

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 09.01.2020

CORAM:

THE HON'BLE MR. JUSTICE SENTHILKUMAR RAMAMOORTHY

O.P. No. 808 of 2017

Dodla Lakshminarayana Reddy

... petitioner

vs

1. Dodla Varada Reddy
2. Dodla Rajagopala Reddy
3. Bezewada Subbalakshmi

... Respondents

Prayer: Original Petition filed under Sections 232, 235 and 276 of the Indian Succession Act 1925 and order XXV Rule 5 of OS Rules, to grant Letters of Administration with the Will annexed may be granted to his son the last Will and Testament of the deceased Tmt.Dodla Venkata Seshamma, having effect throughout the State of Tamil Nadu.

For Petitioner : Mr. K.Harishankar

For Respondents : Mr.C.Ramesh – For R1 to R2

No appearance

J U D G M E N T

This Original Petition is filed for grant of Letters of Administration with the Will annexed to the petitioner in respect of the last Will and Testament of the deceased, Tmt. Dodla Venkata Seshamma.

2. I heard the learned counsel for the petitioner.

3. The learned counsel submitted that the petitioner is one of the sons of the Testatrix the late Mrs.Dodla Venkata Seshamma, who executed her last Will and Testament on 26.10.1990 and the said Will was registered as document No. 109 of 2005 in the office of the Registrar, Vishakapatnam.

4. The learned counsel further submitted that the respondents 1 and 2 are the sons of the testatrix and the 3rd respondent is her daughter. He submitted that evidence was recorded in the matter and that the petitioner was examined as P.W.1 and the following nine documents were exhibited through P.W.1:-

1. Ex.P1 - The computer generated copy of the death certificate of Dodla Chinnabbai Reddy, who died on 12.12.2013.
2. Ex.P2 - The Photocopy of the registered Will and Testament dated 26.10.1990 executed by Mrs.Dodla Venkata Seshamma, which has been attested by two attesting witnesses namely 1.Mr.Dodla Chinnabbai Reddy and 2.Mr.Neelappu Gurunadha Reddy. Ex.P2 Will was registered as Doc. No.109 of 2005 on the file of the office of the Joint Sub Registrar, Vishakhapatnam.
3. Ex.P3 - The original death certificate of the Testatrix Dodla Venkata Seshamma, who died on 04.01.2005.
4. Ex.P4 - The photocopy of the Legal Heirship certificate dated 17.07.2009 in respect of the Testatrix Dodla Venkata Seshamma.

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 affidavit of the petitioner.
9. Ex.P9 – The affidavit of service.

5. He further submitted that in view of the fact that both the attesting witnesses to the Will had expired before evidence could be recorded in the matter, secondary evidence was adduced by examining Mr.J.Harichandra Reddy as P.W.2. He pointed out that the said P.W.2 was well acquainted with one attesting witness and the Testatrix and identified the signatures in the Will as that of the Testatrix and as that of the attesting witness namely of Mr. Dodla Chinnabbai Reddy. The affidavit filed by P.W.2 is marked as Ex.P10.

6. Based on the aforesaid, the learned counsel submitted that the Will has been proved in accordance with law and, therefore, Letters of Administration may be granted to the petitioner.

7. Upon considering the submissions of the learned counsel for the petitioner and on examining the evidence recorded in the matter, the following is evident:

1. The death certificate of the attesting witness the late Mr.Dodla Chinnabbai Reddy, was marked as Ex.P1.
2. The death certificate of the Testatrix was marked as Ex.P3 and this document shows that she died on 04.01.2005.
3. The legal heirship certificate dated 17.07.2009 of the Testatrix was marked as Ex.P4.
4. The consent affidavits of the respondents 1, 2 and 3 were marked as Ex.P5 to Ex.P7.
8. In view of the fact that the attesting witnesses were dead, secondary evidence was adduced through a person who was acquainted, both with the testatrix and with one of the attesting witnesses and the said Mr.J.Harichandra Reddy has deposed as regards the signature of the Testatrix and that of the attesting witness.
9. The petitioner has also stated that no application was made earlier before a District Court or Delegate or to any High Court for probate of any Will of the deceased or for Letters of Administration with or without the Will annexed of her property and credits.
10. Based on the aforesaid, it is clear that the petitioner has proved the Will as per law.

11. Accordingly, this Original Petition is allowed by granting Letters of Administration to the petitioner with the Will annexed in respect of the last Will and Testaments of Dodla Venkata Seshamma to have effect throughout the State of Tamil Nadu. The petitioner shall provide 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, Madras. The petitioner shall also make a full and true inventory of the property and credits and also provide a true account within the time limit specified in paragraph 14 of the petition.

09.01.2020

Index:Yes/No

Internet:Yes/No

Speaking Order/Non speaking order

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SENTHILKUMAR RAMAMOORTHY, J.

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