

O.P.No.304 of 2016**K.KALYANASUNDARAM, J.,**

This petition has been filed under Sections 222, 255 and 276 of the Indian Succession Act, 1925 read with Order XXV, Rule 4 of O.S. Rules, for the grant of Probate in respect of the last Will and Testament of the deceased N.Rosi Naidu.

2. In the petition, it is stated that the deceased N.Rosi Naidu died on 02.08.2011 in Guest Hospital, Chennai-600 010 and he was ordinarily residing at Old No.9, New No.11, Ramasami Street, Vepery, Chennai-600 007. The said deceased at the time of his death left behind, his wife, son, daughter as his Class I heirs and only next of kin and particulars of which are hereunder given:-

- 1) Mrs.N.Mythili - Wife
- 2) V.Shailaja - Daughter
- 3) N.V.Mahesh - Son

His wife has since passed away on 03.10.2014 and his son is an American Citizen and the deceased has not left any of other heirs and the necessary parties and next of kind are made as respondents. There is no other next of kin or other person to be impleaded.

3. The petitioner is the daughter of the deceased and the respondent is the son of the deceased. The deceased N.Rosi Naidu at the time of his death

was possessed of a share in an immovable property which was part of his HUF consisting of house, ground and premises bearing Old Door No.9, New Door No.11, Sir Ramasamy Road, Vepery, Chennai-600 007 morefully described in the schedule within the jurisdiction of this Court and vacant land in Poonamallee and 1/3rd share in a flat in Nungambakkam, Chennai.

4. The petitioner has stated that the deceased N.Rosi Naidu has bequeathed his share of the said HUF house property to and in favour of his wife Mrs.N.Mythili for her life and after her life to his son. The deceased N.Rosi Naidu has also stipulated in his Will that if his wife predeceases him his share in the HUF immovable property will be bequeathed equally to his son and daughter. Further, on 27.06.2004, Mr.N.Rosi Naidu has executed a codicil to his Will, dated 15.03.2001 which stipulates that should his son settle down permanently in a foreign country his share in the HUF property will be bequeathed to his wife Mrs.N.Mythili for her life and after life to his daughter V.Shailaja. The petitioner further stated that the deceased Mr.N.Rosi Naidu has bequeathed his 1/3rd share in the flat in the apartment known as "Sterling Manor" bearing old Door No.5, New Door No.6, Sterling Road, 3rd Cross Street, Nungambakkam, Chennai-34 to his daughter V.Shailaja, the petitioner herein absolutely. However, the said property has been conveyed to the petitioner through a settlement deed dated 29.05.2002 and hence, the petitioner is not seeking grant of probate for the said property.

5. The petitioner further stated that the deceased N.Rosi Naidu has bequeathed his vacant plot measuring one ground in Poonamallee to his son N.V.Mahesh absolutely. However, the property in Poonamallee is situated outside the Territorial Jurisdiction of this Court and therefore, the petitioner is not seeking grant of probate for the said property. The petitioner further states that the investments in National Savings Certificates, PPF, LIC and Post Office Scheme and other instruments & movables mentioned in the Will have been either disposed of or dealt with by deceased during his life time as part of his joint family arrangement & thereafter by his wife during her lifetime and are not included herein. The deceased has left behind him only his share in the HUF house property as immovable property that is bequeathed as per the terms of the Will & codicil. The petitioner further stated that both the petitioner and her mother, the Late Mrs.N.Mythili, the wife of the deceased N.Rosi Naidu were appointed as executrix under the said Will. The wife of the deceased Mrs.N.Mythili has since passed way, the petitioner being the remaining executor under the said Will, has filed the above Original Petition for grant of Probate for the deceased's 1/3 share in the immovable property, viz., the house, ground and premises bearing Old Door No.9, New Door No.11, Sir Ramaswamy Road, Vepery, Chennai-600 007 and the estate of Late N.Rosi Naidu with the original will and codicil annexed thereto in favour of the petitioner.

6. The petitioner further stated that the amount of assets which are likely to come into the petitioner's hands does not exceed in the aggregate the sum of Rs.60,00,000/- and the net amount of the said assets after deducting all items which the petitioner is by way of allowed to deduct is of the value of Rs.60,00,000/-. The petitioner further stated that no application has been made at any District Court or Delegate or to any High Court for the Probate of any Will of the said deceased or Letters of Administration with or without the Will & Codicil annexed of his property and credits. The petitioner has obtained the consent affidavit of the respondent. The petitioner undertakes to duly administer the property and credits of the deceased N.Rosi Naidu and in any way concerning the Will and Codicil by paying first his debts and then his legacies therein bequeathed so far as the assets will extend and to make a full and true inventory thereof to the Court within six months from the date of grant of Probate to the petitioner and also to render to this Court a true account of the said property and credits within one year from the said date. The petitioner further stated that she has not applied for grant of Probate immediately after the death of the deceased N.Rosi Naidu as she was not aware of the fact that the Will has to be proved and Probate had to be obtained and she came to know of the same only when she wanted to deal with the said properties.

7. The petitioner examined herself as P.W.1 and she had narrated the averments made in the petition stating that she has filed this petition for the

grant of probate in her favour and has filed the following documents:

(a) Ex.P1 is the computer generated death certificate of her father N.Rosi Naidu, who died on 02.08.2011.

(b) Ex.P2 is the original Will dated 15.03.2001 executed by her father N.Rosi Naidu. This Will has been attested by two attesting witnesses viz., Mr.S.Arun Kumar and Mr.M.Rajamanickam.

(c) Ex.P3 is the original Codicil executed by her father N.Rosi Naidu on 27.06.2004. This Codicil has been attested by two attesting witnesses viz., Mr.S.Arun Kumar and Mr.M.Rajamanickam.

(d) Ex.P4 is the photocopy of legal-heirship certificate dated 09.04.2012 in respect of her father N.Rosi Naidu. (marked after comparing and verifying with original).

(e) Ex.P5 is the computer generated death certificate of her mother N.Mythili, who died on 03.10.2014.

(f) Ex.P6 is the photocopy of property tax demand card bearing No.388748 in respect of the property mentioned in the Will and Codicil. (marked after comparing and verifying with original)

(g) Ex.P7 is the affidavit of assets showing the net value of the estate for Rs.60,00,000/-.

(h) Ex.P8 (Series 2 Nos.) are the copies of paper publication effected in one issue of Tamil Daily "Makkal Kural", dated 12.08.2016 and in one issue of

English Daily "Trinty Mirror", dated 20.08.2016.

8. Mr.S.Arun Kumar, one of the attestors to the Will, who is an Advocate, was examined as PW2. He stated that he subscribed his signature as the first attesting witness, along with one M.Rajamanickam that the testator was in a sound and disposing state of mind.

9. From the averments made in the petition and the deposition of P.W.1 supported by documents Exs.P1 to P8, it is clear that the petitioner has proved her claim and there is no contra evidence. Hence, I am satisfied that the petitioner is entitled to the relief sought for.

10. In view of the above, the petitioner has proved the Will in common form. Issue probate.

08.12.2016

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