

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

FRIDAY, THE 21ST DAY OF JANUARY 2022

THE HON'BLE MR. JUSTICE ABDUL QUDDHOSE

O.P.No.818 of 2016

In the matter of Indian
Succession Act XXXIX of 1925
and
In the matter of the certified copy of
Last Will and Testament of
R.C.Varadarajulu (deceased)

MR.V.DAMODARAN
S/o.(Late) R.C.Varadarajulu,
Flat No.A-2, Abhilasha Apartments,
Plot No.180, A.V.M.Avenue,
2nd Main Road, Virugambakkam,
Chennai-600 092.

..Petitioner

-Vs-

1. MR.V.SAMPATH KUMAR
S/o.(Late) R.C.Varadarajulu,
Flat No.6, VT Arasu Towers,
New No.3, Gajapathy Street,
Sheynoy Nagar, Chennai -600 030

2. MRS.SAROJINI (A) GNANAMBAL
W/o.Dr.Sreeramulu,
No.96, First Floor,
Vajravelu Nagar, First Cross Street,
Kolathur, Chennai-600 099.

..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 the Petitioner.

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

This petition has been filed for grant of probate. The petitioner is the son of the deceased Testator Mr.R.C.Varadarajulu, who died on 24.01.2001 leaving behind a registered Will dated 23.06.1999, in which the petitioner and the first respondent are the beneficiaries. The petitioner has been appointed as an Executor under the aforementioned Will.

2. Both the respondents have been duly served in this Original Petition and despite the same, they have chosen not to enter appearance till date. Therefore, it can be inferred that they have no objection for grant of letters of administration for the subject Will in favour of the petitioner.

3. The respondents are also the children of the deceased Testator Mr.R.C.Varadarajulu. The petitioner and the respondents are the only beneficiaries of the deceased Testator Mr.R.C.Varadarajulu. The wife of the Testator Mr.R.C.Varadarajulu was granted life interest under the

subject Will, who died on 21.01.2015 and after her death, as per the aforementioned Will, the petitioner and the first respondent, who are the brothers and the sons of the Testator Mr.R.C.Varadarajulu, are the only beneficiaries.

4. Under the subject Will, there are two attesting witnesses. The first attesting witness is Mr.M.V.Krishnamurthy, the maternal uncle of the petitioner and the second attesting witness is Mr.D.Shanmugham. The first attesting witness, Mr.M.V.Krishnamurthy died on 06.12.2015.

5. Before the Learned Master, the petitioner Mr.V.Damodaran 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. 818 of 2016. Through P.W.1., the following documents were marked as exhibits:-

<i>Exhibits</i>	<i>Nature of the document</i>
Ex.P-1	Certified copy of the Will dated 23.06.1999 executed by the father of the petitioner Mr.R.C.Varadarajulu.
Ex.P-2	Computer generated Death Certificate of father of the petitioner Mr.R.C.Varadarajulu who died on 24.01.2001.
Ex.P-3	Original Legal Heir Certificate in respect of father of the petitioner Mr.R.C.Varadarajulu dated 22.03.2016.
Ex.P-4	Computer generated Death Certificate of mother of the petitioner Mrs.M.V.Yasodha who died on 21.01.2015.
Ex.P-5	Original Legal Heir certificate of mother of the petitioner Mrs.M.V.Yasodha dated 22.03.2016.
Ex.P-6	Computer generated Death Certificate of maternal

<i>Exhibits</i>	<i>Nature of the document</i>
	uncle of the petitioner Mr.M.V.Krishnamurthy.
Ex.P.7	Affidavit of assets of showing net value of the estate as Rs.3,72,90,000/-.

6. Through P.W.2, Mr.D.Shanmugham, (second attesting witness) the following documents were marked as exhibits:-

Ex.P.8	Photocopy of Aadhaar card of Mr.D.Shanmugham (P.W.2) bearing No.8747 2170 0283.
Ex.P.9	Affidavit given by Mr.D.Shanmugham (P.W.2).

7. The second attesting witness Mr.D.Shanmugham, under the subject Will, was also examined as a witness (P.W.2). In his deposition, he has deposed that he knows the Testator Mr.R.C.Varadarajulu for the past 30 years and he is his family friend and neighbour. In his deposition, he has also identified the signature of the Testator Mr.R.C.Varadarajulu. He has also deposed that only in his presence and in the presence of the other attesting witness Mr.M.V.Krishnamurthy, the Testator Mr.R.C.Varadarajulu signed the subject Will. He has also deposed that only in a sound and disposing state of mind and memory, the Testator Mr.R.C.Varadarajulu has executed the subject Will dated 23.06.1999.

8. As seen from the evidence available on record, it is clear that the petitioner and the respondents, who are the children of the deceased

Testator Mr.R.C.Varadarajulu are the only beneficiaries of Mr.R.C.Varadarajulu. The legal heirship certificate for Mr.R.C.Varadarajulu dated 22.03.2016 has been marked as Ex.P3, which confirms that the petitioner and the respondents are his only legal heirs. The certified copy of the Will dated 23.06.1999 executed by Mr.R.C.Varadarajulu, the Testator, has been marked as Ex.P1 and as seen from the said Will, Mrs.M.V.Yasodha, the wife of the Testator Mr.R.C.Varadarajulu, was granted life interest and after her lifetime, the property has been bequeathed to the petitioner and the first respondent absolutely.

9. Mrs.M.V.Yasodha, the wife of the Testator Mr.R.C.Varadarajulu died on 21.01.2015 as evidenced by her death certificate, which has been marked as Ex.P4. The legal heirship certificate of Mrs.M.V.Yasodha dated 22.03.2016, which has been marked as Ex.P5, also confirms that the petitioner and the respondents are her only legal heirs. The death certificate of Mr.M.V.Krishnamurthy, the maternal uncle of the petitioner, who is the first attesting witness under the subject Will has also been marked as Ex.P6, which confirms that he died on 06.12.2015.

10. The second attesting witness under the subject Will by name

Mr.D.Shanmugham has been examined as a witness (P.W.2). In his deposition, he has deposed that he knows the Testator Mr.R.C.Varadarajulu for the past 30 years and he is his family friend and neighbour. In his deposition, he has also identified the signature of the Testator Mr.R.C.Varadarajulu. He has also deposed that only in his presence and in the presence of the other attesting witness Mr.M.V.Krishnamurthy, the Testator Mr.R.C.Varadarajulu signed the subject Will dated 23.06.1999. The death certificate of the Testator Mr.R.C.Varadarajulu has also been marked as Ex.P2, which confirms that he died on 24.01.2001.

11. The original Will has been lost during the Flood in the year 2015 and it is also pleaded in the petition filed in support of O.P.No.818 of 2016 and P.W.1 has also deposed to that effect in his deposition.

12. After giving due consideration to the pleadings and evidence available on record, this Court is inclined to grant probate in favour of the petitioner as the certified copy of the Will dated 23.06.1999 (Ex.P1) has been proved by the petitioner. In the result, this original petition is allowed.

13. 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 15 of the petition, the petitioner shall duly administer the property(ies) and credits of the deceased Testator Mr.R.C.Varadarajulu in any way concerning his Will by paying first his 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 property(ies) and credits within one year from the date of issuance of Probate by the Registry of this Court.

Sd/.A.Q.J.
21.01.2022

//Certified to be a true copy//

Dated at Madras this the day of 2022.

SU./27.01.2022

COURT OFFICER(O.S.)

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