

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 04.03.2020

CORAM

THE HONOURABLE MR.JUSTICE **SENTHILKUMAR RAMAMOORTHY**

O.P.No.774 of 2019

S.Seethalakshmi

...Petitioner

Vs.

1. Sri.Krishnan
2. Sri. Savithri Krishnan
3. Sri. Giridhar
4. K.Meera

....Respondents

Original Petition filed for issue of Succession Certificate under Section 222 and 276 of the Indian Succession Act 1925 read with under Order XXV Rule 4 of the Original Side Rules, to prove the Will in common form and that Probate thereof to have effect thought the State of Tamil Nadu may be granted to the petitioner.

For Petitioner : Mr.S.Sridhar

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ORDER

This petition is filed for the grant of probate in respect of the last Will and Testament of Mr.Sathyavageeswaran dated 09.06.2006.

2. I heard the learned counsel for the petitioner. Notice was served on the respondents on 13.11.2019 and they have filed consent affidavits.

3. The learned counsel for the petitioner submitted that the petitioner is the wife of the Testator. The first respondent is the brother of the Testator. The second respondent is the sister-in-law of the Testator. The 3rd and 4th respondents are the children of the 1st and 2nd respondents.

4. The learned counsel submitted that the last Will and Testament was executed by the Testator at Chennai on 09.06.2006 and registered as document No.40 of 2006 before the Sub Registrar, T.Nagar. The learned counsel further submitted that the Testator died on 22.12.2016 and that he resided at No.9/17, Raja Mannar Street, T.Nagar, Chennai-17, which is within the jurisdiction of this Court. Under the Will, the Testator bequeathed the property in favour of his grandson, K.Giridhar, and grand daughter K.Meera, who are the 3rd and 4th respondents herein and the children of the 1st and 2nd respondents herein. The petitioner and the Testator did not have children. On account of the death of both attesting witnesses prior to the filing of the O.P., a 3rd party affidavit was filed and the deponent of the affidavit was examined as P.W.2.

5. In order to prove the Will, the learned counsel submitted that the petitioner was examined as P.W.1. During the course of the examination-in-chief of P.W.1, the following nine documents were marked as Ex.P1 to Ex.P9:

Sl.No.	Description of the documents
1.	Ex.P1 - The photocopy of the Sale Deed dated 07.03.1977 in favour of the Testator Mr.S.Sathyavageswaran.
2.	Ex.P2 - The original Will and Testament dated 09.06.2006 executed by Mr.S.Sathyavageswaran, which has been attested by two attesting witnesses, namely, 1.Mrs.S.Yamuna and 2.Mr.G.Murugan. Ex.P2 Will was registered as Document No.40 of 2006, on the file of the office of the Sub Registrar, T.Nagar.
3.	Ex.P3 - The computer generated copy of the death certificate of the Testator Mr.S.Sathyavageswaran, who died on 22.12.2016.
4.	Ex.P4 - The computer generated copy of the legal heirship certificate dated 02.01.2019 in respect of the Testator Mr.S.Sathyavageswaran.
5.	Ex.P5 - The consent affidavit given by the first respondent.
6.	Ex.P6 - The consent affidavit given by the second respondent.
7.	Ex.P7 - The consent affidavit given by the third respondent.
8.	Ex.P8 - The consent affidavit given by the fourth respondent.
9.	Ex.P9 - The affidavit of assets showing the net value of the estate as Rs.1,99,98,000/-

6. In addition, Mr.N.S.Radhakrishnan was examined as P.W.2. P.W.2 deposed that he is the Testator's uncle and, therefore, he was well acquainted with him. He further deposed that he was present on the date of registration of the Will before the Sub Registrar, T.Nagar and that the Will was executed in his presence. He also witnessed the attestation of the Will by the attesting witnesses, who were also present before the office of the Sub Registrar. In addition, he deposed that the Testator was in a good state of mind and in good health at the time of the execution of Ex.P2 the Will.

7. On the aforesaid basis, the learned counsel submitted that the Will had been duly proved and that the petitioner is entitled to the grant of probate.

8. I considered the submissions of the learned counsel for the petitioner and examined the evidence recorded in this case. I find that the last Will and Testament of Mr.S.Sathyavageeswaran has been marked as Ex.P2.

9. On perusal, it is clear that this is a registered Will, which was registered as document No.40 of 2006 before the Sub Registrar,

T.Nagar. It is also clear from the Will that the petitioner herein has been appointed as the Executrix of the Will. The Will was attested by Mrs.S.Yamuna and Mr.G.Murugan. It is stated in the petition at Paragraph No.4 that both the attesting witnesses died. Therefore, the petitioner has adduced evidence by examining Mr.N.S.Radhakrishnan as P.W.2. The said P.W.2 has deposed that he is the Testator's uncle and, therefore, he is well acquainted with the Testator. In addition, he deposed that he was present at the time of the registration of the Will before the Sub Registrar, T.Nagar on 22.12.2006 and that the Will was executed in his presence and in the presence of the two witnesses, namely, S.Yamuna and G.Murugan. He also deposed with regard to the state of mind of the Testator at the time of execution of the Will.

10. I also find that the death certificate of the Testator has been marked as Ex.P3 and this document evidences that the Testator died on 22.12.2016. I find that the disposition under the Will is natural keeping in mind that the Testator and the petitioner did not have children. The consent affidavits of each of the respondents have been marked as Ex.P5 to Ex.P8.

11. Based on the aforesaid, I conclude that the Will is proved in accordance with law. Consequently, this petition is liable to be allowed.

Accordingly, this Original Petition is allowed by directing that probate be granted to the petitioner in respect of the last Will and Testament of Mr.Sathyavageeswaran, dated 09.06.2006, to have effect throughout the State of Tamil Nadu.

12. The petitioner shall provide a true inventory of the property and credits of the deceased and a true account within a period of six months and one year, respectively, from the date of grant.

04.03.2020

Speaking (or) Non Speaking Order

Index : Yes/ No

Internet : Yes

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SENTHILKUMAR RAMAMOORTHY, J.

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