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O.P.No.76 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 27.07.2023

CORAM

THE HONOURABLE MS.JUSTICE R.N.MANJULA

O.P.No. 76 of 2022

T.R.Vishwanathan

...

Petitioner

Vs.

1.Ramasamy

2.S.Viswanathan

3.S.Sundaresan

4.Vatsala Padmanabhan

5.P.S.Moni

6.Vasanthi Vishwanathan

7.J.Radhakrishnan

...

Respondents

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

For Petitioner : Mr.G.Sundaram

For Respondents : Mr.Preethi Mohan for R1

: Mr.S.Partheeban for RR2 to 6

: No appearance for R7



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ORDER

WEB COPY This Original Petition has been filed for issuance of Probate for the last Will and testament dated 28.10.1991 executed by Late Gomathi Ganesan who died on 27.07.2014.

2. The petition mentioned property is said to be originally belonged to one Ganesan and Gomathi Ganesan by virtue of a sale deed dated 15.10.1990. Ganesan died on 15.05.1991 by leaving his wife alone as his legal heir. The testator had no children and hence the Gomathi Ganesan had inherited the petition mentioned property and she also died on 27.02.2014. During her life time, the said Gomathi Ganesan had executed a registered Will on 28.10.1991. Subsequent to the death of the testatrix, the Will came into effect. The respondents 1 to 6 are the legatees and the 7th respondent is the executor of the Will. Since the 7th respondent did not take any steps to file an application for probating the Will, the petitioner has volunteered and filed a petition to execute the Will. The petitioner's name is also found in the Will as an alternate executor and he has filed this petition seeking the grant of Probate.

3. The petitioner who is the executor has been examined as PW.1 and the 5th respondent has been examined as PW.2 and the following documents were marked:



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<i>Exhibits</i>	<i>Documents</i>
Ex.P1	The original registered Will dated 28.10.1991 executed by Mrs.Gomathi Ganesan.
Ex.P2	The computer generated death certificate of G.Gomathy.
Ex.P3	The Photocopy of the sale deed dated 15.10.1990 in favour of P.Ganesan and Mrs.Gomathy Ganesan (compared with the original).
Ex.P4	The photocopy of the sale deed dated 15.10.1990 in favour of P.Ganesan and Mrs.Gomathy Ganesan (compared with the original).
Ex.P5	The photocopy of the sale deed dated 15.10.1990 in favour of P.Ganesan and Mrs.Gomathy Ganesan (compared with the original).
Ex.P6	The original death certificate of P.Ganesan.
Ex.P7	The original certificate issued by Allahabad Bank, Mylapore Branch dated 14.10.2019 stating the balance amount held by Vasanthi Vishwanathan bearing account No.20018067467.
Ex.P8	The photocopy of the savings account held by Vasanthi Vishwanathan bearing account pass book No.20018067467 in Allahabad Bank, Mylapore Branch (compared with the original).
Ex.P9	The photocopy of the deposit certificate in Unit Trust of India held by G.Gomathi (compared with the original).
Ex.P10	The photocopy of the deposit certificate in Unit Trust of India held by P.Ganesan and G.Gomathi (compared with the original).
Ex.P11	The photocopy of the Share certificate in Reliance Industries Ltd. by Gomathi Ganesan (compared with the original).
Ex.P12	The photocopy of the deposit certificate in Unit Trust of India held by P.Ganesan (compared with the original).
Ex.P13	The photocopy of the Mutual Fund Division Certificate in Unit Trust of India held by Gomathy Ganesan (compared with the original).
Ex.P14	The photocopy of the Mutual Fund Division Certificate in Unit Trust of India held by Gomathy Ganesan (compared with the original).
Ex.P15	The photocopy of the Mutual Fund Division Certificate in Unit Trust of India held by Gomathy Ganesan (compared with the original).
Ex.P16	The photocopy of the Mutual Fund Division Certificate in Unit Trust of India held by Gomathy Ganesan (compared with the original).
Ex.P17	The photocopy of the Mutual Fund Division Certificate in Unit Trust of India held by Gomathy Ganesan (compared with the original).
Ex.P18	The photocopy of the Mutual Fund Division Certificate in Unit Trust of India held by Gomathy Ganesan (compared with the original).
Ex.P19	The photocopy of the Mutual Fund Division Certificate in Unit Trust of



