

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.95 of 2017

In the matter of the Indian
Succession Act XXXIX of 1925.

and

In the matter of the certified copy
of the Last Will and Testament of
W.S.Girija Sankar - Deceased.

W.G.Pankajavalli,
W/o.D.Chithranjan,
C-3, Gragalakshmi Apartment,
No.472, Tondiarpet,
Chennai-600 081.

...Petitioner

-Vs-

1.W.G.Kalyanasundaram,
S/o.Late W.S.Grija Sankar,
Old No.696, New No.324
Thiruvottiyur High Road,
New Washermenpet,
Chennai-600 081.

2.W.G.Vijayakumari,
W/o.Mr.Ramalingam,
No.56, 1st Street Extension,
Ram Nagar North, Velacherry,
Chennai-600 042.

3.W.G.Deva Manohari,
W/o.Mr.Santhanam,
No.52, Giri illam, Bharathi Street,
Baby Nagar, Velacherry,
Chennai-600 042.

4.V.Srinivasan,
S/o.Late.Vijayarangan,
No.18, Radha illam,
Dopikana Lawspet,
Puducherry-605 008.

5.S.Jaya Krishnan,
S/o.V.Srinivasan,
New No.4, Old No.10-M/2,
Seshachala Gramani Street,

Kaladipet,
Chennai-600 019.

6.D.Radhika,
W/o.Deivasigamani,
No.58, Leoport Street,
Puducherry-605 001.

7.M.L.Jagadeesan,
S/o.Late M, Loganathan,

8.J.saravanan,
S/o.M.L.Jagadeesan,

9.J.Arulkumaran,
S/o.M.L.Jagadeesan,

Respondents 7 to 9 are residing at
No.1050/7, T.H.road,
Thanganl,
Chennai-600 019.

10.P,Nithyanandam,
S/o.late Shri.Periathambi,

11.Smt.Vanitha,
W/o.Mr.Anbalagan,

12.N.Shanmugam,
S/o.Mr.Nithyanandam,

Respondents 10 & 12 are residing at
No.28, Seshadaripuram Main Road,
Sachidananda Nagar,
Velacherry,
Chennai-600 042.

13.Smt.Kavitha,
W/o.Mr.Arun,
No.5, G-2, Rudra Apartments,
Krishna Street, North Usman Road,
T.Nagar,
Chennai-600 017.

...Respondents

Original Petition praying that this Hon'ble Court be
pleased to that Letters of Administration with the Will
annexed may be granted to her as the daughter/legatee
/beneficiary named under the will of the deceased to have
effect limited to the State of Tamil Nadu.

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 232 and 276 of the Indian Succession Act read with Order XXV Rule 5 of the High Court Original Side Rules, seeking the grant of Letters of Administration.

2. In the petition, it is stated that the deceased W.S.Girija Sankar died on 05.12.1995 at M.K.Nursing Home, Tondiarpet, Chennai and he was ordinarily residing at Old No.696, New No.324, Thiruvottiyur High Road, New Washermenpet, Chennai-600 081 within the jurisdiction of this Court and possessed properties within the State of Tamil Nadu.

3. The petitioner is the daughter of the deceased. The deceased W.S.Girija Sankar died on 05.12.1995 leaving behind the following persons as his only legal heirs.

- i) Sulochana Ammal - Wife (died)
- ii) W.G.Pankajavalli - Daughter (petitioner)
- iii) W.G.Kalyanasundaram - Son (1st respondent)
- iv) W.G.Vijayakumari - Daughter (2nd respondent)
- v) W.G.Deva Manohari - Daughter (3rd respondent)
- vi) Purandara Devi - Daughter (died)
- vii) Sarojini - Daughter (died)
- viii) Devarajanjani - Daughter (died)

4. It is further stated that the petitioner's mother Sulochana Ammal died on 14.06.2006. Her sister Purandara

Devi died on 22.10.1989, who predeceased her father and leaving behind her husband V.Srinivasan, her son S.Jayakrishnan and her daughter D.Radhika, the respondents 4 to 6 herein. Her sister Sarojini died on 07.10.2007 leaving behind her husband M.L.Jagadeesan and her two sons viz., J.Saravanan and J.Arulkumaran, the respondents 7 to 9 herein. Her sister Devaranjani died on 08.10.2010 leaving behind her husband P.Nithyanandam, two daughters viz., Vanitha and Kavitha and her son Shanmugam, the respondents 10 to 13 herein. The deceased W.S.Girija Sankar was the sole and absolute owner of the property at Old Door No.248 and 249, New Door No.695 and 696, Thiruvottiyur High Road, Chennai 600 081 vide a registered certificate of sale executed by the Assistant Registrar -II(Original Side) of this Court bearing Document No.783 of 1974 dated 11.02.1974.

5. The writing annexed now shown to the petitioner and marked as "A" is certified copy of the last Will and Testament of W.S.Girija Sankar and was duly executed by him and registered as Document No.120/1995 in the office of the Sub-Registrar, Royapuram, Chennai, on the 26th day of October 1995 in the presence of the witnesses whose names appear at the foot thereof. The deceased has not appointed any executor in the Will. The Original Will was in the custody of the petitioner for some time till 2015. During the flood in December 2015, all the documents in respect of the property, which is the subject matter of this OP were

fully damaged and lost along with other materials. Since, the original will is lost and not traceable, the petitioner has filed the certified copy of the Will. The petitioner is the only beneficiary 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. The amount of assets which are likely to come to the petitioner's hands does not exceed in the aggregate sum of Rs.3,03,54,000/- and the net amount of the said assets, after deducting all items which the petitioners are by law allowed to deduct, is only the value of Rs.3,03,54,000/-.

