

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.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 16.07.2025. R2 was called absent petitioner and R1 present. In heaing the petitioner side argument and 1st respondent 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 implead the petitioner/3rd party as party to the Probate Petition 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 2nd Respondent herein is objecting the probate petition and this petitioner is also a necessary party to the probate proceedings and hence this petitioner has to be added as the 2nd Respondent in the probate petition and pray to allow this petition

The brief of the counter filed by the 1st Respondent

3. This respondent denies the content of the affidavit of the petitioner and the alleged sale agreement said to be entered into between the petitioner and Indhra is a fabricated one. That the testator died on 16.06.2023 at Appollo Hospital at KK Nagar, Madurai and during that period he handed over the all the document relating to the property along with will which is under the probate. That without original title deeds the petitioner has created fabricated documents and he cannot entered into agreement for sale with the mother of the testator that two for a meager amount and it is a lie. The intention of the testator is not to sell the property and he has executed the will for the purpose of creating a trust from the income of the property to be settled in favour of his sisters son and daughter. That the petitioner is not a necessary party to the proceedings and this petition is filed only to protract the case and hence prayed to dismiss it with cost.

Brief of the counter filed by the 2nd Respondent

4. That the petitioner is the respondent in the probate petition. That Mr.Arun the 2nd son of this respondent was suffering from Obesity for the past 20 years and this respondents husband spend over Rs.16,00,000/- for his treatment and he was admitted Madurai Appollo Hospital on 06.06.2023 and died on 16.06.2023. That this petitioner took much care of him by giving him necessary medical treatment and appointing a

separate driver by name Arsur Perumal for him for the last 5 years. That the husband of the his respondent out of the income of his business purchased a property measuring 71 cent at Narasingampatti in the name of R.Arun on 21.10.1991. That this respondent is aged at 87 and her husband is aged 89 and for the medical expenses and to meet out the medical expenses sustained for Arun 54 cent was sold to the petitioner and the remaining lands covered under the sale are aquired by the National High Ways. That this respondent entered into agreement for sale with respect to property at Uthankudi and received Rs.10,000/- as advance by a cheque. That this respondent has no objection to implead the proposed party as party to the above said probate proceedings

Point for consideration:

5. Whether the petitioner has to be impleaded as party to the probate petition in OP No.190/2023

Finding for point for consideration:

6. The learned counsel for the petitioner has submitted that the 1st petitioner has filed probate petition against this 2nd respondent to obtain probate in respect of a will said to be executed by R.Arun on 01.06.2023. That this petitioner has entered into agreement for sale with the 2nd respondent herein 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 2nd Respondent herein is objecting the probate petition and this petitioner is also a necessary party to the probate proceedings and hence this petitioner has to be added as the 2nd Respondent in the probate petition and pray to allow this petition.

7. The learned counsel appearing for the 1st respondent has submitted that in a probate proceedings transferry of the property during the pendency of the proceedings is not a necessary party. That the power of the District Judge in granting probate is prescribed in Section 283 of the Indian Sucession Act and submitted that in a probate petition the title of the testator cannot be gone into and it cannot decided that whether the will it is good or bad and submitted that only person who could claim title under the testator alone can oppose the probate and prayed to dismiss the petition. In support of his argument the learned counsel for the 1st respondent 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

No specific argument advanced by the 2nd respondent side and the 2nd respondent in her counter has submitted no objection to allow this petition

8. 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 said to be mother of the Arun 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.

9. 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.

10. 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.

11. 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.

12. 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.

13. 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.