



O.P.No.813 of 2012

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 15.09.2023

CORAM

THE HONOURABLE MS.JUSTICE R.N.MANJULA

O.P.No.813 of 2012

N.Kuppuswamy ... Petitioner

Vs.

1.Lalitha Kuppuswamy

2.Mrs.Lakshmi

3.Mrs.Hemamalini

... 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 14.08.2002 in common form and grant Probate thereof to have effect throughout the State of Tamilnadu

For Petitioner : Mr.M.A.Abdul Wahab

ORDER

This Original Petition has been filed for issuance of Probate for the Last Will and Testament executed by Late Nagaswamy Iyer who died on 19.08.2002.



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2. The petition mentioned properties were originally belonged to the father of the petitioner by name Nagaswamy Iyer. The said Nagaswamy Iyer died on 19.08.2002. During his life time, he executed an unregistered Will dated 14.08.2002 by appointing the petitioner as an Executor. Since the Will came into effect subsequent to the death of Nagaswamy Iyer, the petitioner has filed this petition seeking probate. The mother of the petitioner predeceased his father Nagaswamy Iyer on 05.07.2001. The first respondent is the wife of the petitioner and the second and third respondents are the sisters of the petitioner.

3. The petitioner examined himself as P.W.1 and the respondents 2 and 3 were also examined as P.W.2 & P.W.3 and Exhibits P1 to P6 were marked.

4. From Ex.P2 death certificate of the testator, it is seen that he died on 19.08.2002. Ex.P1 is the death certificate of the wife of the testator. Ex.P3 is the Will executed by the testator. Ex.P5 & Ex.P6 are the paper publication issued in one issue of Tamil Daily “Malai Sudar” dated 24.05.2016 and in one issue of English Daily “News Today” dated 31.05.2016.



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5. Paper publication effected. There is no objector.

6. It is submitted by the learned counsel for the petitioner that both the attestors of the Will are no more. Hence, he is not able to examine them. In fact, during the life time of the second attester viz., T.V.Sundara Natarajan, an attempt was made to examine him by appointing an Advocate Commissioner but that could not be fructified due to the senility of the attesting witness T.V.Sundara Natarajan. However, the respondents 2 and 3 who are the sisters of the petitioner themselves came forward and got examined as P.W.2 and P.W.3. In their examination, they have stated that the Will has been executed by Nagaswamy Iyer in the presence of the attesting witnesses and they are conversant with the signature of their father and the attesting witnesses and they could identify the signature of their father and the attesting witnesses in the Will. They stated that both the attesting witnesses were present at the time of execution of the Will.

7. The evidence of P.W.1, P.W.2 and P.W.3 and the documents available on record would show that the Will has been executed as per the terms of Section 63(c) of the Indian Succession Act and its genuineness has



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been proved in accordance with Section 69 of the Indian Evidence Act, 1872. Since the petitioner proved the genuineness of the Will, the relief sought shall be granted.

8. In the result, the Original Petition is allowed by granting a probate of the last Will and Testament dated 14.08.2002 of late Nagaswamy Iyer, the testator, to the petitioner to have effect limited to the State of Tamilnadu.

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Index :Yes/No



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APPENDIX

Petitioner's witnesses:

P.W.1 – Mr.N.Kuppuswamy

P.W.2 – Mrs.V.Lakshmi

P.W.3 – Mrs.Hemamalini

Documents marked:

<i>Exhibits</i>	<i>Documents</i>
Ex.P1	The photocopy of the death certificate of the petitioner's mother N.Rajeswari who died on 05.07.2001.
Ex.P2	The photocopy of the death certificate of the petitioner's father K.Nagaswamy who died on 19.08.2002.
Ex.P3	The original Will executed by the petitioner's father K.Nagaswamy on 14.08.2002.
Ex.P4	The affidavit of assets showing the net value of the estate as Rs.10,00,000/-.
Ex.P5	The copy of paper publication effected in one issue of Tamil Daily “Malai Sudar” dated 24.05.2016.
Ex.P6	The copy of paper publication effected in one issue of English Daily “News Today” dated 31.05.2016.

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