

IN THE HIGH COURT OF JUDICATURE AT MADRAS

(ORDINARY ORIGINAL CIVIL JURISDICTION)

TUESDAY, THE 19TH DAY OF JUNE 2018

THE HON'BLE MR. JUSTICE N.SATHISH KUMAR

O.P.No.516 of 2009

In the matter of Indian
Succession Act, XXXIX of 1925
And

In the matter of the last will
and Testament of K.Mallika
(deceased)

N.T.Nathan
New No.34, Flat No.9,
Sarojini Street,
T.Nagar,
Chennai - 600 017

...Petitioner

-versus-

1.N.Mangalam
2.N.Satish Kumar

...Respondents

Original petition praying that this Hon'ble Court be pleased to be allowed to prove the will in common form and that probate thereof to have 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 K.Mallika.

2. The case of the petitioner is that the petitioner is the nephew of the deceased K.Mallika and the first

respondent is the sister of the deceased and the mother of the petitioner and the second respondent is the son of the petitioner. The said K.Mallika died as a spinster on 30.04.2009. The deceased executed her last Will and Testament dated 12.06.2006. The petitioner is the executor named in the Will and in the Will the deceased has bequeathed her property to the second respondent. The parents of the deceased predeceased her and the petitioner and the respondents are the surviving class II legal heirs of the deceased. The amount of assets which is likely to come into the petitioner's hands does not exceed in the aggregate sum of Rs.12,20,000/- and the net amount of the assets, after deducting all items which the petitioner is by law allowed to deduct is of the value of Rs.12,00,000/-. During the pendency of this petition, the first respondent died. The petitioner undertakes to duly administer the property and credits of the deceased K.Mallika and 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 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.

3. The petitioner examined himself as P.W.1 and he had narrated the averments made in the petition stating that the petitioner have filed this petition for the grant of probate in his favour in respect of the Last Will and Testament executed by the testator on 12.06.2006. Ex.P.1 is the copy of the death certificate of the deceased

Mallika. Ex.P.1 has been filed to prove that the deceased died on 30.04.2009. Ex.P.2 is the original unregistered Will executed by the deceased Mallika. The deceased has executed the Will on 12.06.2006. Ex.P.3 is the copy of the sale deed dated 30.06.1965. Ex.P.3 Sale Deed has been executed in favour of the deceased K.Mallika. Ex.P.4 is the copy of the death certificate of the first respondent. Ex.P.4 has been filed to prove that the first respondent died on 28.08.2014. Ex.P.5 is the consent affidavit given by the first respondent before her death for grant of probate in favour of the petitioner. Ex.P.6 is the consent affidavit given by the second respondent for grant of probate in favour of the petitioner. Ex.P6 is the affidavit of assets showing the net value of the estate of the deceased as Rs.20,00,000/-.

4.One of the attestors of the Will dated 12.06.2006 viz., N.V.Subramanian was examined as P.W.2. In his evidence, P.W.2 has stated that the testator executed his last Will and Testament on 12.06.2006 in his presence and in the presence of one P.Dileepan. At the request of the testator, P.W.2 subscribed his signature as first attesting witness along with P.Dileepan, 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 and in her presence the attesting witnesses subscribed their signature in the Will. Ex.P18 is the affidavit filed by P.W.2 in this regard. The evidence of P.W.2 not only prove execution but also attestation of the Will and there is no other materials to suspect the Will.

6. In view of the above facts, I am of the view that the petitioner has proved the execution and attestation of the Will. Hence, the petitioner is entitled for the issuance of probate in favour of the petitioner.

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

Sd/.N.S.K.J

19.06.2018

//Certified to be a true copy//

Dated this the th day of 2018.

DL/26.10.2018

COURT OFFICER

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

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