



IN THE HIGH COURT OF JUDICATURE AT MADRAS

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Order reserved on : 08.01.2026

Order pronounced on : 30.01.2026

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THE HONOURABLE MR JUSTICE P.B. BALAJI

CRP.No.6609 of 2025
& CMP.No.32768 of 2025

Yogesh Parmar

... Petitioner

Vs.

1.A.P.Velusamy

2.C.AIR Forwarders (INDIA) Private Limited,
Represented by Shriranjana Venugopalan Menon,
No.57/58, 4th Floor, Gokul Kalyan Building,
No.11/13, M.K.Ameen Mark,
Mumbai – 400 001.

3.Shriranjana Venugopalan Menon

... Respondents

Prayer: Civil Revision Petition filed under Article 227 of Constitution of India, to set aside the rejection order dated 26.11.2025 made by the III Additional District and Sessions Judge, Dharapuram in E.A.CFR.No.7390 of 2025 in E.A.No.10 of 2022 in E.P.No.92 of 2015 in O.S.No.216 of 2008.



For Petitioner : Mr.S.Mukunth
Senior Counsel
for M/s.K.S.Advocates

For Respondents : Mr.N.Manoharan
for Mr.N.Ponraj for R1

ORDER

The revision petitioner challenges the order in E.A.CFR.No.7390 of 2025 in E.A.No.10 of 2022 in E.P.No.92 of 2015 in O.S.No.216 of 2008.

2.I have heard Mr.S.Mukunth, learned Senior for M/s.K.S.Advocates, for the revision petitioner and Mr.N.Manoharan, learned counsel for Mr.N.Ponraj, learned counsel for the contesting 1st respondent.

3.Mr.S.Mukunth, the learned Senior Counsel appearing for the revision petitioner, inviting my attention to the order passed by this Court in CRP.No.3057 of 2025 dated 29.07.2025, would contend that this Court had categorically found that the Will would have to be proved in the manner known to law and therefore, it was necessary for the petitioner to examine his sister, in order to establish the truth and genuineness of the Will. The



learned Senior Counsel would further state that the executing Court ought not to have shut out the remedy of the petitioner even at the numbering stage and contended that the decision with regard to proof of the Will should have been postponed after permitting the petitioner to examine his sister.

4.It is also the contention of the learned Senior Counsel that the best person to speak about the Will is the other disinherited legal heir and further, one of the attesting witnesses is admittedly dead and the whereabouts of the other attesting witnesses are also not known to the petitioner. The learned Senior Counsel would also invite my attention to Section 134 of the Indian Evidence Act, now Section 139 of Bharatiya Sakshya Adhiniyam, 2023 (BSA) and state that there is no embargo for a party to examine any number of witnesses. He would therefore state that the executing Court ought to have numbered the application and permitted the petitioner to examine the sister and the rejection of the application at the SR stage clearly amounted to preclosing the valuable rights of the revision petitioner, especially when the Will is a registered Will and the property that has been purchased by the testatrix bonafide, will have to be necessarily gone into under Section 19 of the Specific Relief Act. The learned Senior Counsel would therefore pray for



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the revision petition being allowed.

5.Per contra, Mr.N.Manoharan, learned counsel appearing for the contesting 1st respondent would state that the decree was passed in the suit way back in September 2012 and E.P.No.92 of 2015 was filed in November 2015 and an attempt was made by the petitioner in I.A.No.32 of 2010 to seek impleadment in the suit under Order I Rule 10 of CPC. However, the said application was dismissed on 13.06.2011 and the said order has become final, with the petitioner not challenging the same by way of preferring a revision before this Court.

6.The learned counsel for the 1st respondent would further contend that it is not even the case of the revision petitioner that his sister is aware of the execution of the Will or that she was present at the time of execution of the Will and in such circumstances, he would state that there was no purpose in examining the sister, as it would not amount to proof of Will under Section 68 of the Indian Evidence Act r/w Section 63 of the Indian Succession Act.



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7.The learned counsel for the 1st respondent would further contend that even according to the revision petitioner, one another attesting witness is alive and the petitioner has even given details with regard to his health condition. However, the same has not been proved and no steps have been taken to examine the legal representatives of the deceased attesting witness or even the living attesting witness, on commission the whereabouts of whom the petitioner does not feign ignorance about. He would therefore state that there is absolutely no infirmity in the order passed by the executing Court, rejecting the application seeking permission to examine the sister of the petitioner.

8.I have carefully considered the submissions advanced by the learned Senior Counsel for the revision petitioner and the learned counsel for the 1st respondent. I have gone through the records, including the impugned order, as well as the documents filed by way of typed set of papers.

