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O.P.No. 235 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 26.07.2023

CORAM

THE HONOURABLE MS.JUSTICE R.N.MANJULA

O.P.No. 235 of 2022

1. S.Ravi

2. S.Ramesh

...

Petitioners

Vs.

1. S.Santhi

2. S.Latha

... Respondents

Original Petition filed for under Section 222 and 276 of the Indian Succession Act read with Order XXV Rule 4 of the High Court Original Side rules, 1956 to allow to prove the will executed at Madras on 09.12.2009 and duly registered as document No.210 of 2009 under Book No.III before the Sub-Registrar, Sembium annexed in common form and that probate thereof, to have effect the whole of State of Tamil Nadu to the petitioners.

For Petitioners : Mr.C.Jagadish

For Respondents : Mr.E.Rajesh for R1
Ms.S.Manju



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ORDER

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2. The suit properties were owned by the father of the petitioners by name T.Selvaraju. The petitioners and the respondents are the children of T.Selvaraju. The father of the petitioner T.Selvaraju died on 12.02.2010 by leaving the petitioners and the respondents as his only legal heirs. During his lifetime T.Selvaraju executed a registered Will dated 09.01.2009 by bequeathing the properties in favour of the petitioners and the respondents. The petitioners have been appointed as the executors in the Will. After the death of the testator T.Selvaraju, the Will came into effect. The petitioners who are the beneficiaries and executors of the Will, have filed this petition for grant of probate.

3. The first petitioner was examined as P.W.1 and Exs.P1 to P7 were marked. One of the attestors of Will by name P.Gururajan was examined as P.W.2 and Ex.P8 was marked.



4. The Will dated 09.12.2009 has been marked as Ex.P1. The death certificate of the testator T.Selvaraju has been marked as Ex.P2 and that would show that the father of parties died on 12.02.2010. From the legal heirship certificate of T.Selvaraju which is marked as Ex.P3 it is seen that the petitioners and the respondents are the only legal heirs and wife of the deceased S.Rajamani had predeceased late T.Selvaraju. The death certificate of mother of the parties has been produced as Ex.P4 and that would show that their mother Rajamani died on 23.01.2009. The consent letter given by the first respondent is marked as Ex.P7. The second respondent is said to be residing at U.S.A. and hence it is submitted that her consent affidavit could not be filed. However the second respondent has not chosen to cross examine P.W.1 and P.W.2.

5. One of the attestors of the Will has been examined as P.W.2. He had stated in his evidence that he was present at the time when the deceased T.Selvaraju had executed the Will and that the said Selvaraju was in sound and disposing state of mind during execution of the Will. He further stated that he and the other attesting witness by name J.T.Sangavi had attested the Will in the presence of testator and the testator had also affixed his signature in their presence.



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6. Excepting the respondents, no other legal heirs of the deceased is available and no one has raised any objection so far. The evidences of PW.1 and PW.2 and the documents available on record would show that the Will has been executed in terms of Section 63(c) of the Indian Succession Act and the same has also been proved in terms of Section 68 of the Indian Evidence Act. Since the petitioners proved the genuineness of the Will and they have been appointed as the executors of the Will, I feel that the relief sought by the petitioners shall be granted.

7. In the result, the Original Petition is **allowed** by granting probate of the last Will and Testament of late T.Selvaraju dated 09.12.2009 to the petitioners to have effect limited to the State of Tamil Nadu.

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Index :Yes/No

Speaking Order / Non-speaking order



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Appendix

Witnesses examined:

P.W.1: S.Ravi

P.W.2: P.Gururajan

Documents Exhibited:

<i>Exhibits</i>	<i>Documents</i>
P1	Original registered Will dated 09.12.2009 executed by T.Selvaraju
P2	Photocopy of the death certificate of T.Selvaraju (compared with the original)
P3	Photocopy of the legal heir certificate of T.Selvaraju (Compared with the original)
P4	Computer generated death certificate of S.Rajamani
P5	(series 2 Nos.) Online copies of the property tax receipts
P6	Affidavit of assets showing the net value of the estate as Rs.1,17,59,000/-
P7	Consent affidavit given by the first respondent.
P8	Affidavit of P.W.2

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R.N.MANJULA, J.

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