



O.P.No.267 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: **14.09.2023**

CORAM:

THE HONOURABLE MS.JUSTICE R.N.MANJULA

O.P.No. 267 of 2023

S.Girija

...

Petitioner

Vs.

S.Moulidharan

....

Respondent

Original Petition is filed under Section 222 & 276 of the Indian Succession Act, 1925 (Act XXXIX of 1925) read with Order XXV, Rule 5 of Original Side Rules, 1956 to allow the petitioner to prove the Will dated 21.03.2016 in common form and that probate to have effect limited to the State of Tamil Nadu granted to the petitioner.

For Petitioner : Mr.R.Rajaramani

ORDER

This Original Petition has been filed for issuance of Probate for the last Will and testament dated 21.03.2016 executed by Late D.Sampath



O.P.No.267 of 2023

2. The petition mentioned property originally belonged to the husband of the petitioner by name Sampath by virtue of an adoption deed dated 21.05.1998. The respondent is the son of Sampath. The said Sampath had executed a registered Will dated 21.03.2016 by bequeathing the property in favour of his wife till her lifetime and thereafter to his son, the respondent herein. The petitioner was also appointed as an executor of the Will. The said Sampath died on 02.05.2021 and after his death, the Will came into effect. Hence the petitioner had filed this petition for seeking grant of probate.

3. The petitioner examined herself as P.W.1 and marked Exs.P1 to P6.

4. The original registered Will dated 21.03.2016 is marked as Ex.P2. The death certificate of Sampath is marked as Ex.P3. Ex.P4 – legal heirship certificate of Sampath would show that the petitioner and the respondent are his only legal heirs. The consent affidavit of the respondent is marked as Ex.P6.

5. The petitioner had stated that one of the attesting witnesses of the Will by name Tamizh Selvi is presently residing at London and the whereabouts of the other witnesses by name Jagan is not known. Hence it is submitted that the petitioner is not in a position to examine them as witnesses.



O.P.No.267 of 2023

P.W.1, in her evidence has stated that the testator was found to be in sound and disposing state of mind at the time of executing the Will. She has further stated one Lakshmi who is the sister of one of the attesting witnesses Tamizh Selvi had been examined and she identified the signature of Tamizh Selvi in the Will. The respondent has given his consent affidavit in favour of the petitioner.

6. The evidences of PW.1 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 the same has been proved in terms of Section 68 of the Indian Evidence Act. Since the petitioner has proved the genuineness of the Will in which she had been appointed as executor of the Will, the relief sought should be granted.

7. In the result, the Original Petition is allowed by granting probate of the last Will and Testament dated 21.03.2016 of late Sampath, to the petitioner to have effect limited throughout the State of Tamil Nadu.

14.09.2023

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O.P.No.267 of 2023

APPENDIX

Petitioner's witness:

P.W.1 – S.Girija

Documents marked:

<i>Exhibits</i>	<i>Documents</i>
P1	Photocopy of adoption deed dated 21.05.1998
P2	Original Will dated 21.03.2016
P3	Death certificate of Sampath
P4	Legal heir certificate of D.Sampath
P5	Affidavit of assets
P6	Consent affidavit of the respondent

14.09.2023

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O.P.No.267 of 2023

R.N.MANJULA, J.

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O.P.No. 267 of 2023

14.09.2023