

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

WEDNESDAY, THE 17TH DAY OF MARCH 2021

THE HON'BLE MR. JUSTICE R.PONGIAPPAN

O.P.No.940 of 2019

In the matter of Indian Succession
Act XXXIX of 1925

and

In the matter of Last Will and
Testament of N.Durairaj (deceased)

1. D.BOJAN PRAKASH
S/o.Late N.Durairaj,
No.48, Iyyampettai Street,
Thiruporur, Kanchepuram-603 110.

2. D.SURESH @ RUBY CHANDER
S/o.Late N.Durairaj,
No.7/3, Thana Street,
Purasaiwalkam, Chennai-600007.

3. D.SATHEESH KUMAR
S/o.Late N.Durairaj,
Plot No.93, 5th Cross Street,
Vysarpadi, M.K.B. Nagar,
Chennai-600039.

..Petitioners

Original Petition praying that this Hon'ble Court be pleased that
Letters of Administration with the Will annexed may be granted to them as
the sons / beneficiaries under the Will of the said deceased having effect
throughout the state of Tamilnadu.

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 232 and 276 of the Indian Succession Act read with Order XXV Rule 5 of the Original Side Rules, seeking for grant of Letters of Administration in respect of the last Will and Testament of N.Durairaj.

2. This petition has been filed for grant of Letters of Administration in favour of the petitioners, in respect of the registered Will of one N.Durairaj executed on 17.03.2010, registered as Document No.26 of 2010, before Sub Registrar's Office, Royapuram. The petitioners are the sons of the testator and legatees named in the Will dated 17.03.2010. The deceased N.Durairaj died on 25.04.2015 at Chennai, leaving behind his wife D.Kowsalya and his three sons, as his surviving legal heirs. The parents of the deceased, pre-deceased him. Wife of the deceased D.Kowsalya, died on 29.01.2017. The petitioners are the beneficiaries under the Will of the deceased. There is no one available to be impleaded in this petition. The amount of assets which is likely to come to the petitioner's hands does not exceed in the aggregate sum of Rs.2,20,00,000/- and the net amount of the said assets after deducting all the items, which the petitioners are by law allowed to deduct is only of the value of Rs.2,20,00,000/-.

3. The petitioners hereby undertakes to duly administer the specified property and credits of the deceased in any way concerning his Will by paying the debts first and then the legacies therein bequeathed so far as the assets will extend and to make full and true inventory thereof and exhibits the same in this Court within six months from the date of the grant of a Letters of Administration with the Last Will annexed to the petition and also to render to this Court a true account of the said property within one year from the said date.

4. The 1st petitioner has examined himself as P.W.1 and the attesting witness one Mr.R.Kumaran, has been examined as P.W.2 and 14 documents viz., Ex.P.1 to P.14 have been marked.

5. P.W.1 has deposed on behalf of the 2nd and 3rd petitioners also. In his evidence, he had narrated the averments made in the petition stating that he has filed this petition for grant of Letters of Administration in their favour in respect of the Last Will and Testament executed by the deceased N.Durairaj, on 17.03.2010. Exs.P1 to P3, are the photocopies of Aadhaar Cards of the petitioners 1 to 3, respectively. Ex.P4, is the photocopy of the

schedule property. Ex.P5, is the photocopy of the sale deed dated 04.02.1984 in favour of the late N.Durairaj with respect to Item II and III of the schedule property. Ex.P6, is the original registered Will dated 17.03.2010 executed by N.Durairaj, which has been attested by two attesting witnesses viz., Mr.L.Mahesh Kumar and Mr.R.Kumaran. Further, the said Will has been registered as Doc.No.26 of 2010 on the file of the office of the Sub Registrar, Royapuram. Ex.P7, is the photocopy of the Will dated 17.03.2010, executed by D.Kowsalya, wife of the deceased. Ex.P8, is the computer generated death certificate of N.Durairaj, who died on 25.04.2015. Ex.P9, is the computer generated legal heirship certificate dated 01.07.2015, in respect to N.Durairaj. Ex.P10, is the computer generated death certificate of D.Kowsalya who died on 29.01.2017. Ex.P11, is the photocopy of the legal heirship certificate dated 12.04.2017, in respect to D.Kowsalya. Ex.P12, is the affidavit of assets showing the net value of the estate as Rs.2,20,00,000/-. Ex.P13 (series 2 Nos.) are the copies of paper publications effected in one issue of Tamil daily “Dina Kural” dated 21.09.2020 and one issue of English daily “Southern Mail” dated 29.09.2020. Though the paper publication is in order, none objected for the same.

6. Mr.R.Kumaran, who is one of the attesting witnesses in the Will, was examined as P.W.2. In his evidence, he has stated that he has attested the Will as second attesting witness in the Will and one Mr.L.Mahesh Kumar, has signed as first attesting witness in the Will. He has also stated that the testator was in sound state of mind while executing the Will and he has also seen the testator signing the Will and the other attesting witness signing in the document. He has also stated that the testator has seen the attesting witnesses subscribing their signature in the Will. He was also one of the identifying witnesses to the Will - Ex.P6, at the time of registration of the same before the Sub Registrar, Royapuram. Ex.P.14, is the affidavit filed by P.W.2 in this regard. The evidence of attesting witness not only prove the execution but also attestation of the Will and there is no other material to suspect the Will.

7. In view of the above facts, I am of the view that the petitioners have proved their claim and hence, the petitioners are entitled for the issuance of Letters of Administration in their favour.

8. Accordingly, this petition is allowed. Issue Letters of Administration in favour of the petitioners. The petitioners are directed to
duly administer the properties and credits of the deceased more fully

described in the schedule. The petitioners are also directed to execute a security bond for a sum of Rs.25,000/- (Rupees twenty five thousand only) in favour of the Assistant Registrar (O.S.II), High Court, Madras. The petitioners are further directed to render true and correct accounts once in a year.

Sd/.R.P.A.J.
17.03.2021

//Certified to be a true copy//

Dated this the day of 2021.

SU/26.03.2021

COURT OFFICER(O.S.)

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

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