



WEB COPY



O.P.No. 272 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 03.08.2023

CORAM

THE HONOURABLE MS.JUSTICE R.N.MANJULA
O.P.No. 272 of 2023

Francis William Fernandez alias Frankie Fernandez
Represented by his Power of Attorney Agent
Russel Adrian Fernandez

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Petitioner

Original Petition filed for Testamentary and Intestate under Sections 222 and 276 of the Indian Succession Act XXXIX of 1925 read with Order XXV Rule 4 of the Original Side Rules, prays the petitioner may be allowed to prove the Will in common form and to grant probate thereof to have effect to the State of Tamil Nadu.

For Petitioner : Mr.V.Krishnamurthy

ORDER

This Original Petition has been filed for issuance of Probate for the last Will and testament dated 15.05.2017 executed by Late Hazel Josephine Fernandez who died on 19.05.2020.



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2. The petition mentioned property is the self acquired property of testatrix Hazel Josephine Fernandez by virtue of a sale deed dated 15.06.1999. The said Hazel Josephine Fernandez died on 19.05.2000 and her husband died on 20.08.2006. The couple had no issues. During the lifetime of testatrix, she had executed a Will dated 15.05.2017 by bequeathing the petition mentioned property in favour of the petitioner who is the son of her brother late Mervyn William Joseph Fernandez. After the demise of the testatrix, the Will came into force and the petitioner had file this petition through his power of attorney agent, seeking probate.

3. The petitioner examined himself as P.W.1 and marked Exs.P1 to P11.

4. The Will dated 15.05.2017 has been marked as Ex.P6 and the death certificate of testatrix Hazel Josephine Fernandez is marked as Ex.P4. The sale deed executed in favour of the Hazel Josephine Fernandez is marked as Ex.P8. Ex.P7 is the death certificate of father of the petitioner.

5. One of the attestors of the Will by name Molly Susan Prem was examined as P.W.2 and she has stated in her evidence about her presence



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during the execution of the Will by the testatrix and she had stated that she was present along with one Glyndon who is the second attesting witness.

From the evidence of P.W.2 it is revealed that the she had affixed her signature in the presence of the testatrix and the testatrix had also affixed her signature in their presence. She stated that the testatrix was found to be in sound and disposing state of mind at the time of execution of the Will.

6. The evidences 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 the same has been proved in terms of Section 68 of the Indian Evidence Act. Since the petitioner had proved the genuineness of the Will, the relief sought shall be granted.

7. In the result, the Original Petition is allowed by granting probate of the last Will and Testament dated 15.05.2017 of late Hazel Josephine Fernandez, to the petitioner to have effect limited throughout the State of Tamil Nadu.

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Appendix

Witnesses examined:

P.W.1 – Russel Adrian Fernandez

P.W.2 – Molly Susan Prem

Documents marked:

<i>Exhibits</i>	<i>Documents</i>
P1	Photocopy of the power of attorney dated 08.07.2022 given by the petitioner in P.W.1's favour
P2	Affidavit sworn by P.W.1
P3	Photocopy of the Aadhaar card of P.W.1
P4	Computer generated death certificate of Hazel Josephine Fernandez
P5	Photocopy of the death certificate of Alfred Gualbert Fernandez
P6	Original Will executed by Hazel Josephine Fernandez dated 15.05.2017
P7	Computer generated death certificate of Mervyn William Joseph Fernandez
P8	Photocopy of the sale deed dated 15.06.1999 executed in favour of Hazel Josephine Fernandez
P9	Computer generated property tax receipt.
P10	Affidavit of assets showing the net value of the assets as Rs.46,74,680/-
P11	Photocopy of the letter dated 01.11.2021 sent by the Assistant Revenue Officer Zone 6, Greater Chennai Corporation to the petitioner.

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