



CRP(MD). No.3736 of 2025

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

**Dated : 09.02.2026**

CORAM

**THE HONOURABLE MR. JUSTICE N.SENTHILKUMAR**

**CRP(MD). No.3736 of 2025  
and  
CMP(MD) No.19674 of 2025**

Shanmugavalli

... Petitioner

Vs

1.Shanmugam

2.Sivagami

3.Palaniappan

4.R.M.Lakshmanan

... Respondents

PRAYER :-Civil Revision Petition filed under Article 227 of the Constitution of India, to set aside the order dated 04.09.2025 passed in I.A. No.2 of 2024 in Prop.O.P.No.142 of 2019 by the 1st Additional District Judge, Madurai.

For Petitioner : Ms.P.Shanmugavalli  
party-in-person

For R1 & R2 : Mr.C.M.Arumugam

For R3 & R4 : Ms.M.Mahalakshmi



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**ORDER**

This Civil Revision Petition has been filed challenging the order dated 04.09.2025 passed in I.A. No.2 of 2024 in Prob.O.P.No.142 of 2019 by the learned I Additional District Judge, Madurai.

2.The petitioner/party-in-person has filed Prob.O.P.No.142 of 2019 before the I Additional District Court, Madurai. Pending such petition, the petitioner filed an interlocutory application in I.A.No.2 of 2024 under Order XVIII Rule 1 of CPC to order the respondents 1 and 2 to begin the evidence. The said application was dismissed. Challenging the same, the present Civil Revision Petition has been filed.

3.It is the grievance of the petitioner/party-in-person that in the probate petition, the respondents in the counter had stated that they have right over the property under a Will said to have been executed by one Natesan Chettiyar and that therefore, the present application has been filed by the petitioner seeking to begin the evidence on the side of the respondents 1 and 2. However, without considering the facts and circumstances of the case properly, the Court below had dismissed the application. She would further submit that if the



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respondents 1 and 2 let in the evidences as to the Will executed by the said Natesan Chettiyar, then it is for the petitioner to lead evidence to disprove the contentions raised by the respondents 1 and 2. Hence, she prays for appropriate orders.

4.The petitioner has also relied upon the judgment of the Hon'ble Supreme Court in the case of **Jami Venkata Suryaprabha and another Vs. Tarini Prasad Nayak and others** reported in **2024 INSC 1001**, wherein, it had been stated as under:-

*“18. Order XVIII Rule 1 indeed provides for plaintiff's right to begin the evidence but not the court's obligation to ask the plaintiffs to begin first. There is no impediment for the court to call upon either party to lead evidence first, depending upon the facts and circumstances of the case and the nature of the issues framed. Neither party can insist that the other one should be asked to lead it first. It all depends upon what the Court deems proper in the circumstances. Where it finds that defendant's plea strikes of the root of the case, there would be no hitch in asking him/her to prove such plea first which can lead to disposal of the case. There can be no watertight compartmentalisation in matters of justice and all rules of procedure are designed and directed to achieve and secure ends of justice.”*



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5.The learned counsel for the respective respondents would submit that as per Order 18(3) Rule 3-A, the petition filed by the petitioner is not at all maintainable. They would further submit that onus is on the petitioner first to prove the Will propounded by her and if she fails to prove the said Will, automatically the Probate Petition filed by her shall stand dismissed and there is no necessity to look into the Will of Natesan Chettiyar. Hence, they prayed for dismissal of this petition.

6.Heard the learned counsel on either side and perused the records.

7.Admittedly, the petitioner/party-in-person has filed Prob.O.P.No.142 of 2019 and pending such petition, she filed I.A.No.2 of 2024. The said application was dismissed and the same is under challenge herein.

8.It is to be noted that the petitioner has sought a direction to the respondents 1 and 2 to commence the evidence in the probate proceedings. This Court, by placing reliance on Section 102 of the Indian Evidence Act, finds no merit in such a request.



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9.As per Section 102 of the Indian Evidence Act, the burden of proof lies on the party, who would fail if no evidence is adduced on either side. In a probate petition, the initial burden squarely rests upon the propounder of the Will to prove its due execution, attestation, and genuineness in accordance with law. Unless and until such burden is discharged, the respondents cannot be called upon to enter the witness box or adduce evidence. It is settled that in probate proceedings, the propounder must first establish the Will by examining attesting witnesses and by removing all suspicious circumstances, if any. Only thereafter the onus shifts to the respondents to rebut the same. Therefore, the petitioner cannot seek a direction to reverse the settled procedure of evidence by compelling the respondents to begin first. The judgment relied upon by the learned counsel for the petitioner is not applicable to the facts of the present case.

10.In the case on hand, the trial Court has rightly followed the legal principles governing burden of proof and has refused to grant the relief sought by the petitioner. No illegality or material irregularity is found in the order passed by the Court below.



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WEB COPY 11. Accordingly, the Civil Revision Petition stands dismissed.

Considering the fact that the Probate Petition is of the year 2019, the learned I Additional District Judge, Madurai, is directed to dispose of Prop.O.P.No.142 of 2019 within a period of one year from the date of receipt of a copy of this order. No costs. Consequently, connected Miscellaneous Petition is closed.

12. This Court places on record its appreciation for the commendable efforts of the legal aid counsel for the respondents 3 and 4, namely, Ms.M.Mahalakshmi, for conducting the case diligently and providing valuable assistance to this Court. The High Court Legal Services Committee attached to this Bench shall pay a total sum of Rs.10,000/- towards remuneration to the legal aid counsel for the respondents 3 and 4 for conduct of the case, within a period of two weeks from the date of receipt of a copy of this order, without fail.



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WEB COPY 13. Registry is directed to forward a copy of this order to the  
Legal Aid Committee for information.

Speaking : Yes / No  
NCC : Yes / No  
Internet : Yes / No  
Index : Yes / No  
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**09.02.2026**

To

The I Additional District Judge, Madurai.



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**N.SENTHILKUMAR, J.**

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