

IN THE COURT OF THE DISTRICT MUNSIF, PALLADAM

**Present:- Thiru. V. Kalidasan, B.Com., L.L.M.,
District Munsif,Palladam.**

Wednesday the 24th day of September 2025

EA No.1/2025

in

EA No.12/2013 in EP NO.9/2012

in

OS No.1100/2008

Tamilarasi

...Petitioner/Claim petitioner/3rd party

/Vs/

1. Selvaraj

2. Vijaya @ Vijayalakshmi

... Respondents/ Respondents /Decree Holder

This Petition is coming on 24.09.2025 for final hearing before me in the presence of Mr.P.Sakthivel, B.Sc., M.L., Advocate for the Petitioner and Mr.S.Marimuthu, M.A., B.L., Advocate for the Respondents. Upon perusing the Petition, affidavit, counter statement and other connected materials on record and hearing the arguments of both sides and having stood over till this day for consideration, this court made the following...

ORDER

i) The petitioner filed this petition in EA No.1/2025 Under Order 7 Rule 14(3) r/w 151 of CPC that to receive the petition mentioned documents with condoning the delay in producing the same.

1. Brief averments of the petition filed by the petitioner:-

The petitioner filed the above application for claim petition in above said EP No.9 of 2012 and other reliefs. The document mentioned in this petition is material to prove her case. She is going to examine one of the attesting witness of registered will namely Krishnasamy son of Marappagounder, recently the said witness states that he has available photocopy of the said registered will. The petitioner is not a direct beneficiary to the said will she has only a purchaser of part of property in said will, She has not been issued original will from his vendor. Hence, she was unable to produce the original will at the time of adducing her side evidence, Hence, the said photo copy of connected will may be received and treated as secondary evidence from her side evidence since he has produced the certified copy of the same and it was marked on her side as Exhibits. The delay in producing the said documents are neither wanton nor willful one. Hence, this petitions.

2. Brief averments of the counter filed by the Respondents:-

i) The petition filed by the petitioner is false. The property relating to the E.P.No.9/2012, is owned by the 2nd respondent, inherited from her husband late Subramaniam, after his under the possession and demised, the property

enjoyment of the 2nd respondent, later on the 2nd respondent executed the sale agreement in favour of the 1st respondent and to execute the sale deed the 1st respondent filed a suit in O.S. No.1100/2008 against the 2nd respondent, the suit is decreed in favour of the 1st respondent and the 2nd respondent got execution of sale deed through court. The petitioner have no right to claim the title over the property.

ii) The document mentioned in petition is material to prove the case, is unacceptable, since the petitioner have produced the Xerox copies of the document. The photocopy of the Will is not considered as primary evidence under the Indian Evidence Act and is only admissible as secondary evidence. If the original is lost or destroyed conditions only, to be accepted in the unavoidable situations. Otherwise, unavailable of the documents and must prove that photocopy is a true and accurate reproduction of the original document and the photocopy must have been compared with the original and the person who made the copy should be available to testify its authenticity, the original and the person who made the copy should be available to testify its authenticity, the original document itself primary evidence. The simply presenting the photocopy of the will without proving the loss of the original (or) verifying the copies of accuracy will likely result in it being dismissed as inadmissible. If the original will is available the court will require to produce it as it is most reliable form of evidence.

iii) The circumstance under which secondary evidence pertaining to documents is acceptable are outlined in sec. 65 of the Evidence Act and Sec 63(2), which permits the admission of the documents as secondary evidence provided that its accuracy is verified. This included copies created by Mechanical process such as photostat, verifying the accuracy of Photostat copy in crucial

when presenting it in court. A photocopy of a document cannot be accepted as secondary evidence, if it is presented without evidence of its accuracy, without a comparison with the original. (or) without verification that it is a true reproduction. Hence, prayed to dismiss this petition.

3. Points for consideration:

Whether these petitions will be allowed or not ?

4. Heard both sides. No oral or documentary evidence is let in by both sides.

5. Answer to the point :

Materials on records perused. It is seen from the records the suit in E.P. No.12/2013 has been filed for execution of decree and delivery of possession of the execution petition mentioned property to the Petitioners/Decree Holders. The petition in E.A. No. 12/2013 has been filed by the Petitioner Under Order 21 Rule 97 of CPC to dismiss the above execution petition. The petition in E.A. No. 1/2025 was filed by the Petitioner Under Order 7 Rule 14(3) r/w 151 of CPC that to receive the petition mentioned documents with condoning the delay in producing the petition mentioned document.

