

O.P.No.128 of 2011**R.SUBBIAH, J**

This Petition has been filed under Sections 222 and 276 of the Indian Succession Act, XXXIX of 1925 read with Order XXV Rule 5 of O.S.Rules, praying to prove the will in common form, that probate thereof to have effect limited to the State of Tamilnadu.

2. The case of the petitioner is that he is the son-in-law of the deceased N.L.Kantha Rao, who died on 25.2.2009 at his ordinary place of residence at New No.2, Old No.87, IV Main Road, Gandhi Nagar, Adyar, Chennai-20. The deceased executed his last Will and testament at Chennai on 3.12.2007 in the presence of the witnesses viz., M.Suresh and S.Meenakumari, appointing the petitioner as the executor. The deceased left behind his wife, two sons, three daughters, the respondents herein as his legal heirs. The parents of the deceased predeceased him. The respondents have filed their consent affidavits along with this petition. The petitioner has filed this petition for probate in respect of the immovable property described in the schedule. The amount of assets which is likely to come into the petitioner's hands does not exceed in the aggregate sum of Rs.10,00,000/-. The petitioner has impleaded all the next of kin or

other persons interested, as party respondents. There is no next of kin or other person interested, to be impleaded. No application has been made to any District Court or High Court for the probate of any Will of the said deceased or letters of administration with or without the Will annexed to his property and credits. The petitioner undertakes to duly administer the property and credits of the deceased N.L.Kantha Rao and in any way concerning his Will by paying first his debts and then the legacies therein bequeathed so far as the assets will extend and to make a full and true inventory thereof and exhibit the same in this Court within 6 months from the date of grant of probate to the petitioner and also to render a true account of the said property and credits to this Court within one year from the said date. Hence, this petition.

3. The petitioner examined himself as P.W.1 and marked Exs.P.1 to P.4 viz.,

Ex.P.1: Original computer generated death certificate of Dr.N.L.Kantharao, who died on 25.2.2009.

Es.P.2: Original unregistered Will executed by Dr.N.L.Kantha Rao on 3.12.2007.

Ex.P.3: Series (5 Nos.) are the consent affidavits given by R1, R2, R4, R5 and R6.

Ex.P.4: Affidavit of assets showing the net value of estate as Rs.9,80,000/-.

He has further stated in his evidence that he has not filed any other petition before any other Court seeking the same relief.

4. One of the attesting witnesses viz., M.Suresh examined himself as P.W.2 and P.W.2, in his evidence, has stated that the testator executed his last Will and testament on 3.12.2007 in his presence and in the presence of one S.Meenakumari. At the request of the testator, P.W.2 subscribed his signature as the first attesting witness along with S.Meenakumari, who attested the Will as the second attesting witness. They saw the testator subscribing his signature in Ex.P.2 Will. The testator was in a sound and disposing state of mind, memory, understanding and in good health at the time of execution of Ex.P.2 Will. Ex.P.5 is his affidavit in this regard.

5. Though notice was duly served on the third respondent, he did not appear before this Court either in person or through counsel. Hence, he was set exparte by order dated 5.1.2012.

Thereafter, the third respondent filed an application in A.No.1177 of 2013 to set aside the exparte order and the same was dismissed by this Court by order dated 23.1.2015.

5. Considering the averments made in the petition and the documents filed by the petitioner, I am satisfied that the petitioner has succeeded the Estate of the deceased N.L.Kantha Rao. Therefore, the petition is ordered as prayed for, allowing the petitioner to prove the Will in common form, that probate thereof to have effect limited to the State of Tamilnadu. He is directed to render account once in a year.

23.01.2015

sbi

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DATED:23.1.2015