

O.P.No.305 of 2018

K.KALYANASUNDARAM, J.

This Petition has been filed under Sections 222 and 276 of Indian Succession Act, 39 of 1925 r/w Order XXV Rule 4 of O.S Rules.

2.In the petition, it is stated that the deceased P.S.Thejomurthy died on 02.02.2017 at the residence of his first son, namely, the first petitioner at Kolathur where he was temporarily staying and he was ordinarily resided at Flat No.6, Krishnakutir Apartments, New Door No.18, Justice Sundaram Road, Mylapore, Chennai-600004 and left the property within the jurisdiction of this Court. The deceased executed the Will and Testament, dated 08.10.2013 registered at Chennai in the presence of two attesting witnesses, namely, Mr.R.Krishnan and Mrs.K.Devika and the petitioners were appointed as the executor of the Will. The first respondent is the wife, the petitioners are the sons and the respondents 2 and 3 are the daughters of the deceased. The deceased at the time of his death left behind the petitioners and the respondents as his surviving legal heirs or next of kin.

3.It is stated that the petitioners impleaded all the next of kin or other persons interested as party/respondent. There is no next kin or other persons interested to be impleaded. The amount of assets which are likely to come into the petitioners hands does not exceed in the aggregate the sum of Rs.86,85,000/- and net amount of the said assets, after deducting all items which the petitioners are by law allowed to deduct is of the value of Rs.86,65,000/-. No application has been made at any District court or delegate or to any other High Court for probate of any Will of the said deceased or for Letters of Administration with or without the Will annexed to his property and credits.

4.The petitioners undertake to duly administer the properties and credits of the deceased and in any way concerning his will by paying first his debts and then the legacies therein bequeathed so far as the assets will extent and to make a full and true inventory thereof and exhibit the same in the Court within six months from the date of grant of Probate to the petitioners and also to render to this Court a true account of the said property and credits within one year from the said date.

5.The second petitioner examined himself as P.W.1 and deposed

evidence on behalf of the first petitioner also and filed proof affidavit and also marked the following documents viz., Exs.P1 to P8.

i) Ex.P1 is the computer generated death certificate of my father P.S.Thejomurthy who died on 02.02.2017.

ii) Ex.P2 is the original Will exhibited by my father P.S.Thejomurthy on 08.10.2013.

iii) Ex.P3 is the photocopy of sale deed dated 13.02.2009 in favour of my father P.S.Thejomurthy registered as Doc.No.295 of 2009 at SRO, Mylapore (Marked after comparing and verifying with the original).

iv) Ex.P4 is the certified copy of Legal Heirship Certificate in respect of my father P.S.Thejomurthy dated 21.07.2017.

v) Ex.P5 is the consent affidavit given by my mother 1st respondent stating that she has no objection in grant of probate in petitioners favour.

vi) Ex.P6 is the consent affidavit given by the 2nd respondent stating that she has no objection in grant of probate in petitioners favour.

vii) Ex.P7 is the consent affidavit given by the 3rd respondent stating that she has no objection in grant of probate in petitioners favour.

viii) Ex.P8 is the affidavit of assets showing the net value of the estate as Rs.86,65,000/-.

He has further stated in his evidence that he has not filed any other

petition seeking the same relief.

6. One of the attestors of the Will Mr.R.Krishnan was examined as P.W.2. In his evidence he has stated that the testator P.S.Thejomurthy is his co-brother. He had further stated that the testator executed his last Will on 08.10.2013 (Ex.P2) in his presence and in the presence of his wife Mrs.K.Devika. At the request of the testator P.W.2 subscribed his signature as the first attesting witness and Mrs.K.Devika, attested the Will as the second attesting witness. The testator was in sound and disposing state of mind, memory and understanding at the time of execution of Ex.P2 Will. Ex.P9 is the concerned affidavit, in that regard.

7. The second respondent examined herself as R.W.1. In her evidence, she has stated that she has no objection for grant of probate in the name of the petitioners and the same has been marked through the second petitioner as Ex.P6. The third respondent examined herself as R.W.2. In her evidence, she has stated that she has no objection for grant of probate in the name of the petitioners and the same has been marked through the second petitioner as Ex.P7.

8.From the averments made in the petition and the deposition of P.W.1 supported by the documents, it is clear that the petitioners have proved their claim and there is no contra evidence. Hence, I am satisfied that the petitioners are entitled to the relief sought for.

9.The Original Petition is ordered. Grant probate of the Will in respect of the petitioners.

30.10.2019

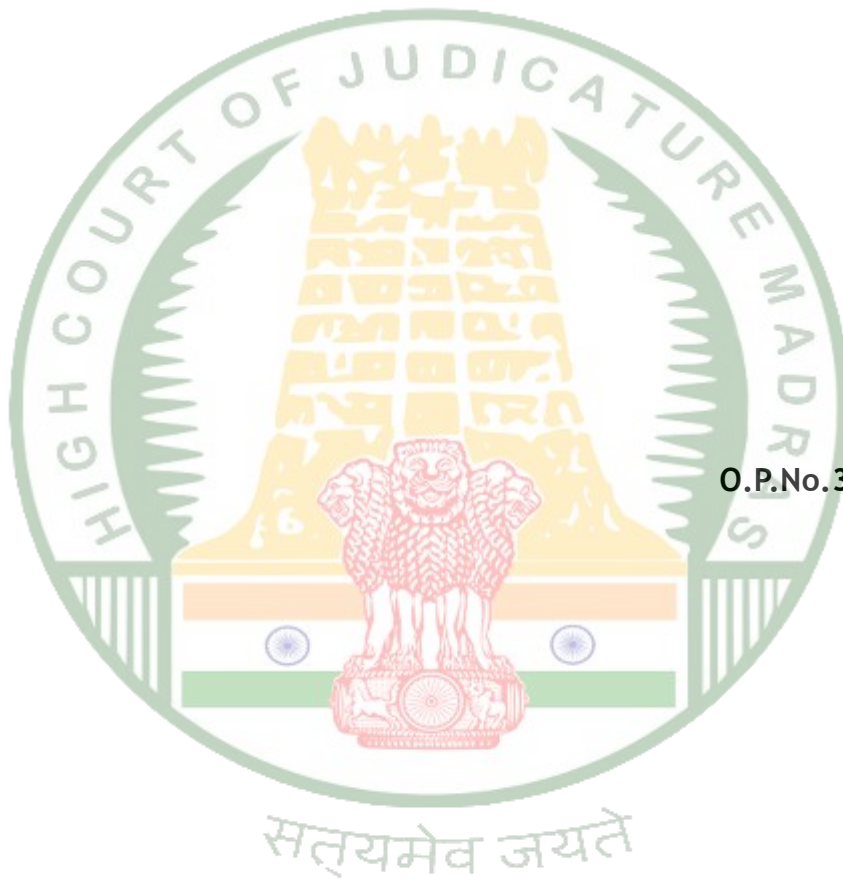
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K.KALYANASUNDARAM, J.

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