

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

WEDNESDAY, THE 10TH DAY OF MARCH 2021

THE HON'BLE MR. JUSTICE R.PONGIAPPAN

O.P.No.267 of 2020

In the matter of Indian Succession
Act, 1925

and

In the matter of Last Will and
Testament of V.Sekar -Deceased.

VIDYA LAKSHMANAN
W/O.LAKSHMANAN,
SISTER OF LATE V.SEKAR,
NEW NO.27, OLD NO.12,
CENOTAPH FIRST STREET,
TEYNAMEPET,
CHENNAI-600 018

..Petitioner

-Vs-

1. KAUSALYA GANAPATHI
W/O.DR.M.GANAPATHI,
4205 WILKIE WAY,
PALO ALTO,
CALIFORNIA, CA-94306

..Respondent

Original Petition praying that this Hon'ble Court be pleased that

he may be allowed to prove the will in common form, and that probate

thereof, to have effect through out the whole of State of Tamilnadu may be

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

This Original Petition has been filed under Sections 222 and 276 of the Indian Succession Act, 1925 read with Order XXV Rule 4 of Madras High Court Original Side Rules, for the grant of Probate in respect of the last Will and Testament of the deceased Mr.V.Sekar.

2.The case of the petitioner is as follows :

(a) The petitioner is the sister of the deceased Mr.V.Sekar, who died on 07.06.1992. The sole respondent is also the sister of the deceased Mr.V.Sekar.

(b) The schedule mentioned property was purchased by their father, Late B.Venkatraman in the year 1983. The said Late B.Venkatraman died on 27.07.1990, leaving behind his wife Vijayavalli, two sons namely Mohan @ Balasubramanian (Mentally Retarded), V.Sekar and three daughters namely V.Geetha (Mentally Retarded), Kousalya Ganapathi, Vidya Lakshmanan and his mother Ulagammal, and the Tahsildar attached to Mylapore Taluk has given a legal heirship certificate to that effect.

(c) The said Late B.Venkatraman had bequeathed a Will dated 25.10.1989, which was registered in the Office of the District Registrar of Madras Central vide Document No.30 of 1989 and by virtue of the Will, the said Late B.Venkatraman had stated that out of the two sons and three daughters, V.Mohan and V.Geetha are mentally retarded because of a bad car accident. The other son V.Sekar is having his own business and two daughters, viz., the petitioner and the respondent herein, have been married. He had stated that he himself, his wife Vijayavalli and his son V.Sekar are looking out of the two mentally retarded children.

(d) The said Late B.Venkatraman had created a trust in the Will over the immovable property situated at Plot No.35, Seethammal Extension, No.27, Old No.12, Cenotaph First Street, Teynampet, by giving residential right to the mentally retarded children. The deceased B.Venkatraman had appointed his son V.Sekar and his wife Vijayavalli as the trustees with residential rights and with an obligation to take care of the mentally retarded children. The Late B.Venkatraman had stipulated a condition in the said Will that, on the death of both the mentally retarded children, 60% of the property shall be taken by V.Sekar and the rest of the property being 40% shall be equally taken by the sisters, viz., petitioner and respondent herein.

(e) The said Late B.Venkatraman died on 27.07.1990. The said Will was also probated before this Court in O.P.No.90 of 1992 vide order dated 27.04.1993. Thus, the deceased V.Sekar was bequeathed with 60% of the share over the aforesaid property. The grandmother Ulagammal died on 19.07.1991.

(f) The deceased V.Sekar was married to one N.Ramaa, however, their marital life ran into rough weather and she left the matrimonial home, without living with the said V.Sekar. Both exchanged legal notices through their Advocates, and ultimately, the said Ramaa and her father had executed a letter of undertaking confirming her separation from the said V.Sekar and hence, she is not shown as a party to the probate proceedings and her whereabouts are not known.

(g) The deceased V.Sekar had no issues and was taking care of his mentally retarded brother and sister. The deceased V.Sekar executed a Testament dated 20.01.1992 and thereby bequeathed his share of 60% of the property in favour of his two married sisters, viz., the petitioner and the respondent herein. Further, it is stated in the Testament that the petitioner and the respondent would get the property only after the death of the two

mentally retarded persons, namely, V.Mohan and V.Geetha and the said Testator V.Sekar had stated that his mother Vijayavalli, V.Mohan and V.Geetha are all entitled for life interest over the property. He has appointed the petitioner as the sole Executrix under the Will.

(h) The said V.Sekar died on 07.06.1992. His mentally retarded brother Mohan @ Balasubramanian died on 05.12.2005 as a bachelor. His mentally retarded sister V.Geetha died on 12.06.2018. Their mother Vijayavalli died on 25.09.2006.

(i) Now, after the death of the mentally retarded brother and sister, the petitioner has approached this Court for grant of probate of the Will executed by the deceased V.Sekar.

(j) The amount of assets which is likely to come to the petitioner's hands does not exceed in the aggregate the sum of Rs.1,96,68,420/- and the net amount of the said assets, after deducting all items which the petitioner is by law allowed to deduct, is only the value of Rs.1,96,68,420/-.

