

CMP NO.21173 OF 2018 IN A.S.NO.1046 OF 2012

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 07.07.2025

CORAM :

THE HONOURABLE MR. JUSTICE R. SAKTHIVEL

CMP NO.21173 OF 2018

IN

A.S.NO.1046 OF 2012

1.G.Govindan Nair (Died on 17.02.2018)

2.G.Selvaraj (Died)

3.G.Jayaprakash

4.Paruvathikutty

W/o. Late G.Selvaraj

5.Sasidharan

S/o. Late G.Selvaraj

6.Sathish

S/o. Late G.Selvaraj

... Petitioners /
Respondents 2 & 3

(Petitioners 4 to 6 are brought on record

as Lrs' of the deceased P2 vide Court

Order dated 10.06.2025 made in

CMP Nos.9522, 9524, 9528 of 2024

in CMP No.21173 of 2018 in

A.S.No.1046 of 2012

Versus

1.G.Vijayakumar

... Respondent /
1st Respondent



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2.The Regional Transport Authority

O/o. The Regional Transport
Appar Street, Venkatesan Colony,
Pollachi.

3.Dhanalakshmi

4.U.Umamaheswari

5.G.Saroja

... Respondents /
Respondents 4 to 7

PRAYER: Civil Miscellaneous Petition filed under Order XXIII Rule 1(A) of the Code of Civil Procedure, 1908 praying to transpose the petitioners herein as appellants 2 and 3 from respondents 2 and 3 in the above appeal.

For Petitioners	:	Mr.P.Dinesh Kumar
For Respondent-1	:	Mr.G.Vijayakumar (Party-in-Person)
For Respondent-2	:	Mr.B.Tamil Nidhi Additional Government Pleader
For Respondent-3	:	No appearance
For Respondent-4	:	Mr.P.Sathish Kumar for M/s.K.A.Vimal Kumar
For Respondent-5	:	Ms.R.Swathi for M/s.Adithya Shivakumar

ORDER

This is the petition filed by the petitioner under Order XXIII

Rule 1(A) of the 'Code of Civil Procedure, 1908' [hereinafter 'CPC']



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praying to transpose the petitioner Nos.2 and 3 who are respondent Nos.2 and 3 in the main Appeal Suit to appellant Nos.2 and 3 in the main appeal.

2.Mr.P.Dinesh Kumar, learned Counsel for the petitioner; Mr.G.Vijayakumar, Party-in-Person; Mr.B.Tamil Nidhi, learned Additional Government Pleader for the respondent No.2 / Regional Transport Authority; Mr.P.Sathish Kumar, representing Mr.K.A.Vimal Kumar, learned Counsel on record for the respondent No.4; and Ms.Swathi, representing M/s.Aditya Shivakumar, learned Counsel on record for the respondent No.5 are before this Court. There is no representation for the respondent No.3.

3.Heard on both sides.

4.This Court has perused the affidavit filed in support of this Civil Miscellaneous Petition. The present petition is filed by the petitioners under Order XXIII Rule 1(A) of CPC seeking to transpose the petitioner



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Nos.2 and 3, who are respondent Nos.2 and 3 in the main appeal, to appellant Nos.2 and 3. To be noted, during the pendency of Civil Miscellaneous Petition, the second petitioner G.Selvaraj passed away, leaving behind petitioner Nos.4 to 6 as his legal heirs / legal representatives.

5.It is stated that the first appellant, G.Govindan Nair passed away on February 17, 2018 and left a Will dated July 19, 2000. Hence, petitioner Nos.2 and 3, who are presently arrayed as respondent Nos.2 and 3 in the main appeal, seeks to transpose themselves as appellant Nos.2 and 3. During the pendency of this Civil Miscellaneous Petition, the second petitioner herein, namely G.Selvaraj passed away and his legal heirs / legal representatives are brought on record in this Civil Miscellaneous Petition as petitioner Nos.4 to 6 vide Order of this Court dated June 10, 2025 made in CMP Nos.9522, 9524 and 9528 of 2024.



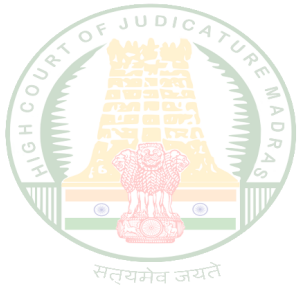
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6.Mr.G.Vijayakumar, Party-in-Person submits that the alleged Will dated July 19, 2000 was falsely created with an intention to defeat his rights in the Suit Properties as if the Testator shown in the Will has right to the Suit Properties. He denies the execution, attestation and legal validity of the said Will.

7.Learned Counsel for the petitioners submits that a finding with regard to the Will was called for by this Court from the Trial Court and the Trial Court, after examining the witnesses, sent the findings along with depositions.

8.Mr.G.Vijayakumar, Party-in-Person submits that the Trial Court, without proper appreciation of evidence, gave a finding. He request the Court to raise his points while arguing the main matter.

9.In view of the facts and circumstances, this Court is of the view that the first respondent is entitled to raise his contentions *qua* Will and the findings recorded by the Trial Court.



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10. Considering the nature of this Civil Miscellaneous Petition,

this Court does incline to allow the petition and the petitioners herein are transposed as appellant Nos.1 to 6. It is made clear that this order is passed without prejudice to the rights and contentions of the first respondent (Party-in-Person). The first respondent (Party-in-Person) is entitled to put forth all the grounds available at law *qua* the Will dated July 19, 2000 and the findings given by the Trial Court during the course of his arguments.

11. With the above observations, this Civil Miscellaneous

Petition is allowed. No costs.

07.07.2025

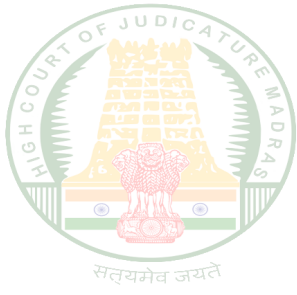
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Speaking Order : Yes/No
Neutral Citation : Yes/No
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R. SAKTHIVEL, J.

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