<i>Exhibits</i>	<i>Documents</i>
	India held by Shri Pichu Iyer Ganesan (compared with the original).
Ex.P20	The photocopy of the Mutual Fund Division Certificate in Unit Trust of India held by Shri Pichu Iyer Ganesan (compared with the original).
Ex.P21	The photocopy of the Mutual Fund Division Certificate in Unit Trust of India held by Gomathy Ganesan (compared with the original).
Ex.P22	The photocopy of the Mutual Fund Division Certificate in Unit Trust of India held by Gomathy Ganesan (compared with the original).
Ex.P23	The photocopy of the Mutual Fund Division Certificate in Unit Trust of India held by Shri Pichu Iyer Ganesan (compared with the original).
Ex.P24	The photocopy of the Mutual Fund Division certificate in Unit Trust of India held by Shri Pichu Iyer Ganesan (compared with the original).
Ex.P25	The photocopy of the Mutual Fund Division Certificate in Unit Trust of India held by Gomathy Ganesan (compared with the original).
Ex.P26	The photocopy of the Mutual Fund Division certificate in Unit Trust of India held by Gomathy Ganesan (compared with the original).
Ex.P27	The photocopy of the Mutual Fund Division Certificate in Unit Trust of India held by Gomathy Ganesan (compared with the original).
Ex.P28	The photocopy of the Mutual Fund Division Certificate in Unit Trust of India held by Gomathy Ganesan (compared with the original).
Ex.P29	The photocopy of the Mutual Fund Division Certificate in Unit Trust of India held by Gomathy Ganesan (compared with the original).
Ex.P30	The photocopy of the Mutual Fund Division Certificate in Unit Trust of India held by Gomathy Ganesan (compared with the original).
Ex.P31	The photocopy of the Mutual Fund Division Certificate in Unit Trust of India held by Gomathy Ganesan (compared with the original).
Ex.P32	The affidavit of assets showing the net value of the estate as Rs.55,16,831/-
Ex.P33	The consent affidavit given by the 1 st respondent.
Ex.P34	The consent affidavit given by the 2 nd respondent.
Ex.P35	The consent affidavit given by the 3 rd respondent.
Ex.P36	The consent affidavit given by the 4 th respondent.
Ex.P37	The consent affidavit given by the 5 th respondent.
Ex.P38	The consent affidavit given by the 6 th respondent.

3.1. The 5th respondent has been examined as PW.2 and the Ex.P39



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and P40 have been marked through him.

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4.The original Will has been marked as Ex.P1. The death certificate of P.Ganesan is marked as Ex.P6. The testatrix Gomathy Ganesan died on 27.07.2014 and her death certificate has been produced as Ex.P2. Notice to the 7th respondent was served on 02.04.2022; but he did not make his appearance before the Court. The respondents 1 to 6 have given their consent affidavits which are available at Exs.P33 to P38.

5.The learned counsel for the petitioner submitted that both the attestors of the Will are not available and their whereabouts not known. PW.2 who is the conversant with the signature of the testatrix has been examined and he has stated in his evidence that he was present at the time when the Will was signed by the testatrix and the attestors. He further stated that his father had affixed his signature as a witness who identified the testatrix.

6. The evidences of PW.1 and 2 and the documents available on record the petitioner has proved that the Will has been executed in terms of Sec.63(c) of the Indian Successions Act and the genuinenesses of the Will

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has been proved under Sec. 69 of the Indian Evidence Act. Since the

petitioner has proved the genuineness of the Will in which he was appointed as the Executor of the Will, the relief sought shall be granted.

7. In the result, the Original Petition is **allowed** by granting a probate of the last Will and Testament dated 28.10.1991 of late Mrs.Gomati Ganesan, the testatrix to the petitioner to have effect limited to the State of Tamil Nadu.

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Index :Yes/No

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