



O.P.No.473 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: **18.08.2023**

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THE HONOURABLE MS.JUSTICE R.N.MANJULA

O.P.No.473 of 2022

Mr.Syrus Mazda

... Petitioner

Vs.

1.Ms.Shahnaz Jehangir Kharas

2.Ms.Zomrode Mazda Devitre

... 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 of the deceased Nergis S.Mazda, marked with letter “A” in common form and grant Probate thereof to have effect throughout the Union of India.

For Petitioner : Mr.T.Jayaraman

For Respondents : Mr.C.Rekhakumari for R1

ORDER

This Original Petition has been filed for issuance of Probate for the last Will and testament dated 30.04.2009 executed by Late Nergis S.Mazda who died on 06.03.2020.



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2. The petition mentioned properties were originally belonged to one S.R.Mazda who is the husband of the testatrix of the Will dated 30.04.2009 involved in this petition. The said S.R.Mazda had executed a Will dated 27.12.1999 and bequeathed the petition mentioned properties in favour of his wife Nergis S.Mazda. After the life time of S.R.Mazda, the Will dated 27.12.1999 came into force and Probate was also granted by this Court in favour of Syrus Mazda who was appointed as the executor of the Will dated 27.12.1999. After inheriting the petition mentioned properties, the said Nergis S.Mazda was in enjoyment of the same. During her life time, she executed a Will dated 30.04.2009 by bequeathing the petition mentioned properties to her son Syrus Mazda and daughters Shahnaz Jehangir Kharas and Zomrode Mazda Devitre who are the respondents 1 and 2 herein.

3. The testatrix also bequeathed some of the properties in favour of the children of the petitioner also. The petitioner has been appointed as the executor of the Will. The testatrix Nergis S.Mazda died on 06.03.2020. The Will has given into effect subsequent to her death. Hence the petitioner has filed this petition seeking probate.



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4. The petitioner examined himself as P.W.1 and one of the attesting witness Mrs.M.Padmavathi @ M.K.Padma has been examined as P.W.2.

Exhibits P1 to P12 were marked.

5. From Ex.P1, it is seen that the original owner S.R.Mazda who is the husband of the testatrix died on 31.12.1999. The Will dated 30.04.2009 executed by the deceased Nergis S.Mazda has been marked as Ex.P2. Ex.P3 is the death certificate of Nergis S.Mazda who died on 06.03.2020. Ex.P4 legal heirship certificate of the testatrix would show that the petitioner and the respondents are the only surviving legal heirs of the testatrix. The respondents 1 and 2 who are the sisters of the petitioner have given their consent for issuance of probate of the Will in favour of the petitioner which have been marked as Ex.P11 and P12.

6. One of the attestors of the Will by name M.Padmavathi @ M.K.Padma has been examined as P.W.2 . She has stated in her evidence that at the time of executing the Will, in the presence of M.Padmavathi @ M.K.Padma and A.Dhiraviyanathan, the testatrix had affixed her signature in the Will. At the request of the testatrix, M.Padmavathi @ M.K.Padma and A.Dhiraviyanathan had affixed their signatures in the Will. It is further



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stated that the testatrix was in a sound disposing state of mind while executing the Will.

7. 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 the petitioner proved the genuineness of the Will through which he had been appointed as executor of the Will, the relief sought should be granted.

8. In the result, the Original Petition is allowed by granting a probate of the last Will and Testament dated 30.04.2009 of late Nergis S.Mazda the testatrix, to the petitioner to have effect limited to the Union of India.

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APPENDIX

Petitioner's witnesses:

P.W.1 – Mr.Syrus Mazda

P.W.2 – Mrs.M.Padmavathi @ M.K.Padma

Documents marked:

<i>Exhibits</i>	<i>Documents</i>
Ex.P1	The computer generated copy of the death certificate of S.R.Mazda dated 31.12.1999.
Ex.P2	The original Will dated 30.04.2009 executed by Mrs.Nergis S.Mazda in favour of the petitioner, respondents and grandchildren.
Ex.P3	The computer generated copy of the death certificate of Nergis Shahrokh Mazda dated 06.03.2020.
Ex.P4	The computer generated copy of the legal heirship certificate of Nergis Shahrokh Mazda dated 29.12.2021.
Ex.P5	The photocopy of the sale deed registered as No.3038 of 1986 before the SRO, Purasaiwakkam of the Roselyn Gardens Apartment property dated 12.12.1986.
Ex.P6	The photocopy of the sale deed registered as No.1679 of 1940 before the Registrar of Madras of Rustom Mahal property dated 21.08.2006.
Ex.P7	The photocopy of the sale deed No.1126 of 2006 registered before the SRO Neelangarai of the Casuarina Drive property dated 23.02.2006.
Ex.P8	The photocopy of the extract of Survey No.239 from the land register pertaining to the property at Pune dated 23.09.2004.
Ex.P9	The photocopy of the extract of Survey No.562-A from the land register pertaining to the property at Pune dated 23.09.2004.
Ex.P10	The photocopy of the probate order in O.P.No.252 of 2004 dated 21.04.2004.
Ex.P11	The consent affidavit of 1 st respondent, Shahnaz Jehangir Kharas dated 12.07.2021.
Ex.P12	The consent affidavit of 2 nd respondent, Zomrode Mazda Devitre dated 15.07.2021.

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