



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

THURSDAY, THE 05TH DAY OF AUGUST 2021

THE HON'BLE MR. JUSTICE V.PARTHIBAN

O.P.No.391 of 2020

In the matter of Indian
Succession Act, XXXIX of
1925
and
In the matter of Last Will and
Testament of Udaya
Mahadevan-Deceased

A.GOPAL
S/o Late A.Nagarajan,
Having his office at:
No.48, Old No.157, Luz Church Road,
Mylapore, Chennai – 600004

..Petitioner

-Vs-

1. NANDHA KISHORE MAHADEVAN
Residing at :
S1 Elite Empire, 317,
Valluvar Kottam High Road,
Nungambakkam, Chennai - 600034

2. V.M.PRAKASH
Residing at:
Flat No.S1, Elite Empire,
317, Valluvar Kottam High Road,
Nungambakkam, Chennai – 600034

..Respondents

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

the Will of the deceased Udaya Mahadevan dated 24/8/2017 annexed hereto

in common form, and that probate thereof, to have effect throughout the



State of Tamil Nadu, may be granted to him.

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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, 1925 read with Order XXV, Rule 4 of O.S. Rules, for the grant of Probate in respect of the last Will and Testament of the deceased Ms.Udaya Mahadevan.

2. Heard the learned counsel appearing for the parties and perused the materials available on record.

3. The case of the petitioner is as follows:

(a) Ms.Udaya Mahadevan ordinarily resided at Flat No.S1, Elite Empire, 317, Valluvar Kottam High Road, Nungambakkam, Chennai-34 and died on 16.03.2019, leaving behind the first respondent as her only surviving legal heir. The petitioner stated that the deceased has executed a Will dated 24.08.2017, in the presence of Mr.A.Vijayakumar and Mrs.V.Dhanalakshmi and the petitioner was appointed as a sole executor of the Will of the deceased Ms.Udaya Mahadevan.

(b) The deceased remained unmarried till her death and the first respondent is an adopted son of the deceased *vide* Adoption Deed dated



Prayag Trust. The second respondent is the brother of the deceased. The respondents are the beneficiaries of the Will executed by the deceased.

According to the petitioner that as per the Will, the Testator has bequeathed all the movable properties in favour of her brother, the second respondent herein as per the recitals in the Will and the first respondent has no objection or claim over them and the immovable property situated at No.FF-3, “Harita Apartments”, Ambattur, Chennai, and such property morefully described in the schedule and affidavit filed with this petition, has been bequeathed in favour of her adopted son, the first respondent herein. At the time of her death, the Testator resided in Flat No.S1, Elite Empire, 317, Valluvar Kottam High Road, Nungambakkam, Chennai-34, which is within the jurisdiction of this Court.

(c) According to the petitioner, the present application is only for a limited grant and is restricted to the immovable property lying in the name of the deceased which property is detailed in the schedule. The petitioner also stated that the other properties that are mentioned in the Will of the deceased have already been dealt with as per her last wish and in the manner mentioned in the Will. Hence, the petitioner has only detailed about the immovable property situated at the above mentioned address that as on date, that property stands in the name of the deceased. The tentative current



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(d) The amount of assets which is likely to come into the petitioner's hands does not exceed in the aggregate sum of Rs.40,00,000/- and the net amount of the said asset, after deducting all items which the petitioner is by law allowed to deduct is of the value of Rs.40,00,000/-. As per the Will, the above said immovable property will be enjoyed by the first respondent herein. The petitioner impleaded all the next of kin or other persons as party/respondents and there is no other parties interested to be impleaded. No application has been made to any District Court or delegate or to any other High Court for probate or letters of administration with or without the Will annexed of her property and credits.

(e) The petitioner undertakes to duly administer the properties and credits of the deceased Ms.Udaya Mahadevan and in any way concerning the Will by paying first her 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 to the Court within six months from the date of grant of Probate to the petitioner and also to render to this Court a true account of the said properties and credits within one year from the said date.

(f) Hence, the petitioner has filed the present Original Petition (O.P) for the relief stated supra.



4. The petitioner examined himself as P.W.1 and reiterated the averments made in the petition and filed Exs.P-1 to P10. Ex.P1 is the computer generated death certificate of Udaya Mahadevan, who died on 16.03.2019. Ex.P2 is the computer generated Legal Heirship Certificate dated 18.09.2019 in respect of Udaya Mahadevan. Ex.P3 is the certified copy of the Order dated 07.04.1998 in Ad.O.P.No.113 of 1998, passed by the learned Principal Judge, City Civil Court, Chennai. Ex.P4 is the original deed of Adoption dated 03.09.1998 executed between the deceased Udaya Mahadevan and Karna Prayag Trust. Ex.P5 is the original unregistered Will dated 24.08.2017 executed by Ms.Udaya Mahadevan which has been attested by two attesting witnesses namely 1.Mr.A.Vijayakumar and 2.Mrs.V.Dhanalakshmi. Ex.P6 is the original Sale Agreement dated 14.06.1993 between the Testatrix and S.S.Swarnalakshmi, Proprietrix of M/s.Sree Rajula Enterprises. Ex.P7 is the photocopy of the Property Tax demand card standing in the name of Udaya Mahadevan along with the computer generated Property Tax Receipt dated 14.07.2019. Ex.P8 is the affidavit of assets showing the net value of the estate as Rs.40,00,000/-. Ex.P9 is the consent affidavit given by the first respondent. Ex.P10 is the consent affidavit given by the second respondent.

5. One of the attestors of the Will dated 24.08.2017 viz.,

<https://hcservices.ecourts.gov.in/hcservices/>

Mr.A.Vijaya Kumar was examined as P.W.2. In his evidence, he has stated



that he knew the Testatrix Udaya Mahadevan as his family friend. The Testatrix executed her last Will and Testament on 24.08.2017. He has signed as the one of the attesting witness in the Will executed by Udaya Mahadevan. The signature found in Ex.P5 Will is that of the Testatrix. The Testator was sound and disposing state of mind at the time of execution of the Will. The Testatrix subscribed her signature in his presence and in the presence of Mrs.V.Dhanalakshmi. He filed his affidavit in this regard and marked the same as Ex.P11.

6. One Mrs.V.Dhanalakshmi was examined as P.W.3. In her evidence, she has stated that she knew the Testatrix as her family friend. She executed her last Will and Testament dated 24.08.2017 during her life time. In her presence and in the presence of Mr.Vijayakumar, the Testatrix signed on the Will. At her request, she subscribed her signature as the second attesting witness in the Will in the presence of the Testatrix and also in the presence of Mr.Vijayakumar. The Testatrix was sound and disposing state of mind at the time of the execution of the Will. She filed her affidavit in this regard and marked the same as Ex.P12.

7. The evidence of P.W.2 and P.W.3 have not only to prove the execution but also attestation of the Will and there is no other materials to suspect the Will. The respondents have also filed their consent affidavits.



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 in his favour.

9. Accordingly, the Original Petition is ordered. Grant probate of the Will dated 24.08.2017, in respect of the petitioner.

Sd/.V.P.N.J.
05.08.2021

//Certified to be a true copy//
Dated this the day of 2021

SU/16.08.2021 COURT OFFICER(O.S.)

From 25.09.2008 the Registry is issuing certified copies of the Order/Judgment Decree in this format.