

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

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

I Additional District Judge, Madurai

On the 09th day of July 2025, Wednesday

I.A.No.2/2025
in
Probate OP No.3/2022

T.Loganathan

... Petitioner/Petitioner

//VS//

1.S.Desabanthu,

2. G.Avadai,

3. V.Tamizhselvi,

4. J.Anandhi

.... Respondents/ Respondents

In this Thiru.K.Anbu Manikandan has appeared for the Petitioner and Advocate Thiru.R.Vivekanandan has appeared for the 4th Respondent and R1 to R3 has endorsed no objection. That this petition came up for final hearing before me 02.07.2025 and upon hearing the petitioner side and R4 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 U/s 151 CPC to pass an order to close the cross of RW-1 by Respondents 1 to 4 side.

2. Brief Statment of the petition averments :-

That the petitioner has filed the main petition for probate of the will dated 15.02.2021 executed by his Peternal aunt Tmt.Mookammal. That Pw-1 to Pw-3 were

examined on the petitioner side and on the respondent side the 2nd respondent is examined as Rw-1 and she was fully cross examined on the petitioner side and the petition is posted for cross examination of Rw-1 by R1 and R4 side. That in the counter filed by R2 and R4 side they vehemently denied the will and both of them stands on the same leg and no adverse claim or statement put up by them against each other. If the co respondents are permitted to cross examine the Rw-1 they will fill up the lacuna. That as per section 138 of evidence Act cross examination can be done only by the adverse party. If the respondents are allowed to cross examination it will lead to multiplicity of proceedings. Hence prayed to allow this petition.

3. R1 to R3 side counter not filed.

The brief statement of the counter filed by the 4th respondent:

4. That the petitioner has no locus-standi to file the probate petition and he has filed the probate petition without valid reason. That the will alleged to executed by late Mookammal is not proved and the petitioner is not entitled to make change in the revenue records. That the will dated 05.02.2021, said to be executed by Mookammal is a fraudulent one and it is created to grab the properties of the 4th respondent. That the 4th respondent and her son filed OS 327/2009 filed by the before the II Additional Sub Court, Madurai and Mookammal is a party to the proceedings and in the suit Mookammal filed written statement and the in that suit some properties was allotted to this 4th respondent and her son and the remaining properties are given to Jeyagopal who is the husband of the 4th respondent. That the said Jeyagopal died on 25.05.2011 and the 4th respondent and her son Subburaj alone entitled to property of Jeyagopal. That Subburaj was also died on 08.03.2022 and hence this 4th respondent is entitled to all the properties and Mookammal has no right to execute will in respect of the petition mentioned properties. That the 2nd respondent also has stated that Mookammal has

executed a will on 11.11.2013 in favour of the daughters of Mookammal and it is a fraudulent one and Mookammal has no right to execute the will. That after the preliminary decree in OS 321/2021 an application for final decree was filed in I.A.411/2011 on 04.12.2017 and in that being party to the suit the defendants 2 and 3 cannot make any claim under the fraudulent will. Under these circumstances the petition is filed this application to curtail the cross examination by the 4th respondent. The averments that the respondents are standing on the same footing are not correct. That the 4th respondent has taken an independent stand against the petitioner and the 2nd respondent and section 138 of the Evidence Act is not applicable. That the 4th respondent has also filed suit in OS No.122/2025 before the I ADJ, Madurai regarding the properties left out by Jeyagopal. Under these circumstances the claim of the petitioner that the 4th respondent is not entitled to cross examine the RW-1 is not maintainable. If the 4th respondent is not allowed to cross examine the 1st respondent she will lose her valuable rights over the properties. Hence prayed to dismiss the petition.

Point for consideration

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

Findings for point for consideration:

6. The learned counsel for appearing on the petitioner has submitted that the respondents are disputing the will executed by Mookammal on 15.02.2021 and they are sailing on the same boat and hence the respondents 1,3 4 are not entitled to cross examine the R2 who is examined as RW-1 and prayed to allow this petition and in support of his contention the learned petitioner side counsel has relied on the decision of the Hon'ble Punjab and Haryana High Court in Brijender Singh @ Vijinder Singh -vs- Balwan Singh and others and the decision of the Hon'ble Madurai Bench of Madras High Court in Chinnaiah -vs- Vellaiammal.

7. The counsel for the 4th respondent has submitted that the 4th respondent is contesting the will said to be executed by Mookammal in favour of the petitioner and in favour of the 2nd respondent and she is hotly contesting the case of the petitioner and the 2nd respondent and that the petition mentioned property belongs to the 4th respondent and her son as per the decree passed in OS No.327/2009 by the II Additional Sub Court, Madurai and to establish the right of the 4th defendant she is entitled to cross examine the RW-1 and prayed to dismiss the petition. In support of his contention the learned counsel appearing for the 4th respondent has relied on the decision of the Hon'ble Madurai bench of Madras High Court in Chithambaran -vs- Allah pitchai and the decision of the Hon'ble M.P. High Court at Jabalpur in Abhishek Singh -vs Krishnan Bahadur singh and the Judgment of the Hon'ble Supreme Court in Patna Venkata Sreeramulu -vs- Dalli Appalareddy and the Judgment of the Hon'ble Delhi High Court in Des Raj Chopra and others -vs - Poran Mal and the Judgment of Hon'ble Punjab and Hariyana High Court at Chandigarh in Mona @ Monika Jaitka -vs Om Prakash Vinayak & Others and the Judgment of the Honourable Madras High Court in S.Nirmala -vs- Shanthi Hari Krishnan

8. In Brijender singh @ Vijinder Singh -vs- Balwan Singh and others the Hon'ble Punjab and Hariyana High Court at Chandigarh the party not having any conflict of interest and not asking relief against each other are not entitled to cross examine each other.

