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O.P.No.306 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 19.04.2023

CORAM

THE HONOURABLE **MR.JUSTICE K.KUMARESH BABU**

O.P.No.306 of 2022

P.T.Thomas

... Petitioner

Vs

Ms.Eunice

Represented by her Court Guardian

Mrs.Felicia Chacko,

Punchavali House, Kadaynickad Post,

Kottayam District, Kerala 686 550.

... Respondent

(Appointed vide an order dated 08.07.2008 in
M.H.O.P.No.32 of 2008 by the Learned Principal
Judge, City Civil Court, Chennai)

PRAYER: Original Petition filed for issuance of Letters of Administration under Section 232 & 276 of the Indian Succession Act, r/w.XXV Rule 5 of the Original Side Rules, prays that the Letters of Administration with the Will of the deceased annexed may be granted to him as the sister's son/beneficiary under the Will of the deceased.

For Petitioners : Mr.R.Selvakumar

ORDER

This Original Petition has been filed for issuance of Letters of Administration in respect of the Will dated 09.12.2014 executed by late M.C.Joseph, who died on 04.05.2015. The petitioner is the sister's son and the respondent is the only daughter of the testator. The petitioner and the respondent are the beneficiaries under the Will. The petitioner seeks



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issuance of Letters of Administration in respect of the properties situate within the jurisdiction of this Court.

2. The petitioner states that the wife of the testator has pre-deceased him, and their only daughter namely Eunice is mentally retarded and is represented by Court appointed guardian Mrs.Felicia Chacko, duly appointed by an Order of the Court dated 08.07.2008 in MHOP No.32 of 2008 on the file of the Learned principal Judge, City Civil Court Chennai, for her person and property. Further it is perused from the will that, as per the Court Order in the above said MHOP the daughter is entitled to $\frac{1}{2}$ share in the schedule property in the Will, and the another $\frac{1}{2}$ share is only bequeathed in the name of the petitioner.

3. The petitioner has been examined as P.W.1. He has produced the death certificate of the testator M.C.Joseph, as Ex.P4. The Original Will dated 09.12.2014, has been produced as Ex.P3. The legal heirship certificate of the testator's wife has been marked as Ex.P1, and on perusal of Ex.P1 it shows that the respondent is the only surviving class-I legal heir of the testator. Copy of the order dated 08.07.2008 passed in MHOP No.32/2008 has been marked as Ex.P2. The consent affidavit of the respondent, given by the guardian appointed by the Court on behalf of the respondent/mentally ill



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person is marked as Ex.P7. A paper publication has been made and any objections have not been received.

4. The petitioner has examined one Mr.K.Balakrishnan, who is the second attester to the said Will as P.W.2. He has spoken about the execution of the Will by the testator and its attestation by himself and Mr.Anand Vijayan.

5. In view of the above said facts and evidence, this Original Petition is ordered and Letters of Administration is granted in favour of the petitioner, in respect of the Will dated 09.12.2014 of the testator M.C.Joseph. The petitioner shall safe guard the interest of $\frac{1}{2}$ share in the property bequeathed to the respondent. The petitioner is directed to execute a security bond for a sum of Rs.25,000/- (Rupees Twenty Five Thousand only) in the name of the Assistant Registrar (Original Side) of this Court. The petitioner is further directed to file an inventory of assets and statement of accounts within a period of six months and one year, respectively.

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Index :Yes/No

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Petitioner's witness:

P.W.1 - Mr.P.T.Thomas

P.W.2 – Mr.K.Balakrishnan

Documents exhibited by the petitioners:

<i>Exhibits</i>	<i>Documents</i>
Ex.P1	Photocopy of the legal heirship certificate Ms.Shukti Joseph
Ex.P2	Certified copy of the order dated 08.07.2008 passed in M.H.O.P.No.32 of 2008 passed by the City Civil Court, Chennai
Ex.P3	Original registered Will dated 09.12.2014 executed by Mr.M.C.Joseph
Ex.P4	Computer generated death cer of Mr.M.C.Joseph
Ex.P5	Online printout of property tax receipt dated 05.10.2021
Ex.P6	Affidavit of assets showing the net value of the estate as Rs.10,00,000/-
Ex.P7	Consent affidavit given by the respondent (consent affidavit is said to be given by the guardian appointed by the Court on behalf of the respondent/ mentally ill person. But the court guardian is not before this Court. This Consent affidavit is marked subject to admissibility, proof and relevancy)
Ex.P8	Copy of paper publication effected in one issue of English daily "Trinity Mirror" dated 21.12.2022
Ex.P9	Copy of paper publication effected in one issue of Tamil daily "Malai Malar" dated 01.01.2023.
Ex.P10	Affidavit of the 2 nd attesting witness PW2

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