

IN THE HIGH COURT OF JUDICATURE AT MADRAS

(ORDINARY ORIGINAL CIVIL JURISDICTION)

DATED, THE 15TH DAY OF NOVEMBER 2018

THE HON'BLE MR.JUSTICE K.KALYANASUNDARAM

O.P.No.658 of 2016

In the matter of Indian  
Succession Act XXXIX of  
1925 and  
In the matter of the last  
Will & Testament of  
Mrs.P.Sarvambigai -Deceased

D.Jothiramalingam,  
No.9/5, Kattabomman Street,  
Tiruvellore Town,  
Tiruvellore District  
Pin Code 6020001

...Petitioner

-vs-

1.D.Balachandran,  
No.3, Perumal Chetty Street,  
Tiruvellore 602001

2.D.Ravi Shankar,  
No.5, Railway Colony, Avadi,  
Chennai 600 054

3.D.Babu,  
No.83, Thiruvalluvar Street,  
Tiruvellore 602 001

4.D.Ramesh  
No.184, Gandhi Street,  
Tiruvellore 602001

...Respondents

Original Petition praying that this Hon'ble Court be  
pleased that Letters of Administration with the will of the  
deceased annexed may be granted to him as he is the son and  
legal heir as well as sole beneficiary under the will of  
the deceased having effect within the State of Tamil Nadu

limited to the property mentioned in the affidavit of Assets.

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, XXXIX of 1925, read with Order XXV Rule 5 of the Madras High Court Original Side Rules, to grant Letters of Administration in favour of the petitioner, in respect of the last Will of the deceased P.Sarvambigai.

2.Heard the Learned Counsel for the Petitioner.

3. In the Petition, it is stated as follows:-

(i) The Petitioner is the one of the sons of deceased P.Sarvambigai and he is the sole beneficiary under her Will. The said P.Sarvambigai died on 08.11.2014 and she was ordinarily residing at No.9/5, Kattabomman Street, Tiruvellore Town & District, Pin Code-602 001.

(ii) The petitioner also state that the deceased P.Sarvambigai left her immovable properties mentioned in the Will situated within the jurisdiction of Tiruvellore District, North-Madras and concurrent jurisdiction as per Section 300 of the Indian Succession Act read with Clause

34 of the Letters Patent. The petitioner marked the last will and testament dated 05.04.2014 of the said deceased Mrs.P.Sarvambigai as Ex.P.2, which was duly executed by her in a sound and disposing state of mind, while she was resided at No.9/5, Kattabomman Street, Tiruvellore Town & District, Pin Code-602 001. The death certificate issued by the Tiruvellore Municipality was also marked as Ex.P.1.

(iii). The petitioner also states that 1<sup>st</sup> husband of the testatrix namely Duraisamy predeceased of the Testatrix and died on 25.02.1974. The available xerox copy of his death certificate is filed along with this petition, as Ex.P.3.

(iv). The Petitioner states that his mother, the testatrix, left behind the following persons as her legal heirs:-

| <b>S.No.</b> | <b>Name</b>       | <b>Age</b> | <b>Relationship</b> |
|--------------|-------------------|------------|---------------------|
| 1.           | D.Balchandran     | 49         | 1 <sup>st</sup> son |
| 2.           | D.Ravi Shankar    | 47         | 2 <sup>nd</sup> son |
| 3.           | D.Babu            | 45         | 3 <sup>rd</sup> son |
| 4.           | D.Ramesh          | 43         | 4 <sup>th</sup> son |
| 5.           | D.Jothiramalingam | 42         | 5 <sup>th</sup> son |

(v). The petitioner also states that except the above persons none of kin or kith left by the testatrix to be impleaded in the Original Petition.

(vi). The value of the asset, which is likely to come to the Petitioner's hand does not exceed in the aggregate

the sum of Rs.18,46,200/- and that the amount of the said asset after deducting all the items for which the Petitioner is by law allowed to deduct is only of the value of Rs.18,46,200/-.

4. No application for Letters of Administration in respect of any security belonging to the estate of the said deceased has been made to any District Court or delegate or to any High Court and no application has been filed before any Court for Letters of Administration with or without Will annexed thereto.

5. The Petitioner undertakes to duly administer the property and credits of the deceased Mrs.Sarvambigai in any way concerning the 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 to the 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.

