



O.P.No.228 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: **05.09.2023**

CORAM

THE HONOURABLE MS.JUSTICE R.N.MANJULA

O.P.No.228 of 2023

Mr.M.Thiyagarajan

... Petitioner

Vs.

1.B.Krishnakumar
2.B.Bhuvaneswari
3.T.Karthikeyan
4.T.Nithyasri
5.M.Parvathi
6.M.Ganthimathi
7.M.Balaji

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

For Petitioner : Mr.R.Vijayakumar

For Respondents : No appearance

ORDER

This Original Petition has been filed for issuance of Probate for the last Will and testament dated 06.05.2009 executed by Late D.Mallikeswaran who died on 29.08.2019.



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2. The petition mentioned property was originally belonged to one D.Mallikeswaran who had executed a registered Will on 06.05.2009 by bequeathing the petition mentioned property in favour of his four grand children were shown as respondents 1 to 4. The petitioner who is one of the sons of the testator has been appointed as an Executor of the Will. The 5th and 6th respondents are the daughters of the testator about whom the testator has mentioned in the Will that they are well settled and hence no property was given to them. The 7th respondent is the another son of the testator. The said D.Mallikeswaran died on 29.08.2019. Since the Will has come into effect subsequent to the death of D.Mallikeswaran, the petitioner has filed this Petition.

3. The petitioner examined himself as P.W.1 and exhibits P1 to P15 were marked. One of the attestors of the Will has been examined as P.W.2.

4. From Ex.P1 death certificate of the testator, it is seen that he died on 29.08.2019. From the legal heir certificate which is available as Ex.P2, it is seen that the petitioner and the respondents 5, 6 and 7 are the only surviving legal heirs of the deceased. The wife of the testator by name Kousalya also died on 10.08.2009. The death certificate of Kousalya is



marked as Ex.P3. The respondents 1 to 7 have given their consent to issue probate in favour of the petitioner. The consent affidavits have been marked as Ex.P7 to P13.

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 Thangamalai Gandhi at the time when the testator had executed the Will. He stated that the testator is his friend's father and he had seen him signed the Will after it has been executed. He also identified the testator at the Registrar Office. He further stated that the testator was in a sound disposing state of mind at the time when the Will was executed. He further stated that he affixed his signature along with the other attestor in the Will and stood as one of the witnesses.

6. The evidence of PW.1 and PW.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 has proved the genuineness of the Will through which he had been appointed as the Executor of the Will, the relief sought shall be granted.



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7. In the result, the Original Petition is allowed by granting a probate of the last Will and Testament dated 06.05.2009 of late D.Mallikeswaran the testator, 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 – Mr.M.Thiyagarajan

P.W.2 – Mr.Peter Pinheiro

Documents marked:

<i>Exhibits</i>	<i>Documents</i>
Ex.P1	The computer generated death certificate of the petitioner's father D.Mallikeswaran dated 01.10.2019.
Ex.P2	The computer generated legal heir certificate of D.Mallikeswaran dated 09.04.2022.
Ex.P3	The computer generated death certificate of the petitioner's mother N.Kousalya dated 17.01.2021.
Ex.P4	The original registered Will executed by the petitioner's father D.Mallikeswaran on 06.05.2009 registered as document No.30/2009 before the SRO, North Chennai.
Ex.P5	The photocopy of the registered sale deed as document No.3119/1973 before the office of the Registrar, Chennai dated 23.05.1973.
Ex.P6	The affidavit of assets showing the net value of the property at Rs.35 lakhs.
Ex.P7	The consent affidavit of the 1 st respondent.
Ex.P8	The consent affidavit of the 2 nd respondent.
Ex.P9	The consent affidavit of the 3 rd respondent.
Ex.P10	The consent affidavit of the 4 th respondent.
Ex.P11	The consent affidavit of the 5 th respondent.
Ex.P12	The consent affidavit of the 6 th respondent.
Ex.P13	The consent affidavit of the 7 th respondent.
Ex.P14	The affidavit of one of the attesting witnesses in the Will.
Ex.P15	The photocopy of the Aadhaar Card of the one of the attesting witnesses.

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