9. In Chinnaiah -vs- Vellaiamman the Honourable Madurai Bench of Madras High Court has held that only on adverse party can cross examine the other party as per section 138 of Indian Evidence Act.

10. In Chithambaran -vs- Alla Pitchai the Hon'ble Madurai bench of Madras High Court as per section 138 evidence act Section 142 of 143 of BSA only adverse party is

entitled to cross examine and the party with interest adverse to the witness is entitled to cross examined.

11. In *Abhishek Singh -vs Krishnan Bahadur Singh and others* the Honourable High Court of Jabalpur (M.P) it has been held that when there is conflict of interest between Defendant No.1 and Defendant No.6 an opportunity to be given to cross examine Dw-1.

12. *Patna Venkata Sreeramulu -vs- Dalli Appalareddy* the Honourable Supreme Court has held that in a case where Dw-1 and DW-13 would go together as against the case of plaintiff, if the plaintiff is directed to cross examine DW-1 before Dw-13 there is likely hood of Dw-13 eliciting evidence from Dw-1 destroying the cross examination conducted by the plaintiffs or he may elicit evidence in favour of Dw-1 and / or Pw-13 because the written statement filed by Dw-1 is already in favour of Dw-13 then the purpose of cross examination would be defeated.

13. In *Des Raj Chopra and others -vs - Poran Mal* the Honourable Delhi High Court has held that without allowing cross examination evidence cannot be treated as admissible.

14. In *Mona @ Monika Jaitka -vs Om Prakash Vinayak & Others* the Honourable High court Punjab and Hariyana at Chandigarh has held that the cross examination of court defendant will begin first before the plaintiff cross examine the 1st defendant.

15. In *S.Nirmala -vs- Shanthi Hari Krishnan* in the Honourable Madras High Court has held that, only adverse party is entitled to cross examine a witness and the party with interest adverse to the witness is entitled to cross examine and application filed without bonofide to pro tract the proceedings is liable to be dismissed with cost.

16. In *Delhi Development Authority -vs Mrs.Vijaya C.Gurushave* the Honourable Supreme Court has held that, the testamentary court is only concerned with finding out

whether or not the testator executed the testamentary instrument of his free will In Abdullah Brelvi road -vs Mr.Kainath Lalta Thuvvari is has held the that it has been long settled that it is not the province of a court of probate to determine the question of title to a property which testator purpose to dispose by this will the grand of probate will not prevent the appellant will bringing a suit if so advised in Sowbagiammal -vs Komalangiammal reported in AIR 1928 Madras 803 it has been held that the law has always been that in a probate proceedings the caveator will not be entitled to raise title himself as to the 4 of any part of estate of the deceased. The title of the testor as to the subject matter of deposition is entirely and necessarily outside the scope of probate proceedings and that has to be settled by a regular trial

17. In Ishwardeo Narain Singh -vs Srimath Kamda Devi reporte in AIR 1954 SC 280 The Hon'ble Supreme Court has held that the court of probate is only concerned with the question as to whether the document put forward as the last will and the testement of deceased person was duly executed and attested in accordance with law and whether at the time of such execution the testator had sound disposing mind. The question whether particular bquest is good or bad is within the purview of probate court therefore the only issue in a probate proceedings relates to the genuineness and due execution of the will.

18. In Kanwarjit Singh -vs Hardyal Singh Dhillon and others reported in AIR 2008 SC 306 The Hon'ble Supreme Court has re affirmed that, the only issue in a probate proceedings relates to execution of the will and the probate court is not competent to determine the question as to title and grant of probate cannot be decisive for declaration of title and injunction.

19. Thus it is settled law that, in a probate proceedings the duty of the court is ascertain whether the will sought to be probated is executed by the testator mentioned in in the will and whether the testator is a major and he/she is of sound mind and did he/she has executed the will on free consent and whether the proposed will is the final will of the said testator. The title of the testator as to the subject matter of the will are outside the scope of probate proceedings and if the respondent claims any independent title as against the testator then he/she has to filed a separate suit before civil court his/her right. As title is not decided in probate proceedings the right of the respondent if any will not get affected by the mere probate proceedings and the order passed in the probate proceedings will not act as res-judicata in the trial of such suit for deciding the question as to title.

20. In this case the petitioner has claimed probate for the will said to executed by Mookammal on 15.02.2021. On the other hand the RW-1 has claimed that Mookammal has executed will in her favour on 11.11.2013. In a probate proceedings it must be proved that the will sought to be probated is the last will of the testator. Under this circumstances in the factual matrix of this particular case if the will relied on by the petitioner dated 15.02.2021 is proved that will be the last will as no other will dated after 15.02.2021 is produced on either side. Therefore the real question to be decided in this probate petition is whether the will dated 15.02.2021 is true or not and not the will dated 11.11.2013 in respect of which no probate is sought for. Hence this court is of the view that there is no necessity to go into the question as to whether will filed by RW-1 is true or not. Therefore there is no necessity to cross examine RW-1 in that respect and no prejudiced will be caused to the respondents by the will produced by RW-1. Further there is no necessity to go into the title of Mookammal over the suit property in this probate petition. Therefore on considering the precedents cited above and the scope of the enquiry in this probate petition this court finds that, no opportunity need to be given

to the respondents to cross examine Rw-1 and the respondents may be permitted adduce evidence with regard to invalidity of that will as claimed by them in other aspects mentioned in their counter.

In the result, this petition is allowed but the respondents may adduce evidence to disprove the genuineness of execution and the invalidity of the will filed by the petitioner and may adduced evidence with regard to dismissal of the petition filed by the petitioner on other aspect raised in their counter in accordance with law.

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 09th day of July 2025.

I Additional District Judge,
Madurai.