



O.P.No.141 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 09.01.2023

CORAM

THE HONOURABLE **MR.JUSTICE SENTHILKUMAR RAMAMOORTHY**

O.P.No.141 of 2022

Gowrisunker R.Davey

... Petitioner

-VS-

1.Karthik G.Davey
2.Ketan G.Davey
3.H.Chandrasekar
4.H.Bharat Davay
5.Ravi Shanker H.Davey
6.H.Prakash
7.S.Santha
8.Aruna.P
9.S.Jaishanker Davay
10.P.Sujathan
11.Narayan S.Davay

... Respondents

PRAYER: Original Petition filed under Sections 222 and 276 of the Indian Succession Act and under Order XXV Rule 4 of O.S.Rules for Probate of the Will, pleased 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.



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For Petitioner : Mr.P.B.Ramanujam

ORDER

The petitioner seeks grant of probate in respect of the last Will and testament of his brother Balkrishna R.Davey.

2. The petitioner states that his brother, Balkrishna R.Davey, executed a Will on 26.03.1993 at his residence in Chennai in the presence of two witnesses, whose names appear at the foot of the Will. The petitioner further states that the testator died on 09.11.2018. He died as a bachelor. His mother, Saraswathy Bai, pre-deceased him. Therefore, the surviving legal heirs are his brother, namely, the petitioner, nephews and sister-in-law. All these persons were impleaded as respondents in the petition.

3. Upon receipt of notice, the second respondent submitted a consent affidavit. The other respondents did not enter appearance.



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4. In order to prove the Will and establish entitlement to the relief claimed, the petitioner adduced evidence. The petitioner was examined as P.W.1 and in course of the examination in chief of P.W.1, the seven documents listed at the foot of this order were exhibited as Exs.P1 to P7. The original registered Will dated 26.03.1993 is on record as Ex.P1. This document discloses that it was executed by two witnesses, namely, A.K.Davey and S.R.Kotadia. The testator has expressly stated in the Will that he does not have a wife or children. He has also stated that he resides with his mother and brother Sri.R.Gowrisunker Davey. The Will records that the petitioner was appointed as the executor thereof. The beneficiaries under the Will are the nephews of the testator, namely, Karthik G.Davey (the first respondent) and Ketan G.Davey (the second respondent). The death certificate of the testator (Ex.P2) discloses that he died on 09.11.2018. The death certificate of the testator's mother is on record as Ex.P3. This document discloses that she died on 24.11.2012. The death certificate of the brother of the petitioner and the testator is on record as Ex.P4. This document discloses that the late R.Shankerlal Davey died on 04.04.2021. The consent affidavit of the second respondent is on record as Ex.P6.



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5. One of the attesting witnesses, Mr.Atul Kumar Davey, was examined as P.W.2. He deposed that the testator was a family friend and lived close to his office. He further deposed that the Will was executed in his presence and in the presence of the other attesting witness, one S.R.Kotadia, who is a family friend of the testator and the maternal uncle of P.W.2. P.W.2 also deposed that the testator was in a sound and disposing state of mind when the Will was executed.

6. Based on the assertions in the petition and the evidence adduced in support thereof, the petitioner has duly approved the Will and is entitled to the relief claimed. Accordingly, O.P.No.141 of 2022 is allowed by granting a probate to the petitioner in respect of the last Will and testament of Balkrishna R.Davey dated 26.03.1993. The probate shall have effect throughout the State of Tamil Nadu.

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Index : Yes / No

Internet : Yes / No

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Petitioner's witness:

P.W.1 - Mr.Gowrisunker R.Davey

P.W.2 - Mr.Atul Kumar Davey

Documents exhibited by the petitioners:

<i>Exhibits</i>	<i>Documents</i>
Ex.P1	Original registered Will dated 26.03.1993 executed by R.Balakrishna Davey.
Ex.P2	Computer generated death certificate of Balakrishnan R.Davey.
Ex.P3	Computer generated death certificate of Saraswathi Bai.
Ex.P4	Computer generated death certificate of R.Shankerlal Davay.
Ex.P5	Computer generated death certificate of Mr.R.Harishankar.
Ex.P6	Consent affidavit given by the second respondent.
Ex.P7	Affidavit of assets showing the net value of the estate as Rs.1,50,00,000/-.
Ex.P8	Affidavit of attesting witness.



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