



O.P.No. 517 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 17.07.2023

CORAM

THE HONOURABLE MS.JUSTICE R.N.MANJULA
O.P.No. 517 of 2022

S.Meena ... Petitioner- Executor

Vs.

1.Gunaseeli ... 1st respondent- sole legal heir
2.R.Sivasankari ... 2nd respondent-Beneficiary

PRAYER: Original Petition filed for Testamentary and Intestate under Sections 222 and 276 of the Indian Succession Act XXXIX of 1925 read with Order XXV Rule 4 of the High Court Original Side Rules, prays the petitioner may be allowed to prove the registered Will dated 03.10.2020 bearing Document No.23/2020 on the file of Sub-Registrar Office, Adyar in common form and that probate thereof to have effect limited to the State of Tamil Nadu may be granted to the petitioner.

For Petitioner : M/S.S.R.Sankareshwaran

For Respondents : No appearance

ORDER

This Original Petition has been filed for issuance of Probate for the last Will and testament dated 03.10.2020 executed by Late Mr.S.Baladandayudam who died on 22.11.2021.

2.The petition mentioned properties were owned by one



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Mr.S.Baladandayudam by virtue of a registered sale deed dated 15.07.2005.

During his lifetime, he executed a Will dated 03.10.2020 by bequeathing his property in favour of his niece and by appointing the petitioner as executor of the Will. The 1st respondent is the wife of S.Baladandayudam. Since the petitioner was appointed as an executor she has filed the application for seeking probate.

3. The petitioner who is the executor has been examined as PW.1 and the following documents are marked:

<i>Exhibits</i>	<i>Documents</i>
Ex.P1	The photocopy of the Sale Deed dated 15.07.2005 in favour of Mr.S.Baladandayudam (compared with the original)
Ex.P2	The photocopy of the petitioners Aadhar Card (compared with the original)
Ex.P3	The computer generated Death Certificate of Mr.Baladandayudam.
Ex.P4	The computer generated legal heirship certificate of Mr. Baladandayudam.
Ex.P5	The original Will dated 03.10.2020 executed by Mr.S. Baladandayudam.
Ex.P6	The photocopy of the Encumbrance Certificate dated 30.05.2005 for the period 01.01.1990 to 26.05.2005 (compared with the original)
Ex.P7	The online Encumbrance Certificate dated 30.09.2020 for the of 01.01.2005 to 24.09.2020
Ex.P8	The online Encumbrance Certificate dated 24.03.2022 for the of 01.09.2020 to 21.03.2022
Ex.P9	The affidavit of assets showing the net value of the estate as



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<i>Exhibits</i>	<i>Documents</i>
	Rs.40,00,000/-.

4. The registered Will of the testator is marked as Ex.P5; the death certificate of the testator is marked as Ex.P3; the legal heir certificate of the deceased is produced as Ex.P4 and that would show that the 1st respondent is the only legal heir of S.Baladandayudam.

5. One of the attesting witness of the Will by name M.K.Rajagiri has been examined as PW.2. He has stated in his evidence that he attested in the Will along with one P.Mahendran. He has also stated that himself and other attester had seen the testator signing the Will in their presence and at the time of execution of the Will, the testator was in a sound and disposing state of mind.

6. The evidences 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(3) of the Indian Successions Act. With the evidence of the attestors, the execution of the Will has also been proved in accordance with Sec.68 of the Indian Evidence Act-1872. Even though the 1st respondent is the surviving legal heir of the testator she has not filed any caveat. Since the petitioner proved the genuineness of the Will in which she had been appointed as executor of the Will, the relief sought shall be granted.



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7. In the result, the Original Petition is **allowed** by granting a probate of the last Will and Testament dated 03.10.2020 of late S.Baladandayudam the testator to the petitioner to have effect limited to the State of Tamil Nadu.

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jrs

Index :Yes/No

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