(k) After a diligent search, the Will was found in the cupboard of the deceased, on 26.12.2019, and immediately, this petition has been filed.

(l) No application has been made at any District Court or Delegate or to any other High Court for the probate of any Will of the said deceased or letters of administration with or without the Will annexed of his property and credits.

(m) The petitioner undertakes to duly administer the property and credits of the said deceased V.Sekar in any way concerning his Will by paying first his debts and then the legacies therein bequeathed so far as the assets will extend and to make a full and true inventory thereof and exhibit the same in this Court within six months from the date of grant of probate with the Will annexed, and also to render to this Court a true account of the said property and credits within one year from the said date.

3. Therefore, the petitioner prays that she may be allowed to prove the Will in common form, and that Probate thereof, to have effect throughout the whole of state of Tamil Nadu, may be granted to her.

4. In this regard, the petitioner examined herself as P.W.1 and she had narrated the averments made in the petition and stated that the petitioner has filed this petition for the grant of probate in respect of the Last Will and

Testament executed by the testator on 20.01.1992. While deposing, she has marked 19 documents as Ex.P1 to P19. Ex.P1 is the photocopy of the sale deed dated 10.03.1983 executed by the Tamil Nadu Housing Board in favour of her father B.Venkatraman, registered as Document No.288 of 1983 at SRO, Madras South. Ex.P2 is the original last Will and Testament dated 20.01.1992 executed by her elder brother V.Sekar. Ex.P3 is the photocopy of the legal notice dated 13.10.1988 addressed to her elder brother V.Sekar. Ex.P4 is the photocopy of the reply notice dated 15.12.1988 sent by her elder brother V.Sekar. Ex.P5 is the photocopy of the letter of undertaking dated 21.08.1989 by Mrs.Rama (wife of her elder brother V.Sekar). Ex.P6 is the copy of the Will dated 25.10.1989 executed by her father B.Venkatraman. Ex.P7 is the photocopy of the death certificate of her father B.Venkatraman, who died on 27.07.1990. Ex.P8 is the photocopy of the Legal Heirship Certificate dated 17.09.1990 in respect of her father B.Venkatraman. Ex.P9 is the photocopy of the death certificate of her paternal grandmother B.Ulagammal, who died on 19.07.1991. Ex.P10 is the photocopy of the death certificate of her elder brother V.Sekar (the Testator herein), who died on 07.06.1992. Ex.P11 is the photocopy of the order passed in O.P.No.90 of 1992 on 27.04.1993 by this Court. Ex.P12 is the photocopy of the Birth Certificate in respect of male child of Gopalakrishnan and Ramaa, who was born on 24.02.1994.

Ex.P13 is the photocopy of the death certificate of her eldest brother V.Mohan, who died on 08.12.2005. Ex.P14 is the photocopy of the Legal Heirship Certificate dated 10.03.2006 in respect of her eldest brother V.Mohan. Ex.P15 is the photocopy of the death certificate of her mother V.Vijayavalli, who died on 25.09.2006. Ex.P16 is the photocopy of the Legal Heirship Certificate dated 03.11.2006 in respect of her mother V.Vijayavalli. Ex.P17 is the computer generated death certificate of her eldest sister V.Geetha, who died on 12.01.2018. Ex.P18 is the consent affidavit given by her elder sister, the respondent herein, stating that she has no objection in grant of Probate as prayed in the petition. Ex.P19 is the affidavit of assets showing the net value of the estate as Rs.1,96,68,420/-. She marked the photocopies of the documents as she did not have the original.

5. One of the attesters of the Will dated 20.01.1992, viz., V.Krishnamurthy was examined as P.W.2. In his evidence, he stated that the testator Mr.V.Sekar is his nephew's son and the testator executed his Last Will and Testament on 20.01.1992 (Ex.P2) in his presence and in the presence of Mr.K.Vaidyanathan; he subscribed his signature as the first attesting witness along with Mr.K.Vaidyanathan, who attested the Will (Ex.P2) as the second attesting witness in the presence of the Testator, and the Testator was in a sound and disposing state of mind, memory and

understanding at the time of execution of the Will (Ex.P2). While deposing, he marked his affidavit as Ex.P20.

6.Heard the learned counsel appearing for the petitioner. There was no appearance on behalf of the respondent. However, the respondent has filed her consent affidavit stating that she has “No Objection” in the present Original Petition and since, she is residing in California, she could not come to India, and hence, she has attested the affidavit with the vakalat before the Notary Public available at California, and the same has been marked as Ex.P18.

7.The evidence of P.W. 2 not only proves execution but also attestation of the Will and there are no other materials to suspect the Will.

8.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 of the Will.

9.This Original Petition is ordered as prayed for. Grant probate of the Will in respect of the petitioner.

Sd/.R.P.A.J.
10.03.2021

//Certified to be a true copy//

Dated this the day of 2021.

SU/26.03.2021

COURT OFFICER(O.S.)