

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

FRIDAY, THE 23RD DAY OF APRIL 2021

THE HON'BLE MR. JUSTICE T.RAVINDRAN

O.P.No. 510 of 2020

In the matter of Indian
Succession Act, 1925
(Act XXXIX of 1925)

and

In the matter of Last – Will and
Testament of Unnamkondaiah -
Deceased

Mr.V.VENKATESWARALU
S/o.Late Unnam Kondaiah,
No.7/4, Narasimma Nagar,
3rd Street, Pulianthope,
Chennai-600 012

..Petitioner

-Vs-

1. Mr.V.SAPTHAGIRI
S/o.V.Venkateswaralu,
No.7/4, Narasimma Nagar,
3rd Street, Pulianthope,
Chennai-600 012

2.Mrs.D.KONDAMMA
D/o.Late Unnam Kondaiah,
No.24, Lakshmiammam Nagar,
1st Street, Selavoyal,
Chennai-600 051

..Respondents

Original Petition praying that this Hon'ble Court be pleased to permit

the petitioner to prove the WILL in common form and that probate thereof

to having effect Limited to the state of Tamil Nadu may be granted to him.

This Original Petition coming on this day before this court for hearing the court made the following order:

The Original Petition has been laid for the grant of probate under Sections 222 and 276 of Indian Succession Act, 1925, r/w Order XXV Rule 4 of the Original Side Rules.

2. The petitioner is the son of the deceased Unnam Kondaiah and the first respondent is the son of the petitioner and the second respondent is the daughter of the deceased Unnam Kondaiah. It is put forth by the petitioner that the deceased Unnam Kondaiah purchased the property with lease hold rights situated at No.7/4, Plot No.160, Narasimma Nagar, 3rd Street, Peambur Baracks, Pulianthope, Chennai 600 012, measuring an extent of 1988 sq. ft. by way of the registered sale deed dated 06.12.1982. It is further stated that the deceased Unnam Kondaiah had executed a registered Will dated 23.05.1996 in the presence of the witnesses in a full and fit state of mind and health and on his own volition bequeathing the abovesaid property in favour of the petitioner and the first respondent, granting life interest in favour of the petitioner and absolute right in favour of the first respondent. The petitioner had been appointed as the executor in the Will by the deceased and therefore, according to the petitioner, he has life time interest over the property bequeathed and after his demise, the first respondent shall take the property bequeathed absolutely with all rights as

set out in the Will. It is further stated that Unnam Kondaiah died on 26.10.1998 and that his wife Mrs. Narasimma predeceased him on 28.12.1996 and as well as the parents of the deceased Unnam Kondaiah predeceased him. It is further put forth that as per the terms of the Will, the petitioner is in the possession and enjoyment of the property. Thus, it is the case of the petitioner that he and the first respondent are named as legatees in the abovesaid Will executed by the testator and the amount of asset which are likely to come in the hands of petitioner and the first respondent is of the value of Rs.39,80,000/-. It is further stated that no application has been preferred in any court for the probate of the Will left by the deceased. The petitioner undertakes to administer the property and credits of the deceased testator by paying first his debts and then the legacies so far as the assets will extend and to make a full and true inventory thereof and exhibit the same in the Court within six months from the grant of probate as well as render a true account of the said property and credits within one year from the grant of probate. As the petitioner was not fully aware of the necessity of obtaining the probate of the Will, it is put forth that the delay had occurred in filing the petition for probate. Thus according to the petition, he has come forward with the petition for the grant of probate qua the Will dated 23.05.1996 left by the deceased Unnam Kondaiah.

matter was referred to the Master for recording the evidence. In support of the petitioner's case, the petitioner has examined himself as P.W.1 and marked Exs.P1 to P12, detailed as under.

- 1) Ex.P1 is the Original Will dated 23.05.1996 executed by deceased testator UnnamKondaiah.
- 2) Ex.P2. is the copy of the sale deed dated 06.12.1982 registered as Doc. No.2189 of 1982 before SRO, Purasawalkam (marked after comparing and verifying with the original)
- 3) Ex.P3 is the original death certificate of Unnam Kondaiah, who died on 26.10.1998.
- 4) Ex.P4 is the original death certificate of Narasumma, who died on 28.12.1996.
- 5) Ex.P5 is the copy of the Legal Heirship certificate dated 02.08.2000 in respect of the deceased Unnam Kondaiah (marked after comparing and verifying with the original)
- 6) Exs.P6 and P7 are the photocopies of the Aadhaar cards of the petitioner and the first respondent.
- 7) Ex.P8 is the photocopy of the EB card in the name of the deceased Unnam Kondaiah (marked after comparing and verifying with the original).

8) Ex.P9 is the computer generated copy of Encumbrance

Certificate dated 04.09.2020.

9) Exs.P10 and P11 are the the consent affidavits of the first

and the second respondents.

10)Ex.P12 is the affidavit of assets showing the net value of the

estate as Rs.39,80,000/-

4. In addition to that, the petitioner has also examined the attesor Mr. Mallikarjuna @ Mallaiah as P.W.2 and P.W.2, in his evidence has deposed that the deceased Unnam Kondaiah had executed the said Will in his presence and in the presence of the other witness C.G. Kasiah and he and the other attesor has witnessed the testator executing the Will and signing in all the pages of the Will and that they had attested in the presence of the testator and that the testator was in a sound and disposing state of mind, memory and understanding at the time of the execution of Ex.P1 Will. Ex.P13 is the affidavit of P.W.2.

5. Considering the evidence of P.Ws.1 and 2, in toto, as well as the documents marked as Exs.P1 to P13, it is found that the deceased Unnam Kondaiah is the owner of the property involved in the matter and that he had bequeathed the same in favour of the petitioner and the first respondent granting life interest in favour of the petitioner and absolute right in favour

the deceased testator was in the fit state of mind and had executed the Will in favour of the petitioner and the first respondent on his own volition and in the fit state of mind and health and thus it is seen that the petitioner had been appointed as the executor in the Will left by the testator. From the evidence of P.W.2, the attesor, the same being wholly reliable, it is found that the petitioner has established the truth and validity of Ex.P1 Will in accordance with law.

6. In the light of the abovesaid factors, it is evident that the petitioner has made out the case for the grant of probate in his favour as prayed for in the Original Petition. Resultantly, the petitioner is entitled for the grant of probate qua the Will dated 23.05.1996 as prayed for. The petitioner is directed to make a full and true inventory of the assets as well as the full and true account of the said property and credits within the time as undertaken by him in the petition. Accordingly, the Original Petition stands allowed.

WEB COPY

Sd/.T.R.N.J.
23.04.2021

//Certified to be a true copy//
Dated this the day of 2021

SU-28.04.2021

COURT OFFICER(O.S.)

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