



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

FRIDAY, THE 08TH DAY OF APRIL 2022

THE HON'BLE MR. JUSTICE P.VELMURUGAN

O.P.No.742 of 2021

In the matter under section
XXXIX Indian Succession Act
1925

and

In the matter of Last Will
and Testament of A.P.Baggia
Sundari (Deceased)

A.B.SELVAKUMAR
(Aadhar No.8538 7246 2449)
S/o.A.P.Balakumar,
Flat No.1110, 11th Floor,
Tulive Horizon, 16/1,
Arunachalam Road,
Saligramam,
Chennai - 600 093.

..Petitioner/Executor

-Vs-

1. N.THENMOZHI
No.33, 3rd Street, Kannan Nagar,
Chromepet, Chennai - 44.

2. RAJARAJESWARI. M
No.9, Ganesh Nagar Main Road,
Om Sakthi Nagar, Kallikuppam,
Ambattur, Chennai – 53.



3. LAKSHMI DEVI. R
Flat No 17, Sithartha Apartments,
No.23, Nelvayal Road,
Perumbur, Chennai - 11.

4. RANI VALARMATHI S
No.5, Jani John Khan 4th Lane,
Royapettah,
Chennai - 14.

..Respondents

Original Petition praying that this Hon'ble Court be pleased that this petitioner may be allowed to prove the WILL in common form and that Probate thereof to have effect limited to the State of Tamilnadu may be granted to him.

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

This Original Petition has been filed for grant of probate.

2. The respondents are the sisters of the petitioner and the deceased A.P.Baggia Sundari is their paternal aunt. The said A.P.Baggia Sundari had executed an unregistered Will dated 16.02.2004 bequeathing her property in favour of her unmarried sister A.P.Meenakshi Sundari with limited interest stating that she was not entitled to alienate the said property or to encumber the same in any manner during her lifetime. As per the Will, after the death of A.P.Baggia Sundari, the said A.P.Meenakshi Sundari is



entitled to execute the Will of her choice and in case, if she failed to execute

a separate Will of her choice in her life time, A.B.Vijaya Sankari

(unmarried) who is niece of A.P.Baggia Sundari and one of the sisters of

the petitioner, would be entitled to the property. However, she shall not be

entitled to alienate the said property by any means like sale, mortgage, gift,

settle or create any encumbrance thereto. After the death of A.P.Meenakshi

Sundari and A.B.Vijaya Sankari, the descendants of the nephew of the

deceased viz., A.B.Selvakumar / the petitioner herein shall be entitled to the

said property. In the absence of any descendants to A.B.Selvakumar at the

age of 50, ultimately A.B.Selvakumar shall be entitled to the said property

unconditionally and after the death of A.P.Baggia Sundari, A.B.Selvakumar

will assist A.P.Meenakshi Sundari and A.B.Vijayasankari in the

maintenance of the house if necessary arises during their life time and take

over the entire maintenance of the said property after their death. While

being so, the Testator of the Will A.P.Baggia Sundari without cancelling or

modifying her Will dated 16.02.2004 died on 03.03.2018 and the said

A.P.Meenakshi Sundari also died intestate on 25.01.2021. The another

unmarried niece A.B.Vijayasankari also died intestate on 27.08.2005.

Though as per Clause VI of the Will, the descendants of the the petitioner

are entitled to the said property, the petitioner is entitled to manage and

administer the schedule mentioned property as the daughter and son of the



petitioner are minors aged 13 and 10 respectively.

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3. Before the learned Master, three witnesses were examined. The petitioner was examined as P.W.1. The other two witnesses who were examined as P.W.2 and P.W.3 are the attestors to the Will. The documents filed through PW1 were marked as Ex.P1 to Ex.P12 and they are as follows:

<i>Exhibits</i>	<i>Nature of the documents</i>
P1	The original unregistered will dated 16.02.2004 executed by Ayapakkam Palani Baggia Sundari which has been attested by two attestors
P2	The photocopy of the registered Sale Deed dated 02.07.1993
P3	The computer generated death certificate of A.P.Baggia Sundari
P4	The computer generated death certificate of A.P.Meenakshi Sundari
P5	The computer generated death certificate of A.P.Balakumar
P6	The photocopy of the death certificate of A.B.Vijaya Sankari
P7	The computer generated death certificate of A.Sarojini
P8	The photocopy of the Legal Heirship Certificate dated 25.09.2012 in respect of A.B.Vijaya Sankari
P9	The computer generated Legal Heirship certificate of A.P.Balakumar
P10	The computer generated property tax receipt dated 12.08.2019
P11	The photocopy of P.W.1's PAN Card and Aadhaar card
P12	The affidavit of assets showing the net value of the



<i>Exhibits</i>	<i>Nature of the documents</i>
	estate as Rs.34,15,000/-

4. P.W.2 and P.W.3 who are the attestors to Will have deposed that they were present at the time of execution of Will by the Testator A.P.Baggia Sundari and they subscribed their signatures as witnesses to the Will. They have further deposed that the Testator A.P.Baggia Sundari was in a sound and disposing state of mind at the time of execution of the Will.

5. As seen from the Exhibits, the petitioner and the respondents are the brother and sisters and the deceased A.P.Baggia Sundari is their paternal aunt. As per the unregistered Will which has been marked as Ex.P1, the petitioner herein is the Executor and he has to manage and administer the schedule mentioned property, until his minor children attain majority. The respondents who are the sisters of the petitioner, have given no objection for the grant of Probate of the said Will dated 16.02.2004 to the petitioner. Therefore, the Will has been proved as contemplated under Section 68 of the Indian Evidence Act.

6. After perusing and examining the pleadings and the evidence on record as well as after hearing the submissions of the learned counsel for the petitioner, this Court is inclined to grant probate as prayed for.

7. Accordingly, Registry is directed to grant "Probate" in respect of

the said Will in favour of the petitioner. As undertaken by the petitioner in



paragraph 9 of the petition, the petitioner shall duly administer the properties and credits of the deceased A.P.Baggia Sundari in any way concerning her Will by paying first her debts 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 properties and credits within one year from the date of issuance of Probate by the Registry of this Court.

Sd/.P.V.J.
08.04.2022

//Certified to be a true copy//

Dated at Madras this the day of 2022.

SU/29.04.2022

COURT OFFICER(O.S.)

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