

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

FRIDAY, THE 12TH DAY OF FEBRUARY 2021

THE HON'BLE MR. JUSTICE R.PONGIAPPAN

O.P. No.991 of 2019

In the matter of Indian Succession
Act XXXV of 1925 r/w Rule 4 of
O.S.Rules.

and

In the matter of Last Will and
Testament of Catherine
Vanhaltren (Deceased)

1. MR.PHILIP VANHALTREN
S/O.P.E.VANHALTREN,
NO.15/8, 9TH CROSS,
SHASTRI NAGAR,
ADYAR, CHENNAI-600 020

2. MRS.L.JAMES
SISTER OF (LATE) CATHERINE VANHALTREN,
NO.9, G.A.A.KHAN,
10TH STREET, THOUSAND LIGHTS,
CHENNAI-600 006

..Petitioners

-Vs-

1. DONOVAN VANHALTREN
S/O.LATE CATHERINE VANHALTREN,
3318, LADY FERN LOOP N.W.,
OLYMPIA, W.A.-98502

2. MRS.CANDEELIA D 'ROZARIO
D/O.(LATE) CATHERINE VANHALTREN,
NO.25 M WURUND JERI B.L.V.D.,
BERWICK- MELBOURNE-VIC 3806

3. MRS.MARTINA NETTO
D/O.(LATE) CATHERINE VANHALTREN,
NO.36, GOLF LINKS ROAD,
BERWICK, MELBOURNE, VIC 3806

..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 having effect through the state of Tamilnadu may be granted to them.

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

This petition has been filed under Sections 222 and 276 of the Indian Succession Act, 1925 read with Order XXV, Rule 4 of O.S. Rules, for the grant of Probate in respect of the last Will and Testament of the deceased Catherine Vanhaltren.

2. The case of the petitioners is that the 1st petitioner is the son of P.E.Vanhaltren and brother of the deceased and the second petitioner is the sister of the deceased; the first respondent is the son of the deceased and the second and third respondents are the daughters of the deceased. The deceased Catherine Vanhaltren died intestate on 08.03.2015. The deceased ordinarily resided at No.16, Block 'D', Maruthi Apartment, bearing Door No.42 (Old No.87) Dr.Alagappa Road, Purasawalkam, Chennai – 600 084. The deceased executed her last Will and Testament dated 13.12.2013. The petitioners are the executors named in the Will.

The only legal heirs of the deceased are the sons and daughters who are the respondents herein. The respondents 1 to 3 have given consent affidavits for this petition and no further notice is necessary to them. All the next kin have been impleaded. There is no other person interested to be impleaded. The amount of assets which is likely to come into the petitioner's hands does not exceed in the aggregate sum of Rs.23,16,000/- and the net amount of the assets, after deducting all items which the petitioner is by law allowed to deduct is of the value of Rs.23,16,000/-. The petitioners undertakes to duly administer the property and credits of the deceased Catherine Vanhaltren and in any way concerning the Will by paying first her debts and then the legacies therein bequeathed so far as the assets will extend and to make a full and true inventory thereof to the 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 and credits within one year from the said date.

3. The second petitioner examined himself as P.W.1 and he had narrated the averments made in the petition stating that the first petitioner is his brother. He deposed on behalf of the 1st petitioner also. He was filing his proof affidavit stating the facts of this case and the same may be treated as part and parcel of his examination-in-chief. In continuation of his proof affidavit, the following documents were marked as exhibits on his side.

original unregistered will dated 13.12.2013 executed by Mrs.Catherine Vanhaltren, which has been attested by two attesting witnesses namely 1.Julia Ann Fernandez and 2. Mrs.Shanthi Michael. Ex.P3 is the computer generated death certificate of Mrs.Catherine Vanhaltren, who died on 08.03.2015. Ex.P4 is the photocopy of the Legal Heirship certificate dated 10.09.2015 in respect of Mrs.Catherine Vanhaltren. Ex.P5 (series 2 Nos) are the photocopies of the General Power of Attorney dated 14.12.2015 and 08.08.2016 executed in favour of the 1st petitioner by the respondents. Ex.P6 is the original Engineer's Report dated 22.05.2018. Ex.P7 (series 2 Nos) are the photocopies of the Aadhaar cards of the petitioners. Ex.P8 is the affidavit of assets showing the net value of the estate as Rs.22,96,000/-. Ex.P9 to Ex.P11 are the consent affidavits given by the respondents 1 to 3.

4. On the side of the petitioner, one Shanthi Michael was examined as P.W.2. In her evidence, he has stated that she knew the Testatrix Mrs.Catherine Vanhaltren as she was her neighbour. As such she was well acquainted with her. She executed her last Will and Testament(Ex.P2) on 13.12.2013 in her presence and in the presence of Julia Ann Fernandez. At the request of the Testatrix, she subscribed her signature as the second attesting witness along with Julia Ann Fernandez, who attested the Will (Ex.P2) as the first attesting witness in the presence of

the Testatrix. She was the Testatrix subscribing her signature at the foot of every page of Ex.P2 Will. All of them signed in each other's presence. The Testatrix was in a sound and disposing state of mind, memory and understanding at the time of execution of Ex.P2 Will. The 1st attesting witness has given affidavit in this regard and the same was marked as Ex.P12. Ex.P13 is her affidavit in this regard.

5. In view of the above facts, I am of the view that the petitioners have proved the execution and attestation of the Will. Hence, the petitioners are entitled for the issuance of probate in favour of the petitioners.

6. The Original Petition is ordered. Grant probate of the Will in respect of the petitioner.

//Certified to be a true copy//

Dated this the th day of 2021.

SU/18.03.2021.

COURT OFFICER(O.S.)

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