

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 31.08.2021

Coram:

THE HONOURABLE MR.JUSTICE V.PARTHIBAN

Original Petition No.462 of 2021

1. Mrs.K.Shanthi Kannan

2. Mr.Ganesh Kumar

.. Petitioners

vs.

Mrs.Parathi Srinivasan

..Respondent

Original Petition (O.P) filed under Sections 222 and 276 of the Indian Succession Act, 1925, read with Order XXV Rule 6 of the Original Side Rules of this Court, praying for grant of Probate to the 1st petitioner in respect of the last Will and Testament dated 13.11.1995 of the deceased Mr.G.Vaidyanathan, to have effect throughout the state of Tamil Nadu and whole of Union of India.

For Petitioners : Mr.P.Subba Reddy

ORDER

This petition has been filed under Sections 222 and 276 of the Indian Succession Act and Order XXV, Rule 4 of the Original Side Rules of this Court, for grant of probate in respect of the Will, dated 13.11.1995 bearing Doc.No.83/1995 on the books of SRO, Periamet, executed by the deceased

G.Vaidyanathan, by proving the Will in common form to have effect throughout the State of Tamil Nadu and whole of Union of India in respect of the property mentioned in the Will.

2. The petitioners submit that the respondent and the deceased late Mr.G.Vaidyanathan were the only children of Mr.and Mrs.Ganan Jagannathan and that late Mr.G.Vaidyanathan was the elder brother of the respondent and the maternal uncle of the petitioners. Late Mr.G.Vaidyanathan was married to one Mrs.Radha who predeceased him on 12.01.1998 and they died issueless. The respondent is the only sibling to late G.Vaidyanathan and there is no other surviving kith and kin of the late Mr.G.Vaidyanathan.

3. The petitioners submit that G.Vaidyanathan died on 16.08.2009 and during his lifetime, he had purchased a property bearing Old Door No.26/3 and new Door No.4, Pachiappa's Hostel road, Chetpet, Chennai - 600 031 comprised in R.S.No.374/27, measuring about 2139 sq.ft. along with the built up area vide a registered sale deed dated 09.03.1988 bearing document No.370/1988 on the books of SRO Periamet, the subject property.

4. The petitioners state that being the absolute owner of the subject

property, Mr.G.Vaidyanathan had executed a registered Will dated 13.11.1995, whereby he had bequeathed the subject property in favour of the petitioners, in particular, the entire ground floor and front half of the 2nd floor along with half of the undivided share in the land measuring about 2139 sq.ft has been bequeathed in favour of the 1st petitioner and the balance portion i.e., the entire first floor and the rear half of the 2nd floor along with half of the undivided share in the land measuring about 2139 sq.ft. has been bequeathed in favour of the 2nd petitioner respectively.

5. The petitioners submit that the deceased G.Vaidyanathan, died on 16.08.2009 without leaving any surviving legal heir except for his only sibling the respondent herein who is none else than the mother of the petitioners. The 2nd petitioner submits that though as per the Will, half portion of the subject property has been bequeathed in favour of the 2nd petitioner, the 2nd petitioner hereby intends to give the probate to his sister i.e., the 1st petitioner alone. The deceased ordinarily residing at Old Door No.26/3 and New Door No.4, Pachiappa's Hostel Road, Chetput, Chennai - 600 031 and the subject property is situated within the State of Tamil Nadu and within the jurisdiction of this Court.

6. The Will marked with letter 'A' is the last Will and Testament of late Mr.G.Vaidyanathan duly executed by him at Chennai on 13.11.1995 registered as document No.83/1995 on the books of SRO, Periamet, in the presence of the witnesses, whose names appear at the foot thereof, however one of the witnesses viz., Mrs.Jayalakshmi expired on 24.03.2009 who is none else than the petitioners maternal grandmother and the mother of the respondent herein and the respondent has also filed an affidavit identifying the signature of the witness/her mother. Further, the whereabouts of the other witness is not known to the petitioners. As per the said Will, the Testator had appointed the petitioners as the beneficiary cum executors of the Will. Hence this petition is filed for the relief stated supra.

7. Though the Will was executed by the testator on 13.11.1995 and he had expired on 16.08.2009 but as the Will have been acted upon and benefits of the Will are also being enjoyed by the petitioners without any hindrance or claim by any person till date, ever since the death of the testator, further the petitioners have been paying necessary statutory tax and charges for the subject property and hence no necessity had arisen to probate to the Will immediately, however, now in order to set the legal

status right of the property and in order to avoid any issues in further, the petitioners have chosen to file this petition seeking for Probate of the subject Will.

8. The amount of the assets that are likely to come into the petitioners' hands, does not exceed in the aggregate a sum of Rs.2,20,00,000/- and the net amount of the said assets after deducting all items which the petitioners are by law allowed to deduct, is of the value of Rs.2,20,00,000/-.

9. In this Original Petition, the petitioners have undertaken to duly administer the properties and credits to the deceased G.Vaidyanathan, in any way concerning his Will, by paying first his debts and the legacies therein bequeathed insofar as the assets will extend and to make a full and true inventory thereof and exhibit the same before this Court within six months from the date of the grant of probate with the Will annexed to the petitioners and also to render to this Court a true and proper accounts of the said property and credits within one year from the said date.

10. The petitioners further submit that they are the only beneficiaries of the Will and the testator does not have any surviving legal heir and

except the respondent. Hence, the petitioners have not impleaded any person as next of kin or other persons as Party and there is no next of kin or other person interested to be impleaded.

