

IN THE HIGH COURT OF JUDICATURE AT MADRAS
(TESTAMENTARY AND INTESTATE JURISDICTION)

MONDAY, THE 28TH DAY OF JANUARY 2019

THE HON'BLE MR. JUSTICE K.KALYANASUNDARAM

O.P.No.12 of 2018

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

In the matter of the last Will
and Testament of Late Thiru
A.K.M.Govindasamy Chettiar -
Deceased

1. G.Venkatachala Kumar alias G.V.Kumar
S/o. Late A.K.M.Govindasamy Chettiar
Residing at No.68, A.K.M.G.Nagar,
Karur Road, Dindugal - 624001.

2. G.Karthikeyan
S/o. Late A.K.M.Govindasamy Chettiar
residing at No.4, Durai Raj Nagar,
West Govindapuram, Dindigul 624 001. : Petitioners

-Vs.-

1. Smt.G.Palaniammal
W/o. Late A.K.M.Govindasamy Chettiar
No.4, Durairaj Nagar,
3rd Street, West Goidappuram
Dindigul - 624 001.

2. Mrs.Muthulakshmi
D/o. Late A.K.M.Govindasamy Chettiar
Residing at No.29, Durai Raj Nagar,
West Govindapuram, Dindigul 624 001.

3. Mrs.Thilagavathi
W/o. Late G.Angusamy
Residing at No.23/32, Durai Raj Nagar,
West Govindapuram, Dindigul 624 001.

4. Mr.A.Shrinivasan
S/o. Late Mr.G.Anguswamy
residing at No.23/32, Durai Raj Nagar,
West Govindapuram, Dindigul 624 001.

5. MRS.Manjula
D/o. late Mr.G.Anguswamy
residing at No.23, Pillaiyar Kovil Street,
Triplicane, Chennai 600 005. : Respondents

Original Petition praying that this Hon'ble Court be pleased that letters of Administration with the Will annexed may be granted to the petitioners as sons/beneficiaries of the said deceased having effect through out the state of Tamilnadu.

This Original Petition coming on this day before this court for hearing and the Court made the following Order :

This Original Petition has been filed under Sections 232 and 276 of the Indian Succession Act, XXXIX of 1925 and Order XXV Rule 5 of the Original Side Rules of the High Court of Judicature at Madras for grant of Letters of Administration.

2. In the petition, it is stated that the deceased A.K.M.Govindasamy Chettiar, is the father of the first and second petitioner. The deceased died intestate on 22.05.1996 at Door No.4, Durairaj Nagar, Dindigal Town, Dindigal Taluk, Dindigal - Anna District, Tamilnadu. The deceased ordinarily resided at the above said address and left immovable property morefully specified in the schedule within the jurisdiction of this Court. The deceased had purchased the schedule mentioned property in the year 1994 by way of a Sale Deed, registered as Document No.16/1994 on the file of Joint Sub Registrar Office at Dindugal. Mr.A.K.M.Govindasamy Chettiar married to the first respondent herein and through their wedlock, three sons and one daughter was born to them viz., Venkatachala Kumar, Karthikeyan, Angusamy and Muthulakshmi. Mr.Angusamy died on 18.06.2015 leaving behind him the wife and two children as his legal heirs. The petitioners are the sons of the testator. The first respondent is the wife of the Testator, second respondent is the daughter of the testator, third respondent is the wife of Late G.Angusamy

and fourth and fifth respondents are the son and daughter of Late G.Angusamy. The parents of the deceased predeceased him. The testator executed a Will dated 01.08.1994, thereby, bequeathed the immovable property as mentioned in the Will at Para-6 in favour of his two sons, the petitioners herein absolutely and he further stated that the properties in Malaysia is not subject to the above will. The amount of assets which are likely to come to the petitioners' hand does not exceed in aggregate the sum of Rs.5,27,00,000/-. 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 Letters of Administration with or without the Will annexed to her property and credits.

3. The petitioners undertakes to duly administer the property and credits of the deceased and to make a full and true inventory thereof and exhibit the same in this Court, within six months from the grant of a Letters of Administration to them and also to render this Court a true account of the said property and credits within one year from the said date.

4. The first petitioner examined himself as PW1 and marked exhibits Exs.P1 to P9.

a) Ex.P1 is the registered Will and Testament dated 01.08.1994 executed by A.K.M.Govinda samy Chettiar, which has been attested by two attesting witnesses namely 1.Mr.C.M.Sivaswamy, 2.Venkata samy Chettiar. Ex.P1 Will was registered as Doc.No.16 of 1994 on the file of the office of the District Registrar, Dindugal.

b) Ex.P2 is the certified copy of the death certificate of Mr.A.K.M.Govinda Samy Chettiar, who died on 22.05.1996.

c) Ex.P3 is the copy of the Legal Heirship Certificate dated 28.06.1996 in respect of A.K.M.Govindasamy

Chettiar.

