

**IN THE COURT OF PRINCIPAL DISTRICT JUDGE,
DINDIGUL.**

**Present: Thiru.V.Padmanabhan, M.A., M.L., D.H.,
Principal District Judge
Dindigul.**

Thursday, the 9th day of July 2026

I.A.No. 5 /2026
in
O.S.No. 185 / 2018

B.Mohamed Kalibullah

... Petitioner/ 1st defendant

.vs.

S.Arivin Nisha

... Respondent/Plaintiff

This petition coming on 02.07.2026 for final hearing before me in the presence of Thiru.P.Palkannan, Advocate for the Petitioner and Tvl.M.M.Asraf Ali, V. Satheeskmar and C.Vadivelan, Advocates for the respondent and upon hearing the arguments of both sides and having stood over for consideration till this date, this court has passed the following.

//ORDER//

1. The Petition is filed under Order XXVI Rule 10(A) r/w Sec. 151 of the Code of Civil Procedure to take DNA Genetic, Ancestry and sibling test between Petitioner/1st defendant with Arivin Nisa/respondent/plaintiff before the Regional Forensic Science Department, Madurai through Court Commissioner.

2. **The Brief averments of the affidavit appended to the petition are as follows :**

The petitioner is the 1st defendant in the suit. The respondent filed the suit for partition claiming $\frac{1}{4}$ share in the suit properties. The Respondent / Plaintiff is not known and her whereabouts is a question mark and this suit is filed by one P.S.Sharfudeen's second wife Nisa Begam who is proxy of this suit and wrongly instigated and fraudulently with ulterior motive to harass & disturb to get unlawful means from the petitioner. It is necessary to take DNA test between the Petitioner/1st defendant with Original Plaintiff namely Arivin Nisa. The sharfudeen set up her 2nd wife namely NisaBegam appearing before this court in the place of original Arivin Nisa and mislead the Court from the beginning from 09.01.2019 onwards including in his written statement, all counters in I.A. No.1/2021 and 2/2024 and his version of notice was not taken into account while passing orders in previous IA's. It is necessary for this petitioner to prove the proxy is continuously appearing/misleading before this Court and in order to prove the fact the DNA test is to be taken between the petitioner/1st defendant to original plaintiff otherwise it will create miscarriage of justice. The DNA test must comply with constitutional protections under Article 21, ensuring that the right to privacy is respected unless there is a compelling legal reason for testing in this case is very much necessary. The above suit is illogic, malafide to the core

in the nature of misleading and influence this Court and against the ends of justice. Hence this petition.

3. The brief content of the counter statement filed by the respondent in brief :

The respondent denies all the allegations stated in the petition. The reason averred in the petitioner to have the DNA test is quite false and baseless. This application was filed only to drag the case proceedings and also deny her lawful share in the suit properties. The petitioner is the own brother of this respondent and after the demise of their father, the petitioner has been in possession and enjoyment of the suit properties and other properties, refused to give her share, hence this petitioner filed the suit for partition. There is no impersonation whatsoever. She is the only wife of her husband P.S. Sharfudeen and he has not married anybody. The said Nisa Begam is a fictitious person and no such person is residing in the address stated by the petitioner. The above suit is posted for cross examination of PW1, but the petitioner had not cross examined deliberately and has come forward with this petition with malafide intention. The reliefs sought by the petitioner are legally not sustainable and the application seeking for taking the DNA test between the petitioner with this respondent or with anybody else is liable to be dismissed in limini as devoid of merits. Hence the petition is liable to be dismissed.

4. **Point for Consideration :**

Whether the petition is to be allowed or not as prayed for ?

5. No oral evidence adduced on both sides. Ex.P1 to Ex.P6 were marked on the petitioner side and Ex.R1 to Ex.R5 were marked Heard both side.

6. **Answer to Point :-**

Admittedly the petitioner is the 1st defendant in main suit and the respondent herein as plaintiff filed the suit for partition claiming $\frac{1}{4}$ share in the suit property as sister of the 1st defendant in the year 2018. The respondent filed the suit against three defendants. Having received the summons, the petitioner and the 3rd defendant appeared through their counsel and also filed written statement and based on which, issues were framed on 22.06.2023. In the written statement it is stated that the plaintiff is a mentally disordered person and her whereabouts is not known. After framing issues when the suit was posted for trial, the case was referred to mediation and report was received that parties were not willing to participate in the mediation. Whereupon, the case was posted on list on 10.01.2024.

