Will. Therefore, I do not find any requirement to expand the scope of the present suit to include a challenge to the Will as well, especially when there is an effective and efficacious alternate and proper remedy available for the same.

14. With regard to the issuing of summons to the Tahsildar as well, the same contentions that are discussed herein above would squarely apply even for this Application. Probate and alleged suppression of legal heirs are all totally outside the purview of the suit for declaration filed by the revision petitioners, which is claiming under a purchase from the



Testator himself and therefore, it would be inconsequential to even go into the other issues as to whether any legal heir has been suppressed and probate has been obtained by playing fraud etc.

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15. In the light of the above, I find that the Trial Court has rightly proceeded to dismiss the Applications finding no merits. I do not see any grounds made out to interfere with the said orders of the Trial Court, warranting interference under Article 227 of the Constitution of India.

16. In fine, these Civil Revision Petitions are dismissed. No costs. Connected Miscellaneous Petitions is also dismissed.

**04.09.2025**

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Index : Yes / No  
Internet : Yes / No

To:  
The Sub Judge, Alandur.



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**P.B.BALAJI, J.,**

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**Pre-delivery order in**  
**CRP. Nos.2135 & 2136 of 2025**  
**and CMP. No.12512 of 2025**

**04.09.2025**