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

TUESDAY, THE 07TH DAY OF DECEMBER 2021

THE HON'BLE MR. JUSTICE ABDUL QUDDHOSE

O.P.No.554 of 2021

In the matter of Indian Succession
Act XXXIX of 1925

and

In the matter of the Last Will
and Testament of Mr.Kamal
Kishore Agarwal

Mr.AJAY AGARWAL
S/o.Late Kamal Kishore Agarwal,
6/9, 1st Cross, Kasturi Ranga Road,
Mylapore, Teynampet,
Chennai.

..Petitioners

-Vs-

1. MRS.PUSHPA AGARWAL
W/o.Late Kamal Kishore Agarwal,
6/9, 1st Cross, Kasturi Ranga Road,
Mylapore, Teynampet,
Chennai - 18.

2. Ms.ANU AGARWAL
D/o.Late Kamal Kishore Agarwal,
6/9, 1st Cross, Kasturi Ranga Road,
Mylapore, Teynampet,
Chennai - 18.

..Respondents



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Original Petition praying that this Hon'ble Court be pleased to allow him to prove the Will in common form and that Probate thereof to have effect throughout 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:

This petition has been filed by the petitioner seeking for probate of the Will dated 20.01.2012 executed by Kamal Kishore Agarwal, who died on 22.05.2020.

2. The petitioner is the son of the Testator, Kamal Kishore Agarwal, the first respondent is his wife and the second respondent is his daughter. The petitioner and the respondents are the only legal heirs of the Testator, Kamal Kishore Agarwal. Under the Will, RSB Mehta and Kiran Kumar Agarwal are the attesting witnesses.

3. Before the learned Master, Ajay Agarwal was examined as a witness (P.W.1) and through him, the following documents were marked as Exhibits.



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Exhibits	Nature of the document
Ex.P-1	Original unregistered Will and Testament dated 20.01.2012 executed by Mr.Kamal Kishore Agarwal, which has been attested by two attestors.
Ex.P-2	Computer generated death certificate of Kamal Kishore Agarwal, who died on 22.05.2020.
Ex.P-3	Computer generated Legal Heirship Certificate dated 31.10.2020 in respect of Kamal Kishore Agarwal.
Ex.P-4	Photocopy of the Sale Deed dated 30.12.1996.
Ex.P-5	Photocopy of the Sale Deed dated 30.12.1996.
Ex.P-6	Photocopy of the Sale Deed dated 26.02.1997.
Ex.P-7	Photocopy of the Sale Deed dated 27.01.1997.
Ex.P-8	Photocopy of the Sale Deed dated 30.12.1996.
Ex.P-9	Photocopy of the Sale Deed dated 30.12.1996.
Ex.P-10	Photocopy of the Sale Deed dated 20.01.1997.
Ex.P-11	Photocopy of the Sale Deed dated 20.01.1997.
Ex.P-12	Photocopy of the Sale Deed dated 26.02.1997.
Ex.P-13	Photocopy of the Sale Deed dated 20.01.1997.
Ex.P-14	Photocopy of the Sale Deed dated 31.03.1997.
Ex.P-15	Photocopy of the Sale Deed dated 10.03.1997.
Ex.P-16	Photocopy of the Sale Deed dated 10.03.1997.
Ex.P-17	Photocopy of the Sale Deed dated 10.03.1997.
Ex.P-18	Photocopy of the Sale Deed dated 10.03.1997.
Ex.P-19	Photocopy of the Sale Deed dated 31.03.1997.
Ex.P-20	Photocopy of the Sale Deed dated 30.12.1996.
Ex.P-21	Photocopy of the Sale Deed dated 30.12.1996.
Ex.P-22	Photocopy of the Sale Deed dated 08.01.1997.
Ex.P-23	Photocopy of the Sale Deed dated 30.12.1996.
Ex.P-24	Photocopy of the Sale Deed dated 27.01.1997.
Ex.P-25	Photocopy of the Sale Deed dated 30.12.1996.
Ex.P-26	Photocopy of the Sale Deed dated 30.12.1996.
Ex.P-27	Computer generated Patta standing in the name of



Exhibits	Nature of the document
	K.K.Agarwal.
Ex.P-28	Photocopies of the Patta.
Ex.P-29	Original Bank Statement dated 05.07.2021 in respect of K.K.Agarwal, bearing Account No.02710200003192 and Account No.5-197824-443.
Ex.P-30	Consent affidavit given by the first respondent.
Ex.P-31	Consent affidavit given by the second respondent.
Ex.P-32	Affidavit of assets.

4. One of the attesting witnesses to the Will, Kiran Kumar Agarwal was examined as a witness (P.W.2). In his deposition, he has deposed that he is well acquainted with the deceased Kamal Kishore Agarwal and only in his presence and in the presence of the other witness, RSB Mehta, the Testator has left his thumb impression on all pages in the subject Will (Ex.P1). He has also deposed that the Testator was in a sound and disposing state of mind, memory and understanding at the time of execution of the Will (Ex.P1).

5. The petitioner (PW.1), in his deposition, has reiterated the contents of the petition filed by him in support of O.P.No.554 of 2021 seeking for grant of Probate.



6. As seen from the evidence available on record, Kamal

Kishore Agarwal executed a Will dated 20.01.2012, which has been marked as Ex.P.1, under which, the petitioner and the first respondent, who is the mother of the Testator, are the beneficiaries. The second respondent is the daughter of the Testator and in the said Will, it has been stated by the Testator that she has been provided with adequately under a Private Trust created by the Testator. The death certificate of Kamal Kishore Agarwal, which has been marked as Ex.P2 also confirms that the Testator died on 22.05.2020. The legal heirship certificate dated 31.10.2020 of Kamal Kishore Agarwal, which has been marked as Ex.P3 also confirms that the petitioner and the respondents are his only legal heirs. The Title Deeds standing in the name of the Testator, Kamal Kishore Agarwal, which are the subject matter of the Will, have been marked as Exs.P4 to P26 and the computer generated patta for the said properties have been marked as Ex.P27 and Ex.P28. The Bank Statements dated 05.07.2021 standing in the name of the Testator has been marked as Ex.P29. The first and second respondents, who are mother and daughter respectively of the Testator, have given their consent affidavits for grant of Probate in favour of the petitioner, which have been marked as Ex.P30 and Ex.P31. The petitioner is the Executor under the subject Will, as seen from the contents of the Will,



subject Will, namely, RSB Mehta and Kiran Kumar Agarwal and one of the attesting witnesses, Kamal Kishore Agarwal has been examined as PW.2 and in his deposition, he has confirmed that only in his presence, the Will was executed by the Testator and he has also identified the Thumb impression of the Testator. He has also deposed that the Will has been executed by the Testator in a sound state of mind.

7. This Court, after giving due consideration to the contents of the petition as well the evidence available on record, is inclined to grant Probate in favour of the petitioner, as prayed for in O.P.No.554 of 2021.

8. Accordingly, Registry is directed to grant "Probate" in respect of the said Will in favour of the petitioner. As undertaken by the petitioner in paragraph 11 of the petition, the petitioner shall duly administer the property(ies) and credits of the deceased Kamal Kishore Agarwal 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 the Registry of this Court and also

to render before this Court a true and proper account of the said



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property(ies) and credits within one year from the date of issuance of
Probate by the Registry of this Court.

Sd/.A.Q.J.
07.12.2021

//Certified to be a true copy//

Dated this the day of 2021.

SU.14.12.2021/24.02.2022

COURT OFFICER(O.S.)

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