



T.O.S.No.26 of 2013

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Date : 01.11.2023

CORAM:

THE HON'BLE MR.JUSTICE A.A.NAKKIRAN

T.O.S.No.26 of 2013

(O.P No.110 of 2010)

E.Devarajulu

.. Plaintiff

..Vs.

1.Mahalakshmi

2.Ranibai

3.Gnanasoundri

4.Gajalakshmi

.. Defendants

Prayer: Original Petition has been filed under Sections 222 and 276 of the Indian Succession Act of XXXIX of 1925 for the grant of probate in respect of the last Will and Testament of the deceased P.D.Ethirajulu Naidu. Against this petition, a Caveat and supporting affidavit was filed by the Caveators. As per order of this Court, the Original Petition No.110 of 2010 was converted into Testamentary Original Suit No.26 of 2013.

For Plaintiff : Mr.Christopher Vijay

For Defendants : Set Exparte

J U D G M E N T



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WEB COPY The Testamentary Original Suit is filed for grant of Probate in respect of the last Will and Testament of the deceased P.D.Ethirajulu Naidu.

2.The brief facts of the case of the plaintiff are as follows:

The petitioner/plaintiff and the respondents 1 to 5 in the main O.P are son, daughter-in-law, daughters and grand son respectively of late P.D.Ethirajulu Naidu. The said Eithrajulu Naidu died on 21.09.2004 leaving behind the plaintiff and the respondents 1 to 5 in the main O.P and he executed his last Will and Testament on 06.03.2003. The wife, father and mother of the testator predeceased him. The plaintiff is the executor named in the Will and hence the petitioner/plaintiff, in his capacity as the executor of the said Will, has filed the main original petition for the grant of probate. The amount of assets which is likely to come to the petitioner/plaintiff's hand does not exceed in the aggregate a sum of Rs.4,00,000/- and the net amount of the said assets after deducting all items which the plaintiff is as per law allowed to deduct is only of the value of Rs.4,00,000/-. No application has been made to any District Court or Delegate or to any other High Court for



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probate of any Will of the said deceased or Letters of Administration with or without Will annexed of her property and credits. The petitioner/plaintiff hereby undertakes to duly administer the property and credits of the said late P.D.Ethirajulu Naidu, in any way concerning his Will by first paying his debts and then the legacies therein bequeathed so far as his assets will extend and to make a full and true inventory thereof and exhibit the same in this Court within six months from the date of grant of probate to the petitioner herein and also to render to this Court a true account of the said property and credits within one year from the said date. Hence, he prays to grant probate of the Will.

3. Though summons were served on the defendants, neither the defendants nor their counsel had chosen to appear before this Court and filed their written statement. Hence, the defendants were set exparte on 22.08.2023.

4. Heard the learned counsel for the plaintiff and perused the records.



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5. The plaintiff examined himself as P.W.1 and he had narrated the averments made in the petition stating that the plaintiff has filed the main original petition for the grant of probate in his favour in respect of the Last Will and Testament executed by the testator on 06.03.2003. Ex.P1 is the colour xerox of death certificate of the deceased of Ethirajulu Naidu and the same has been filed to prove that the deceased died on 21.09.2004. The wife of the deceased Ethirajulu Naidu predeceased him. Ex.P2 is the colour xerox of death certificate of Santha, who is the wife of the testator. Ex.P3 is the colour xerox of death certificate of Jayachandra Babu, who is the son of the testator. Ex.P4 is the consent affidavit given by the 5th respondent in the main O.P namely D.Arunkumar, in favour of the plaintiff. Ex.P5 is the affidavit of assets, showing the net value of the estate of the deceased as Rs.4,00,000/-. Ex.P6 is the certified copy of the Will dated 06.03.2003 executed by the deceased Ethirajulu Naidu.

6. One of the attestors of the Will dated 06.03.2003 viz., Dayalan was examined as P.W.2. In his evidence, P.W.2 has stated that the testator executed his last Will and Testament on 06.03.2003 in his presence and in the presence of one K.Sekkaran and they subscribed their respective names



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and signatures at the foot of the testamentary paper as witnesses thereto.

While executing the Will, the testator was in a sound and disposing state of mind and in his presence, the attesting witnesses subscribed their signature in the Will. Ex.P.7 is the affidavit filed by P.W.2 in this regard. The evidence of P.W.2 has not only proved the execution, but also attestation of the Will.

7. In view of the above facts, I am of the view that the plaintiff has proved the execution and attestation of the Will. Hence, the plaintiff is entitled for the issuance of probate in favour of him.

8. In the result:

(i) This Testamentary Original Suit is decreed as prayed for and the Registry is directed to issue probate in respect of the Will dated 06.03.2003.

(ii) This Court, taking into consideration the nature of relationship between the parties, is not inclined to award costs.

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Index : Yes/No
Speaking/Non-speaking order
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Witnesses examined on the side of the plaintiff:

WEB COPY P.W.1. - E.Devarajulu

P.W.2 - V.Dayalan

Exhibits produced on the side of the plaintiff:

S.No.	Exhibits	Date	Description
1.	P-1	21.09.2004	Colour xerox of death certificate of P.D.Ethirajulu Naidu.
2.	P-2	30.01.2010	Colour xerox of death certificate of E.Santha
3.	P-3	29.03.2009	Colour xerox of death certificate of E.Jayachandra Babu
4.	P-4	23.11.2009	Consent affidavit of D.Arunkumar.
5.	P-5	23.11.2009	Affidavit of Assets
6.	P-6	06.03.2003	Certified copy of Will
7.	P-7	23.11.2009	Affidavit of Attesting witness

Witnesses & documents on the side of the defendants:

Nil.

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