



O.P.No.416 of 2022

O.P.No.416 of 2022

WEB CO **N.SATHISH KUMAR, J**

This Petition has been filed under Sections 232 and 276 of the Indian Succession Act read with Order XXV Rule 5 of the Original Side Rules, seeking to grant of Letters of Administration in respect of Will left by one Mrs.Fathi Muthu, the mother of the petitioner. The respondents are sisters and brother of the petitioner.

2. This petition has been filed for grant of Letters Administration in respect of the Will of one Fathi Muthu executed on 18.08.2008 which was registered as Doc.No.72 of 2008 on the file of Joint Sub Registrar-I, Chennai South. The petitioner and the respondents are daughters and son of the testatrix. According to the petitioner, her mother Fathi Muthu executed the registered Will bequeathing her estate in her favour on 18.08.2008. The testatrix died on 24.10.2008. It is the further case of the petitioner that Will was attested by the respondents 1 and 3 who are none other than the other two daughters of the testatrix and sisters of the petitioner. The petitioner and the respondents are Class-I heirs of the testatrix. The respondents 1 and 3 and the other respondents did not chose to contest the proceedings though they were served with notice. The respondents 1 and 3, however, filed their affidavit of attesting witness individually. The petitioner undertakes to duly administer the specified property and credits of the deceased in any way concerning her Will by paying the debts first and then the legacies



O.P.No.416 of 2022

therein bequeathed so far as the assets will extend and to make full and true inventory thereof and exhibits the same in this Court within six months from the date of the grant of a Letters of Administration with the Last Will annexed to the petition and also to render to this Court a true account of the said property within one year from the said date.

3. The petitioner examined herself as P.W.1 and marked Ex.P.1 to Ex.P.8. P.W.1 in his evidence had narrated the averments made in the petition stating that she has filed this petition for grant of Letters of Administration in her favour in respect of the Last Will and Testament executed by the deceased Fathi Muthu on 18.08.2008. Ex.P.1 is the Original Registered Will and Testament dated 18.08.2008 executed by Mrs.Fathi Muthu. The testatrix died on 24.10.2008. Ex.P.2 is the death certificate of the testatrix. The petitioner and the respondents are the legal heirs of the deceased. Ex.P.3 is the photocopy of the legal heir certificate of Mrs.Fathi Muthu. Ex.P.4 is the Aadhaar Card of the petitioner. Ex.P.5 is the downloaded copy of the guideline value of the property. Ex.P.6 is the affidavit of assets showing the net value of the estate as Rs.12,50,000/- . Ex.P.7 is the copy of the paper publication effected in one issue of Tamil Daily 'Makkal Kural' dated 03.03.2023. Ex.P.8 is the copy of paper publication effected in one issue of English Daily 'Trinity Mirror' dated 10.03.2023.

4. One G.Singaravelan, who is one of the attesting witnesses in the Will, was examined as P.W.2. In his evidence, he has stated that the testatrix was in



O.P.No.416 of 2022

sound state of mind while executing the Will and he had also seen the testatrix signing the Will and the other attesting witness subscribing his signature in the Will. He has also stated that the testatrix had seen the attesting witnesses subscribing their signature in the Will. The evidence of attesting witness not only proved the execution but also attestation of the Will and there is no other material to suspect the Will. Thus, this court is of the view that the Will in question has been proved in the manner known to law.

5. Now, the question that remains to be determined is whether the testatrix being Muslim lady could bequeath the entire property to the sole beneficiary. It is the well settled law that under Mohammedan Law, a Mohammedan cannot by Will dispose of more than a third of his/her. Bequeath in excess of one third cannot take effect unless the other legal heirs consented thereto, after the death of the testatrix. Therefore, in order to give effect, bequeath made in excess of one third, consent of the other legal heirs is required. It is also well settled that consent of the other legal heirs may be either express or implied. In given fact the respondents 1 and 3, the other two daughters subscribed as attesting witnesses makes it clear that they have consented to bequeath the property more than a third of the surplus of her estate. The other respondents though entered appeared through counsel, they did not choose to contest the matter. The very factum of non-contest and failure to raise any objection with respect to the Will left by their mother makes it clear that they have also no grievance in respect of the Will exceeding one third



O.P.No.416 of 2022

share in the estate of the testatrix. Therefore, the conduct of the respondents as to the execution of the Will by the testatrix and in not raising any objection as to the disposal of the property by the testatrix would also amount to consent though not by directly but impliedly. In such view of the matter, this court is of the view that the petitioner is entitled to Letters of Administration of the Will left by her mother—Fathi Muthu as per Section 218 of the Indian Succession Act .

6. In view of the above facts, I am of the view that the petitioners have proved the execution and attestation of the Will. Hence, the petitioner is entitled for the issuance of Letters of Administration in his favour.

7. Accordingly, the Original Petition is allowed. Issue Letters of Administration in favour of the petitioner. The petitioner is directed to duly administer the properties and credits of the deceased more fully described in the schedule. The petitioner is also directed to execute a security bond for a sum of Rs.25,000/- (Rupees twenty five thousand only) in favour of the Assistant Registrar (O.S.II), High Court, Madras. The petitioner is further directed to render true and correct accounts once in a year.

03..11..2023

kmk



WEB COPY



O.P.No.416 of 2022

N.SATHISH KUMAR, J

kmk

O.P.No.416 of 2022

03..11..2023