



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 29-07-2025

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CORAM

THE HONOURABLE MR JUSTICE N. SATHISH KUMAR

CRP No. 3057 of 2025 & CMP.No.17152 of 2025

1. Yogesh Parmar

S/o. Late.B.D. Parmar, Permanently resi
at No. 791, Rue De La Commune Est,
No.211, Montreal, H2Y4A2, Quebec,
Canada Now at No. A-48/38A, First
Floor, DLF Phase-I, Gurugram,
Haryana 122 002

Petitioner(s)

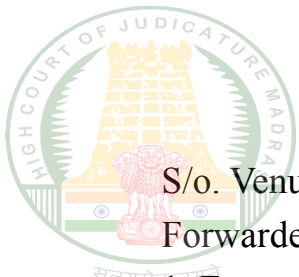
Vs

1. A.P.Velusamy

S/o. Palanisamy Gounder, G.S. No.
302, Mangalam Road, Andipalayam,
Tiruppur Town, Tiruppur District 641
687

2.C.AIR Forwarders (INDIA) Pvt Ltd.
Rep by Shriranjan Venugopalan Menon,
No. 57/58, 4th Floor, Gokul Kalyan
Building, No. 11/13, M.K. Ameen
Mark, Mumbai 400 001

3.Shriranjan Venugopalan Menon



S/o. Venugopalan Director - C AIR
Forwarders (INDIA) Pvt Ltd. Plot No.
1, Energy Kottapuram Appartments,
Trissur, Kerala 680 001 Now at
Kanthan Serath House, Doctor Bedy
Road, Irichalaguda, Trissur, Kerala 680
661

Respondent(s)

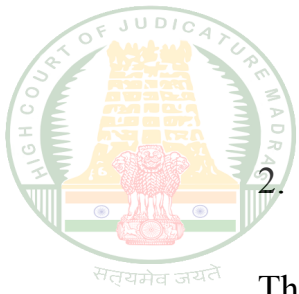
PRAYER : Petition filed under Article 227 of Constitution of India to set aside the Fair and Final Order dated 06.02.2025 in E.A.No. 1 of 2024 in E.A. No. 10 of 2022 in E.P. No. 92 of 2015 passed by the learned III Additional District and Sessions Judge at Dharapuram.

For Petitioner(s): Mr.S.Mukunth, Senior Counsel
for Ks Advocates

For Respondent(s): Mr.N.Manokaran
For N.Ponraj – R1, Caveator

ORDER

Challenge has been made to the Order passed by the Executing Court rejecting the request of the revision petitioner to file the certified copy of the Will as a secondary evidence, in the present Civil Revision Petition.



2. Brief background of the case is as follows :

The second respondent has entered into an agreement for sale in favour of the first respondent on 12.08.2007 for sale of the property. Pursuant to that agreement, the suit in O.S.No.216 of 2008 came to be filed by the respondent before the Additional District Court, Dharapuram. The said suit came to be decreed on 27.09.2012, of course, it is an exparte decree. When the decree sought to be executed, the revision petitioner filed an application under Order 21 Rule 97 of Code of Civil Procedure. According to him, his mother has purchased the property as early as on 16.10.2007. Thereafter, she had executed a Will in favour of the revision petitioner on 02.04.2009, not only in respect of the suit property, but also the property situated in Noida, Uttar Pradesh. Therefore, at this stage, an application has been taken out by the petitioner to file a copy of the Will as a secondary evidence, since the original Will is required to maintain the property in Uttar Pradesh. The said application has been opposed by the respondent on the ground that the petitioner has not satisfied the ingredients essential for secondary evidence. The trial Court, after taking note of the fact that the petitioner has not made out a ground to file



secondary evidence, dismissed the application. Challenging the same, the present revision has been filed.

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3. The learned counsel appearing for the petitioner would submit that since the Will is not only covering the suit property, it also covers the properties situated outside the State, the original Will is required for the legatee to establish his right over the other properties. Therefore, secondary evidence is absolutely required to be field in this case.

