

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

WEDNESDAY, THE 11TH DAY OF NOVEMBER 2020

THE HON'BLE MR. JUSTICE N.SATHISH KUMAR

O.P.No.152 of 2018

In the matter of Indian Succession Act
XXXIX of 1925 and
In the matter of the last Will &
Testament of P.Muthukumarasamy
(Deceased)

1. Mr.G.Mahalingam
(G.M.Lingam),
S/o.Late A.Gopal, Padayachi,
Hindu aged about 73 years,
residing at No.50, Rukmani Street,
West Mambalam, Chennai-600033.

... Petitioner.

Vs

1. Mrs.M.Jayalakshmi
W/o.Late P.Muthukumarasamy,
Hindu, aged about 83 years,
residing at No.8, Neelakandan Street,
Lake Area, Nungambakkam,
Chennai - 600 034.

2. Mr.T.Dharmarajan
S/o.Late P. Thangavel Padayachi,
Hindu aged about 77 years,
residing at
829, Netaji Street,
Narayanapuram,
Villupuram - 605602.

..Respondents

Original Petition praying that this Hon'ble Court be pleased to that the petitioner may be allowed to prove the Will in common form and that Probate thereof to have effect throughout the whole of Union of India may be granted to him.

This Original Petition coming on this day before this court for hearing the court made the following order:

This Petition has been filed under Sections 222 and 276 of the Indian Succession Act read with Order XXV Rule 4 of the Madras High Court Original Side Rules, 1956, to grant probate in favour of the petitioner.

2. Heard Mr.V.B.Thirupathi Kumar, learned counsel for the petitioner and Mr.S.Vasudevan, for the respondents.

3. It is the case of the petitioner that though the petitioner and respondents are aware of the Will dated 1/2/2007 executed by the deceased testator, parties to this petition had no occasion to deal with the property bequeathed under the Will. Hence, they were not aware about the proceedings which ought to have been taken to obtain Probate of the Will left behind by the deceased testator.

4. It is the further case of the petitioner that when the parties to the petition who are the legates wanted to deal with their respective bequest, came to know about the procedure to obtain Probate through their counsel. The amounts of assets which is likely to come into the petitioner's hands does not exceed the sum of Rs.75,00,000/- and the net amount of the said assets after deducting all the items which the petitioner is by law allowed to deduct is to the value of Rs.74,00,000/-.

5. The Probate is required to duly administer the property and credits of the said late Thiru.P.Muthukumarasamy and in anyway concerning his Will by paying first his debts and then the legacies bequeathed so far as the assets will extend and to make a full and true inventory thereof. Hence, the petitioner has approached this Court for grant of probate in favour of the petitioner.

6. On the side of the petitioner, P.Ws.1 and 2 have been examined and on the side of respondents, R.W.1 has been examined. On the side of the petitioner, Exs.P.1 to P.6 have been marked and on the side of the respondent, Ex.R.1 has been marked.

7. Ex.P.1 is the original certified copy of the Sale Deed dated 25/1/1968. Ex.P.2 is the original Will and Testament dated 1/2/2007 executed by Mr.P.Muthukumarasamy, which has been attested by two attesting witnesses, viz., Mr.S.K.Sukumar and Mr.R.Muralitharan. Ex.P.3 is the original Death Certificate of Mr.Muthukumarasamy, who died on 23/2/2009. Ex.P.4 is the original legal heirship certificate, dated 29/4/2009 in respect of the deceased Mr.P.Muthukumarasamy. Ex.P.5 is the affidavit of assets showing the net value of the estate as Rs.74,00,000/-. Ex.P.6 is the affidavit of Mr.S.K.Sukumar/P.W.2.

8. Petitioner himself has been deposed as P.W.1 and in his evidence he has narrated that he is the Executor of the Will dated 1/2/2007 executed by the deceased Mr.P.Muthukumaraswamy which was registered as Document No.3 of 2007 at the office of the Sub-Registrar, Thousand Lights, Chennai.

9. P.W.2 in his evidence has deposed that the testator Mr.P.Muthukumarasamy, brother of his father-in-law Mr.G.Mahalingam @ G.M.Lingam, petitioner herein. He further deposed that he subscribed his signature as the first attesting witness to the Will (Ex.P.2) in the presence of

10. R.W.1 in his evidence has deposed that she is the wife of the testator Mr.P.Muthukumarasamy and she was aware of the fact that her husband Mr.P.Muthukumarasamy had executed a Will dated 1/2/2007.

11. On a perusal of the above, Ex.P.1 has been filed to prove the sale deed which was executed on 25/1/1968. Ex.P.2 is to prove that Will and testament was executed by Mr.P.Muthukumarasamy.

12. In view of the above facts, I am of the view that the petitioner has proved the execution and attestation of the Will. Hence, the petitioner is entitled for the issuance of probate in favour of the petitioner.

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

Sd/.N.S.K.J.
11.11.2020

//Certified to be a true copy//
Dated this the day of 2020.

SU/22.12.2020

COURT OFFICER(O.S.)

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