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O.P.No.233 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 19.01.2023

CORAM

THE HONOURABLE **MR.JUSTICE SENTHILKUMAR RAMAMOORTHY**

O.P.No.233 of 2022

Mr.D.Ambikapathy,
S/o.S.Deenadayalan,
Addressed at Plot No.1757, 6th Avenue,
Anna Nagar West, Chennai-600 040.

... Petitioner

vs.

1. Mr.D.Sivakumar,
S/o.S.Deenadalayan,
Addressed at Plot No.1757, 6th Avenue,
Anna Nagar West, Chennai-600 040.

2. Mr.A.Abhimanyu, (Minor),
S/o.D.Ambikapathy
Represented by his mother and Guardian A.Praveena
Addressed at Plot No.1757, 6th aVenue,
Anna Nagar West, Chennai-600 040.

3. D.Parimala,
W/o.S.Deenadayalan,
Addressed at Plot No.1757, 6th Avenue,
Anna Nagar West, Chennai-600 040.

... Respondents



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PRAYER: Original Petition filed under Sections 222 and 276 of the Indian Succession Act 1925 read with Order XXV, Rule 4 of the Madras High Court (Original Side) Rules, 1956, prayed that (a) allow the Petitioner to prove the Last Will and Testament as Doc.No.18 of 2010 dated 16.02.2010 before the office of the Sub Registrar of Villivakkam, Chennai, of the Testator, late S.Deenadayalan, in common form, and that Probate thereof to have effect throughout the State of Tamilnadu may be granted to him; and (b) grant any other relief, which the Hon'ble Court deems fit, may please be granted to the petitioner in the interest thereof.

For Petitioner : Mr.K.Gunasekaran

For Respondents : Mr. K.Arumugam

ORDER

The petitioner seeks a probate in respect of the last Will and testament dated 16.02.2010 of his father, Mr.S.Deenadayalan, which was registered as Document No.18 of 2010 before the SRO, Anna Nagar, Chennai.



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2. The petitioner states that he is the son of the testator. The testator executed his last Will and testament on 16.02.2010 and registered the same as Document No.18 of 2010 before the SRO, Anna Nagar. The petitioner asserts that the testator died on 27.02.2020 at Sundaram Medical Foundation, Anna Nagar, Chennai. The wife of the testator is arrayed as the third respondent and the other son of the testator as the first respondent. The second respondent is the petitioner's minor son. On the ground that the petitioner and the first respondent are the only class I legal heirs of the testator, the present petition is filed by joining them and the only other beneficiary as parties thereto.

3. In order to establish entitlement to the probate, the petitioner adduced evidence by examining himself as PW1. In course of the examination-in-chief of PW1, the eight documents listed at the foot of this order were exhibited as Exs.P1 to P8. The original Will of the testator is on record (Ex.P4). This document discloses that the testator executed the Will on 16.02.2010 and registered the same as document No.18 of 2010 in the office of the SRO Anna Nagar, Chennai. The document has been attested by



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Mr.D.Thulasipathy Naidu and Mr.S.Kubenthiran. The Will discloses that the petitioner has been named as executor. The immovable property described in the schedule to the Will has been bequeathed in favour of the petitioner, the first respondent and the second respondent. The Will also provides that the testator's wife shall have life interest in the property. The death certificate of the testator (Ex.P1) discloses that he died on 27.02.2020. The legal heirship certificate in respect of the testator (Ex.P2) discloses the names of the petitioner, 1st respondent and 2nd respondent. It further discloses that the mother of the testator, Mrs.Pathmavathi, pre-deceased him. The photocopy of the sale deed relating to the immovable property is on record (Ex.P3). All the respondents have provided consent affidavits (Exs.P5 to P7).

4. The attesting witnesses were examined as PW2 and PW3. Both attesting witnesses stated that they knew the testator. PW2 stated that he knew the testator and resided in the same locality. PW3 stated that the testator and PW3 worked in the same department for more than 40 years. Both the attesting witnesses deposed that they witnessed the execution of



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the Will by the testator and further deposed that the testator was in a sound and disposing state of mind at the time of execution of the Will.

5. Based on the assertions in the petition and the evidence adduced in support thereof, the Will has been duly proved and the petitioner is entitled to the grant of probate.

6. For the reasons stated above, O.P.No.233 of 2022 is allowed by granting probate to the petitioner in respect of the last Will and testament dated 16.02.2010 of Mr.S.Deenadayalan. The probate shall have effect throughout the State of Tamil Nadu.

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Index : Yes

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Petitioner's witness:

P.W.1 – Mr.D. Ambikapathy

P.W.2 – Mr.S.Kubendran

P.W.3 – Mr.D.Thulasipathy Naidu

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Documents exhibited by the petitioner:

<i>Exhibit No.</i>	<i>Description</i>
Ex.P1	The computer generated death certificate of Mr.S.Deenadayalan.
Ex.P2	The computer generated Legal Heirship certificate of Mr.S.Deenadayalan dated 12.06.2020.
Ex.P3	The photocopy of the sale deed dated 06.01.2004. (Compared with the original).
Ex.P4	The original Will executed by Mr.S.Deenadayalan on 16.02.2010.
Ex.P5	The consent affidavit of the first respondent.
Ex.P6	The consent affidavit of the second respondent.
Ex.P7	The consent affidavit of the third respondent.
Ex.P8	The affidavit of assets showing the net value of estate as Rs.4,16,67,000/-

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SENTHILKUMAR RAMAMOORTHY,J



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