6. The Petitioner Mr.D.Jothiramalingam examined himself as P.W.1 before the Master of this Court on 24.07.2018 and filed proof affidavit and marked the following documents:-

| S.N<br>o | Exhibits | Documents                                                                                                                                                                                                                                    |
|----------|----------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 1        | Ex.P.1   | Original death certificate of my mother P.Sarvambigai, who died on 08.11.2014                                                                                                                                                                |
| 2        | Ex.P.2   | Original unregistered Will and Testament dated 05.04.2014 executed by my mother P.Sarvambigai, which has been attested by two attesting witnesses namely Mrs.M.Gunavathy and Mr.M.Unnikrishnan                                               |
| 3        | Ex.P.3   | Photocopy of the death certificate of my father Durai Samy, who died on 25.02.1974 (Witness say that the original of the same was filed in the earlier probate proceedings in O.P.No.521/1994 on the file of the Hon'ble High Court, Madras. |
| 4        | Ex.P.4   | Photocopy of the Letters of Administration dated 25.10.1994, granted in O.P.No.521/1994 by Hon'ble High Court, Madras, in respect of the Will executed by Mr.M.Parthasarathy Mudaliar.                                                       |
| 5        | Ex.P.5   | Photocopy of the certified copy of the affidavit of assets and liabilities filed in O.P.No.521/1994.                                                                                                                                         |
| 6        | Ex.P.6   | Certified copy of the sale deed dated 02.07.1980 executed in favour of Parthasarathy Mudaliar.                                                                                                                                               |
| 7        | Ex.P.7   | Certified Copy of the Indenture of Sale deed dated 02.11.1962 executed by Mr.N.K.Elayaperumal Mudaliar and others in favour of Mr.M.Parthasarathy Mudaliar.                                                                                  |
| 8        | Ex.P.8   | Certified copy of the agreement of sale deed dated 26.10.1959 entered into between Mr.Umapathy Mudaliar and Mr.M.Parthasarathy Mudaliar.                                                                                                     |
| 9        | Ex.P.9   | Affidavit of assets showing the net value of the assets as Rs.18,46,200/-                                                                                                                                                                    |
| 10       | Ex.P.10  | Copy of paper publication effected in one issue of Tamil daily "Maalai Murasu", Chennai edition, dated 08.01.2018                                                                                                                            |
| 11       | Ex.P.11  | Copy of paper publication effected in one issue of Tamil daily "Maalai Murasu" dated 12.01.2018.                                                                                                                                             |
| 12       | Ex.P.12  | Copy of paper publication effected in one issue of English daily "News Today" dated 18.01.2018.                                                                                                                                              |

7. One of the attesting witnesses viz., Mrs.V.Gunavathi was examined as P.W.2 on 06.08.2018, wherein she has stated that the deceased Mrs.Sarvambigai has executed her Last Will and Testament on 05.04.2014 in her presence and in the presence of one Mr.N.Unnikrishnan. At the request of the Testatrix, she subscribed her signature as the first attesting witness along with Mr.N.Unnikrishnan who attested the Will as the second attesting witness in the presence of the testatrix. She further stated that she saw the Testatrix subscribing her signature at the foot of every page of Ex.P.2-Will and all of them signed in each other's presence. The Testatrix was in a sound and disposing state of mind, memory and understanding at the time of execution of the Will. She has filed affidavit in this regard, which was marked as **Ex.P.13.**

8. Further, the learned counsel for the petitioner submitted that another attesting witnesses viz., Mr.N.Unnikrishnan was examined as PW.3 on 06.08.2018, wherein he has stated that the deceased Mrs.Sarvambigai has executed her Last Will and Testament on 05.04.2014 in his presence and in the presence of Mrs.M.Gunavathi. At the request of the Testatrix, he subscribed his signature as the second attesting witness along with Mrs.M.Gunavathi who attested the Will as the first attesting witness in the presence of the testatrix. She further stated that he saw the Testatrix subscribing her signature at the foot of every page of Ex.P.2-Will and all of them signed in each

other's presence. The Testatrix was in a sound and disposing state of mind, memory and understanding at the time of execution of the Will. She has filed affidavit in this regard which was marked as **Ex.P.14.**

9. On a perusal of the contents of the Petition, corroborated by the aforesaid documents marked and deposition of P.W.2 and P.W.3, and in the absence of any contra evidence, it has been proved that the Petitioner Mr.D.Jothiramalingam is entitled to be granted Letters of Administration of the Will executed by the deceased Mrs.Sarvambigai.

10. The Petitioner shall duly administer the properties and credits of the deceased more fully described in the Schedule annexed to the Petition. The Petitioner is 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.

11. The Original Petition is ordered on the aforesaid terms.

Sd/.M.K.K.S.J.

15.11.2018

//Certified to be a true copy//  
Dated this the      day of      2019.

R.s/29.04.2019

COURT OFFICER

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