

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.950 of 2019

In the matter of Indian Succession
Act XXXIX of 1925

and

In the matter of Last Will and
Testament of D.Kowsalya
(deceased)

1. B.MAGESH
S/o.D.Bojan Prakash,
No.48, Iyyampettai Street,
Thiruporur,
Kancheepuram -603110.

2. B.MANOJ
S/o.D.Bojan Prakash,
No.48, Iyyampettai Street, Thiruporur,
Kancheepuram-603 110.

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

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

..Petitioners

-Vs-

1.D.BOJAN PRAKASH
S/o.Late N.Durairaj,
No.48, Iyyampettai Street,
Thiruporur, Kancheepuram,-603110.

..Respondent

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 grandsons and 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 to grant of Letters of Administration in respect of the estate of the deceased D.Kowsalya.

2. This petition has been filed for grant of Letters of Administration in respect of the registered Will dated 17.03.2010 of one D.Kowsalya, registered as Document No.27 of 2010, before Sub Registrar's Office, Royapuram, in favour of the petitioners. The petitioners 1 and 2 are twin sons of the respondent as well as the grandsons of the deceased

deceased D.Kowsalya. The deceased D.Kowsalya died on 29.01.2017 at Chennai, leaving behind her three sons and two grandsons, as her surviving legal heirs. The petitioners are the beneficiaries under the Will of the deceased. The husband of the deceased predeceased her. There is no one available to be impleaded in this petition. The said deceased at the time of her death possessed and left properties in Chennai and within the jurisdiction of this Court. The deceased has not appointed any executor for the above said Will. The amount of assets which is likely to come to the petitioners' hand does not exceed in the aggregate the sum of Rs.1,80,00,000/- 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.1,80,00,000/- .

3. The petitioners undertake to duly administer the property and credits of the deceased D.Kowsalya and to make a full and true inventory thereof and exhibit the same to the Court within six months from the date of grant of Letters of Administration to the petitioners and also render a true account of the said property and credits within one year from the said date.

4. Though the sole respondent has not entered appearance, the consent affidavit given by him, has been marked as Ex.P15.

4. The 4th petitioner has been examined as P.W.1 and Ex.P.1 to Ex.P.15 have been marked. One Mr.L.Mahesh Kumar, one of the attester to the Will dated 17.03.2010 has been examined as P.W.2.

5. P.W.1 in his evidence had narrated the averments made in the petition stating that the petitioners have filed this petition for grant of Letters of Administration in favour of the petitioners in respect of the estate of the deceased D.Kowsalya. Exs.P1 to P4, are the photocopies of Aadhaar Cards of the petitioners 1 to 4, respectively. Ex.P5, is the photocopy of the sale deed dated 30.04.1965 executed in favour of D.Kowsalya with respect to Item II of the Schedule property. Ex.P6 is the photocopy of the sale deed dated 23.04.2007 executed in favour of the deceased D.Kowsalya. Ex.P7, is the photocopy of the Will dated 17.03.2010, executed by Mr.N.Durairaj, husband of the deceased. Ex.P8, is the original registered Will dated 17.03.2010 executed by the deceased D.Kowsalya, 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.27 of 2010 on the file of the office of the Sub Registrar, Royapuram. Ex.P9, is the computer generated death certificate of N.Durairaj, who died on 25.04.2015. Ex.P10, is the photocopy of the legal heirship certificate dated 01.07.2015, in respect

to N.Durairaj. Ex.P11, is the computer generated death certificate of D.Kowsalya who died on 29.01.2017. Ex.P12, is the photocopy of the legal heirship certificate dated 12.04.2017, in respect to D.Kowsalya. Ex.P13, is the affidavit of assets showing the net value of the estate as Rs.1,80,00,000/- . Ex.P14 (series 2 Nos.) are the copies of paper publications effected in one issue of Tamil daily “Dina Kural” dated 23.09.2020 and one issue of English daily “Southern Mail” dated 01.10.2020. Ex.P15, is the consent affidavit given by the respondent. Though the paper publication is in order, none objected for the same.

6. Mr.K.Mahesh Kumar, 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 first attesting witness in the Will and one Mr.R.Kumaran has signed as second attesting witness in the Will. He has also stated that the testatrix was in sound state of mind while executing the Will and he has also seen the testatrix signing the Will and the other attesting witness signing in the document. He has also stated that the testatrix has seen the attesting witnesses subscribing their signature in the Will. He was also one of the identifying witnesses to the Will - Ex.P8, at the time of registration of the same before the Sub Registrar, Royapuram. Ex.P.16 is the affidavit

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.

WEB COPY

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.