11. The petitioners state that no application has been made before any District Court or delegate or to any High Court to Probate of any Will of the said deceased or for probate with or without the Will annexed to his properties and credits.

12. The first petitioner was examined as P.W.1 and she had reiterated the averments made in the petition. Exs.P1 to P9 were marked. Ex.P-1 is the Original Will dated 13.11.1995 executed by Mr.G.Vaidyanathan which has been attested by two attesting witnesses namely (1) J.Jayalakshmi and (2) Mr.P.Kothandaraman. Ex.P2 is the computer generated death certificate of Radha, who died on 12.01.1998. Ex.P3 is the computer generated death certificate of G.Vaidyanathan, who died on 16.08.2009. Ex.P4(Series 3 Nos.) are the photocopies of the Aadhaar cards of both the petitioners and the respondent. Ex.P5 is the Family Tree in respect of the deceased G.Vaidyanathan. Ex.P6 is the photocopy of the sale Deed dated 09.08.1988 executed in favour of Vaidyanathan. Ex.P7 is the online copy of the

statement for payment of Property tax. Ex.P8 is the computer generated death certificate of Jayalakshmi, who died on 19.03.2009. Ex.P9 is the affidavit of assets showing the net value of the estate as Rs.2,20,00,000/-.

13. Heard the learned counsel for the petitioners. The respondent has no objection for grant of probate in favour of the petitioners in respect of the Will executed by the deceased and that the respondent has also filed consent affidavit in that regard which is marked as Ex.P10.

14. The signature of one of the attesting witnesses to the Will, namely Mrs.Jayalakshmi expired on 24.03.2009. Her signature has been identified by her daughter, namely Mrs.Parvathi Srinivasan/respondent herein. It is stated that the whereabouts of the other witness is not known to the petitioners. The testator had appointed the petitioners as the beneficiaries cum executors of the Will.

15. From the averments made in the petition and the deposition of P.W.1 supported by documents Exs.P-1 to P-11 and also taking into account that the respondent has no objection in granting probate in favour of the petitioners which is evident from her consent affidavit (Ex.P-10), it is clear that the petitioners have proved their claim and that the Will had been

proved more particularly in common form and there is no contra evidence. Hence, this Court is satisfied that the petitioners are entitled to the relief sought for in this Original Petition.

16. In fine, this Original Petition is ordered as prayed for. Registry is directed to grant "Probate" in respect of the said Will in favour of the 1st petitioner. As undertaken by the petitioners in paragraph 14 of the petition, the 1st petitioner shall duly administer the properties and credits to the deceased G.Vaidyanathan in any way concerning his Will by paying first his debts and the legacies therein bequeathed in so far as the assets will extend and to make full and true inventory thereof and exhibit the same before this Court within six months from the date of issuance of Probate by the Registry of this Court and also to render before this Court a true and proper account of the said properties and credits within one year from the date of issuance of Probate by the Registry of this Court.

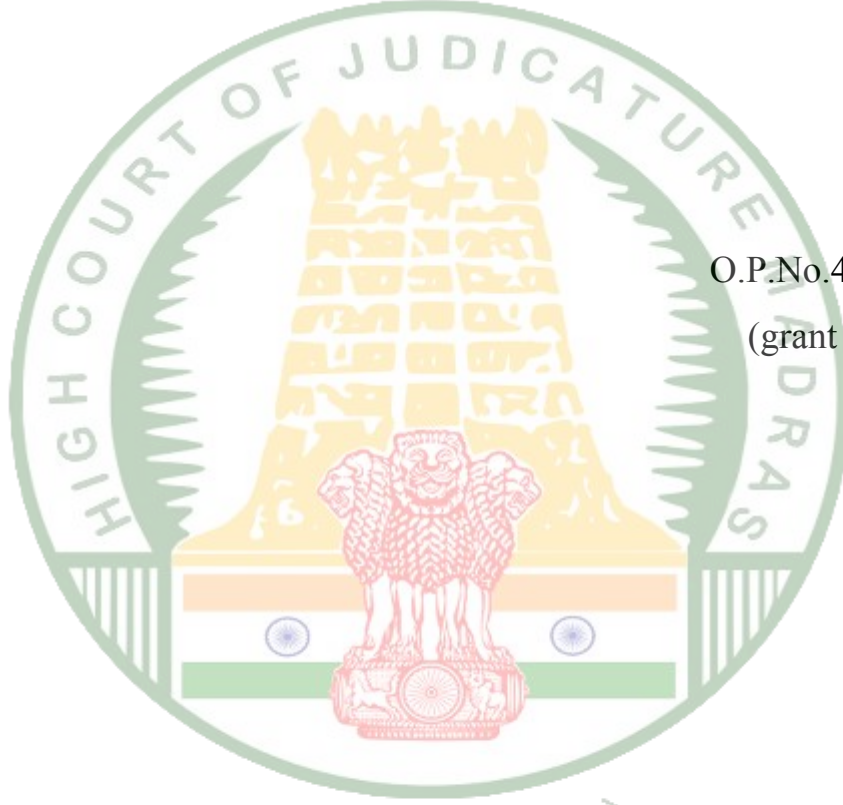
Speaking Order: Yes
vsi

31.08.2021

O.P.No.462 of 2021

V. PARTHIBAN, J

vsi



O.P.No.462 of 2021
(grant of probate)

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