In the meantime, the defendants 1 and 3 filed application under Order 7 Rule 11 of CPC to reject the plaint in I.A.No.107/2019 and the same was dismissed on 14.02.2020. Aggrieved over this order, the defendants 1 and 3 preferred revision before Hon'ble High Court in

CRP (MD)No.763/2020 and at the end, the Hon'ble High Court dismissed the same on 19.02.2025 and also directed the trial Court to dispose the case within one year. Thereafter on 28.08.2025, plaintiff as PW1 filed proof affidavit and marked Ex.A1 to Ex.A.6 and the case was adjourned for cross examination of defendants side on 12.09.2025 and on 12.09.2025 at request of defendants, the case was adjourned to 19.09.2025 and again it was posted to 24.09.2025 as last chance. On 24.09.2025, there was no representation on defendants side and it was recorded by this Court that no cross on defendants side and it was posted as further plaintiff side evidence on 16.10.2025. From 16.10.2025 it was again adjourned to 30.10.2025 and at last on 07.11.2025 plaintiff's side evidence was closed and case was adjourned to 19.11.2025 for defendant side evidence. When the case was posted for defendant side evidence on 19.11.2025, applications to reopen and recall of PW1 filed on defendant side and the same were adjourned to 27.11.2025 and the said applications were allowed on 19.1.2026 and the case was adjourned to 23.01.2026 for cross examination of PW1. Thereafter, the case was adjourned to 30.1.2026. On that date party impleading petition was filed and the same was returned and again the case was adjourned to 03.02.2026. On 03.02.2026, the PW1 was also present and the case was again posted to 13.02.2026 for PW1 cross and on that day also PW1 was present. In this stage, the petitioner filed this application for the relief as indicated above.

7. In the application, the petitioner has stated that the whereabouts of original plaintiff Arivin Nisha is not known and one Sharfudeen's 2nd wife Nisa Begam is appearing in the place of original plaintiff as proxy and in order to prove the proxy before this court it is necessary to conduct DNA test between the petitioner and the proxy herein before this Court.

8. Admittedly, in the written statement, the petitioner/1st defendant did not take any specific and definite plea that there is a dispute regarding sister hood of the plaintiff with him. His defence was that the plaintiff's husband in order to preassurize the defendants for his personal gain filed the suit using his 2nd wife as proxy for plaintiff. No issues has been framed on this sister-hood dispute between the plaintiff and the petitioner. Fact remains that, from perusal of written statement it could be seen that in earlier occasion civil suits were filed against the plaintiff and this plaintiff also participated in civil proceedings as 1st defendant. Further, it reveals that O.S.No.334/2015 was also pending in the file of District Munsif Court, Dindigul against plaintiff and others, and NBW is also pending against the plaintiff in C.C No.452/2017 in the file of Judicial Magistrate No.II Court, Dindigul. It could be seen that the petitioner/1st defendant filed civil case and criminal complaints against the plaintiff and her husband and others which are pending before the concerned Courts till date.

9. According to the petitioner, he lodged a complaint against the plaintiff and others and FIR was registered in Cr.No.49/2015 u/s.120B, 420, 465 and 471 of IPC. Further he also preferred the complaint against the plaintiff and his husband and FIR was registered in Cr.No.1041/2015 u/s.341, 506(ii) of IPC and plaintiff and her husband got anticipatory bail before Hon'ble High Court.

10. Admittedly, Hon'ble High Court pleased to pass an order in a revision preferred by the petitioner/1st defendant directing the trial court to dispose the suit within one year period from the receipt of the order. Now 1½ years passed since such direction received by the Court. When the suit was taken up for trial, PW1 has been examined on plaintiff side. It was the duty of the petitioner to carryout cross examination regarding his proxy plea, mental state, identification and so on. Unfortunately, he did not carryout cross examination in spite of several opportunities given to him. In the meantime, when the suit was posted for defendants side evidence, he moved reopen and recall of PW1 for cross examination in I.A.Nos.3/2025 and 4/2025 and the same were allowed on 19.01.2026. Even then he was not ready to carryout the cross of PW1 regarding his serious defence taken. Instead, he has come with the present application to get an order for DNA test between him and the PW1 to ascertain the proxy plea. As already indicated, the petitioner did not

raise any dispute regarding his sister hood with the plaintiff. In other wards, their relationship is not in dispute. The petitioner /1st defendant admitted his sisterhood relationship with the plaintiff in earlier civil and criminal proceedings. Despite specific direction was given by Hon'ble High Court in the revision preferred by the petitioner, he is not proceeding with the main case.

