



WEB COPY



O.P.No.99 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: **30.08.2023**

CORAM

THE HONOURABLE MS.JUSTICE R.N.MANJULA

O.P.No.99 of 2023

D.Jagadish

... Petitioner

Vs.

1.D.Manoshankar

2.D.Srinivasan

3.Mr.V.Gopi

4.Mr.V.Anand

5.Mrs.V.Devi

6.Mr.S.Durai

7.Mr.P.Rajasekhar

... Respondents

PRAYER : Original Petition is filed under Sections 222 and 276 of the Indian Succession Act and under Order XXV Rule 4 of the High Court Original Side Rules, praying to allow the petitioner to prove the Will dated 01.07.2014 in common form and probate thereof to have effect limited to the State of Tamil Nadu may be granted in favour of the petitioner.

For Petitioner : Mr.R.Ganesh Babu

For Respondents : Mr.B.Mutharasu for R1,R2 and R6
Ms.S.Preethi for R3 to R5
Mr.C.Dinesh for R7



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ORDER

WEB COPY This Original Petition has been filed for issuance of Probate to the petitioner for the last Will and testament dated 01.07.2014 executed by Late S.Kirubarani @ Kutty Pappa who died on 11.11.2014.

2. The petition mentioned property was originally owned by one Peria Peratti Ammal, wife of Athimuthu Nadar. The said Peria Peratti Ammal executed a Settlement Deed dated 17.03.1928 by appointing Ayyavu Nadar and Nammalwar Nadar as the trustees. The said Ayyavu Nadar and Nammalwar Nadar are said to be the nephews of late Peria Peratti Ammal. But in the petition, it is stated that Ayyavu Nadar and Nammalwar Nadar had given with life interest and their legal heirs should have the absolute interest in accordance with the settlement deed dated 17.03.1928.

3. On perusal of the settlement deed, it came to be known that the settlement has been made in such a way that Ayyavu Nadar and Nammalwar Nadar have been given with life interest and their respective male legal heirs have been given with the absolute interest after their life time. Though the settlement deed used the word 'trustee' as against Ayyavu Nadar, the whole reading of the document would only show that Ayyavu Nadar was



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given with the responsibility of complying the terms of settlement deed and the usage of the word 'trustee' is just a misnomer. The settlement deed only confers life interest upon Ayyavu Nadar and Nammalwar Nadar and after their life time, absolute interest is given in favour of their male legal heirs in respect of the shares enjoyed by them.

4. Ayyavu Nadar has got a son by name Sakkarai Nadar and Nammalwar Nadar has got a son by name Anantha Krishnan. After the demise of Ayyavu Nadar and Nammalwar Nadar, their male legal heirs Sakkarai Nadar and Anantha Krishnan had inherited their respective shares over which their respective fathers were given with life interest.

5. The petitioned mentioned property is said to be representing the half share of Sakkarai Nadar, in which, he was in enjoyment and he died intestate on 26.02.1976 leaving behind his wife Rajeswari and his children Durai, Kuselan, Kanniga, Banumathi and Kirubarani @ Kutty Pappa as his legal heirs. The said Banumathi has filed a Civil Suit in O.S.No.3507 of 2011 for partition and in the said suit, she got a decree for her 1/5th share. The said Banumathi died on 14.02.2019 and the respondents 3 to 5 are the surviving legal heirs of the said Banumathi. Sakkarai Nadar died on



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26.02.1976. The wife of Sakkarai Nadar by name Rajeswari also predeceased him in the year 1987 itself.

6. The petition mentioned property is in respect of 1/5th share of one of the daughters of Sakkarai Nadar viz., Kirubarani @ Kutty Pappa. The said Kirubarani @ Kutty Pappa remained unmarried and she did not have any issues of her own. The 6th respondent is the one of the brothers of Kirubarani @ Kutty Pappa and the 7th respondent is the legal heir of the other sibling by name Kanniga. Another brother by name Kuselan did not have any legal heirs and he also died on 04.05.2021. During the lifetime of Kirubarani @ Kutty Pappa, she had executed a Will dated 01.07.2014 by bequeathing her undivided 1/5th share of petition mentioned property in favour of her brother's children, who are the petitioner and the respondents 1 & 2 herein. According to the Will of Kirubarani @ Kutty Pappa, she had bequeathed her 1/5th undivided schedule mentioned property equally to them. Now the petitioner has filed this application for seeking Probate of the Will dated 01.07.2014.



