

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 02nd day of August 2025, Saturday

I.A.No.2/2025 in I.A.No.1/2024 in Probate OP No.190/2023

X.Jhon Kennedy

... Petitioner/3rd Party Objector

///VS//

1.L.C.M.Lasarus

.... 1st Respondents/ Petitioner

2. Indhra

... 2nd Respondent/Respondent

In this Petition Advocate Thiru.V,Nagendran M.A., B.L., has appeared for the Petitioner and Advocate M/s.Aravindh Karthikeyan has appeared for the 1st Respondent and Advocate Thiru.K.V.S.Sudharshan Babu B.S.c.B.L. has appeared for the 2nd Respondent .That this petition came up for final hearing before me 29.07.2025 and upon hearing the petitioner side arguments 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 to grant leave to the petitioner to contest the Probate Petition in OP No.190/2021.

Brief Statement of the petition averments :-

2. That the petitioner is the 3rd party objector in the Probate OP filed by the 1st respondent. That the 2nd respondent is a 30 years old friend of the petitioner and the petitioner has got business and family relationship with the 2nd respondent. That the petitioner has entered into a an agreement for sale with the 2nd respondent on 05.10.2023

in respect of a property at Uthankudi and a sale agreement on 17.10.2023 in respect of a property situated at Narasingampatti which is the property covered under the dated 01.06.2023. That the petitioner has paid Rs.10,00,000/- in advance for the property of Uthankudi and Rs.6,00,000/- as advance for the property of Narasingampatti. That the 2nd respondent is objecting to grant probate to the petitioner in respect of the properties belonging to the deceased. Hence he filed I.A.No.1/2024 to implead the petitioner as party to the probate proceedings. That in the above said I.A. argument was heard on 16.07.2025 and it is reserved for orders on 25.07.2025. That the petitioner also has filed separate application Under Order 1 Rule 10(2). Hence it becomes necessary to granting leave in the Probate Petition 190/2021 and prayed to allow this petition.

The brief statement of the memo of objection filed by the 1st Respondent

3. That the petitioner a stranger has filed I.A.No.1/2024 on 06.06.2024 to implead him party on the strength of unregistered sale agreement alleged to have been entered into between the petitioner and the 2nd respondent on 05.10.2023 in respect of Item No.1 & 2. That the document will not convey any title to the petitioner. That on 16.07.2025 I.A.No.1/2024 was taken up for final hearing extensive argument was made drawing attention of this court the power about the scope of probate proceedings with reference to Sec.63 of Indian Succession Act and Sec.68 of Indian Evidence Act and explained the provision of Sec.52 of Transfer of property Act to show that the petitioner is not a necessary party for want of caveatable interest. That on 25.07.2025 the petitioner has filed two more I.A. probate petitioner to reopen and seek leave of this court to implead him as party. It is submitted that the above petitions are filed without citing any reason to reopen and without mentioning any specific provision. Both the I.A's are liable to be dismissed at limine and the same are devoid of merit and they are filed with view to procrastinating the proceedings. Hence prayed to dismiss the both the I.As.

The 2nd respondent counsel has submitted that No counter for R2.

Point for consideration:

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

Finding for point for consideration:

5. The petitioner counsel has submitted that the 1st respondent has filed an application for probate of a will said to be executed by R.Arun on 16.06.2024 and it is contested by the 2nd respondent That petitioner has entered into an agreement for sale with the 2nd respondent on 05.03.2023 and he has paid huge amount as advance and hence it becomes necessary for him to become a party to the probate proceedings to contest the execution of the will. That the I.A.No.1/2024 is reserved for orders and now the petitioner has filed a petition to seek permission of the court to grant leave to contest the probate petition and it is numbered as I.A. No.2/2025 hence it becomes necessary to reopen the I.A.No.1/2024 and to grant permission and then I.A.No.1/2024 has to be disposed off. Hence prayed to allow this petition.

