

In the Court of the I Additional District Court, Madurai.

Present: Thiru.G.Muthukumaran, B.Sc., M.L.

I Additional District Judge, Madurai

On the 30th day of July 2025, Wednesday

I.A.No.1/2025

in

Probate OP No.15/2024

S.T.Guruprasath, S/o.(Late.) Tamilselvan,
No.8-2, 147, K.S.G Bhavanam, Main Road,
T.Vadipatti, Madurai District.

... Petitioner/Proposed Respondent

///VS//

1. S.V.Gandhi, S/o.Srinivasan,
No.4-5-19 Neerethan Village, Vadipatti Taluk,
Madurai District.

.... Respondent/ Petitioner

2. R.Pappammal, W/o.(Late) Ramachandran,
Reddiar Street, Vadipatti, Vadipatti Taluk,
Madurai District.

.... Respondent/ Respondent

In this Petition Advocate Thiru.Mr.S.Hari Gopalakrishnan has appeared for the Petitioner and Advocate Mr.R.Suriyanarayanan has appeared for the 1st Respondent. That this petition came up for final hearing before me 25.07.2025 and upon hearing the petitioner side and the Respondents side and on perusing the records having stood over for consideration of this court till this day , this court delivers today he following,

ORDER

1. This petition is filed by Under Order 1, Rule 10(A) and Section 151 of CPC to pass an order to allow the petition by way of impleading the proposed party as the Respondent No.2 in the main petition.

2. Brief Statment of the petition averments :-

That the petitioner herein and proposed party. That this probate petition 15/2024 is pending before this court between the petitioner namely S.V.Gandhi and the respondent namely Pappammal. That the petitioner/respondent has received a will from one deceased Ramachandran who is husband of the respondent Mrs.Pappammal, in 2007 and it is registered at Sub-Register office, Vadipatti, Madurai North Registration district office as Document No.6/2007. That there is a partition suit and appeal in AS No.(MD) No.56/2010 is pending before the Hon'ble Madurai Bench of Madras High Court, between the said Ramachandran and his grandfather namely Subburaj Vagayara. The above said appeal this petitioner is arrayed as Respondent No.9 and the Respondent is arrayed as Respondent No.44. The probate petitioner unnecessarily causing confusion in the said appeal by using this will dated 04.03.2007, That this respondent filed an application to implead him as legal representative of Late Ramachandran the above appeal before the Hon'ble Madurai Bench of Madras High Court in CMP (MD) No.4328/2022 in A.S.(MD) No.56/2010 and after considering that will the Hon'ble Madurai Bench of High Court has dismissed the petition giving liberty to approach civil court. Then the respondent filed review application vide Rev.Appeal (MD)No.45/2023 in CMP (MD)No.4328/2022 in AS (MD)No.56/2010 and the Hon'ble Madurai Bench of High Court again dismissed the Review application and has sated that that “if at all any right is accrued through the 1st respondent (i.e.) (Late) Ramachandran the petitioner S.V.Gandhi may work out his remedy as per the decree passed in the appeal or resort to section 47 of C.P.C.,” According to this Review Petition order the respondent/petitioner in main petition S.V.Gandhi may approach civil court after the decree passed in A.S.(MD)No.56/2010 .That S.V.Gandhi has suppressed the order passed in the review application no.45/2023 and he has filed the probate petition by showing order of CMP (MD)No.4328/2022 ,without impleading the main objectors in the main petition. That this petitioner has strong objections over the “will” and he to

record his objections before this court. The respondents cannot have any valid objection for allow this petition. Unless this petition is allowed the petitioner will be put to irreparable loss and undue hardship. Hence pray to allow this petition.