6. It is stated that the petitioner had offered a portion of property for sale and joint development of the same only recently. Hence, she had approached her advocate for taking advice in the matter for sale of property and to enter into a joint development agreement, only then she was advised to file a petition for Letters of Administration to prove the Will and the same should have been filed within 3 years from the death of the testator. Hence, there was a delay in filing this petition.

7. It is further stated that there is no next of kith and kin or other persons interested to be impleaded. The petitioner hereby undertakes to duly administer the property and credits of the deceased W.S.Girija Sankar 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 make a full and true inventory

thereof and exhibit the same in this Court within six months from the date of grant of letters of administration 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. No application has been made to any District Court of Delegate or to any High Court for probate of any Will of the said deceased or for Letters of Administration with or without the Will annexed to their properties and credits of the said deceased. All the respondents have filed their consent affidavits for grant of Letters of Administration in favour of the petitioner.

8. The petitioner, who examined himself as P.W.1, reiterated the averments made in the petition and filed the following documents viz., Exs.P1 to P24;

Ex.P1 is the Photocopy of certificate of sale in favour of the petitioner's father W.S.Girija Sankar, issued by the Hon'ble Court in A.No.721 of 1971 in CS.No.57 of 1957 dated 20.06.1971. (Marked after comparing and verified with the original).

Ex.P2 is the certified copy of the Will executed by the petitioner's father W.S.Girija Sankar, on 26.10.1995 registered as Doc.No.120/1995 at SRO, Rayapuram.

Ex.P3 is the computer generated death certificate of petitioner's father W.S.Girija Sankar, who died on 05.12.1995.

Ex.P4 is the photocopy of legal heirship certificate dated 03.04.1996 in respect of petitioner's father W.S.Girija Sankar.

Ex.P5 is the Computer generated death certificate of petitioner's mother G.Sulochana Ammal, who died on 14.06.2006.

Ex.P6 is the affidavit of assets showing the net value of the property as Rs.3,03,54,000/-.

Ex.P7 is the consent affidavit given by the 1st respondent stating that he has no objection in grant of probate in my favour.

Ex.P8 is the consent affidavit given by the 2nd respondent stating that she has no objection in grant of probate in my favour.

Ex.P9 is the consent affidavit given by the 3rd respondent stating that she has no objection in grant of probate in my favour.

Ex.P10 is the consent affidavit given by the 4th respondent stating that he has no objection in grant of probate in my favour.

Ex.P11 is the consent affidavit given by the 5th respondent stating that he has no objection in grant of probate in my favour.

Ex.P12 is the consent affidavit given by the 6th respondent stating that she has no objection in grant of probate in my favour.

Ex.P13 is the consent affidavit given by the 7th respondent stating that he has no objection in grant of probate in my favour.

Ex.P14 is the consent affidavit given by the 8th respondent stating that he has no objection in grant of probate in my favour.

Ex.P15 is the consent affidavit given by the 9th respondent stating that he has no objection in grant of probate in my favour.

Ex.P16 is the consent affidavit given by the 10th respondent stating that he has no objection in grant of probate in my favour.

Ex.P17 is the consent affidavit given by the 11th respondent stating that she has no objection in grant of probate in my favour.

Ex.P18 is the consent affidavit given by the 12th respondent stating that she has no objection in grant of probate in my favour.

Ex.P19 is the consent affidavit given by the 13th respondent stating that he has no objection in grant of probate in my favour.

Ex.P20 is the Computer generated death certificate of petitioner's sister Devaranjini, who died on 08.10.2010.

Ex.P21 is the photocopy of death certificate of petitioner's another sister Sarojini, who died on 07.10.2007.

Ex.P22 is the computer generated death certificate of petitioner's another sister S.Puranadara Devi, who died on 22.02.1989.

Ex.P23 is a one copy of paper publication effected in one issue of Tamil daily "Makkal Kural" dated 13.04.2017.

Ex.P24 is a one copy of paper publication effected in one issue of English daily "Trinity Mirror" dated 20.04.2017.

9. One of the attestors of the Will dated 26.10.1995 viz., J.Krishnan was examined as P.W.2. The testator is the maternal grandfather of the attestor. In his evidence, P.W.2 has stated that the testator executed his last Will and Testament on 26.10.1995 in his presence and in the presence of one M.Siva. At the request of the testator, P.W.2 subscribed his signature as first attesting witness along with M.Siva, who attested the Will as the second attesting witness in the presence of the testator. While executing the Will, the testator was in a sound and disposing state of mind, memory and understanding. Ex.P17 is his affidavit in this regard.

10. Considering the averments made in the petition and on perusing the materials available on record, I am satisfied that the petitioner is entitled to the issuance of Letters of Administration.

11. Accordingly, this petition is allowed. Issue Letters of Administration in favour of the petitioner. The petitioner is directed to duly administer the properties and credits of the deceased more fully described in the

schedule. The petitioner is also directed to execute a security bond for a sum of Rs.25,000/- (Rupees twenty five thousand only) in favour of the Assistant Registrar (O.S.II), High Court, Madras. The petitioner is further directed to render true and correct accounts once in a year.

Sd/-C.V.K.J

19.09.2017

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

EM/25.09.2017

COURT OFFICER

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