

O.P.No.238 of 2019

K.KALYANASUNDARAM, J.

This petition has been filed under Sections 222 and 276 of the Indian Succession Act 39 of 1925 read with Order XXV Rule 4 of Original Side Rules for Probate of Will.

2. In the petition, it is stated that the deceased Bertra D'Netto ordinarily resided at 05, Rohini Gardens, Raja Annamalaipuram, Chennai-600 028 and died on 17.09.2017 and left the properties specified in the Schedule within the jurisdiction of this Court. The last Will and Testament of the deceased was duly executed by him at Chennai in the presence of the witnesses on 26.08.2017. The petitioner was appointed as the Executor in the said Will.

3. It is stated that the parents of the deceased pre-deceased him and also his wife Alfredo D'Netto also predeceased him on 04.11.1990. The respondents 1 and 4 alone are the beneficiary under the said will and the testator appointed T.S.Murali, his son-in-law, the petitioner herein as the executor to the said Will.

4. There is no other movable or immovable properties which stand in the said Bertram D'Netto and the said Bertram D'Netto is not liable to pay any debts to any other persons and in the same manner there is no other income to the said Bertram D'Netto by any source.

5. The deceased Testatrix left the Will and Testament bequeathing his properties in favour of the parties herein. The respondents 1, 3 and 4 have no objection for granting probate and they have filed their consent affidavits to that effect. The amount of assets which are likely to come into the petitioner's hands does not exceed in the aggregate sum of Rs.1,60,00,000/- and the net amount of the said assets after deducting all items which the petitioner is allowed to deduct is of the value of Rs.1,60,00,000/-. The other assets have been dealt with by the Testatrix himself during his lifetime.

6. No application has been made to any District Court or delegate or to any other High Court for the Probate of any Will of the deceased or for grant of Letters of Administration with or without the Will annexed in respect of his property and credits. The petitioner undertakes to duly administer the property and credits of the deceased 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 to the petitioner and also render to this Court a true account of the said property and credits within one year from the said date.

7. The petitioner examined himself as P.W.1 and marked exhibits Exs.P1 to P7;

- a) Ex.P1 is the original last Will and Testament dated 26.08.2017 executed by Bertram D'Netto, which has been attested by two attesting witnesses namely 1.Mr.Basil Narendra Row and 2.Mr.Malcolm Xavier.
- b) Ex.P2 is the computer generated death certificate of Bertram D Netto, who died on 17.09.2017.
- c) Ex.P3 is the computer generated Legal Heirship certificate dated 10.05.2018 in respect of Bertram D Netto.
- d) Ex.P4 is the affidavit of assets showing the net value of the estate as Rs.1,60,00,000/-.
- e) Ex.P5 is the consent affidavit given by the 1st respondent.
- f) Ex.P6 is the consent affidavit given by the 3rd respondent.
- g) Ex.P7 is the consent affidavit given by the 4th respondent.

8. One Mr.B.N.Row, examined himself as PW-2 and submitted that the deceased was his friend's father. The Testator executed his last Will and Testament on 26.08.2017 (Ex.P1) in his presence and in the presence of Mr.Malcolm Xavier. PW2, subscribed his signature as the first attesting witness along with Malcolm Xavier, who attested the Will (Ex.P1) as the second attesting witness in the presence of Testator. The Testator was in a sound, disposing state of mind, memory and understanding at the time of execution of the Will, Ex.P1. Ex.P8 is his affidavit in that regard.

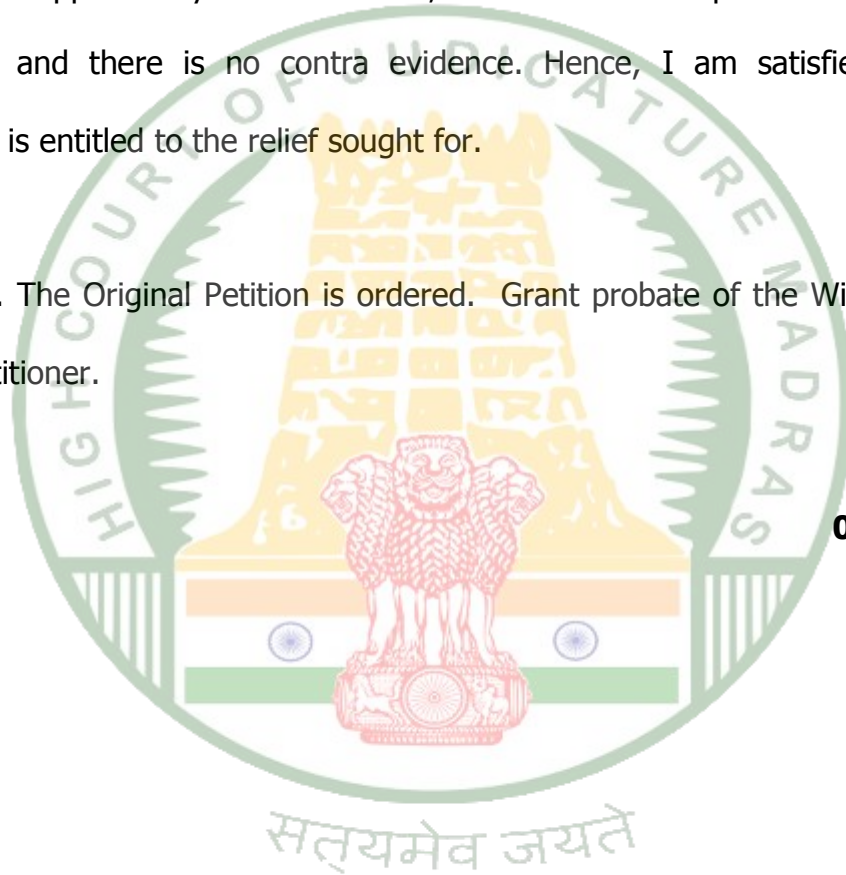
9. It is seen that notice has been served to the second respondent herein, but so far, he has not chosen to appear either in person or through counsel.

10. From the averments made in the petition and the deposition of P.W.1 and P.W.2 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.

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

04.10.2019

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