6. The learned counsel appearing for the respondent has submitted that the 3rd party impleading petition filed by the petitioner has been taken as I.A.No.1/2024 and only in that after hearing both side it is posted for orders and at this stage the petitioner has unnecessarily without coating any provisions has filed the I.A.No.2/2024 seeking leave to contest the case and for that purpose has filed I.A.No.3/2025 with view to procrastinating the proceedings and submitted that already argument submitted on both side in I.A.No.1/2024 and submitted that the petitioner is not a necessary party to the proceedings and he cannot make any claim against the interest of the testator and that he is not directly claiming under the testator and hence prayed to dismiss this petition. The the petitioner side counsel has relied on the followings decisions

- 1). 2007 8 SCC 511
- 2) Order of the Hon'ble Madras High Court in Application No.3102 of 2007 in TOS No.5/20000 dated 07.06.2012
- 3) The Order of the Hon'ble High Court of Gujarath at Ahamadabad in Spl.Civil Application No.20400/2016

7. The main OP No.190/2023 is filed by the 1st respondent seeking probate of the will dated 01.06.2023 said to be executed by R.Arun and claiming that it is last will of the said Arun. That one Indira is shown as respondent in that in the main Probate petition. Under this circumstances the 2nd respondent who is a 3rd party claims that he has entered into an agreement for sale with the 2nd respondent. Hence the main question is whether the 2nd respondent is a necessary and proper party to deciding the probate petition.

8. Under this circumstances both side counsels has submitted argument in the party impleading petition filed in I.A.No.1/2024 and when it is reserved for orders this petition is filed seeking leave of the court to contest the probate petition

9. The petitioner counsel has not explained why the separate application seeking leave of the court is filed to contest the probate petition when already he has filed an application to implead him as a party to the probate petition. More particularly after advancing the arguments and matter posted for orders an application cannot be reopened under guise of hearing further arguments.

10. It is settled law that only a person claiming title under the testator can dispute the probate proceedings. If anyone claims independent title then that of the testator then his remedy will be only to file a civil suit. Further the foremost question to be decided in a

probate proceedings is whether the testator has executed the will, was he of sound mind at that time of execution and is it the last will of the testator. Any person disputing the title of the testator can do so only by way of civil suit. The probate proceedings are summary proceedings and the title of the testator regarding the property mentioned in the will cannot be decided in probate proceedings. As per the will the probate petitioner claims that only the sisters son and daughter are bequeathed with the property for creation of trust. Under this circumstances it cannot be decided in that proceedings whether the property is the exclusively property of the husband of the respondent or the property of Arun. Such an issue can be decided only by way of civil suit. The present petitioner is the 3rd party and he is not claiming under the testator.

11. Further In 2007 8 SCC 511 The Hon'ble Supreme Court has been clearly held that a transfery of the property during the pendency of the proceedings is not a necessary party.

12. In the Order of the Hon'ble Madras High Court in Application No.3102 of 2007 in TOS No.5/20000 dated 07.06.2012 the Hon'ble Madras High court has referred the decision of Ishwardeo Narayan Singh -vs- Srimath Hamtha Devi and has dismiss the application of the 3rd party seeking him to implead as party to the proceedings.

13. In the Order of the Hon'ble High Court of Gujarath at Ahamadabad in Spl.Civil Application No.20400/2016 the Hon'ble Gujarath High Court also has held that the request of the holder of the sale agreement to implead him as party to the probate proceedings has been rejected.

14. Therefore on considering the scope of the probate proceedings and the precedents cited above this court finds that the petitioner/3rd party is not a necessary party to the

probate proceedings and this petition is liable to be dismissed. Point for consideration is answered accordingly.

In the result, this petition is dismissed. The petitioner is directed to pay cost of this petition to the 1st respondent and the 2nd respondent is directed to bear own their 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 02nd day of August 2025.

I Additional District Judge,
Madurai.