



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

MONDAY, THE 25TH DAY OF APRIL 2022

THE HON'BLE MR. JUSTICE P.VELMURUGAN

O.P.No.954 of 2019

In the matter of Indian Succession
Act XXXIX of 1925

And

In the matter of last Will &
testament of the Testator Late
S.Yegnaviswanathan

Y.Mani,
S/o.Late S.Yegnaviswanathan,
No.15, A-5, Vijay Apartments,
Ayyasamy Street, Nehru Nagar,
Chrompet, Chennai- 44

... Petitioner

VS

1.Y.Sriram
S/o.Late S.Yegnaviswanathan,
Plot Old No.22/2, New No.47/2,
5, Trust Cross Street,
Mandavelipakkam, Chennai- 28

2.Y.Jeyanthi
W/o.Jayaraman,
No.9/3/12 VOC Street,
Viswanathapuram,
Madurai - 625 014

...Respondents



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Original Petition praying that this Hon'ble Court be pleased to allow the petitioner to prove the Will in common form and that probate thereof to have effect through out the state of Tamil Nadu may be granted to him.

This original petition having been heard on 21.03.2022 in the presence of Mr.S.Sankara Subramanian, Advocate for the petitioner herein and the respondents herein not appearing in person or by advocate and upon reading the petition filed herein and the other exhibits therein referred to and upon perusing the evidence adduced therein and having stood over for consideration till this date and coming in this day before this Court for orders in the presence of said advocates for the parties hereto and this Court having observed that the petitioner neither examined the other attesting witness who is alive at present nor established the steps he had taken to trace out his whereabouts and in the absence of the same, this Court is of the opinion that the Will has not been proved in the manner known to law, therefore, the petitioner is not entitled to the relief sought for in this Original Petition and the same is liable to be dismissed,



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It is ordered :-

That the O.P.No.954 of 2019 be and is hereby dismissed.

WITNESS THE HON'BLE MR. JUSTICE MUNISHWAR NATH
BHANDARI, CHIEF JUSTICE, HIGH COURT AT MADRAS
AFORESAID, THIS THE 25TH DAY OF APRIL 2022.

Sd./-
ASSISTANT REGISTRAR (O.S.II)

//Certified to be true copy//

Dated at Madras this the day of 2022.

COURT OFFICER(O.S.)
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O.P.No.954 of 2019

ORDER

DATED : 25.04.2022

THE HON'BLE MR. JUSTICE
P.VELMURUGAN

FOR APPROVAL:13.05.2022

APPROVED ON : 13.05.2022



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Original Petition praying that this Hon'ble Court be pleased to allow the petitioner to prove the Will in common form and that probate thereof to have effect through out 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:-

RESERVED ON : 21.03.2022

PRONOUNCED ON : 25.04.2022

This application has been filed seeking for grant of probate.

2. The petitioner is executor of the Will. The petitioner's father Late.S.Yegnaviswanathan had executed a Will dated 10.12.2013 at Chennai in the presence of 2 witnesses bequeathing the schedule mentioned property in favour of the petitioner. At the time of executing the Will, the Testator was in a sound and disposing state of mind and he was mentally and physically well. The said Will was duly registered at SRO Mylapore vide Doc.No.153 of 2003 dated 10.12.2013. The Testator S.Yegnaviswanathan, the father of the petitioner died on 25.05.2015 and the said Will is a last Will.

3. The respondents 1 and 2 are the brother and sister of the



petitioner respectively. The mother of the petitioner predeceased his father S.Yegnaviswanathan on 16.10.2001.

4. In order to prove the genuinity of the Will, before the learned Master, the petitioner was examined as a witness (PW1) and a 3rd party who is said to be a known person to the first attesting witness namely S.Krishnamoorthy, was examined as a witness (PW2) since the said S.Krishnamoorthy is no more. The documents filed through PW1 were marked as Ex.P1 to Ex.P9 are as follows:

<i>Exhibits</i>	<i>Nature of the documents</i>
P1	The original Will dated 10.12.2003 executed by Mr.S.Yegnaviswanathan
P2	The original death certificate of S.Yegnaviswanathan
P3	The computer generated Legal Heirship Certificate dated 19.06.2019 in respect of S.Yegnaviswanathan
P4	The photocopy of the Sale Deed dated 08.08.1998
P5	The photocopy of the Property Tax Deman Card bearing serial No.660647 along with photocopy of the Property Tax receipt
P6	The photocopy of the Electricity Charges Card in respect of Electricity service No.127:058:260
P7	The E-Receipt Cum ASD Intimation Notice dated 31/05/2019 in respect of Electricity service No.01127058260
P8	The computer generated death certificate of S.Krishnamoorthy
P9	The affidavit of assets showing the net value of the Estate of Rs56,00,000/-.



was executed in the presence of two witnesses namely S.Krishnamoorthy and S.Raman. He has further deposed that the first attesting witness S.Krishnamoorthy died on 16.03.2018 and the whereabouts of the other attesting witness is not known despite his best efforts.

6. One V.S.Sundari, who was examined as P.W.2 has deposed that she knew one S.Krishnamoorthy as he was her elder brother's friend and she also knew the signature of the said Krishnamoorthy. Since the said Krishnamoorthy died, she identified the signature found in the Will and deposed that the Signature found in the column of the first attesting witness in the Will is that of the said S.Krishnamoorthy.

7. It is seen that out of the two attesting witnesses, one of the attesting witnesses is no more and the whereabouts of the other witness is not known to the petitioner. It is made clear that Section 63 of the Indian Succession Act clearly says how the Will has to be executed. Section 68 of the Indian Evidence Act says how the Will has to be proved and Section 69 of the Indian Evidence Act clearly says how the Will has to be proved in the absence of two attesting witnesses.



8. Admittedly in this case, the Will has been executed as per Section 63 of Indian Succession Act. Now the Court has to see whether the Will has been proved by the petitioner as per Section 68 of the Indian Evidence Act or otherwise Section 69 of Indian Evidence Act. As per Section 68 of the Indian Evidence Act, the Will has got to be proved atleast by examining one of the attestors and it does not mean that the executor has to examine only one of the attestors alone. If one reads Section 63 of the Indian Succession Act and Section 68 of the Indian Evidence Act together, it will clear that in case both the attestors are alive, both the attestors have to be examined to prove the Will. In case one of the attestors is no more, the Will has to be proved by examining the other attestor. But if both the attestors are not alive or not traced out their whereabouts, then the Will has got to be proved under Section 69 of the Indian Evidence Act.

9. In this case admittedly one of the attestor namely S.Krishnmoorthy is no more. But the executor/the petitioner herein has examined one of the known person who got acquaintance with the signature of the said S.Krishnamoorthy. Though the other attesting witness is alive, the petitioner has simply stated that despite his best efforts, he could not trace out his whereabouts. But he has not established that what type of best efforts he had taken and whether he enquire with the relatives of the said



attestor or the local persons or with the Revenue Authorities. Without establishing the same, he has simply examined P.W.2 who is said to be known to the one of the attestors namely S.Krishnamoorthy. The petitioner neither examined the other attesting witness who is alive at present nor established the steps he had taken to trace out his whereabouts. In the absence of the same, this Court is of the opinion that the Will has not been proved in the manner known to law. Therefore, the petitioner is not entitled to the relief sought for in this Original Petition and the same is liable to be dismissed.

10. Accordingly, this Original Petition is dismissed.

Sd/-P.V.J.

25.04.2022

//Certified to be true copy//

Dated at Madras this the day of 2022.

COURT OFFICER(O.S.)

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