

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 05.03.2020

CORAM

THE HONOURABLE MR.JUSTICE **SENTHILKUMAR RAMAMOORTHY**

O.P.No.615 of 2019

1. S.Vijaya Kumar

2. V.Nehaa

3. Naren Karthik @ V.Karthick Narain (minor)
Represented by his father and Natural Guardian
Mr.S.Vijaya kumar

...Petitioners

Vs.

S.Saraswathi

....Respondent

Original Petition filed under Section 232 and 276 of the Indian Succession Act read with Order XXV Rule 5 of the Original Side Rules praying that the Letters of Administration with the Will of the deceased may be granted to them, to the first petitioner for himself and as natural guardian of the 3rd petitioner herein for the use and benefit of the minor until he attains the age of majority and the second petitioner as beneficiaries under the Will of deceased as the Legatees under the Will of the said deceased as mentioned in the affidavit of assets having effect limited to the State of Tamil Nadu, may be granted to the petitioners.

For Petitioners : Mr.P.M.Gopala krishnan

ORDER

This petition is filed for the grant of Letters of Administration with the Will annexed to the first petitioner for himself and as natural guardian of the 3rd petitioner.

2. I heard the learned counsel for the petitioners.

3. The learned counsel for the petitioners submitted that the petitioners are the brother's children of the Testator, Mr.T.G.Shanmuga Sundaram. The sole respondent is the wife of the said Testator. The Testator ordinarily resided at No.23/1, Lakshmiamman Koil Street, Perambur, Chennai-11, which is within the jurisdiction of this Court. The Testator died on 21.06.2013 at K.M.Clinic and Nursing Home, Kilpauk, Chennai, leaving behind his wife, the respondent herein, as the only Class-1 legal heir because the couple did not have children. The Testator's parents also pre-deceased him. During his lifetime, the Testator executed the last Will and Testament on 02.07.2012, which was registered as document No.56 of 2012 before the Sub Registrar, Sembium. The said Will was attested by two witnesses, namely, Mr.A.Purushothaman and Mr.V.Sakthivel.

4. The learned counsel submitted that evidence was adduced in order to prove the Will by examining the first petitioner as P.W.1. During the course of the examination-in-chief of P.W.1, the following 6 documents were exhibited as Ex.P1 to Ex.P6:

Sl.No		Description of documents
1	Ex.P1	The original last Will and Testament executed by T.G.Shanmuga Sundaram on 02.07.2012, registered as Doc. No.56 of 2012 at SRO, Sembium.
2	Ex.P2	The photocopy of the death certificate of the Testator T.G.Shanmuga Sundaram, who died on 21.06.2013.
3	Ex.P3	The computer generated death certificate of T.G.Nagarajan, who was mentioned in the Will as executor, who died on 27.09.2015.
4	Ex.P4	The consent affidavit given by the respondent herein stating that she has no objection in grant of letters of administration in favour of the petitioner as prayed them.
5	Ex.P5	The affidavit of assets showing the net value of the estate as Rs.30,00,000/-.
6	Ex.P6	The copies of paper publications effected in one issue of Tamil daily "Maalai Sudar" dated 23.11.2019 and one issue of English daily "News Today" dated 02.12.2019.

5. In addition, evidence was adduced through the first attesting witness, namely, Mr.A.Purushothaman. Mr. Purushothaman deposed that the Testatrix was his relative and that, therefore, he was acquainted with him. He also deposed that the last Will and Testament was executed on 02.07.2012 in his presence and in the presence of Mr.V.Sakthivel. Moreover, Mr.A.Purushothaman deposed with regard to the state of mind

of the Testator at the time of execution of the Will. In addition, he deposed that he was one of the identifying witnesses to the Will at the time of registration of the Will before the Sub Registrar, Sembium. Based on the aforesaid, the learned counsel for the petitioners submitted that the Will has been proved in accordance with law and that, therefore, the petitioners are entitled to Letters of Administration.

6. I considered the submissions of the learned counsel for the petitioners and examined the evidence recorded in this case. I find that the original Will and Testament dated 02.07.2012 has been marked as Ex.P1. On perusal, I find that it is a registered Will bearing document No.56 of 2012 at the Office of the Sub Registrar, Sembium.

7. I also find that the said Will was attested by Mr.A.Purushothaman and Mr.V.Sakthivel. The death certificate of the Testator has been marked as Ex.P2 and this document reflects that he died on 21.06.2013. Although Mr.T.G.Nagarajan had been named as Executor in the Will, he died on 27.09.2015 before the petition was filed and his death certificate has been marked as Ex.P3 in order to prove that he died prior to the filing of the petition. The wife has provided a consent affidavit stating that she has no objection to the grant of letters of administration in favour of the petitioners and this document is marked

as Ex.P4. The delay in filing the petition has been explained in Paragraph No.11 of the petition on the basis that the Will was not disclosed by the respondent until recently. The first attesting witness, P.W.2, deposed that he was acquainted with the testator, who was his relative. He also deposed that the Will was executed by the testator in his presence and in the presence of the other attesting witness and that he was one of the identifying witnesses at the time of registration thereof. He also deposed with regard to the sound and disposing state of mind of the testator at the time of execution of the Will.

8. Based on the aforesaid evidence, I conclude that the Will has been proved in accordance with law. Accordingly, this Original Petition is allowed by granting Letters of Administration to the first petitioner for himself and as natural guardian of the third petitioner for the use and benefit of the minor until he attains the age of majority and to the second petitioner having effect limited to the State of Tamil Nadu in respect of the assets specified in the affidavit of assets. As regards the minor's share in the bequest, permission of the Court shall be obtained before transferring the same by sale, mortgage, lease or in any other manner.

9. The petitioners shall execute a bond for a sum of Rs.25,000/-

(Rupees Twenty Five thousand only) in the name of the Assistant Registrar (Original Side), High Court of Madras. In addition, the petitioners shall also provide a full and true inventory of the properties and credits and also true accounts thereof within a period of six months and one year, respectively, from the date of grant.

05.03.2020

Speaking (or) Non Speaking Order

Index : Yes/ No

Internet : Yes

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SENTHILKUMAR RAMAMOORTHY, J.

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