

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

WEDNESDAY, THE 10TH DAY OF MARCH 2021

THE HON'BLE MR. JUSTICE R.PONGIAPPAN

O.P.No. 958 of 2017

In the matter of the Indian Succession
Act, XXXIX of 1925, and
In the matter of Last Will and
Testament of K.Gopalan, deceased.

K.G.Subhash
S/o.Late K.Gopalan
No.49/2, Thiruvenkata Naicken Street,
Pudupet, Chennai-600 002. : Petitioner

-Vs.-

1. Mrs.K.K.Shankariamma
W/o.Late K.Gopalan
No.49/2, Thiruvenkata Naicken Street,
Pudupet, Chennai - 600002.

2. K.G.Shaji
S/o.Late K.Gopalan
KGS Bhavan, Krishnapuram Village
Kappil Mekku Muri, Karthikappalli Taluk
Kayamkulam (Krishnapuram) Sub-District
Alapuzha District, Kerala State. : Respondents

This original petition praying that this Hon'ble court be pleased that
this Hon'ble Court may be pleased to GRANT LETTERS OF
ADMINISTRATION with the WILL annexed to the petitioner, as the
son/beneficiary under the WILL executed by the deceased K.Gopalan

having effect limited to the Union of India.

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 Madras High Court Original Side Rules, seeking to grant Letters of Administration in respect of the last Will and Testament of the deceased K.Gopalan.

2.This petition has been filed for grant of Letters Administration in respect of the Will of one K.Gopalan executed on 04.05.2007. The petitioner is the elder son of the deceased K.Gopalan. The 1st respondent is the wife of the deceased. The 2nd respondent is the younger son of the deceased K.Gopalan.

3.The said K.Gopalan, Son of Kochuraman, died on 02.10.2007 at Kankalil, Vathikulam Thekku, Theekakara, Mavelikara, and the permanent address of the deceased is at Karavanal Kizhakkathil (Keejees Bhavan), Krishnapuram, Kappilmekkeu, Kayamkulam, both address at State of Kerala, where he was then originally residing, possessed properties at State of Kerala and State of Tamil Nadu, more fully described in the schedule of

Kerala.

4.The said K.Gopalan executed his last Will, dated 04.05.2007, and he did not appoint any executor under the Will and the same was very recently found. The amount of assets which is likely to come to the petitioner's hand does not exceed in the aggregate the sum of Rs.84,35,000/- and the net amount of the said assets after deducting all items, which the petitioner is by law allowed to deduct, is only of the value of Rs.84,35,000/-.

5.The petitioner hereby undertakes to duly administer the property and credits of the deceased K.Gopalan 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 a full and true inventory thereof and exhibit the same in this Court within the six months from the date of the grant of Letters of Administration with the 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.

6.The petitioner would submit that there is no next kin or other persons interested to be impleaded in the present petition. No application

has been made to any District Court or Delegate or to any High Court for Probate or Letters of Administration, with or without the Will annexed to his property and credits.

7. In this regard, the petitioner was examined as P.W.1 and he reiterated the averments in the petition, and while deposing, he marked 7 documents as Exs.P1 to P7. Ex.P1 is the Original Will dated 04.05.2007 executed by his father K.Gopalan, which has been attested by two attesting witnesses, namely, 1.Mr.K.Vijayan and 2.Mr.C.K.Sreedharan. Ex.P2 is the original death certificate of his father K.Gopalan, who died on 02.10.2007. Ex.P3 is the photocopy of his Aadhar Card showing his identity. Ex.P4 is the consent affidavit given by the 1st respondent Mr.K.K.Shankariamamma. Ex.P5 is the consent affidavit given by the 2nd respondent. Ex.P6 is the copy of paper publication effected in one issue of Tamil daily “Makkal Kural” dated 11.07.2019. Ex.P7 is the copy of paper publication effected in one issue of English daily “Trinity Mirror” dated 18.07.2019. None has raised any objection.

8. The second attesting witness to the Will (Ex.P1), namely, Mr.C.K.Sreedharan was examined as P.W.2 through Mr.Anu Varghese, Advocate, who is the Advocate Commissioner appointed by this Court,

since the attesting witness was about 85 years old and he could not come from Kerala to Chennai for giving evidence. In the evidence given by the said C.K.Sreedharan (P.W.2), he has stated that he signed as one of the attesting witnesses to the Will (Ex.P1) executed by Mr.K.Gopalan, and the signature found at the column of the second attesting witness in Ex.P1 is his signature. The said K.Gopalan was in a sound and disposing state of mind at the time of execution of the Will. He also knows one Mr.K.Vijayan, who attested the Will as the 1st identifying witness and the said Mr.K.Vijayan expired before two months. He saw the deceased Mr.K.Gopalan signing his signature at the foot of every page of the Will (Ex.P1) and he also saw him affixing his thumb impression at the foot of every page of the said Will. P.W.2 has filed his affidavit and the same has been marked as Ex.P8.

9.The evidence of the attesting witness not only proves the execution but also attestation of the Will and there is no material to suspect the Will.

10.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 with the Will annexed in his favour.

11. Accordingly, this Original 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 sum of Rs.25,000/- (Rupees twenty five thousand only) in favour of the 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.
10.03.2021

//Certified to be a true copy//
Dated this the day of 2021.

SU/08.04.2021 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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