

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 01.09.2021

Coram:

THE HONOURABLE MR.JUSTICE V.PARTHIBAN

Original Petition No.734 of 2019

Rathinamary @ Rathinamary Sowridoss,
W/o S.M.Sowridoss

.. Petitioner

Vs.

1. Tmt.Anbuselvi, W/o Joseph Vedachalam

2. Mariya Josephlingan Ambedkar, S/o S.M.Sowridoss

3. Amalanathan, S/o S.M.Sowridoss

4. Aruldoss, S/o S.M.Sowridoss

.. Respondents

Original Petition (O.P) filed under Sections 222 and 276 of the Indian Succession Act, 39 of 1925, read with Order 25 Rule 4 of the Madras High Court Original Side Rules, praying that petitioner may be permitted to prove the Will in common form and that probate thereof to have effect limited to the State of Tamil Nadu may be granted to her.

For petitioner : Mr.R.Prathapan

For respondents: M/s.L.Sonia Gandhi for RR-1 and 3

Mr.R.MD.Muheeb-Ul-Khader for R-2

Mr.S.Sathyaraj for R-4

ORDER

The petitioner has filed this petition praying that she may be permitted to prove the Will in common form and that probate thereof to have effect limited to the State of Tamil Nadu, may be granted to her.

2. It is averred by the petitioner in the petition as follows:

(a) The deceased S.M.Sowridoss, son of Susai Manickam died on 27.10.2014 at Southern Railway Hospital, 6, Railway High Road, Perambur, Chennai-600 023 at the age of 88 years at Chennai, as he was then residing, possessed of the property within the State of Tamil Nadu and within the jurisdiction of this Court and he was residing at Door No.91/60, Ponnuswamy Nagar, 3rd Street, Perambur, Chennai-600 011 and Death Certificate is produced before this Court.

(b) The writing herein annexed now shown to the petitioner and marked with letter "A", is the last Will and testament of the deceased S.M.Sowridoss and the same was duly executed by him at Chennai on 21.03.2006 in the presence of witnesses whose names appear at the foot

thereof.

(c) The petitioner is the executrix named in the said Will. The petitioner is the mother of the respondents. The petitioner is the wife and the respondents are daughter and sons of the testator S.M.Sowridoss, who are the legal heirs of the deceased testator S.M.Sowridoss.

(d) The amount of assets which are likely to come into the petitioner's hands, does not exceed in the aggregate the sum of Rs.32 lakhs and the net amount of the said assets, is the same, since there are no items to be deducted. The net value of the assets is same, i.e. Rs.32 lakhs.

(e) The petitioner has impleaded all the next of kin or other persons interested as party as respondents. There is no next of kin or other persons interested to be impleaded.

(f) Insofar as the petitioner is concerned, she had been nominated as the executrix of the Will and she is the wife of the deceased and besides her duty as an executrix under the Will, she has no other claim over the Estate left by the said late S.M.Sowridoss.

(g) The petitioner has made several compromise between the respondents, but failed in the same and so, there is no other way for getting

the relief, and hence this petition is filed for getting the relief from this Court and it is neither wilful nor wanton due to the reasons stated above.

(h) Under the last Will and testament of the deceased S.M.Sowridoss, he has bequeathed all his properties as mentioned hereunder in favour of his said daughter and sons, the petitioner and respondents herein; the "A" schedule property in favour of his first son Maria Joseph Lingam Ambedkar - the rear portion in house and ground nearly 681 Sq.Ft. at 60/91, Ponnusamy 3rd Street, Sembium, Perambur, Chennai-600 011; the "B" schedule property in favour of his second son Amalanathan - in the front portion of the house and ground, nearly 681 Sq.Ft. at 60/91, Ponnusamy 3rd Street, Sembium, Perambur, Chennai-600 011; the "C" Schedule property in favour of his 3rd son Aruldoss - in the rear vacant land (ground) an extent of 612 Sq.Ft. at 60/91, Ponnusamy 3rd Street, Sembium, Perambur, Chennai-600 011 and he would construct the building in the said vacant as he likes; the "D" Schedule property in favour of petitioner's daughter Anbu Selvi - the hut on the house (Motta Madi).

(i) No application has been made to any District Court or delegate or in any other High Court for the probate of any Will of the said deceased or

Letters of Administration with or without the Will annexed to his properties.

(j) The petitioner hereby undertakes to duly administer the property of the said S.M.Sowridoss, deceased, and in any way concerning his Will by paying first his debts, if any and then legacies therein bequeathed so far as the assets will extend and to make a full and true 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 within one year from the said date.