At this juncture, it is relevant to refer Hon'ble Apex Court Judgment delivered in respect of DNA test. In **APARNA AJINKYA FIRODIA VS. AJINKYA ARUN FIRODIA** case [(2024) 7 Supreme Court Cases 773] Our Hon'ble Apex Court has held as follows:

“ 43.4 Merely because either of the parties have disputed a factum of paternity, it does not mean that the Court should direct DNA test or such other test to resolve the controversy. The parties should be directed to lead evidence to prove or disprove the factum of paternity and only if the Court finds it impossible to draw an inference based on such evidence, or the controversy in issue cannot be resolved without DNA test, it may direct DNA test and not otherwise. In other words, only in exceptional and deserving cases, where such a test becomes indispensable to resolve the controversy the Court can Direct such test.”

In the said judgment, the Hon'ble Apex Court specifically held that '*DNA test cannot be ordered as a matter of routine and it could be ordered in exeptional circumstances*'. First of all there was a specific plea regarding paternity and issues to be framed on that paternity. Beside, the evidence should be given before the Court to prove or disprove such paternity issues. Even then if the Court finds that the DNA test is necessary, the Court can order for DNA test. Here as already discussed, the petitioner/1st defendant did not take any specific and definite plea regarding the blood relationship with the plaintiff and no such issues were framed in this regard. He only disputing about the identification of PW1. Therefore, no situation arise for ordering DNA Test.

12. The petitioner has filed some documents obtained under RTI Act and also copy of complaint. That documents are no way relevant at this stage to decide the issue involved in the application. At the same time, on respondent side Ex.R.1 and Ex.R5 were marked to show that PW1 is the plaintiff. The petitioner/1st defendant can very well test the same while carryout cross examination of PW1.

Considering the above discussions and in the interest of justice, this Court comes to the conclusion that the petitioner is not entitled to the relief as prayed for and the point is answered accordingly.

In the result, this petition is dismissed with cost.

Dictated to the stenographer Gr.I, transcribed and typed by her in the computer, corrected and pronounced by me in the open court today the 9th day of July 2026.

**Principal District Judge,
Dindigul.**

Annexure:

Witnesses examined on both sides : Nil.

Exhibits marked on the side of Petitioner:

Ex.P1	--	Particulars of the Members in Lion Club of Dindigul. (Web copy)
Ex.P2	12.02.2016	RTI letter of petitioner/1st defendant to the Information Officer, State Human Rights Commission (Hand copy) and the reply (Original)
Ex.P3	20.01.2017	RTI reply of District Information Officer, Superintendent of Waqf, Madurai to the petitioner/1st defendant and the memo of the office of the Tamilnadu Waqf Board, Chennai.
Ex.P4	11.01.2011	Letter of Public Information Officer and Additional Superintendent of Police, Dindigul District to the petitioner/1st defendant. (Copy)
Ex.P5	23.05.2017	Letter of Public Information Officer and Additional Superintendent of Police, Dindigul District to the petitioner/1st defendant. (Copy)
Ex.P6	--	Court copy of summon in OS No.334/2015 on the file of Additional District Court, Dindigul. (Copy)

Exhibits marked on the side of Respondent:

Ex.R1	--	Aadhar identity card of Arivin Nisha (Photo Copy)
Ex.R2	--	Election identity card of Arivin Nisha (Photo Copy)

Ex.R3	--	Pilgrim identity card of Arivin Nisha (Photo Copy)
Ex.R4	02.06.2023	Pass port front page of Arivin Nisha (Photo Copy)
Ex.R5	--	Bank pass book front page of Arivin Nisha (Photo Copy)

Principal District Judge,
Dindigul.