

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

TUESDAY, THE 16TH DAY OF FEBRUARY 2021

THE HON'BLE MR. JUSTICE R.PONGIAPPAN

O.P.No.511 of 2019

In the matter of the Indian Succession
Act XXXIX of 1925 and
In the matter of Last Will and
Testament of deceased K.Rukmani

ERA.SADAGOPAN
S/o.Late Ramasamy
9, Old No.7, 51st Street,
Ashok Nagar, Chennai-600083

..Petitioner

-Vs-

1. SANTHI V.
W/o.Late V.Varadarajan
22/4, Gandhi Raod,
Alwarthirunagar,
Chennai-600087.

2. S.LALITHA
W/o.Era.Sadagopan
9, Old No.7, 51st Street,
Ashok Nagar, Chennai-600083.

3. S.USHA
W/o.A.B.Sairamesh
A-3, Second Floor, Krish Apartments,
77/30, Thambiah Road,
West Mambalam,
Chennai-600033.

..Respondents

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 the limited to State of Tamil Nadu may be granted to him.

The 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 Mrs.K.Rukmani.

2. The Petitioner is the husband of the 2nd Respondent and brother-in-law of the deceased Mrs.K.Rukmani as well as the 1st and 3rd Respondents. The deceased is wife of Mr.A Krishnamurthy. Mr.A. Krishnamurthy during his life time obtained land measuring an extent of 7200 sq.ft along with building under a will dated 09.03.1961 executed by his brother late A.Devanayagam. The husband of the deceased developed and promoted the land after demolishing the old building and constructed residential flats over it. The said Mr.A.Krishnamurthy died intestate on 24.05.1999 at Chennai leaving his wife Mrs.K.Rukmani as sole surviving legal heir. No child was born to them. After the demise of her husband

mother and she executed a will dated 15.06.2014 bequeathed her immovable property referred above in favour of the Respondents equally by reserving life interest in favour of her mother Mrs.M. Alamelu. The Testatrix of the Will Mrs.K.Rukmani died on 30.08.2014. The deceased Mrs.K.Rukmani was ordinarily resided at West Mambalam, Chennai, possessed of properties at Chennai, within the jurisdiction of this Court.

3. The deceased testatrix executed his last Will and Testament dated 15.06.2014, thereby bequeathing the movable and immovable properties on the Respondents. The testatrix nor his mother Mrs.A. Alamelu never informed anyone about the Will during their life time or at the time of their death. The Will was traced only recently when the belongings of the testatrix were searched and verified for the purpose of renovation. Hence, there was a delay in filing the petition for probate.

4. The will was duly executed by the deceased in the presence of witnesses. The petitioner has been appointed as executor of the Will. The amount of assets which is likely to come into the petitioner's hands does not exceed in the aggregate sum of Rs.41,57,400/- and the net amount of the assets, after deducting all items which the petitioner is by law allowed to deduct is of the value of Rs.41,57,400/-. The petitioner undertakes to duly

administer the property and credits of the deceased Mrs.K. Rukmani and in any way concerning the 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 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 property and credits within one year from the said date. No application has been made to any District Court or delegate or to any High Court for probate of any Will of the said deceased or Letters of Administration with or without the Will annexed to his properties and credits.

5. The petitioner examined himself as P.W.1 and he had narrated the averments made in the petition stating that the petitioner have filed this petition for the grant of probate in his favour in respect of the Last Will and Testament executed by the testatrix on 15.06.2014. Ex.P.3 is the death certificate of Mr.A.Krishnamurthy husband of Testatrix, who died on 24.05.1999. Ex.P.4 is the legal heir ship certificate dated 13.07.1999 in respect of Mr.A. Krishnamurthy. Ex.P.5 is the death certificate of Mrs.M. Alameu, who died on 16.12.2015. Ex.P.6 is the death certificate of Mrs.K.Rukmani who died on 30.08.2014. Ex.P.7 is the original Will dated

witnesses namely 1.B.V.Sai Charan and 2.C.Chandravathi. Ex.P.9 is the affidavit of assets showing the net value of the estate as Rs.41,57,400/-

6. One of the attestors of the Will dated 15.06.2014 viz., Mr.B.V.Sai Charan was examined as P.W.2. In his evidence, P.W.2 has stated that the testatrix executed his last Will and Testament on 15.06.2014 in his presence and in the presence of Mrs.C. Chandravathi. At the request of the testatrix, P.W.2 subscribed his signature as first attesting witness along with Mrs.C. Chandravathi, who attested the Will as the second attesting witness in the presence of the testatrix. While executing the Will, the testatrix was in a sound and disposing state of mind and in her presence the attesting witnesses subscribed their signature in the Will. Ex.P13 is the affidavit filed by P.W.2 in this regard. The evidence of P.W.2 not only prove execution but also attestation of the Will and there is no other materials to suspect the Will.

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7. 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.

8. Accordingly, the Original Petition is ordered. Grant probate of the Will in respect of the petitioner.

Sd/.R.P.A.J.
16.02.2021

//Certified to be a true copy//

Dated this the day of 2021.

SU.03.03.2021

COURT OFFICER(O.S.)

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



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