

IN THE COURT OF ADDITIONAL DISTRICT MUNSIFF, VALLIYOOR

Present: Mithuna.A.Kaiser, B.A., B.L., Additional District Munsif, Valliyoor

Tuesday, On the day of 16th day of June 2025.

திருவள்ளூர் ஆண்டு 2056, குரோதி வருடம் ஆனி மாதம் 2-ம் நாள் திங்கட்கிழமை

I.A.No.4/2025

In

O.S.No.1/2019

Mayil Rajan

.... Petitioner/Plaintiff

-Vs-

1. Anbarasi
2. A.Senthilkumar
3. A.Jegan
4. The Tahsildhar, Radhapuram
5. Government of Tamil Nadu
rep by The District Collector

.... Respondents/Defendants

This petition came before this court on 10.06.2025 for a final hearing in the presence of Thiru. H. Mohammed Riyas, Learned counsel for the petitioner/plaintiff and Thiru.S.Kanthimathinathan, Learned counsel for the 1 to 3 respondents and Government Pleader for the 4th and 5th respondents and upon hearing both sides, perusing the case records, and having stood over the consideration till this day, this court hereby delivers the following:

ORDER

The petitioner had filed this petition under Order XXVI Rule 10A of Civil procedure code, seeking to appoint Advocate Commissioner to collect blood samples

of petitioner and 1 to 3 respondents for performing DNA test of scientific investigation.

GIST OF AVERMENTS IN PETITION:

The petitioner/plaintiff filed the suit for declaration of legal heir of deceased one Arumuga Nadar. The 1 to 3 respondents were born to Arumuga Nadar and his first wife Ms.Amirthakani. The 1 to 3 respondents/defendants in the suit claims that Arumuga Nadar is no way relation to the petitioner/plaintiff. The original suit is for the adjudication of relation between Arumuga Nadar and petitioner/plaintiff. Hence, it is necessary to prove that the petitioner is the son of Arumuga Nadar and also involves Chastity of plaintiff mother which leads to allegations of infidelity of plaintiff mother in the society. Thus, it is necessary to perform a DNA test between the petitioner/plaintiff and 1 to 3 respondents/defendants. Hence, prayed that Advocate commissioner be appointed to collect samples from petitioner and 1 to 3 respondents to conduct DNA test for scientific investigation, failing which petitioner/plaintiff will be put to irreparable loss and injury.

GIST OF COUNTER FILED BY 1 TO 3 RESPONDENTS:

The 1 to 3 respondents countered that there is no prima facie to pray for DNA test, as there is no prima facie evidence and document to support the contention of petitioner/plaintiff. Moreover, the petitioner/plaintiff can pray for DNA test as matter of right when it is conducted between father and son. But the present case, the petitioner/plaintiff has no relation with 1 to 3 respondents/defendants and so, 1 to 3

respondents/defendants can't be compelled to give blood samples to conduct DNA test. The petitioner/plaintiff can't attempt to fish for evidence through DNA test whereas the petitioner/plaintiff must prove the case on his own legs. Even in Criminal cases the accused has a right against self-incrimination but in the petition 1 to 3 respondents/defendants can't be forced to give evidence with blood samples to perform DNA test. As there is no prima facie evidence to conduct DNA test, 1 to 3 respondents/defendants prays for dismissal of the petition.

GIST OF COUNTER FILED BY 4,5 RESPONDENTS:

4,5 Respondents stated that petition is not maintainable in eyes of law and it should be dismissed at limine. The original suit filed for the relief of declaration of the petitioner/plaintiff as legal heir of Arumuga Nadar. The burden of proof lies on the petitioner/plaintiff to establish Arumuga Nadar is a father. In the issue to be decided between petitioner/plaintiff and 1 to 3 respondents/defendants, the government parties, respondents 4 and 5 are no way connected to the prayer of petition to conduct DNA test. Hence, 4,5 respondents/defendants are unnecessary parties to the petition and thus prays for dismissal of the petition against the 4,5 respondents.