- d) Ex.P4 is the certified copy of the death certificate of Mr.K.Angusamy, who died on 18.06.2015.
- e) Ex.P5 is the certified copy of the Legal Heir certificate dated 07.07.2015 in respect of Mr.K.Angusamy.
- f) Ex.P6 is the certified copy of the order dated 19.06.2017 passed in A.No.3212 of 2017 in O.P.No.789 of 2016.
- g) Ex.P7 is the affidavit of assets showing the net value of the estate as Rs.5,27,00,000/-.
- h) Ex.P8 is a copy of paper publication effected in one issue of English daily "News Today" dated 18.07.2018.
- i) Ex.P9 is a copy of paper publication effected in one issue of Tamil daily "Maalai Sudar" dated 25.07.2018.

He has further stated that he has not filed any other petition before any other court seeking the same relief.

5. Since one of the attesting witness, viz., M.Sivasamy, who was not in a position to move from his residence due to his health condition, the petitioners filed an application in A.No.335 of 2019 to appoint an Advocate Commissioner to record his evidence at his residence. This Court, by an order dated 11.01.2019, appointed Mr.T.M.Karthikeyan, as an Advocate commissioner to record the evidence of the said attesting witness and the learned Advocate Commissioner has recorded his evidence as PW4 on 26.01.2019. PW4 gave evidence stating that the testator A.K.M.Govindasamy Chettiar was in sound and disposing state of mind and memory at the time of execution of the Will and he signed in his presence.

6. Mr.P.Kaalikurichi examined himself as PW2 and submitted that he knew the Testator A.K.M.Govinda Samy Chettiar as a common friend and neighbour. As such he was well acquainted with him. The Will was executed by the testator A.K.M.Govinda Samy Chettiar on 01.08.1994. The testator asked him to sign as one of the identifying witness at the time of registration of Ex.P2 Will registered as Document No.16/1994 at SRO Dindigul along with other identifying witness namely V.Singaram Chettiar. The said Will was registered on 14.12.1994. The testator also signed in their presence in the Registration Office. Ex.P.10 is his affidavit in this regard.

7. The second petitioner examined himself as P.W.2 and submitted that the first petitioner is his brother. He was filing his proof affidavit stating the facts of this case and the same may be treated as part and parcel of his examination-in-chief.

8. The first respondent examined herself as R.W.1 and submitted that she had given her consent affidavit stating that she has no objection to grant of Letters of Administration in favour of the petitioners in respect of the Will dated 01.08.1994 executed by Thiru. A.K.M.Govinda Samy Chettiar.

9. The second respondent examined herself as R.W.2 and submitted that she had given her consent affidavit stating that she has no objection to grant of Letters of Administration in favour of the petitioners in respect of the Will dated 01.08.1994 executed by Thiru. A.K.M.Govindasamy Chettiar.

10. The third respondent examined herself as R.W.3 and submitted that she had given her consent affidavit stating that she has no objection to grant of Letters of Administration in favour of the petitioners in respect of the Will dated 01.08.1994 executed by Thiru.

A.K.M.Govindasamy Chettiar.

11. The fourth respondent examined himself as R.W.4 and submitted that he had given his consent affidavit stating that he has no objection to grant of Letters of Administration in favour of the petitioners in respect of the Will dated 01.08.1994 executed by Thiru. A.K.M.Govindasamy Chettiar.

12. The fifth respondent examined herself as R.W.5 and submitted that she had given her consent affidavit stating that she has no objection to grant of Letters of Administration in favour of the petitioners in respect of the Will dated 01.08.1994 executed by Thiru. A.K.M.Govindasamy Chettiar.

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

14. Accordingly, this petition is allowed. Issue Letters of Administration in favour of the petitioners. The petitioners are directed to duly administer the property and credits of the deceased morefully described in the schedule. The petitioners are 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 petitioners are further directed to render true and correct accounts once in a year.

Sd/- M.K.K.S.J
28/01/2019

//Certified to be true copy//

Dated at Madras this the day of 2019.

COURT OFFICER(O.S.)

GJM-21/3/2019

From 25th Day of September 2008 the Registry is issuing certified copies of the Orders/Judgments/Decrees in this format.