9.The 1st respondent, admittedly, obtained a decree in O.S.No.216 of 2008 and the same was put to execution in E.P.No.92 of 2015. In the said execution petition, after failing in his attempt to get himself impleaded in the



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suit, obstructing to the request for delivery of possession, has filed the instant application. It is the case of the petitioner that the mother, Nirmal Kanta Parmar had purchased the subject property, in and by a registered sale deed for a valuable sale consideration, without notice of the agreement of sale in favour of the 1st respondent and that during her lifetime, she has executed a Will, bequeathing the said property to the petitioner, her son. The Will, is no doubt, a registered Will dated 02.04.2009. The testatrix purchased the property on 16.10.2007, in and by a registered sale deed bearing Doc.No.6042 of 2007 on the file of the SRO, Dharapuram. In respect of the specific performance decree, it was pursuant to a sale agreement in favour of the 1st respondent on 12.08.2007, which is prior to the sale deed in favour of the 1st respondent's mother.

10.No doubt, this Court in the order dated 25.07.2025, felt that, in the circumstances of the case, the petitioner should be given an opportunity to prove the Will, in the manner known to law. It is only under the teeth of the said order passed by this Court in CRP.No.3057 of 2025 that the application in E.A.CFR.No.7390 of 2025 has been taken out to permit the petitioner to examine his sister, who lives in Spain through virtual mode. Admittedly, the



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sister of the petitioner is not one of the attesting witnesses to the Will executed by the mother of the petitioner. The Will can be proved only in accordance with Section 68 of the Indian Evidence Act (Section 67 of BSA, 2023), by examining one of the attesting witnesses to the said Will.

11. Section 68 of the Indian Evidence Act (Section 67 of BSA, 2023) sets out the manner in which a Will can be proved when an attesting witness is not found. In the present case, even according to the petitioner, in his affidavit, it is stated that one attester by name, Ajaj Chadha is dead and his legal heirs are not found in the locality and that the other attester, M.K.Saini is aged about 85 years and therefore, he is not in a position to prove the Will. Casually, the petitioner states that he intends to examine his sister, Kavita Parmar, a resident of Madrid, Spain.

12. There is absolutely not a whisper in the said affidavit, as to how the sister of the petitioner is going to assist in proving the Will executed by the mother. As rightly contended by the learned counsel for the 1st respondent, it is not even stated whether the said Kavita Parmar, sister of the petitioner was present at the time of the execution of the Will. Further, I find



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that the said affidavit was sworn to by the petitioner on 21.11.2025. However, in the affidavit filed before this Court in CMP.No.32768 of 2025, the petitioner states that the attesting witness being over 85 years is incapable of giving evidence due to present state of unsoundness of mind and hence, the petitioner has no other option, but to seek closure of the attesting evidence. This was not the case projected before the executing Court. After rejection of the application to reopen the evidence, the petitioner appears to have improved his version to now added that the attesting witness, who is alive is aged more than 85 years and is also of unsound mind. There is no document to substantiate the self serving claim.

13.Under Section 68 of the Indian Evidence Act (Section 67 of BSA, 2023), an option is available for enabling the proof of Will, even no attesting witness is found. Section 70 of the Indian Evidence Act (Section 69 of BSA, 2023) enables proof of execution by other evidence, only when the attesting witness denies or does not recollect execution of the document. The said stage has not arisen in the present case, especially when neither the mandate of Section 68 of the Indian Evidence Act has been followed nor Order XVI Rule 10 of CPC has been followed. The petitioner has not taken any steps to



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summon the other attesting witness who is alive or even the legal representatives of the deceased witness to prove the Will.

14.This Court thought it fit to give an opportunity to the petitioner to prove the Will. The said order was passed even in July 2025. As seen from the impugned order, several opportunities were given to the revision petitioner and no steps have been taken by the petitioner to avail of the opportunity given by this Court in CRP.No.3057 of 2025. In any event, without exhausting the remedy available under Bharatiya Sakshya Adhiniyam, 2023, the question of examining the sister does not even arise. In such circumstances, I do not find any infirmity in the order of the executing Court, refusing to reopen the evidence on the side of the petitioner to enable him to examine his sister in an attempt to prove the Will. There is no merit in the revision petition.

15.In fine, the Civil Revision Petition is dismissed. No costs.
Connected Civil Miscellaneous Petition is closed.

30.01.2026

Neutral Citation: Yes
Speaking Order



Index : Yes
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To

The III Additional District and Sessions Judge, Dharapuram.

P.B. BALAJI,J.

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Pre-delivery order made in
CRP.No.6609 of 2025
& CMP.No.32768 of 2025

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30.01.2026