

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

MONDAY, THE 10TH DAY OF JANUARY 2022

THE HON'BLE MR. JUSTICE ABDUL QUDDHOSE

O.P.No.159 of 2021

In the matter of Indian
Succession Act XXXIX of 1925
and
In the matter of the Last Will and
Testament of Mr.D.V.Subramanian –
(deceased)

D.S.KARTHIKEYAN
S/o.Late D.V.Subramanian,
Old No.28, New No.68,
Brindavan Extension Street,
West Mambalam,
Chennai-600 033

..Petitioner

-Vs-

1. PAVUNAMBAL
W/o.Late D.V.Subramanian,
Old No.28, New No.68,
Brindavan Extension Street,
West Mambalam,
Chennai-600033

2. D.S.SUNDERASAMANI
S/o.Late D.V.Subramanian,
17/3, Kamaraj Street,
Chakaravarthy Nagar,
Aynavaram, Chennai-600 023

3. D.S.MEENAKSHI
W/o.S.Palani,
Plot No.17, Sriram Nagar,

Paruthipattu, Avadi,
Chennai-600 071

4. GIRIJA KUZHANDAIVELU
W/o.Kuzhandaivelu,
1323, Willow Bluff DR,
Pflunger Vile,
Texas-78660, USA

5. M.ANAND
S/o.Murugesan,
3/198B, NGR Nagar,
C.K.Puthur, V.K.Mills Post,
Palani-624 615

6. M.KRITHIKA
W/o.Sundar,
No.7, Thanthai Periyar Nagar,
Jeevanandam Street,
Anakaputhur,
Chennai-600 070

..Respondents

Original Petition praying that this Hon'ble Court be pleased that he may be allowed to prove the will in common form and that probate thereof to have effect limited to the State of Tamil Nadu may be granted to him.

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

This petition has been filed by the petitioner seeking for probate of the Will dated 24.07.2012 executed by D.V.Subramanian, who died on 25.12.2012

2. The petitioner is the son of the deceased, Testator, D.V.Subramanian, who died on 25.12.2012 leaving behind a Will dated

24.07.2012, under which, the petitioner and the respondents are the beneficiaries. The petitioner, who is the Executor of the said Will, was born to the second wife of the Testator, D.V.Subramanian, by name S.Pavunambal, the first respondent herein. The second respondent herein is the son of the first wife, by name, Saradambal. The third and fourth respondents are the daughters of the first respondent, who is the second wife of the deceased Testator, D.V.Subramanian. The fifth respondent is the grand son and the sixth respondent is the grand daughter of the deceased, Testator D.V.Subramanian, who were born to M.Uma, who is the daughter of the first wife of the deceased, Testator D.V.Subramanian.

3. Under the Will dated 24.07.2012, there are two attesting witnesses viz., M.Sripathi and Z.Lalith Kumar .

4. Before the learned Master, the petitioner was examined as a witness (P.W.1). In his deposition, he has reiterated the contents of the petition filed in support of O.P.No.159 of 2021. Through P.W.1, the following documents were marked as Exhibits.

<i>Exhibits</i>	<i>Nature of the document</i>
Ex.P-1	Original unregistered Will and Testament dated 24.07.2012 executed by D.V.Subramanian, which has been attested by two attestors.

<i>Exhibits</i>	<i>Nature of the document</i>
Ex.P-2	Computer generated death certificate of D.V.Subramanian, who died on 25.12.2012.
Ex.P-3	Photocopy of the legal heirship certificate dated 09.07.2015 in respect of D.V.Subramanian.
Ex.P-4	Photocopy of the death certificate of M.Uma, who died on 13.04.2013.
Ex.P-5	Computer generated death certificate of M.Sripathi, who died on 09.01.2019.
Ex.P-6	Photocopy of the property tax demand card standing in the name of D.V.Subramanian.
Ex.P-7	Affidavit of assets.
Ex.P-9	Computer generated death certificate of S.Pavunambal, who died on 07.09.2021.
Ex.P-10	Computer generated legal heirship certificate dated 20.12.2021 in respect of S.Pavunambal.

