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O.P.No.305 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 13.03.2023

CORAM

THE HONOURABLE MR.JUSTICE K.KUMARESH BABU

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S.Suresh

... Petitioner

PRAYER: Original Petition filed for Letters of Administration under Section 232 & 276 of Indian Succession Act XXXIX of 1925 and under Order XXV Rule 5 of Original Side Rules, prays that the Letters of Administration with the Will annexed may be granted to him as the beneficiary/ third party under the Will of the deceased S.Krishnaveni.

For Petitioners : Mr.N.Sivaprakash

ORDER

This instant O.P. had been filed seeking for Letter of Administration of the Will annexed.

2.The case of the petitioner is that the deceased Krishnaveni had died leaving behind her schedule mentioned property. He would submit that she had executed an unregistered Will dated 14.08.2021 beaquething the



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property in favour of the petitioner. He would submit that for the schedule mentioned property patta has been granted in favour of the testatrix Krishnaveni, her sister Subbulakshmi and her brother Balasubramani.

2.He would submit that the brother Balasubramani and sister Subulakshmi had pre deceased the testatrix. He would further submit that the sisters and brother were unmarried and they have lived together. Since, the brother and sister of the testatrix has pre deceased, the testatrix had succeeded to the property mentioned in the schedule. As the petitioner had taken care of her, she had executed the unregistered Will and therefore, he had filed this present application.

3.The petitioner had examined himself as PW1 and that marked the patta issued in favour of the testatrix, her brother and sister as Ex.P1. He had marked the death certificate of S.Subbulakshmi, the testatrix sister as Ex.P2. He had marked the unregistered Will dated 14.08.2021 as Ex.P3. Ex.P4 is the death certificate of the testatrix. He had also marked Ex.P5 to show the net value of the assets and estate and Exs.P6 and 7 being the paper publication.



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4.A perusal of Ex.P1 would show that the property stands in the name of the three individuals namely the testatrix, her brother and sister. Eventhough, the petitioner makes a claims that the testatrix, her brother and sister remained unmarried, he had not produced any evidence to substantiate the same. He had also not brought on record that the brother of the testatrix Balasubramani is no more. Further, there is no evidence except a bald statement claiming that there are no legal heris for the deceased testatrix.

5.A perusal of Ex.P3, the unregistered Will also creates a doubt on the execution of the Will. Ex.P3 runs to two pages. On the 2nd page, it could be seen, the alleged attestors had made their attestation in the middle of the Will above the schedule of property. Normally, after the bequeath under the Will is made and the testator affixes his signature, the attestation follows. In this case, the attestation is much before the testatrix's signature. This creates a doubt in the mind of this Court as to the execution of the Will. That apart, as stated supra, the petitioner had not substantiated the death of the brother of the testatrix and also not substantiated by any independent evidence, to show that the testatrix, her brother and sister remained unmarried till their death. Hence, I do not find any reasons to grant Letter of Administration as



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prayed for in this petition.

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6.In fine, this petition is dismissed. However, there shall be no order as to costs.

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Index :Yes/No

Petitioner's witness:

P.W.1 - Mr.S.Suresh

P.W.2 – Mr.M.Gopal

P.W.3 – Mr .D.Sathish

Documents exhibited by the petitioners:

<i>Exhibits</i>	<i>Documents</i>
Ex.P1	Photocopy of the patta along with the allotment order standing in the names of S.Krishnaveni, Balasubramani and Subbulakshmi
Ex.P2	Death certificate of S.Subbulakshmi
Ex.P3	Original unregistered Will dated 14.08.2021 executed by S.Krishnaveni
Ex.P4	Computer generated death certificate of S.Krishnaveni
Ex.P5	Affidavit of assets showing the net valule of the estate as Rs.19,90,000/-
Ex.P6	Copy of paper publication effected in one issue of Tamil daily “Maalai Tamizhagam” dated 20.08.2022.
Ex.P7	Copy of paper publication effected in one issue of English daily “Trinity Mirror” dated 20.08.2022.

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