

O.P. No.263 of 2016

T.RAVINDRAN, J.

The Original Petition has been laid under Sections 232, 241 and 276 of the Indian Succession Act, 1925 and Order XXV Rule 5 of the High Court Original Side Rules.

2. The Original Petition has been laid for the grant of Letters of Administration with Will annexed dated 03.07.1996 infavour of the first petitioner as the grandson/beneficiary of the deceased V.Viswanathan, represented by the second petitioner, his father and agent for the use and benefit of the first petitioner insofar as the property set out in the schedule to the petition, to have effect through out the State of Tamil Nadu.

3. The first petitioner (the son of the second petitioner), is the grandson of the deceased V.Viswanathan who died on 22.06.2002, the second petitioner is the son and the first respondent is the daughter of the deceased V.Viswanathan. The second respondent is the husband of the first respondent and the respondents 3 and 4 are the children of the respondents 1 and 2. It is stated that the wife of the deceased

V.Viswanathan died on 15.03.1983 and thus the second petitioner and the first respondent are the only class I legal heirs of the deceased. According to the petitioners, the deceased V.Viswanathan duly executed a Will dated 03.07.1996 in the presence of the witnesses as set out in the Will and the same had been registered in the office of the Sub Registrar, Konnur, and under the said Will, he had appointed E.S.Jayagopal and V.Mohanakrishna (the second respondent) as the executors. It is stated that E.S.Jayagopal, one of the executors had died. According to the petitioners, the other executor, namely, the second respondent had declined to cooperate in offering the subject Will for probate and also not willing to take any action with reference to the same despite the request on the part of the petitioners. Hence, according to the petitioners, the first petitioner had been necessitated to initiate the present proceedings seeking for the grant of Letters of Administration with the Will annexed.

4. It is put forth that the first petitioner had appointed the second petitioner as his duly constituted Power Agent and thus representing the first petitioner as his Power Agent and the second petitioner is not claiming any right to the properties of the deceased and

on the other hand, is consenting for the grant of Letters of Administration with the Will annexed in favour of the first petitioner.

5. The first petitioner is seeking for Letters of Administration only in relation to the immovable property described in the 'A' schedule to the Will dated 03.07.1996 and according to the petitioners, the value of the abovesaid immovable property is Rs.65,00,000/- (Rupees Sixty Five Lakhs). It is further stated that the movables described in the schedules B to D in the abovesaid Will had been disbursed as per the wishes of the testator and therefore, it is stated that the present petition has not been laid in relation to the properties set out in the schedules B to D of the Will left by the testator.

6. The petitioners undertake to duly administer the property and the credits of the deceased V.Viswanathan concerning the Will by paying first their debts and then the legacies therein sofaras the assets will extend and to make a full and true inventory thereof and exhibit the same in this Court within six months as well as render the true account of the said property and credits within one year from the date of grant of Letters of Administration. It is further sated that the petitioners have not

made any application for the probate of the Will dated 03.07.1996 or for the Letters of Administration qua the Will left by the deceased in any other Court. The deceased V.Viswanathan was the owner of the immovable property set out in the schedule to the petition and by way of the Will, the first petitioner had been granted life interest in the said property and thereafter, the vested remainder shall go to the children born to the first petitioner. The first petitioner is not married and therefore, not blessed with any children as on date. Accordingly, the petitioners have prayed for the grant of Letters of Administration with the Will dated 03.07.1996 as prayed for.

7. In the abovesaid matter, though the notice had been sent to the respondents, they had not entered appearance nor put forth any objection to the grant of Letters of Administration qua the Will dated 03.07.1996 as sought for by the petitioners.

8. In the abovesaid matter, after completing necessary formalities, the matter was referred to the Master for recording the evidence. In support of the relief sought for by the petitioners in the main Original Petition, P.Ws.1 to 3 had been examined and Exs.P1 to P8 were

marked, detailed as under:

- 1) Ex.P1 is the certified copy of the General Power of Attorney dated 02.01.2009 executed by the first petitioner in favour of the second petitioner.
- 2) Ex.P2 is the Original death certificate of the deceased V.Viswanathan, who died on 22.06.2002
- 3) Ex.P3 is the original legal heirship certificate dated 19.12.2002 in respect of the deceased V.Viswanathan.
- 4) Ex.P4 is the certified copy of the Sale deed dated 24.11.1993 standing in the name of the deceased V.Viswanathan.
- 5) Ex.P5 is the original registered Will dated 03.07.1996 executed by the deceased V.Viswanathan.
- 6) Ex.P6 is the computer generated copy of the death certificate of the wife of the deceased, namely V.Hemavathy, who died on 15.03.1983.
- 7) Ex.P7 is the affidavit of assets showing the net value of the estate as Rs.65,00,000/-

8) Ex.P8(series 2 Nos) are the copies of paper publications effected in one issue of Tamil Daily "Makkal kural" dated 05.08.2016 and in one issue of English Daily "Trinity Mirror" dated 12.08.2016.

9. P.W.1, the second petitioner is the power agent as well as the father of the first petitioner. P.W.2, K. Damodaran has tendered evidence that the testator V.Viswanathan is his uncle and that he is acquainted with his signature and accordingly he has identified the signature of the testator in Ex.P5 Will and also he had identified the signature of the attestator of the Will namely M.D.Veeraraghavalu as according to him M.D.Veeraraghavalu is his relative.

