



WEB COPY



O.P.No.360 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 21.07.2023

CORAM

THE HONOURABLE MS.JUSTICE R.N.MANJULA

O.P.No.360 of 2019

Mrs.Vasantha Samuel

...

Petitioner

Vs.

1.Mr.Gilbert Samuel

2.Mrs.Jesse Charles (deceased)

3.Mohan Samuel

4.Vanitha Samuel

5.Dr.Samraj Samuel (deceased)

6.Mrs.Mercy Simon

7.Hepsy Samuel

8.C.G.Dhanraj

9.Mrs.Dhanam

(9th respondent brought on record as the legal heir of

2nd respondent vide order dated 18.12.2020 in

A.No.3150 of 2020)

10. Hudson Samuel

11.Paul Samuel

12.John Samuel

(respondents 10 to 12 are brought on record as the legal

heir of the 5th respondent vide orders dated 15.06.2022, 07.07.2022 &

21.07.2022 in A.No.1283 of 2022)

... Respondents

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



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to have effect, limited to State of Tamil Nadu may be granted to the petitioner.

For Petitioner : Mr.M.Muthappan

For Respondents : Mr.V.R.Annagandhi for R1 to R4 & R6 to R8

ORDER

This Original Petition has been filed for issuance of Probate for the last Will and testament dated 25.11.2005 executed by Late Daisy Samuel who died on 30.09.2011.

2. The petition mentioned property morefully described in the schedule was owned by one late Daisy Samuel and she acquired the same through the Will dated 05.07.1970, executed by her father. After the demise of her father, Daisy Samuel was in possession and enjoyment of the same till her life time. Daisy Samuel remained unmarried. During her life time, she executed a registered Will dated 25.11.2005 by bequeathing the same in favour of her brother, the first respondent, by appointing the petitioner, 3rd respondent and 8th respondent as executors. The petitioner is the wife of the another brother of the deceased Daisy Samuel. Daisy Samuel died on 30.09.2011 and subsequent to her death, this Original Petition has been filed seeking grant of probate.



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WEB COPY 3. The petitioner examined herself as P.W.1 and one Godwin Raymond Simon was examined as P.W.2 and the following documents were marked as Exhibits P1 to P11.

<i>Exhibits</i>	<i>Documents</i>
Ex.P1	The Original Will dated 25.11.2005 executed by Daisy Samuel.
Ex.P2	The computer generated death certificate of Daisy Samuel.
Ex.P3	The Computer generated encumbrance certificate dated 05.08.2009 for the period from 01.01.1987 to 04.08.2009.
Ex.P4	The affidavit of assets showing the net value of the estate as Rs.50,00,000/-.
Ex.P5	The consent affidavit given by the 1 st respondent.
Ex.P6	The consent affidavit given by the 3 rd respondent.
Ex.P7	The consent affidavit given by the 4 th respondent.
Ex.P8	The consent affidavit given by the 6 th respondent.
Ex.P9	The consent affidavit given by the 8 th respondent.
Ex.P10	The consent affidavit given by the 9 th respondent.
Ex.P11	The consent affidavit given by the 7 th respondent.

4. The Will executed by Daisy samuel is marked as Exhibit P1. The death certificate of Daisy Samuel is marked as Exhibit P2. The consent affidavit given by the first respondent is marked as Exhibit P5.

5. The second respondent who is the sister of the testatrix died during



the pendency of the proceedings. The ninth respondent is impleaded as her legal heir. The respondents 3 & 4 are the son and daughter of the predeceased brother of the testatrix. The fifth respondent is also the one of the brother of the testatrix who also died during the pendency of the proceedings. The legal heirs of the fifth respondent are impleaded as respondents 10 to 12. The sixth and seventh respondents are the sisters of the testatrix. The seventh respondent also died during the pendency of the proceedings and she has no legal heirs. Apart from the first respondent, the respondents 3,4,6,8,9,7 also given their consent affidavits and they have been marked as Ex.P6 to P11. None of the respondents have objected the Will and the arrangement so made therein.

6. The Will dated 25.11.2005 has been attested by one Philip Rajeswar and A.M.Krishnamoorthy. One of the attesting witness Philip Rajeswar is no more and the other attesting witness A.M.Krishnamoorthy's whereabouts are not known. P.W.2 Godwin Raymond Simon is said to be conversant with the signatures of the attesting witnesses as he happened to be their neighbour for a long time. P.W.2 has stated in his evidence that he was present along with the attestors at the time when the Will was executed and seen the testatrix and the attestors signing the Will.



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7. Even though the attesting witnesses are not available, the person who knows the signature of the attestors has been examined as P.W.2. The evidences of P.W.1 and P.W.2 and the documents available on record would prove that the Will has been executed in terms of Section 63(c) of the Indian Successions Act and the genuineness of the Will has been proved under Section 69 of the Indian Evidence Act. Since the petitioner has proved the genuineness of the Will in which she was appointed as the Executor of the Will, the relief sought by the petitioner should be granted.

8. In the result, the Original Petition is **allowed** by granting a probate of the last Will and Testament dated 25.11.2005 of late Daisy Samuel, 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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