5. The second attesting witness, viz., Z.Lalith Kumar was also examined as a witness (P.W.2). In his deposition, he has deposed that the deceased, Testator D.V.Subramanian is his neighbour and is well acquainted with him. He has also deposed that Ex.P1 (Will) dated 24.07.2012 was executed by the deceased, Testator D.V.Subramanian only in his presence and in the presence of the other attesting witness, viz., M.Sripathi. He has also deposed that only on the request made by the deceased, Testator D.M.Subramanian, he has subscribed his signature as the second attesting witness along with M.Sripathi, the first attesting witness, in the presence of the Testator D.V.Subramanian. He has deposed that he saw D.V.Subramanian signing on all pages of the Will (Ex.P1) and he has also

identified the signature of the deceased, Testator D.V.Subramanian. In his deposition, he has also deposed that the deceased, Testator was in a sound and disposing state of mind, memory and understanding at the time of execution of the Will (Ex.P1). In support of his deposition, he has also filed an Affidavit, which has been marked as Ex.P8.

6. The fourth respondent is one of the daughters born to the deceased, Testator, D.V.Subramanian out of his wed lock with the second wife S.Pavunambal, the first respondent herein. The remaining respondents have been duly served in this Original Petition.

7. As seen from the Will dated 24.07.2012, the petitioner, who is the Executor, is the beneficiary along with the respondents. The Death Certificate of the deceased, Testator D.V.Subramanian has been marked as Ex.P2, which confirms that he died on 25.12.2012. The Original Will dated 24.07.2012 executed by the deceased, Testator D.V.Subramanian has been marked as Ex.P1. The legal Heirship Certificate of the deceased, Testator D.V.Subramanian has been marked as Ex.P3, which confirms that the petitioner and the first to fourth respondents are his legal heirs. The Legal Heirship Certificate of the deceased, Testator D.V.Subramanian (Ex.P3) also confirms that his first wife, Saradambal pre-deceased him in the year

1961 itself and his daughter M.Uma born through his wed lock with Saradambal also died on 13.04.2013. The Death Certificate of M.Uma, who is the daughter of the deceased, Testator D.V.Subramanian was born through his first wife Saradambal, has been marked as Ex.P4, which confirms that she died on 13.04.2013. In the proof affidavit of P.W.1 filed before the learned Master, the petitioner has also deposed that the husband of M.Uma pre-deceased her and after the death of M.Uma, the fifth and sixth respondents are her only legal heirs.

8. S.Pavunambal, the second wife of the deceased, Testator D.V.Subramanian, who has granted life interest over the immovable property under the Will (Ex.P1) died on 07.09.2021, as seen from her death certificate, which has been marked as Ex.P9 and she died, after filing of the petition in O.P. No.159 of 2021. Thereafter, on the death of Puvanambal, the petitioner became entitled to the immovable property mentioned in the subject Will (Ex.P1) and the petitioner under the subject Will was directed to provide cash mentioned in the subject Will to the respective respondents.

9. After giving due consideration to the pleadings and the evidence available on record, this Court is inclined to grant Probate as prayed for by the petitioner, as the will dated 24.07.2012 executed by the

deceased, Testator D.V.Subramanian has been proved. Accordingly, O.P. No.159 of 2021 is allowed as prayed for.

10. Accordingly, Registry is directed to grant "Probate" in respect of the said Will in favour of the petitioner. As undertaken by the petitioner in the petition, the petitioner shall duly administer the property(ies) and credits of the deceased in any way concerning the Will by paying first, the debts of the deceased and the legacies therein bequeathed so far as the assets will extend and to make full and true inventory thereof and exhibit the same before this Court within six months from the date of issuance of Probate by the Registry of this Court and also to render before this Court a true and proper account of the said property(ies) and credits within one year from the date of issuance of Probate by the Registry of this Court.

Sd/.A.Q.J.
10.01.2022

//Certified to be a true copy//

Dated at Madras this the day of 2022.

SU./24.01.2022

COURT OFFICER(O.S.)

From 25.09.2008 the Registry is issuing certified copies of the Orders/Judgments/Decrees in this format.