The brief statement of the counter filed by the 1st Respondent:

3. The petitioner is a stranger to the will dated 04.03.2007 and he has no cavetable interest and he has no locus-standi to file this petition. The respondent submit that there is an appeal in AS MD 56/2010 and the same is pending before the Hon'ble Madras High Court, Madurai bench between the executors of the will namely Ramachandran and petitioners grand father namely Subbah reddy and in which the petitioner is arrayed as respondent no.9 and the 2nd respondent arrayed as respondent no.44. But the allegation that this respondent has tries unnecessarily distrubing by a will dated 04.03.2007 is false. This respondent as a legate of the will is the legal representative of the deceased Ramachandran but the 2nd respondent who is the estranged wife of Ramachandran in collusion with the petitioner here in. even without knowledge of this respondent added as a Legal representative of the deceased Ramachandran . It is true that CMP (MD) No.4328/2022 in AS (MD) No.56/2010 to is filed to implead this respondent as LR of Ramachandran . Unfortunately the said petition was dismissed not on merits but on the ground maintainability and liberty is given to work out his remedy in the civil court and then this respondent filed a review petition in Rev.C (MD) No.45/2023 and the same also dismissed directing this respondent to probate the will before claiming right in the suit property. The allegation and averment para no.6 of the petition is that the said review application order is suppressed by filing probate petition showing the order of CMP(MD) No.4328/2022 is incorrect and miss leading as it is settle principle of law when the review application dismissed the order passed in review application is merged with original order in CMP (MD) 4328/2022 and as such the probate petition filed by the 1st respondent is perfectly valid. That the petitioner as a 3rd party cannot be implead as a

party in the probate petition by invoking order 1 Rule 10 cpc as the same is only applicable to the suit and not applicable for the probate proceedings. This petition is filed with the view to drag on the proceedings after the examination of the Pw-1. There is collusion between the petitioner and the 2nd respondent in order to grab the properties of the Ramachandran bequeathed to this respondent under the registered will dated 04.03.2007. That the petitioner has no role to say or object the same and hence petitioner may be dismissed with cost.

Point for consideration

4. Whether the petitioner is entitled to the relief claimed in the petition?

Findings for point for consideration:

5. The learned counsel for appearing on the petitioner has submitted that the partition suit in AS MD No.56/2010 is pending before the Hon'ble Madurai Bench of Madras High Court and in the above appeal this petitioner is arrayed as 9th respondent and this respondent is arrayed as 49th respondent that the respondent/probate petitioner filed an application to implead him as a party to legal representative of said Ramachandran and after considering the will the Hon'ble Madurai Bench of Madras High Court has dismissed this petition with liberty to approach the civil court and the review petition filed by the probate petitioner in Re appeal MD No.45/2023 in CMP MD No.4328/2022 in AS MD No.56/2010 also has been dismissed. Suppressing the order the petitioner has filed the probate petition. Therefore this petitioner is a necessary party to the petition to explain the facts hence prayed to allow this petition.

6. The learned counsel appearing for the respondent has submitted that the question to be decided is whether the will filed by the respondent executed by Ramachandran @ Ramachandra Kennedy and whether it is last will of the said Ramachandran @

Ramachandra Kennedy and that whether Ramachandra Kennedy was of sound mind at the time of execution of the will. That the title of the proposed party cannot be gone into in this petition and prayed to dismiss the petition.

7. On perusal of the main petition it appears that the respondent has filed the main OP 15/2024 for probating the will said to be executed by one Ramachandra Kennedy on 04.03.2007. Whether the said will is executed by the said Ramachandra Kennedy and whether he was of sound mind at that time of execution and whether it is the last will is a main question to be decided in the probate. In a probate proceedings the title of the testator to execute the will could not be decided. However when it is alleged that already an attempt is made by filing a will even in the year 2010 it becomes necessary to decide the question as to limitation for filing the probate petition. Further granting probate will not cloth any title to the petitioner obtaining probate. If already title of the testator is decided in a civil suit the decree will prevail over the probate. The order of preference is that succession certificate will prevail over nomination and probate of the will prevail over succession certificate and decree of the civil court will prevail over the probate as title is finally decided in a civil suit and probate petition is only a summary proceedings and title cannot be gone into probate proceedings and probate cannot be granted in already civil court decided over title of the testator and in such case probate will become useless this court finds that the petitioner may be added as a proper party to the proceedings and the matter may be adjudicated finally on considering the orders said to be passed by the Hon'ble High Court in the previous proceedings. Therefore this court finds that this petition may be allowed.

In the result this petition is allowed and on considering the facts and circumstances of this case the parties are directed to bear their own cost.

Dictated to Steno-Typist and typed by her directly to in the computer, printed out corrected signed and pronounced by me in the Open court on this the 30th day of July 2025.

I Additional District Judge,
Madurai.