POINT FOR CONSIDERATION:

Whether the petition under Order XXVI Rule 10A CPC has to be allowed or not?

1. Heard both sides, records perused. The petitioner/plaintiff had filed the petition to appoint Advocate Commissioner to collect blood samples from the petitioner and 1 to 3 respondents/defendants and to conduct DNA test to establish the paternity of the petitioner/plaintiff.

2. Admittedly, the suit is for the relief of declaration of petitioner/plaintiff as legal heir of one Arumuga Nadar. The fact of the suit is that, the late Arumuga Nadar was married to mother of 1 to 3 respondents Ms.Amirthakani. Later on 1972 Late.Arumuga Nadar married Mrs.Subbammal, mother of the petitioner/plaintiff. The 1 to 3 respondents concealing the fact the petitioner/plaintiff is one of the legal heir to Arumuga Nadar applied for legal heir certificate 1 to 3 respondents/defendants and without proper enquiry 4 and 5 respondents/defendants issued an legal heir certificate to 1 to 3 respondents. It was strongly denied by the 1 to 3 respondents/defendants that late.Arumuga Nadar never married Mrs.Subbammal, mother of petitioner/plaintiff as stated by the petitioner/plaintiff. Now the petition has been filed, seeking for a appointment of the advocate commissioner for scientific investigation.

3. This court is of view that, as this petition is between the petitioner/plaintiff and 1 to 3 respondents/defendants, the government parties, respondents 4 and 5 are unnecessary parties to the petition.

4. Since the original suit is for the relief of declaration of legal heir, the paternity of the petitioner/plaintiff is directly in issue, the facts of the case warrants a direction to conduct the DNA test. Meanwhile the PW1, Assistant Medical officer,

Tirunelveli Government Hospital deposed during his oral examination that the children born to same father and different mothers cannot undergo DNA test to prove the common paternity, after the death of the father. Hence scientifically , DNA test cannot be done between siblings to find out the paternity of the parties on comparing blood samples between the siblings without any samples from deceased father.

5. Moreover, this court is of view that, merely because either of parties have disputed a factum of paternity, it does not mean that 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. Hence, in order to conduct a DNA test the petitioner must make a prima facie case for exercising such power by this court. Even the documents filed by the petitioner/plaintiff are Identity cards which are issued only by self-serving information and thus it cannot be reliable by this court. On this consideration, the petitioner failed miserably to satisfy the eminent need for DNA test.

6. The Counsel for the 1 to 3 respondents had rightly placed his reliance on the case of *Kalaiselvan @ Dhanush K.Raja Vs. Kathiresan, Crl.O.P.(MD). 480 of 2017* popularly known as “Dhanush case” in which Hon’ble Madurai Bench of Madras High Court held that “the supreme court has held that in unequivocal language that the person who wants DNA examination to be done, should make out the prima facie case for the court to exercise its power. In absence of making out prima

facie case from their own pleadings and documents submitted before the trial court as well as this court, the prayer of the Kathiresan couple for DNA profiling cannot be entertained.” thus, on considered view over the precedent, this court inclines that the petitioner failed to establish the prima facie case for the court to exercise its power.

In the result, this petition is dismissed. No costs.

This Order dictated to the Typist, directly typed in computer by him, corrected and pronounced by me in open Court, on 16th day of June 2025.

Additional District Munsif,
Valliyoor.

Witnesses examined on the side of Petitioner :

PW1 – Assistant Medical Officer, Tirunelveli Government Hospital.

Witnesses examined on the side of Respondents: Nil

List of Documents on the side of the Petitioner and Respondents: Nil

Additional District Munsif,
Valliyoor.

Additional District Munsif Court,
Valliyoor

I.A.No.04/2023

in

O.S.No.1/2019

Draft/Fair Order

Dated: 16.06.2025