

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 01.09.2021

Coram:

THE HONOURABLE MR.JUSTICE V.PARTHIBAN

Original Petition No.451 of 2021

Sidhique Razack, S/o Razack

.. Petitioner

Original Petition (O.P) filed under Sections 222 and 276 of the Indian Succession Act XXXIX of 1925 read with Order XXV Rule 4 of the Original Side Rules of this Court, praying that petitioner may be allowed to prove the Will, dated 22.05.2015 in common form and the probate thereof to have effect throughout the State of Tamil Nadu, may be granted to him.

Schedule of property

All that piece and parcel of land and building consisting of Ground Floor and First Floor having commercial and residential portions, bearing Old Door No.2, New Door No.3, Gulam Abbas Ali Khan 3rd Street, Thousand Lights, Chennai-600 006, measuring to an extent of 2130 Sq.Ft. of land together with the building thereon comprised in O.S.No.328, R.S.No.56 Part, New S.No.56/125 in C.C.No.271 and situate in Nungambakkam Revenue Village, Egmore-Nungambakkam Taluk, Chennai

District and bounded on the:

North by : Nayar's House

South by : Maimoona Bee's House

East by : Abdul Razzack House

West by : Gulam Abbas Ali Khan 3rd Street

situated within the Registration District of Chennai Central and Sub-Registration District of Joint II Sub-Registrar - Thousand Lights.

For petitioner : Mr.S.Sathish Rajan

ORDER

This petition has been filed praying that petitioner may be allowed to prove the Will, dated 22.05.2015 in common form and the probate thereof may be granted to him, to have effect throughout the State of Tamil Nadu.

2. In the petition, it is stated by the petitioner as follows:

(a) The present petition is filed by the petitioner for grant of probate with a Will annexed to the property and credits of Tmt.Shanoo @ Halima Bi, the deceased.

(b) The schedule mentioned property belongs to the testatrix Tmt.Shanoo @ Halima Bi, who is the cousin sister (mother's sister's

daughter) of the petitioner. The testatrix is the absolute owner of the property being land and building bearing Old Door No.2, New Door No.3, Gulam Abbas Ali Khan 3rd Street, Thousand Lights, Chennai-600 006, measuring to an extent of 2130 Sq.Ft. of land together with the building thereon, comprised in O.S.No.328, R.S.No.56 Part, New S.No.56/125 in C.C.No.271 and situate in Nungambakkam Revenue Village, Egmore-Nungambakkam Taluk, Chennai District, which is more-fully described in the schedule, having purchased the same in the name of the testatrix by her father when she was a minor, by a Deed of Sale, dated 04.08.1973 and the same was registered as Document No.1189 of 1973 on the file of the SRO, T.Nagar.

(c) The above named Tmt.Shanoo @ Halima Bi died on 29.06.2017 at the above address, where she was then residing, possessed of property within the State of Tamil Nadu and within the jurisdiction of this Court.

(d) The writing hereunto annexed now shown to the petitioner and marked with letter "A", is the last Will and testament of the testator Tmt.Shanoo @ Halima Bi and was duly executed by her at the above address on 22.05.2015 in the presence of the witnesses whose names

appeared at the foot thereof.

(e) The petitioner is the executor named in the said Will.

(f) The amount of assets which are likely to come into the petitioner's hands does not exceed in the aggregate the sum of Rs.1,25,00,000/- and the net amount of the said assets, after deducting all items which the petitioner is by law allowed to deduct, is of the value of Rs.1,25,00,000/-.

(g) There are no other kith and kin of the deceased and hence, there are no respondents. There is no Class-II legal heirs to the father of the deceased/testatrix, and likewise, except the petitioner who is the mother's sister's son of the deceased, there is no other Class-II legal heirs to the mother of the deceased.

(h) No application has been made to 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 her property and credits.

(i) The petitioner undertakes to duly administer the property and credits of the testatrix/deceased and in any way concerning her will by paying first her debts and then the legacies therein bequeathed so far as the

assets will extend, to make a full inventory thereof and exhibit the same in this 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.

(j) The husband of the testatrix pronounced three Talaq on 29.04.1993 and the marriage between the deceased and her husband Noor Mohammed was dissolved by divorce. The Will annexed herewith is the last and only Will and testament of the testatrix and except this Will, the testatrix has not executed any other Will. The petitioner made strenuous efforts and made a thorough search if there is any other Will executed, but except the present Will, no other Will is found and executed by the testatrix.

(k) The Will was executed on 22.05.2015. The testatrix died on 29.06.2017. Even though the Will came into force immediately after the death of the testatrix on 29.06.2017, the petitioner was not aware that Probate with the Will is to be obtained. Only now, he was informed that probate is to be obtained based on the Will. Hence, immediately the present application is filed without any least delay. The delay is neither wilful nor deliberate, but due to the bona-fide reasons and facts as stated above.

Hence, for the above reasons, the petitioner has filed the present petition for the relief stated supra.

