

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 02.09.2020

Delivered on : 08.09.2020

CORAM

THE HONOURABLE Ms. JUSTICE P.T. ASHA

OP.No.763 of 2019

Mr. S. Mithilesh

... petitioner

vs

1. Mr. SundarRaman

2. Mrs. Aparna

3. Mr. R. Sriram

...respondents

Prayer: Petition filed under Section 222 & 276 of the Indian Succession Act XXXIX of 1925 read with Order XXV Rule 4 of Rules of the High Court Madras Original Side 1956 for grant of probate for the Will.

For petitioner : Mr. R. Prasad

For Respondents : Ms.R. Suvithra

ORDER

The above petition is filed for grant of probate in respect of the Will of late Shantha.

2. The narration of facts in the Petition are as follows:

The petitioner's grandfather is the brother-in-law of the deceased testatrix (husband's brother). The second respondent is his daughter and first respondent is her husband. The first-respondent is the son of the deceased testatrix's sister-in-law (husband's sister). The third respondent is the only son of the deceased testatrix who is mentally challenged. The deceased testatrix had executed the Will dated 12.05.2018 bequeathing the properties on her niece viz. the mother of the second respondent, the first respondent and the petitioner who is the Executor of the Will as well. The Will has been made in their favour since they were taking care of the deceased testatrix as well as her son, the third respondent. The third respondent continues to be under their care. The said testatrix had died on 12.06.2018 and therefore the Petition.

3. The petitioner has adduced evidence and marked documents which are detailed herein below.

<i>S.No</i>	<i>Exhibits</i>	<i>Description of documents</i>
1	Ex.P1	Original Will dated 12.05.2018 executed by Santha.
2	Ex.P2	Original death Certificate of Santha.
3	Ex.P3	Photocopy of the Legal Heirship Certificate dated 07.12.2009.
4	Ex.P4	Computer generated property tax receipt dated 08.03.2013
5	Ex.P5	Computer generated property tax receipt dated 08.03.2013
6	Ex.P6	Online Patta transfer order dated 25.07.2016
7	Ex.P7	Photocopy of the Sale Deed dated 28.10.1988 executed in favour of R.Rajasekaran
8	Ex.P8	Photocopy of the Development Agreement dated

<i>S.No</i>	<i>Exhibits</i>	<i>Description of documents</i>
		15.09.1994
9	Ex.P9	Photocopy of the death Certificate of Rajasekaran, who died on 26.10.2009.
10	Ex.P10	Photocopy of the bank passbook for the account in No.449640576.
11.	Ex.P11	Affidavit of assets
12.	Ex.P12	Consent affidavit given by the 1st respondent
13	Ex.P13	Consent affidavit given by the 2nd respondent
14	Ex.P14	Consent affidavit given by V.Usha, Testamentary Guardian of the 3rd respondent R.Sriram.

4. The petitioner had adduced evidence as PW1 and marked the documents Ex.P1 to Ex. P14. The attesting witness has also been examined as PW2 and Ex.P15 has been marked through her. She has adduced evidence to the effect that in the presence of the testatrix she had signed in the Will Ex P1 and the testatrix is her aunt. She had also seen

the testatrix affixing her signature. She would also contend that the testatrix was in a sound disposing state of mind when executing the Will.

5. When arguments were initially made by the learned counsel for the petitioner, this Court posed a question to the learned counsel as to what was wrong with the third respondent as neither in the Petition nor in the Will, there is reference about the nature of his ailment. The learned counsel then submitted that the 3rd respondent was a mentally challenged person. To verify the said statement, I directed that the third respondent be brought before this Court through a virtual meeting.

6. The 3rd respondent was brought before the Court on 02.09.2020, in the virtual meeting by the petitioner. It was very evident that the 3rd respondent is mentally challenged. In view of the same and in order to ensure that the petitioner and the respondents 1 and 2 adhere to the responsibilities mentioned in the Will, this Court while granting Probate would reiterate the desire of the Testatrix, in that, the petitioner shall open an account jointly in the name of the third respondent and either the

petitioner or the second respondent, wherein the rents received from one of the properties described in the B Schedule, be deposited and the same shall be utilized for the maintenance/medical treatment of the third respondent. In case the petitioner sells the properties, then as stated by the testatrix, the proceeds shall be deposited/invested in some nationalized bank and the interest therefrom shall be utilized towards the maintenance of the third respondent R. Sriram. The Petitioner shall exhibit the inventory as prescribed in Section 317 of the Indian Succession Act.

08.09.2020

Index : Yes/No
Speaking / Non-Speaking
mrn

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P.T. ASHA. J.
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Pre-delivery Order in
OP.No.763 of 2019

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