

IN THE HIGH COURT OF JUDICATURE AT MADRAS
(TESTAMENTARY AND INTESTATE JURISDICTION)
TUESDAY, THE 10TH DAY OF OCTOBER 2017
THE HON'BLE MR. JUSTICE C.V.KARTHIKEYAN
O.P.No.70 of 2017

In the matter of Indian
Succession Act XXXIX of 1925

and

In the matter of the Last Will
and Testament and Codicil to
the Last Will and Testament of
Bijoy Kumar Jain (B.K.Jain)-
deceased.

Rajesh Shyamlal Bathija,
Flat No.801, C Block,
Shivalaya Building,
Ethirajsalai,
Chennai.

...Petitioner

-Vs-

1.Kiran Jain,
W/o.Late Mr.Bijoy Kumar Jain,
D-13 Brownstone Apartment,
Mahalingapuram Main Road,
Chennai-600 034.

2.Manish Jain,
S/o.Late Mr.Bijoy Kumar Jain,
D-13 Brownstone Apartment,
Mahalingapuram Main Road,
Chennai-600 034.

3.Deepak Jain,
S/o.Late Mr.Bijoy Kumar Jain,
D-13 Brownstone Apartment,
Mahalingapuram Main Road,
Chennai-600 034.

4.Ranjani Jain,
W/o.Late Mr.Manish Jain,
D-13 Brownstone Apartment,
Mahalingapuram Main Road,
Chennai-600 034.

...Respondents

Original Petition praying that this Hon'ble Court be pleased to that the petitioner may be allowed to prove the will and codicil dated 16/08/2007, 01/11/2007 respectfully of the said deceased Late Mr.Bijoy kumar Jain in common form and that probate thereof, to have effect limited to the Union of India and limited to the assets mentioned in the affidavit of assets may be granted to the petitioner and pass such further or orders as this Hon'ble court may deem fit and proper in the circumstances of the case.

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

This petition has been filed under Section 222, 255 and 276 of the Indian Succession Act XXXIX of 1925 read with Order XXV Rule 4 of the Original Side Rules, 1956 for the grant of Probate in respect of the last Will and codicil and Testament of the deceased Mr.Bijoy Kumar Jain.

2. In the petition, it is stated that the deceased Bijoy Kumar Jain died on 03.06.2008 at Hotel Krishna International, Hingali, Daund Taluk, Pune District, Maharashtra State, leaving behind the respondents as his first class legal heirs. The first respondent is the wife of the deceased and respondents 2 and 3 are the sons of the deceased. The fourth respondent is the daughter-in-law of the deceased. The deceased had one another son by name Late

Mr.Vishal Jain who being unmarried predeceased on 24.10.1995. Late Mr.Bijoy Kumar Jain's father viz., Bajranglal Jain died on 27.09.2012 and also his mother viz., Gayathri Devi Jain died on 25.12.2013. Late Mr.Bijoy Kumar Jain the testator ordinarily resided at No.D-13, Brownstone Apartment, Mahalingapuram Main Road, Chennai - 600 034. The testator owns property being a residential flat at E35B, P.A.Tower, 9th Floor, 33, Halls Road, Egmore, Chennai - 600 008, which is situated within the jurisdiction of this Hon'ble Court.

3. The deceased executed his last Will and Testament dated 16.08.2007 at Plot No.1, Progressive Society, Below Dr.Sasture's Hospital, Vaiduvaid, Hadapsar, Pune-411 013. The deceased had also executed a Codicil dated 01.11.2007. The last Will and Testament of the deceased was duly executed by him at Pune on 16.08.2007 in the presence of the witnesses viz., Sachin Dattatray Mate and Mukesh Kumar, whose names appear at the foot thereof. The petitioner herein has been named as executor along with Late Mr.Shambhu Prasad Ganeriwala in the said Will. Late Mr.Shambhu Prasad Ganeriwala passed away on 06.09.2013. The testator had discharged all his debts during his lifetime. The aforementioned property is the only immovable property within Chennai left by the testator. The Will was attested by Sachin Dattatray Mate and Mukesh Kumar. The Will was drafted and prepared by the testator himself. The testator