3. The petitioner examined himself as P.W.1 and marked Exs.P-1 to Ex.P-7. Ex.P-1 is the photocopy of the sale deed, dated 04.08.1973 executed in favour of the testatrix. Ex.P-2 is the computer generated Death Certificate of the testatrix, who died on 29.06.2017. Ex.P-3 is the original unregistered Will, dated 22.05.2015 executed by the deceased/testatrix, which has been attested by two attesting witnesses, namely (i) Noorjahan Razack and (ii) M.Shakeer. Ex.P-4 is the computer generated Death Certificate of A.Arab Shah, who died on 20.11.2007. Ex.P-5 is the computer generated Death Certificate of Noorjahan Razack, who died on 13.11.2019. Ex.P-6 is the copy of the notice, dated 03.05.1993 from the Counsel of Noor Mohammed, enclosing the copy of the Talaq proceedings. Ex.P-7 is the affidavit of assets showing the net value of the Estate as Rs.1,25,00,000/-.

4. One of the attesting witness to the Will, i.e. Mr.S.Shakeer was

examined as P.W.2 and he deposed that the testatrix is known to him and he is her close relative and he is well acquainted with her. She executed her last Will and testament Ex.P-3 on 22.05.2015 in the presence of P.W.2 and also in the presence of P.W.2's brother-in-law's mother Noorjahan Razack. P.W.2 further deposed that at the request of the testatrix, P.W.2 had subscribed his signature as the second attesting witness, along with Noorjahan Razack, who attested the Will Ex.P-3 as the first attesting witness in the presence of the testatrix. P.W.2 further stated that he saw the testatrix subscribing her signature at the foot of every page of Ex.P-3 Will and all of them signed in each other's presence. The testatrix was in a sound and disposing state of mind, memory and understanding at the time of execution of Ex.P-3 Will. In this regard, P.W.2 has filed affidavit Ex.P-8.

5. Heard the learned counsel for the petitioner and perused the materials available on record.

6. From the averments made in the petition and the deposition of P.Ws.1 and 2 and considering Exs.P-1 to P-8 and also taking into consideration the fact that the deceased has executed the Will while she was

in a sound and disposing state of mind, it is clear that the petitioner has proved his claim and that the Will had been proved in common form and there is no contra evidence. Hence, this Court is satisfied that the petitioner is entitled to the relief sought for in this Original Petition.

7. 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 petitioner. The petitioner shall duly administer the property(ies) and credits of the deceased-testatrix Mrs.Shanoo @ Halima Bi, in any way concerning her Will by paying first her debts and the legacies therein bequeathed 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 this Court and also to render before this Court a true and proper account of the said property(ies) and credits within one year from the date of issuance of Probate by this Court.

WEB COPY

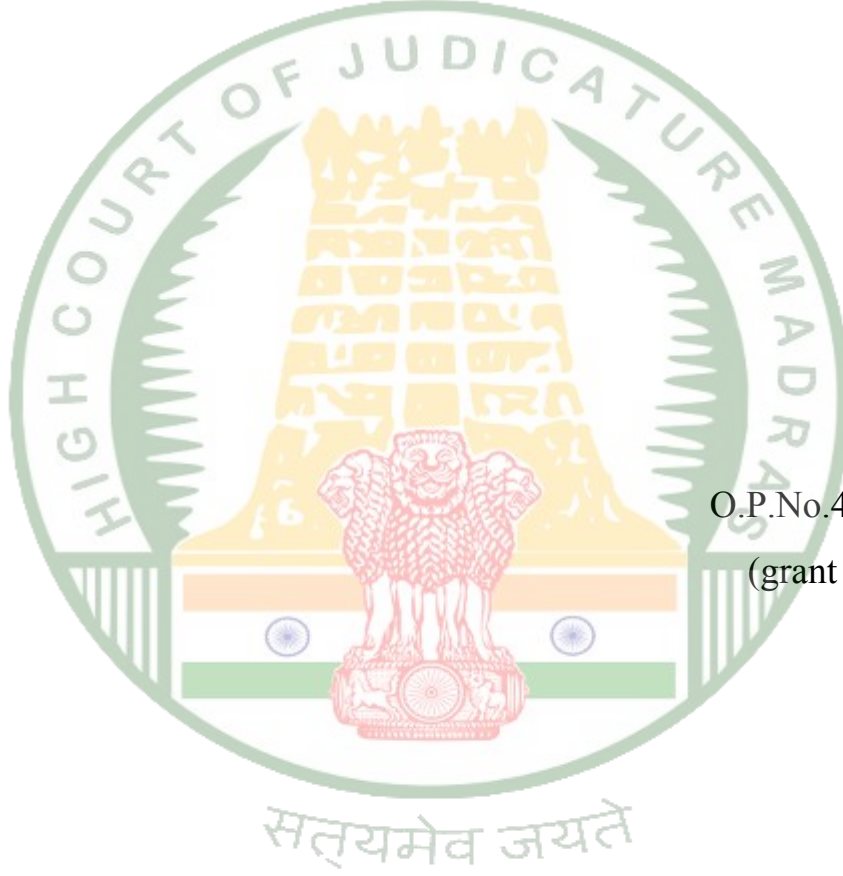
01.09.2021

Speaking Order: Yes
cs

Order dated 01.09.2021
in O.P.No.451 of 2021

V. PARTHIBAN, J

CS



O.P.No.451 of 2021
(grant of probate)

WEB COPY 01.09.2021