(k) No caveat petition is filed and there is no endorsement in the caveat register as on date.

Thus, the petitioner has filed the present petition for the relief stated supra.

3. The petitioner examined herself as P.W.1 and marked Exs.P-1 to P-5. Ex.P-1 is the original Will, dated 21.03.2006 executed by Mr.S.M.Sowridoss, which has been attested by two attesting witnesses, namely, Mr.M.Joseph Eratchagar and Mr.P.Jayaraman. Ex.P-2 is he computer generated Death Certificate of S.M.Sowri Doss, who died on

27.10.2014. Ex.P-3 is the original Legal Heirship Certificate dated 05.05.2017 in respect of S.M.Sowri Doss. Ex.P-4 is the photocopy of the sale deed, dated 24.10.1967. Ex.P-5 is the affidavit of assets showing the net value of the Estate as Rs.32,00,000/-.

4. One of the attestors to the Will, was examined as P.W.2 who deposed that the testator is his paternal uncle. He executed his last Will and testament on 21.03.2006, Ex.P-1, in his presence and in the presence of Mr.P.Jayaraman. At his request, P.W.2 had subscribed his signature as the first attesting witness along with Mr.P.Jayaraman, who attested the Will Ex.P-1 as the second attesting witness in the presence of the testator. P.W.2 saw the testator signing in all the pages of the Will Ex.P-1. All of them signed in each other's presence. The testator was in a sound and disposing state of mind, memory and understanding at the time of execution of Ex.P-1 Will. In this regard, P.W.2 has filed his affidavit, which is marked as Ex.P-6.

5. Heard both sides 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 also considering Exs.P-1 to P-6 and also taking into

consideration the fact that the deceased has executed the Will while he 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 favour of the petitioner, in respect of the said Will. The petitioner shall duly administer the property(ies) and credits of the deceased in any way concerning his Will by paying first his 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.

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01.09.2021

Speaking Order: Yes

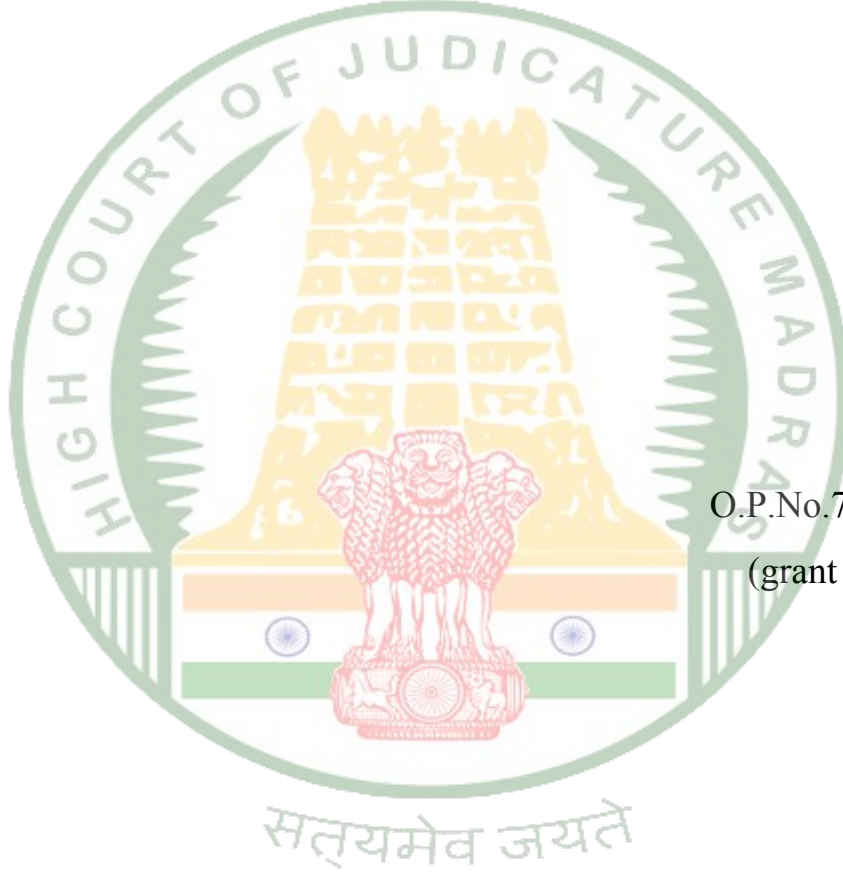
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Order dated 01.09.2021
in O.P.No.734 of 2019

V. PARTHIBAN, J

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O.P.No.734 of 2019
(grant of probate)

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