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7. The petitioner examined himself as P.W.1 and one of the attesting witness P.Velayutham has been examined as P.W.2. Exhibits P1 to P19 were marked.

8. Ex.P2 is the Will dated 01.07.2014 executed by Ms.Kirubarani @ Kutty Pappa. Ex.P3 death certificate would show that Mrs.Kirubarani @ Kutty Pappa died on 11.11.2014. Exs.13, 14, 15, 16, 17, 18 and 19 are the consent affidavits given by the respondents.

9. One of the attestors of the Will by name P.Velayutham has been examined as P.W.2 and in his evidence, he has stated that Ex.P2 Will was executed by Ms.Kirubarani @ Kutty Pappa on 01.07.2014. The testatrix affixed her left thumb impression in the said Will in his presence. At her request, he signed the Ex.P2 Will. It is further stated that the testatrix was in a sound disposing state of mind while executing the Will.

10. The evidence of PW.1 and PW.2 and the documents available on record would show that the Will has been executed as per the terms of Sec.63(c) of the Indian Successions Act and its genuineness has been proved in accordance with Sec.68 of the Indian Evidence Act-1872. Since



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the petitioner proved the genuineness of the Will, the relief sought shall be granted.

11. In the result, the Original Petition is allowed by granting a probate of the last Will and Testament dated 01.07.2014 of late Kirubarani @ Kutty Pappa, the testatrix, to the petitioner to have effect limited to the State of Tamil Nadu.

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APPENDIX

Petitioner's witnesses:

P.W.1 – Mr.D.Jagadish

P.W.2 – Mr.P.Velayutham

Documents marked:

<i>Exhibits</i>	<i>Documents</i>
Ex.P1	The photocopy of the petitioner's Aadhar Card.
Ex.P2	The original Will dated 01.07.2014 executed by Ms.Kirubarani @ Kutty Pappa.
Ex.P3	The computer generated death certificate of Ms.Kirubarani @ Kutty Pappa.
Ex.P4	The computer generated death certificate of Mrs.V.Banumathi.
Ex.P5	The computer generated death certificate of Mr.S.Kuselan.
Ex.P6	The photocopy of the Judgment dated 12.03.1948 passed in O.S.No.393 of 1947 by the City Civil Court at Madras.
Ex.P7	The certified copy of the Judgment dated 17.07.2013 passed in O.S.No.3507 of 2011 by the City Civil Court at Chennai.
Ex.P8	The photocopy of the sale deed dated 09.04.2021 executed in favour of Mr.D.Jagadish, Mr.D.Manoshankar and Mr.D.Srinivasan.
Ex.P9	The photocopy of the settlement deed dated 16.04.2021 executed by Mr.S.Durai in favour of Mr.D.Jagadish, Mr.D.Manoshankar and Mr.D.Srinivasan.
Ex.P10	The photocopy of the sale deed dated 30.04.2021 executed in favour of Mr.D.Jagadish, Mr.D.Manoshankar and Mr.D.Srinivasan.
Ex.P11	The photocopy of the sale deed dated 12.08.2021 executed in favour of Mr.D.Jagadish, Mr.D.Manoshankar and Mr.D.Srinivasan.
Ex.P12	The affidavit of assets showing the net value of the estate as Rs.11,00,000/-
Ex.P13	The consent affidavit given by the 1st respondent.



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<i>Exhibits</i>	<i>Documents</i>
Ex.P14	The consent affidavit given by the 2nd respondent.
Ex.P15	The consent affidavit given by the 3rd respondent.
Ex.P16	The consent affidavit given by the 4th respondent.
Ex.P17	The consent affidavit given by the 5th respondent.
Ex.P18	The consent affidavit given by the 6th respondent.
Ex.P19	The consent affidavit given by the 7th respondent.

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