

IN THE HIGH COURT OF JUDICATURE AT MADRAS

(TESTAMENTARY AND INTESTATE JURISDICTION)

TUESDAY, THE 19TH DAY OF SEPTEMBER 2017

THE HON'BLE MR.JUSTICE C.V.KARTHIKEYAN

O.P.No.155 of 2017

In the matter of the Indian
Succession Act XXXIX of 1925

And

In the matter of Last Will and
Testament of Smt.Rukmani Ammal
(deceased)

B.K.Ramachandran,
s/o.Late B.K.Vedagiri Iyer,
New No.11, Old No.15,
Avathanam Ramasamy Iyer Street,
old Washermenpet,
Chennai-600 021.

...Petitioner

-Vs-

1.Smt.V.E.Saroja,
W/o.V.E.Krishnamoorthy,
No.1/183, Brahmin Street,
Perambakkam Village & Post,
Thiruvallur Taluk & District.
Pin-631 402.

2.B.R.Chandrasekar,
S/o.B.K.Ramachandran,
New No.11, Old No.15,
Avathanam Ramasamy Iyer Street,
old Washermenpet,
Chennai-600 021.

...Respondents

Original Petition praying that this Hon'ble Court be
pleased to that this Hon'ble Court may be pleased to permit
the petitioner to prove the will in common form and that
probate thereof to having effect limited to the State of
Tamil Nadu may be granted to him.

This Original Petition coming on this day before this court for hearing the court made the following order:

This petition has been filed under Sections 222 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 Rukmani Ammal.

2. Heard the learned counsel appearing for the petitioner.

3. In the petition, it is stated that the deceased Rukmani Ammal died on 07.04.1980 at her residence at Chennai and she was then ordinarily resided at New No.11, Old No.15, Avathanam Ramasamy Iyer Street, Old Washermenpet, Chennai-600 021 and possessed the properties, which is within the State of Tamil Nadu . The husband of the deceased viz., B.K.Vedagiri Iyer predeceased her. The petitioner is the son of the deceased. The first respondent is the daughter of the deceased. The second respondent is the grandson of the deceased.

4. The writing annexed now shown to the petitioner and marked as "A" is the last Will and Testament of Rukmani Ammal and was duly executed on the 28th day of January 1980 at Chennai and registered as Doc.No.13 of 1980 in the District Registrar, Chennai, in the presence of the witnesses whose names appear at the foot thereof.

5. The deceased has appointed the petitioner as executor in the Will. The whereabouts of the attesting witnesses of the Will could not be found. Hence, one K.Ravichandran has filed a 3rd party affidavit to the extent of proving the signature of the testator and 1st attesting witness. The deceased Rukmani Ammal had inherited the property situate at New.No.11, Old No.15, Avathanam Ramasamy Iyer Street, Old Washermenpet, Chennai-600 021, through her father T.R.Venkataramana Iyer, based on which, the revenue records were muted in her favour and she was in peaceful possession and enjoyment of the property till her life time. After her life time, the petitioner along with the 2nd respondent is in peaceful possession and enjoyment of the said property by paying the property tax and other necessary taxes in the name of the petitioner. The petitioner and the second respondent are the only beneficiaries named in the Will. The petitioner has impleaded the next kin or other persons interested. There is no next of kin or other persons interested to be impleaded.

6. The amount of the assets which are likely to come to the petitioner's hands does not exceed in the aggregate the sum of Rs.53,30,000/- and the net amount of the said assets, after deducting all items which the petitioner is by law allowed to deduct, is only the value of Rs.53,30,000/-.

7. The petitioner hereby undertakes to duly administer

the property and credits of the deceased Rukmani Ammal in any way concerning the Will by paying first her 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 six months from the grant of Probate with the Will annexed 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.

8. No application has been made to any District Court or Delegate or to any other High Court for Probate or Letter Administration with or without the Will annexed to her property and credits.

9. The petitioner examined himself as P.W.1 and he had narrated the averments made in the petition stating that the petitioner has filed this petition for the grant of probate in his favour in respect of the Last Will and Testament executed by the testator on 28.01.1980. The petitioner marked the following documents viz., Exs.P1 to P7:

Ex.P1 is the original registered Will and Testament dated 28.01.1980 executed by the deceased Ruckmani Ammal, who died on 07.04.1980, Ex.P1 attested by two attesting witnesses namely M.Visvanathan and R.Govindiah.

Ex.P2 is the original death certificate of the deceased Ruckmani Ammal, who died on 07.04.1980.

Ex.P3 is the consent affidavit given by the 1st

respondent.

Ex.P4 is the consent affidavit given by the 2nd respondent.

Ex.P5 is the affidavit of assets showing the net value of estate for Rs.53,30,000/-.

Ex.P6 is a one copy of paper publication effected in one issue of Tamil daily "Makkal kural" dated 17.07.2017.

Ex.P7 is a one copy of paper publication effected in one issue of English daily "Trinity Mirror" dated 24.07.2017.

10. One of the attestors of the Will dated 28.01.1980 viz., K.Ravichandran was examined as P.W.2. In his evidence, P.W.2 has stated that the testatrix executed her last Will and Testament on 28.01.1918 in the presence of their close family friend M.Vishwanathan and also one R.Govindan. At the time of execution of the said Will, he was also present and he saw the testatrix and both the attesting witnesses subscribed their signatures in Ex.P1-Will. The signatures found in Ex.P.1, are that of attestor's maternal grand mother Ruckmani Ammal and also their family friend M.Vishwanathan. Ex.P8 is his affidavit in this regard.

11. From the averments made in the petition and the deposition of P.W.1 supported by the documents, it is clear that the petitioner has proved his claim and there is no contra evidence. Hence, I am satisfied that the petitioner

is entitled to the relief sought for.

12. The Original Petition is ordered. Grant probate of the Will in respect of the petitioner.

Sd/- C.V.K.J.

19.09.2017

//Certified to be a true copy//
Dated this the day of 2017.

EM/21.09.2017

COURT OFFICER

From 25.09.2008 the Registry is issuing certified copies of the Order/Judgment Decree in this format.