4. I have perused entire materials. The main issue in this revision is with regard to filing of the Will. The petitioner has filed an application under Order 21 Rule 97 of Code of Civil Procedure to dispute the very decree granted for enforcement of the agreement said to have been executed by the second respondent in favour of the first respondent. Whereas, it is the contention of the petitioner that his mother had purchased the suit property by registered a sale deed dated 16.10.2007. Thereafter, she had left a Will dated 02.04.2009 and she subsequently died. Therefore, the petitioner has become the absolute owner of



the property. In order to establish his right over the property, he had filed an application under XXI Rule 97 of Code of Civil Procedure. As rightly pointed

out by the trial Court, to receive secondary evidence, the ingredients found under Section 60 of BSA has to be satisfied, which reads as follows :

60. Cases in which secondary evidence relating to documents may be given.

Secondary evidence may be given of the existence, condition, or contents of a document in the following cases, namely:

(a) when the original is shown or appears to be in the possession or power-

(i) of the person against whom the document is sought to be proved; or

(ii) of any person out of reach of, or not subject to, the process of the Court; or

(iii) of any person legally bound to produce it, and when, after the notice mentioned in section 64 such person does not produce it;

(b) when the existence, condition or contents of the original have been proved to be admitted in writing by the person against whom it is proved or by his representative in interest;



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(c) when the original has been destroyed or lost, or when the party offering evidence of its contents cannot, for any other reason not arising from his own default or neglect, produce it in reasonable time;

(d) when the original is of such a nature as not to be easily movable;

(e) when the original is a public document within the meaning of section 74;

(f) when the original is a document of which a certified copy is permitted by this Adhiniyam, or by any other law in force in India to be given in evidence;

(g) when the originals consist of numerous accounts or other documents which cannot conveniently be examined in Court, and the fact to be proved is the general result of the whole collection.

Explanation. - For the purposes of-(i) clauses (a), (c) and (d), any secondary evidence of the contents of the document is admissible;(ii) clause (b), the written admission is admissible;(iii) clause (e) or (f), a certified copy of the document, but no other kind of secondary evidence, is admissible;(iv) clause (g), evidence may be given as to the general result of the documents by any person who has



examined them, and who is skilled in the examination of such document.

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5. Only when the above grounds are satisfied, the secondary evidence is permissible. Admittedly, the original Will is with the petitioner. In such view of the matter, unless, the original Will is produced and one of the witness is examined, the Will cannot be admitted in evidence. Let the petitioner produce the original Will and examine any one of the attesting witness to admit the Will as a document. Once, the Will is admitted, then he can substitute the certified copy of the Will and get back the original Will. Ultimately, the issue as to whether the petitioner's mother is a bonafide purchaser for value without notice is to be decided. That issue has to be seen and decided under Order XXI Rule 97 of Code of Civil Procedure. The revision petitioner claims that his mother purchased the property by way of a registered sale deed dated 16.10.2007. Whereas, the agreement is dated 12.08.2007, just two months prior to the Will. Admittedly, subject purchaser has not been made as a party. Therefore, whether such purchaser is bonafide purchaser for value without notice has to be decided



as per Section 19 [2] of the Specific Relief Act. However, to make a claim over a property, the Will is absolutely required to be proved. Once, the Will is admitted in the manner known to law, the petitioner can very well substitute certified copy of the Will and get back the original Will. Hence, I do not find any merits in this Civil Revision Petition.

6. Accordingly, this Civil vision Petition is dismissed. No costs.

Consequently, connected miscellaneous petition is closed.

29-07-2025

Index: Yes/No

Speaking/Non-speaking order

Internet: Yes

Neutral Citation: Yes/No

vrc

To,

The III Additional District and Sessions Judge,
Dharapuram.



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N.SATHISH KUMAR J.

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