and the witnesses affixed their signatures to the Will in the presence of each other. At the time of the execution of the Will, the testator was aged about 59 years and was found to be clear, lucid and independent in his thinking and of sound mind and he died at the age of 60 years. The petitioner has impleaded all the next of kin or other persons/ beneficiaries interested as respondents. There is no other next of kin or other persons interested to be impleaded. The parents of the testator viz., Late Bajrang Lal Jai and Late Gayathri Devi Jain died after death of the testator i.e. On 27.09.2012 and 25.12.2013 respectively. Though the testator died on 03.06.2008 the petitioner was able to trace the original Will only recently while clearing some of the personal files. The amount of the assets which are likely to come into the hands of the petitioner does not exceed in the aggregate the sum of Rs.14,40,979/- and the net amount of the said assets, after deducting all the items which the petitioner is by law allowed to deduct is only of the value of Rs.14,40,979/-.

4. The petitioner hereby undertakes to duly administer the property and credits of the said deceased 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 six months from the date of 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. Respondents 1 to 3 are the next of kin or other persons interested to be impleaded except the fourth respondent who is the daughter in law of the testator and shown as a beneficiary to the immovable property. No application has been made to any District Court or delegate or to any other High Court for probate of any Will of the said deceased or letters of Administration with or without the Will annexed of his property and credits. No caveat has been filed.

5. 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 24.01.1964. The petitioner marked the documents Viz., Exs.P1 to P12.

i.Ex.P1 is the original death certificate of his uncle Bijoy Kumar Jain @ B.K.Jain, who died on 03.06.2008.

ii.Ex.P2 is the Will dated 16.08.2007 (1st page is carbon copy and the remaining pages are photocopies. All the pages contain original signatures of the Testator and attesting Witnesses), executed by Mr.B.K.Jain. This Will has been attested by two attesting witnesses viz., Mr.Sachin Dattatray Mate and Mr.Mukesh Kumar.

iii.Ex.P3 is the carbon copy of the Codicil dated 01.11.2007 containing original signature of the Testator, executed by Mr.B.K.Jain. This Codicil has been attested by two attesting witnesses (original signatures of the attesting witnesses are not available) viz., Mr.Sachin Dattatray Mate and Mr.Mukesh Kumar.

iv.Ex.P4 is the photocopy of the legal heirship certificate dated 15.11.2011 in respect of his deceased uncel Bijoy Kumar Jain @ B.K.Jain. (Marked after comparing and verifying with the original).

v.Ex.P5 is the photocopy of the death certificate of Vishal Jain, S/o the Testator B.K.Jain, who died on 24.10.1995. (Marked after comparing and verifying with the original).

vi.Ex.P6 is the affidavit of assets showing the net value of the property as Rs.14,40,979/-.

Vii.Ex.P7 is the consent affidavit given by the 1st respondent.

viii.Ex.P8 is the consent affidavit given by the 2nd respondent.

ix.Ex.P9 is the consent affidavit given by the 3rd respondent.

x.Ex.P10 is the consent affidavit given by the 4th respondent.

xi.Ex.P11 is a copy of paper publication effected in one issue of Tamil daily "Makkal Kural" dated 24.02.2017.

xii.Ex.P12 is a copy of paper publication effected in

one issue of English daily "Trinity Mirror" dated 03.03.2017.

Mr. Sachin Dattatray Mate has been examined as P.W.2 and the documents viz., Exs.P13 and 14 were marked.

xiii.Ex.P13 is the affidavit of P.W.2 as the 1st attesting witness to Ex.P2 Will.

xiv.Ex.P14 is the affidavit of P.W.2 as the 1st attesting witness to Ex.P3 Codicil.

6. The learned counsel for the respondents has submitted that the respondents have no objection for allowing this petition and they have filed consent affidavit to this effect.

7. 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.

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

Sd/-C.V.K.J
10.10.2017

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

EM/27.10.2017

COURT OFFICER

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