10. The petitioners have examined one of the attestors M.D.Veeraraghavalu as P.W.3 and it is found that P.W.3 was brought to the court to tender evidence only after taking coercive steps and he, in his evidence, has deposed that he does not know as to whether P.W.2 is the relative of the testator V.Viswanathan and further deposed that P.W.2 is the son of the testator's wife's sister and admitted that his

signature is found in page No.5 of Ex.P5 Will and further admitted that the signature of the testator is found in all the pages of Ex.P5 Will and further testified that the testator had bequeathed the property to the children born to the first petitioner under Ex.P5 Will and stated that the first petitioner has life interest over the property and thereafter, his children would acquire absolute right and further stated that he had accompanied the testator at the time of registration of Ex.P5 Will in the Registrar's office and according to him, upon request of the testator he had accompanied him to the Registrar's office and would state that Ex.P5 Will was executed on 03.07.1996 and would further state that R.Selvaraj also accompanied them at the time of registration and that he and R.Selvaraj were present at the time of signing of the Will by the testator and the testator was in sound and disposing state of mind at the time of execution of the Will Ex.P5.

11. Considering the evidence of P.Ws.1 to 3 and the documents marked Exs.P1 to P8, in toto, it is found that the petitioners have established the truth and validity of the Will dated 03.07.1996 marked as Ex.P5 in accordance with law and accordingly it is found that

the first petitioner, as the beneficiary, is entitled for the grant of Letters of Administration qua the Will dated 03.07.1996 as prayed for with reference to the petition schedule property as by way of the said Will the first petitioner had been granted the life interest over the said property and the vested remainder being given to his children.

12. In view of the abovesaid position, it is evident that the petitioners are entitled to the relief prayed for and there is no impediment for the grant of Letters of Administration in favour of the first petitioner, represented by the second petitioner, his father and agent, with the Will annexed dated 03.07.1996 as prayed for.

13. For the reasons aforesaid, the Letters of Administration is ordered to be granted in favour of the first petitioner, represented by the second petitioner, his father and agent, as prayed for and the petitioners are directed to administer the properties and credits of the testator as set out in the Will and file a full and true inventory of the property before this Court within a period of six months and to render a true account of the said property and credits within a period of one year from the date of grant of Letters of Administration. The petitioners are

further directed to execute a bond for a sum of Rs.25,000/- (Rupees Twenty Five thousand only) in the name of the Assistant Registrar (Original Side), High Court of Madras. Accordingly, the Original Petition stands allowed.

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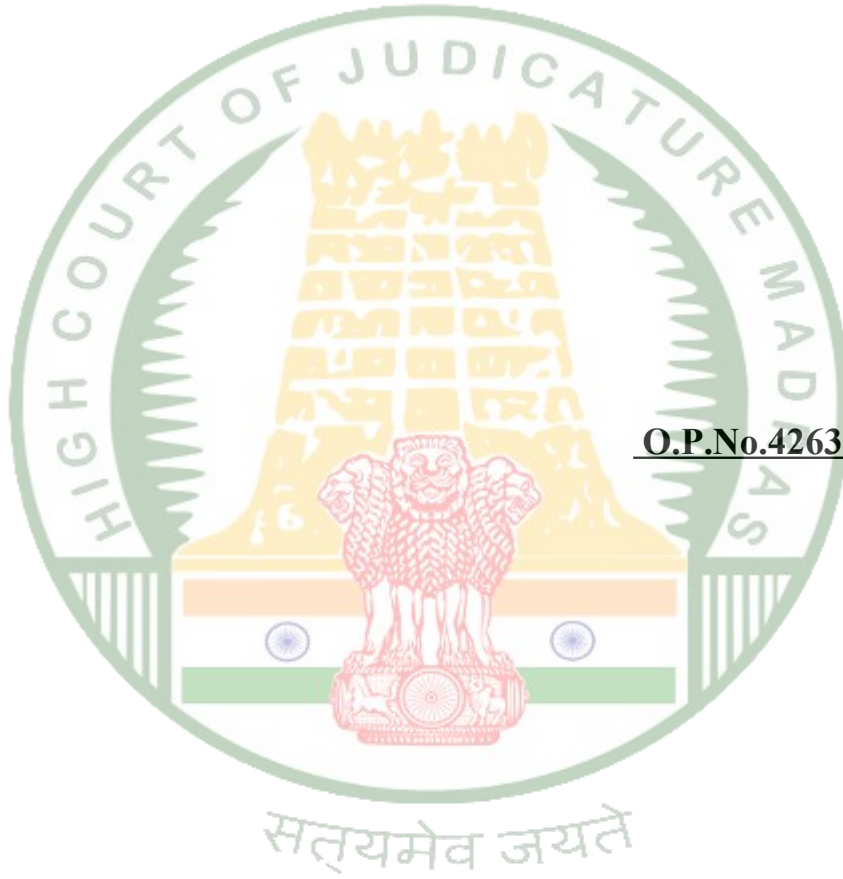


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