



WEB COPY



O.P.No.791 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: **08.09.2023**

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THE HONOURABLE MS.JUSTICE R.N.MANJULA

O.P.No.791 of 2022

Mr.Aditya Mirza

... Petitioner

Vs.

1.Mrs.Nirmal Mirza

2.Mrs.Divya Mirza Pai

... 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 and Codicil in common form and grant Probate thereof to have effect throughout the Union of India.

For Petitioner : Mr.S.Rajasekar

For Respondents : Mr.À.Alluri Lakshminarayanan

ORDER

This Original Petition has been filed for issuance of Probate for the Last Will and Testament and Codicil executed by Late Ashok Mirza who died on 10.09.2020.



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2. The petition mentioned properties were originally belonged to one

Ashok Mirza who is the father of the petitioner and the second respondent and the husband of the first respondent. During his life time, Ashok Mirza had executed a Will dated 28.04.2020 along with a Codicil. As per the above Will, the deceased Ashok Mirza had bequeathed the properties in favour of his son and daughter as per the ratio mentioned therein. So far as the first respondent is concerned, her husband had settled her by gift of Rs.3,00,00,000/-.

2.1. Ashok Mirza died on 10.09.2020. The parents of the deceased predeceased him. The petitioner and the respondents are the only surviving legal heirs of Ashok Mirza. After the death of Ashok Mirza, the Will has come into effect. The petitioner and the second respondent had acquired the properties as per the terms of the Will. Hence, the petitioner has filed this petition seeking probate in respect of the Will and Codicil dated 28.04.2020.

3. The petitioner examined himself as P.W.1 and Exhibits P1 to P8 were marked. One of the attestors of the Will has been examined as P.W.2.



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4. From Ex.P1 death certificate of the testator, it is seen that he died on 10.09.2020. From the legal heir certificate of Ashok Mirza which is available as Ex.P4, it is seen that the petitioner and the respondents are the only surviving legal heirs of the deceased. Exs.P2 and P3 are the Will and Testament and Codicil executed by Ashok Mirza on 28.04.2020. The respondents have given their consent to issue probate in favour of the petitioner. The consent affidavits have been marked as Exs.P6 & P7.

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 knew Ashok Mirza as his family friend. At the request of Ashok Mirza, he signed as the first attestor to Exs.P2 & P3. Ashok Mirza was in a sound disposing state of mind at the time when the Will and Codicil were executed.

6. The evidence of PW.1 and PW.2 and the documents available on record would show that the Will and Codicil have been executed as per the terms of Section 63(c) of the Indian Succession Act and its genuineness has been proved in accordance with Section 68 of the Indian Evidence Act, 1872. Since the petitioner proved the genuineness of the Will and Codicil, the relief sought shall be granted.



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WEB COPY 7. In the result, the Original Petition is allowed by granting a probate of the last Will and Testament and Codicil dated 28.04.2020 of late Ashok Mirza, the testator, to the petitioner to have effect limited to the Union of India.

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APPENDIX

Petitioner's witnesses:

P.W.1 – Mr.Aditya Mirza

P.W.2 – Mr.Ilyas Ahmed

Documents marked:

<i>Exhibits</i>	<i>Documents</i>
Ex.P1	The computer generated death certificate of Ashok Mirza.
Ex.P2	The original Will and Testament dated 28.04.2020 executed by Ashok Mirza.
Ex.P3	The original Codicil dated 28.04.2020 executed by Ashok Mirza.
Ex.P4	The computer generated legal heir certificate of Ashok Mirza.
Ex.P5	The affidavit of assets showing the net value of the estate as Rs.19,74,80,000/-.
Ex.P6	The consent affidavit of the 1 st respondent.
Ex.P7	The consent affidavit of the 2 nd respondent.
Ex.P8	The affidavit of one of the attesting witnesses in the Will.

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