



O.P.No.684 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: **21.09.2023**

CORAM

THE HONOURABLE MS.JUSTICE R.N.MANJULA

O.P.No.684 of 2022

D.Prema Kumari

... Petitioner

Vs.

1.Gowri

2.Balaji

3.N.Prema

4.N.Sankar

5.S.Gowri

6.S.Jayaprakash

... 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 D.Balambal in common form and grant Probate thereof to have effect throughout the State of Tamilnadu.

For Petitioner : Ms.L.Arivukkarasi

ORDER

This Original Petition has been filed for issuance of Probate for the last Will and testament dated 13.02.2009 executed by Late D.Balambal who died on 15.02.2009.



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2. The petition mentioned property was originally owned by

Udayakumar, son of Balambal who is the mother of the petitioner. The said Balambal died on 15.02.2009. Udayakumar predeceased Balambal by leaving behind his mother, wife and son. The first respondent is the wife of Udayakumar and the second respondent is the first respondent's son. The third respondent is the wife of the another son of Balambal and the fourth respondent is the third respondent's son. The respondents 5 and 6 are the grandchildren of the testatrix. As the legal heir of the deceased son, Balambal inherited 1/3 share in the property. During her lifetime, she executed a Will dated 13.02.2009 by bequeathing her 1/3 share in favour of the petitioner. Since Balambal died, the Will came into effect. Therefore, the petitioner has filed this Original Petition.

3. The petitioner examined herself as P.W.1 and Exhibits P1 to P5 were marked. One of the attestors of the Will has been examined as P.W.2.

4. Ex.P1 is the original Will dated 13.02.2009 executed by Balambal. Ex.P2 is the death certificate of Balambal. Ex.P3 legal heir certificate of Balambal would show that the petitioner is the one of the legal heirs of the deceased Balambal.



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5. One of the attesting witnesses of the Will has been examined as P.W.2 and he has stated in his evidence that he was present along with the other attesting witness R.Krishnamurthy at the time when the testatrix had executed the Will. He stated that he had seen the testatrix signing the Will after it has been executed. He further stated that the testatrix was in a sound and disposing state of mind at the time when the Will was executed. He further stated that he affixed his signature along with the other attester on the Will and stood as an attester for the same.

6. The evidence of P.W.1 and P.W.2 and the documents available on record would show that the Will has been executed as per the terms of Section 63(c) of the Indian Successions Act and its genuineness has been proved in accordance with Section 68 of the Indian Evidence Act, 1872. Since the petitioner proved the genuineness of the Will through which she had been appointed as Executor of the Will, the relief sought shall be granted.



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WEB COPY 7. In the result, the Original Petition is allowed by granting a probate of the last Will and Testament dated 13.02.2009 of late D.Balambal the testatrix, to the petitioner to have effect limited to the State of Tamilnadu.

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Index :Yes/No



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APPENDIX

Petitioner's witnesses:

P.W.1 – D.Prema Kumari

P.W.2 – Mr.B.Murugesan

Documents marked:

<i>Exhibits</i>	<i>Documents</i>
Ex.P1	The original Will dated 13.02.2009 executed by Mrs.D.Balambal.
Ex.P2	The computer generated death certificate of D.Balambal.
Ex.P3	The original legal heirship certificate of D.Balambal.
Ex.P4	The photocopy of the sale deed dated 09.12.1993 executed in favour of Mr.D.Udayakumar.
Ex.P5	The affidavit of assets showing the net value of estate as Rs.80,00,000/-

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