6) The learned counsel for the petitioner submit that the vendor of the petitioners property was purchased from the one Vansanthi who is the beneficiary of the registered will dated 03.01.1991 which was bequeathed by the one Subramaniam. The 1st respondent is claiming the property based on sale agreement executed by the 1st wife of the said Subramaniam namely Vijaya who is the 2nd respondent herein. The 2nd respondent was not having any right to enter into a sale agreement with the 1st respondent. Through the will dated 03.01.1991

along with the petitioner's property some other properties also bequeathed by the Subramaniam. Therefore, the original will dated 03.01.1991 was not handed over to the petitioner's vendor and as well as to the petitioner. In order to prove the said will, the petitioner is going to examine one of the attesting witness namely Krishnasamy. Recently the said attesting witness stated that he has available photocopy of the said registered will. The petitioner already marked the certified copy of the registered will dated 03.01.1991. Hence, in order to prove the said will it is necessary to mark the said photocopy of the will as exhibits.

7) On the other hand the learned counsel for the respondent submit that A photocopy of the will is not considered primary evidence and it only to be considered as secondary evidence if the original is lost or destroyed, unless its authenticity to testify with the original and the person who made the copy should be available to testify it cannot be relied. Without production of original or proving the lost of the original, simply presenting the photocopy is inadmissible. The copy of the will produced by the petitioner is created by mechanical process. Without verify the accuracy of original is inadmissible and cannot be accepted as secondary evidence

8) On considering the both side submissions and on perusing the records, the petitioner herein has filed the EA.No.12/2013 to dismiss the above EP.No.9/2012. The main contention of the petitioner is that the vendor of the petitioner was purchased the property from the beneficiary of the will dated 03.01.1991. Since, the original will is not available with the petitioner, She has marked the certified copy of the said will. The petitioner is going to examine one of the attesting witness of the said will and the said witness is available with the photocopy of the said will. Hence, he may be permitted to receive the photocopy

of the said will dated 03.01.1991 in order to mark the exhibit on the side of petitioner.

9) The 1st respondent has strongly objected to receive the said photocopy of the will, since the secondary evidence cannot be permitted without verifying the authenticity of the document with the original and the petitioner has not proved that the original will was lost or destroyed. In order to considering the submission of the 1st respondent, this court is thinks that it is relevant to extract the provision and section 63 of Indian Evidence Act

63.Secondary evidence.

Secondary evidence means and includes -

(1)[certified copies given under the provisions hereinafter contained;

(2)copies made from the original by the mechanical processes which in themselves insure the accuracy of the copy, and copies compared with such copies;

(3)copies made from or compared with the original;

(4)counterparts of documents as against the parties who did not execute them;

(5)oral accounts of the contents of a document given by some person who has himself seen it.

It is evident from the above provision Under Section 63(2) of the Indian Evidence Act. the copies made from the original by mechanical process is a secondary evidence and it has to be compared with the such copies. In the present case the petitioner has already marked the certified copy of the registered will dated 03.01.1991 on her side as exhibits. The petitioner has stated the original will is not available with her, since, the vendor's vendor of the petitioner has not handed over the original will to her vendor. The document sought to be receive with this petition is admittedly photocopy and the veracity and genuineness of the contents of the said photocopy of the will can be compared with the certified copy of the said will which available in this case as exhibits.

10) The petitioner also stated that the one of the attesting witness namely Krishnasamy has stated that he available with the photocopy of the said will. Considering the nature of the issue involved in this case the will dated 03.01.1991 is important document for this case. Since, the certified copy of the said will already available in this court, hence, the contents of the photocopy of the will can be compared easily. Receiving the said documents will not amounting to proving the contention of the said document or the said document is admitted in evidence. The relevancy and admissibility will be decided only at the time of deciding the claim petition. Therefore, in order to provide one opportunity to the petitioner to conducting her case effectively and in the interest of justice this court is inclined to allow this petition.

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

Dictated to Steno-Typist, and typed directly in computer and corrected & pronounced by me in open Court, on this 24th day of September 2025.

**District Munsif,
Palladam.**

Appendix:-

Petitioner's side Witness and Documents:- Nil

Respondent's side Witness and Documents:- Nil

**District Munsif,
Palladam.**