

IN THE COURT OF THE DISTRICT MUNSIF, SULUR

Present : Tmt.M.Santhosham., B.Sc., B.L.,

District Munsif, Sulur

Thiruvalluvar year 2056 Visvavasu year, 22nd day of Month of Aadi

Thursday the 7th day of August 2025

I.A.No.7/2025

in

O.S.No.870/2017

R.Sakthivel

... Petitioner/3rd party

- In -

1. S. Sudhakar

2. S. Shanthi

...Respondents/Plaintiffs

/VS/

1. D.Balasubramaniam @ Balasundaram (Died)

2. K.Rajendran

3. The Joint Sub-Registrar, Coimbatore

4. The Sub-Registrar, Annur SRO

5. Amsaveni

6. Mohan

7. Maragatham

...Respondents/Defendants

This petition is coming for final hearing before me in the presence of Mr.J.Bill Klinton, Advocate for the Petitioners and Mr.S.Chandrasekaran, Advocate for the Respondents/Plaintiffs and the 1st Respondent/Defendant died and the 2nd to 7th Respondents/Defendants are exparte in Main Suit and upon perusing the records, and this court made the following:

ORDER

This petition filed by the petitioner under order 1 rule 10 of CPC to impleading the petitioner as 8th defendant in the OS.No.870/2017.

1. The brief averments of the affidavit filed by the petitioners as follows:

1.1. The petitioner is the 3rd Party in the above suit. The suit mentioned property is originally belongs to one Late. D.Balasubramaniam who was Petitioner/3rd Party's Cousin Brother, based on a registered will 108/1998, subsequently, the above named respondents are collusively filed the suit which is OS.No.853/2017. Hence Petitioner/ 3rd Party is a bona fide purchaser under a statutory Will for the suit mentioned property from D.Balasubramaniam and also who passed away due to Bone Cancer on dated 18.03.2024, during the critical situation, Petitioner/ 3rd Party maintained the above named Late. D.Balasubramaniam and took care of his Medical Treatment, out of those all affections, the above said Late. D.Balasubramaniam without any inducement, voluntarily came forward to execute a registered Will No.46/2024 dated 19.02.2024 in Petitioner/ 3rd Party favor and now Petitioner in possession of the suit mentioned property and also enjoying the subject matter of the suit as per the aforesaid will.

1.2. Since, Petitioner/ 3rd Party Cousin Brother had executed a registered Statutory Will in favor of Petitioner/ 3rd Party, as if now, Petitioner being the absolute owner as per the aforesaid will, the above named respondents are very well known about the facts and circumstances and avoids Petitioner/ 3rd Party to include as an party and further filed the above suit which is OS.No.870/2017 collusively. So, Petitioner is a necessary party for property adjudication of the dispute involved in the present case. Hence, the Petition is to be allowed.

2. The brief averments of Counter statement filed by the 1st Respondent/Plaintiff and adopted by 2nd Respondent/Plaintiff as follows:

2.1. The petition is false, frivolous and unsustainable in law and on facts of the case. The Petitioner is put to strict proof of all the allegations except those that are specifically admitted herein. The Respondents/ Plaintiffs filed the above suit against D.Balasubramaniam as defendant No.1, who in turn did not at all

file any written statement in the above suit and thereby, he was set Ex-parte long back. While so, at present, this petition has been filed in collusion with other respondents.

2.2. This respondent has already challenged the defendant in the suit in O.S.No.885/2017 with respect of decree obtained in OS.No.2216/2012 and also in O.S.No.870/2017 by challenging the subject matter of Power of Attorney therein. During the pendency, the alleged Will Doc.No.46/2024 has been created only to defeat the right of plaintiff in the above suit. This respondent craves leave to refer the plaint pleading in OS.No.870/2017 and OS.No.885/2017 as part and parcel of the counter statement. Already there are strained relationship exists between petitioner and 6th Defendant Balasubramaniam due to criminal cases and while so, it is absolutely false to alleged that the said Balasubramaniam executed Will in favour of Petitioner. In fact, the present petition is an abuse process of law. This respondent does not admit the alleged Will Doc.Nos.108/1998 and 46/2024. More so, it is admitted fact in the affidavit that the said Balasubramaniam was in chronic stage Bone Cancer and also in prison. While so, it is absolutely false to allege that the said Balasubramaniam executed alleged Will in favour of Petitioner.

2.3. This respondent is the absolute owner of the suit property, over which neither Balasubramaniam nor Petitioner had any right. Hence, the present petition is devoid of merits. This petition is filed to drag the suit further. The copies of alleged Will Doc.No.46/2024 not produced to this Respondent. Without prejudice, the entire averments in the affidavit are false and untenable. Hence, the petition is to be dismissed.

3. No Witnesses were examined on either side, and no documents were marked as exhibits.

4. Points for Consideration:-

Whether the petition under order 1 rule 10 of CPC to impleading the Petitioner as 8th Defendant in the O.S.No.870/2017 is to be allowed?

5. Points :-

5.1. The petition affidavit, counter and the enquiry of both parties were carefully considered. Heard the counsels for both the parties. The suit documents were carefully examined. The Petitioner stated that the Petition mentioned that the Petitioner/ 3rd Party is a bona fide purchaser under a statutory Will for the suit mentioned property from D.Balasubramaniam and also who passed away due to Bone Cancer on dated 18.03.2024. The Petitioner/ 3rd Party took care of Late. D.Balasubramaniam's Medical Treatment, out of those all affections, the said Late. D.Balasubramaniam without any inducement, voluntarily came forward to execute a registered Will No.46/2024 dated 19.02.2024 in favour of Petitioner/ 3rd Party. The respondents objected that the present petition is an abuse process of law. This respondent does not admit the alleged Will Doc.Nos.108/1998 and 46/2024. More so, it is admitted fact in the affidavit that the said Balasubramaniam was in chronic stage Bone Cancer and also in prison.

5.2. The Respondents/Plaintiffs filed Main suit for declaration to declare that the General Power of Attorney dated 15.05.2015 registered as document No.2520/2015 executed by 1st Defendant in favour of 2nd Defendant registered in the office of 3rd and 4th Defendants as null and void and for Permanent Injunction restraining the 1st and 2nd Defendants, their men, agents and servants from in anyway encumbering the suit property.

5.3. In the Original suit, the Defendants have been set exparte. The suit is now pending for exparte evidence. In this situation, it is stated that the Suit property was bequeathed to Balasubramaniam through a Will. Further,

Balasubramaniam is said to have executed a Will in favour of the Petitioner, and based on that Will in favour, the Petitioner claims to be the rightful owner of the suit property.

5.4. Since the Petitioner claims to be the owner of the suit property, an opportunity is granted to him and hence, the said Petition is allowed. Whether the Petitioner has proved his case through the Will document will be decided at the conclusion of the main suit, as determined by the Court.

In the result, this petition is allowed. No cost.

Dictated to the Steno-typist and directly typed by her in computer, corrected and pronounced by me in open court this the 7th day of August 2025.

Sd/M.Santhosham
District Munsif,
Sulur.

List of witnesses and documents on petitioner side:-

Nil

List of witnesses and documents on Respondents side:-

Nil

Sd/M.Santhosham
District Munsif,
Sulur.

Draft/ Fair Order
I.A.No.7/2025 in
O.S.No.870/2017
Dated:07.08.2025
DMC, Sulur