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O.P.No.56 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: **04.08.2023**

CORAM

THE HONOURABLE MS.JUSTICE R.N.MANJULA

O.P.No.56 of 2023

Kaleeswaran

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Petitioner

PRAYER: Original Petition filed for issuance of Letters of Administration with Will annexed under Section 232 & 276 of the Indian Succession Act, 1925 r/w. Order XXV Rule 5 of the Original Side Rules, prays that the Letters of Administration with the Will annexed to the petitioner a the sister's son and adopted son of the deceased legatee/ beneficiary named under the Will of the said deceased, having effect limited within the State of Tamilnadu.

For Petitioner : Mr.K.Balaji

ORDER

This petition has been filed for seeking the Letters of Administration in respect of to the last Will and Testament of the deceased N.Gomathiammal.

2. The petition mentioned property along with its appertunates were originally purchased by one Subramania Pillai who is the father in law of the



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testatrix N.Gomathiammal by virtue of a sale Deed dated 28.05.1951.

During the life time of Subramania Pillai he executed a Will dated 26.09.1973 by bequeathing the property for his two sons namely Nellaiappan and Ayyasamy. The said Nellaiappan had entered into a Memorandum of Understanding with M/s.Prajwal Associate for construction of flats. Since his brother Ayyasamy predeceased him, his wife also joined in the Memorandum of Understanding. After the construction of the building was over, the said Nellaiappan and his brother's wife Uma Ayyasamy were given with three flats each. The said Nellaiappan died on 13.07.2015 and he did not have any children.

2.1. Ayyasamy, who is the brother of the Nellaiappan, did not have any child of his own. The wife of Nellaiappan by name Gomathiammal had inherited the petition mentioned property as the only legal heir of her husband after his demise. The legal heir certificate of Nellaiappan has been produced to show the same. During the life time of Gomathiammal she executed a Will dated 04.02.2019 by bequeathing the petition mentioned property in favour of her adopted son who is the petitioner herein. Gomathiammal died on 09.10.2019 and subsequent to her death the Will has come into force. As per the Will the said Gomathiammal had bequeathed the petition mentioned property in favour of the petitioner who is said to be



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the adopted son of the testatrix. Subsequent to the death of Gomathiammal, the petitioner had come with this petition for seeking Letters of Administration.

3. The petitioner examined himself as PW.1 and the following documents were marked:

<i>Exhibits</i>	<i>Documents</i>
Ex.P1	The Photocopy of the Will dated 26.09.1973 executed by Subramania Pillai.(compared with the original)
Ex.P2	The photocopy of the Order dated 29.06.1989 passed by this high Court in OP.No.216/1989. (compared with the original)
Ex.P3	The photocopy of the Memorandum of Understanding dated 25.09.1996 between Mr.K.S.Nellaippan and M/S.Prajwal Associates. (compared with the original)
Ex.P4	The photocopy of the Flats handing over letter dated 12.05.1999 by M/s.Prajwal Associate to Mr.K.S.Nelliappan. (compared with the original)
Ex.P5	The photocopy of the Death Certificate of Nellaippan. (compared with the original)
Ex.P6	The photocopy of Legal Heir Certificate of Nellaippan. (compared with the original)
Ex.P7	The photocopy of the water tax receipt dated 26.10.2018 standing in the name of Mr.K.S.Neliappan. (compared with the original)
Ex.P8	The photocopy of the Water tax receipt dated 26.10.2018 standing in the name of Mr.K.S.Neliappan. (compared with the



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<i>Exhibits</i>	<i>Documents</i>
	original)
Ex.P9	The photocopy of the water tax receipt dated 26.10.2018 standing in the name of Mr.K.S.Neliappan. (compared with the original)
Ex.P10	The original Will dated 04.02.2019 executed by N.Gomathiammal.
Ex.P11	The computer generated death certificate of N.Gomathi.
Ex.P12	The photocopy of the certificate dated 13.07.2020 issued by Tahsildar Thirupathur Taluk stating that there are no legal heirs of N.Gomathiammal. (compared with the original)
Ex.P13	The computer generated death certificate of K.S.Ayya Samy.
Ex.P14	The computer generated death certificate of Umaayyasamy
Ex.P15	The online printout of extract from permanent land register stating the details of Patta standing in the name of K.S.Nelliappan.
Ex.P16	The photocopy of the Aadhar Card of the petitioner (compared with the original)
Ex.P17	The copy of the paper publication effected in Tamil daily 'Makkal Kural' dated 14.03.2023
Ex.P18	The copy of paper Publication effected in English daily 'Trinity Mirror' dated 22.03.2023
Ex.P19	The affidavit of assets showing the net value of estate as Rs.94,50,000/-
Ex.P20	The affidavit filed by the petitioner under Section 65B of the Evidence Act, 1969.



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4. A copy of the Will executed by the father in law of the testatrix is marked as Ex.P1. The above said Will has been probated by the order of this Court in this Court is marked as Ex.P2. The Memorandum of Understanding between one of the son by name Nelliappan with the flat promotees has been marked as Ex.P3. The death certificate of the Nelliappan has been produced as Ex.P5. The legal heir certificate of the Nelliappan has been marked as Ex.P6 would show that Gomathiammal is the sole legal heir of deceased Nelliappan.

5. The paper publications issued one in Tamil daily "Makkal Kural" and another one in English daily "Trinity Mirror" dated 14.03.2023 and 22.03.2023, respectively, did not attract any objectors. The copy of the death certificate of N.Gomathiammal has been marked as Ex.P11 and the Will dated 04.02.2019 executed by Gommathiammal is marked as Ex.10. The brother of the testatrix's husband Iyya Samy and his Wife Uma Ayyasamy also died subsequently and their death certificates have been produced as Ex.P13 & 14.

6. One of the attestor's namely Nagamuthu has been examined as PW.2. He has stated in his evidence that he stood as a witness for the execution of the Will by the Gomathiammal along with one R.Pondian. He



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further stated that he had affixed his signature as first attestor and the other attesting witness has affixed his signatures as second attesting witness. He has stated that at the time of execution of the Will he had seen the testatrix Gomathiammal affix her left thumb impression in the Will in their presence.

7. With the evidence of PW.2, the petitioner had proved the Will is true and genuine. Thus the Ex.P1 Will is seen to be fulfilling the essential requirements of Section 63(c) of the Indian Succession Act and with the evidence of the attestor, the Will has also been proved to be true in accordance with Section 68 of the Indian Evidence Act. Hence, the petitioner is entitled to the relief claimed as prayed for.

8. Accordingly, this Original Petition is **allowed** by granting Letter of Administration to the petitioner in respect of the last Will and Testament of late Mrs.N.Gomathiammal. The petitioner shall execute a 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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jrs

Internet :Yes/No



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Speaking: Non speaking
Neutral:Yes/ No

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R.N.MANJULA, J.
jrs

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