

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

THURSDAY, THE 04TH DAY OF MARCH 2021

THE HON'BLE MR. JUSTICE R.PONGIAPPAN

O.P. No.761 of 2017

In the matter of the Indian
Succession Act XXXIX of 1925
and
In the matter of the Last Will and
Testament of K.Kamal Das-
deceased.

1. UTTAM KUMAR DAS
AP-1159, 75th Street, 12th Sector,
K.K.Nagar, Chennai-600078.

..Petitioner

-Vs-

* 1. SUSHIL MALAKAR
S/o.Late Budhar Chandra Malakar,
Nafirharaj, D.S.Lane, Howrah, West Bengal

* 2. SAPAN KUMAR DAS
S/o.L.M.Doss,
Nafirharaj, D.S.Lane, Howrah, West Bengal

* 3. MUNI MOHAN MALAKAR
S/o.Late Budhar Chandra Malakar,
Nafirharaj, D.S.Lane, Howrah, West Bengal

(R1 to R3 impleaded and amended
as per order dt 2/2/2021 in A.No.1753/2020)

..Respondents

Original Petition praying that this Hon'ble Court be pleased that the Letters of Administration with the Will annexed may be granted to him as the adopted son/ beneficiary under the Will of the said deceased K.Kamal Das having effect limited the State of Tamil Nadu.

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 last Will and Testament of Mr.K. Kamal Das

2. This petition has been filed for grant of Letters Administration in respect of the Will of one Mr.K. Kamal Das executed on 01.08.1997 in favour of the petitioner. The Petitioner is the adopted son of the deceased. The Respondents 1 to 3 are the brother's sons of the deceased. The said Mr.K. Kamal Das died on 03.08.1997 at K.K.Nagar Chennai, where he ordinarily resided. The parents and wife of the deceased had predeceased him. The deceased had no children. Except the Petitioner the deceased has no other legal heirs. The petitioner is the beneficiary under the Will of the deceased. The properties specified in the Will i.e., land, deposits, savings bank accounts, and safety lockers in various banks are within the

jurisdiction of this Court. In the Will the deceased directed the Petitioner to pay a sum of Rs.50,000/- each to the Respondents 1 to 3 who are the his brother's sons namely 1.Mr.Sushil Malakar, 2.Mr.Sapan Kumar Doss and 3.Mr.Muni Mohan Malakar. The Petitioner also paid the same and the Respondents 1 to 3 executed receipts confirming the receipt of the said amount from the Petitioner. There is no one available to be impleaded in this petition. The amount of assets which is likely to come to the petitioner's hand does not exceed in the aggregate sum of Rs.56,14,771/- and the net amount of the said assets after deducting all the items, which the petitioner is by law allowed to deduct is only of the value of Rs.1,50,000/-. The petitioner hereby undertakes to duly administer the specified property and credits of the deceased in any way concerning her 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 the 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.

3. The petitioner has examined himself as P.W.1 and the attesting

have been marked.

4. P.W.1 in her evidence had narrated the averments made in the petition stating that the petitioner has filed this petition for grant of Letters of Administration in his favour in respect of the Last Will and Testament executed by the deceased Mr.K. Kamal Das executed on 01.08.1997. Ex.P.1 is the copy of the death certificate of the deceased Mr.K. Kamal Das, who died on 03.08.1997. Ex.P.2 is the original Will executed by the deceased Mr.K. Kamal Das. Ex.P.2 shows that the deceased Mr.K. Kamal Das executed the Will on 01.08.1997. Ex.P.3 is the legal heirship certificate dated 14.09.1997 in respect of the deceased Mr.K. Kamal Das. Exs.P.10 to 12 are the original receipt dated 19.02.2001, 20.08.2001 and 08.01.2002 executed by the Respondents 2, 1 and 3 respectively. Ex.P.14 is the affidavit of assets showing the net value of the estate as Rs.56,14,771/-. Exs.P.15 and P.16 are the copies of paper publications effected and none objected for the same. Ex.P.17 is the affidavit of attesting witness/P.W.2. Exs.P.18 to 20 are consent affidavits given by the respondents stating that they have no objection for granting Letters of Administration in favour of the Petitioner in respect of the movable and immovable properties mentioned in the petition.

5. One Mr.P.K. Ganesh, who is one of the attesting witness 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.P.Vijaya Sekhar Reddy has signed as second 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 testatrix has seen the attesting witnesses subscribing their signature in the Will. Ex.P.17 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.

6. In view of the above facts, I am of the view that the petitioner has proved the execution and attestation of the Will. Hence, the petitioner is entitled for the issuance of Letters of Administration in his favour.

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7. Accordingly, this petition is allowed. Issue Letters of Administration in favour of the petitioner. The petitioner is directed to duly administer the properties and credits of the deceased more fully described in the schedule. The petitioner is also directed to execute a security bond for a

Assistant Registrar (O.S.II), High Court, Madras. The petitioner is further directed to render true and correct accounts once in a year.

Sd/.R.P.A.J.
04.03.2021

//Certified to be a true copy//

Dated this the th day of 2021.

SU/10.03.2021.

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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