

O.P.No.478 of 2020

V.PARTHIBAN, J

This petition has been filed under Sections 222 and 276 of the Indian Succession Act and Order XXV, Rule 4 of the Original Side Rules of this Court, for grant of probate in respect of the Will, dated 09.05.2016 executed by the deceased S.Krishna Murthy, by proving the Will in common form to have effect throughout the whole of Union of India in respect of the properties mentioned in the Will.

2. The said Krishna Murthy died in Chennai on 19.07.2020 at Flat No.3, G.S.Flats, Old No.25-A, New No.14, East Abiramapuram 2nd Street, Mylapore, Chennai-600 004, wherein he was permanently residing and possessed property in the State of Tamil Nadu within the jurisdiction of this Court, as well as in Nagpur. The deceased died leaving behind the following surviving legal heirs, who are the respondents herein:

- (i) his wife Mrs.Shanta Krishna Murthy,
- (ii) his daughter Mrs.Kanchana Shanmugam,
- (iii) his son K.Gopalakrishnan,

(iv) Malathi Sunderaraman, wife of his deceased son K.Sunderaraman, and

(v) Prerna Sunderraman, daughter of his deceased son K.Sunderaraman.

3. The deceased S.Krishna Murthy, at the time of his death, left the following properties:

(i) Flat No.101, Durga Krupa, Plot No.62, Postal Audit Colony, Rana Pratap Nagar, Nagpur-400 022, and

(ii) Flat No.3, G.S.Flats, Door No.25-A, East Abhiramapuram, 2nd Street, Mylapore, Chennai-600 004, which is within the jurisdiction of this Court.

4. The deceased, during his life time, subsequent to the execution of the Will, sold one of the properties mentioned in the Will, namely said Nagpur property and settled all the liabilities mentioned in the Will.

5. The last Will and testament of the deceased S.Krishna Murthy was duly executed by him at Chennai on 09.05.2016 in the presence of the

witnesses, namely P.Natarajan and N.P.Haran, whose names appear at the foot of the Will.

6. The petitioners are the executors of the Will, namely J.R.Venkat Raman and P.Natarajan.

7. The deceased bequeathed his properties absolutely to his son K.Gopalakrishnan and his wife Shanta Krishna Murthy, i.e. the said Nagpur property to his wife Shanta Krishna Murthy (first respondent herein) with instructions to sell the flat and pay a sum of Rs.20 lakhs to his daughter Mrs.Kanchana Shanmugam, the second respondent herein and the said Chennai property at East Abhiramapuram, to his son K.Gopalakrishnan, the third respondent herein.

8. The amount of the assets that are likely to come into the petitioners' hands, does not exceed in the aggregate a sum of Rs.1,34,08,731/- and the net amount of the assets after deducting all items which the petitioners are by law allowed to deduct, is of the value of Rs.1,34,08,731/-.

9. In this Original Petition, the petitioners have undertaken to duly administer the property(ies) and credits to the deceased S.Krishna Murthy, in any way concerning his Will, by paying first his debts and the legacies

therein bequeathed insofar as the assets will extend and to make a full and true inventory thereof and exhibit the same before this Court within six months from the date of the grant of probate to the petitioners and also to render to this Court a true and proper accounts of the said property(ies) and credits within one year from the said date.

10. The petitioners have impleaded the testator's legal heirs, namely his wife Mrs.Shanta Krishna Murthy, his daughter Kanchana Shanmugam, his son K.Gopalakrishnan, his deceased son's wife and daughter Malathi Sunderaraman and Prerna Sunderraman as the next of kin and other persons interested as party/respondents. There is no next of kin or other person, interested to be impleaded.

11. No application had 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 his property(ies) and credits.

12. The second petitioner was examined as P.W.1 and he had narrated the averments made in the petition stating that he has filed this petition for the grant of probate in favour of the petitioner(s) in respect of the Will

executed by the testator Krishna Murthy. The said deceased died on 19.07.2020. Ex.P-1 is the Original Last Will and Testament, dated 09.05.2016 executed by the uncle of P.W.1, namely S.Krishna Murthy (P.W.1's mother's sister's husband). Ex.P-2 is the computer generated Death Certificate of S.Krishna Murthy, who died on 19.07.2020. Ex.P-3 is the photo-copy of the sale deed dated 10.03.2016 executed in favour of Mr.S.Krishna Murthy and Mr.K.Gopalakrishnan, registered as Doc.No.800 of 2016 at Sub-Registrar Office, Mylapore. Ex.P-4 is the photo-copy of the Deed of Apartment, dated 27.04.2015. Ex.P-5 is the affidavit of assets showing the net value of the Estate as Rs.1,34,08,731/-. Ex.P-6 is the consent affidavit given by the first respondent stating that she has no objection for grant of probate as prayed for in the Original Petition. Ex.P-7 is the consent affidavit given by the third respondent stating that he has no objection for grant of probate as prayed for in the Original Petition. P.W.1 has stated that he had not filed any other petition before any other Court seeking the same relief as prayed for in the present Original Petition.

13. Heard the learned counsel for the petitioners. It is stated by the learned counsel for the respondents 1 and 3 that the respondents 1 and 3

have no objection for grant of probate in favour of the petitioners in respect of the Will executed by the deceased and that the respondents 1 and 3 have also filed their respective consent affidavits, which were marked as Exs.P-6 and 7 respectively.

14. The respondents 2, 4 and 5 have been set ex-parte on 24.03.2021.

15. The attesting witnesses to the Will, namely N.P.Haran, has filed an affidavit dated 30.09.2020 stating that he was present together with the first attesting witness, namely P.Natarajan and the deceased at East Abhiramapuram property (mentioned above), that the deceased set and subscribed his name at the foot of the testamentary papers on English language, that both the above said attesting witnesses have subscribed their respective names and signatures at the foot of the testamentary papers as witnesses thereto, that the name and signature subscribed at the foot of the testamentary paper as of the party executing the same, is in the proper handwriting of the testator and that the name, signature and additions made in the Will also subscribed and written at the foot of the Will as of the parties attesting the execution of the same are in the proper and respective handwritings of the deceased-testator S.Krishna Murthy, P.Natarajan and

N.P.Haran. It is further stated by the attesting witness-N.P.Haran in his said affidavit that the deceased subscribed his name and signature to the said Will as aforesaid in a sound and disposing state of mind, memory and understanding to the best of the belief of the said N.P.Haran and published the same of his free Will and pleasure. The signatures in the Will and in the present Petition are that of the N.P.Haran, as sworn to him in the said affidavit dated 30.09.2020.

16. From the averments made in the petition and the deposition of P.W.1 supported by documents Ex.P-1 to P-7, coupled with the above said affidavit of the attesting witness, 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, and also taking into account that the respondents 1 and 3 have no objection in granting probate in favour of the petitioners which is evident from their consent affidavits (Exs.P-6 and P-7), it is clear that the petitioners have proved their claim and that the Will had been proved more particularly in common form and there is no contra evidence. Hence, this Court is satisfied that the petitioners are entitled to the relief sought for in this Original Petition.

17. 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 petitioners. As undertaken by the petitioners in paragraph 10 of the petition, the petitioners shall duly administer the property(ies) and credits to the deceased S.Krishna Murthy in any way concerning his Will by paying first his debts and the legacies therein bequeathed in 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 property(ies) and credits within one year from the date of issuance of Probate by the Registry of this Court.

06.07.2021

Speaking Order: Yes
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V. PARTHIBAN, J

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O.P.No.478 of 2020
(grant of probate)

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