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O.P. No.236 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved On : **18.10.2024**

Delivered On : **27 .12.2024**

CORAM

THE HONOURABLE MR.JUSTICE RMT.TEEKAA RAMAN

O.P. No.236 of 2024

K.S.Mohan

... Petitioner

Vs.

V.Chamundeswari

... Respondent

PRAYER: Original Petition filed under Section 258 and 276 of the Indian Succession Act, 1925 read with Order XXV Rule 5 of the High Court Original Side Rules, to issue letters of Administration in favour of the petitioner with respect of the Will dated 21.10.2013 executed by the deceased V.Saraswathi to have effect limited to the State of Tamil Nadu.

For Petitioner : Mr.S.Krishnasamy

For Respondent : Mr.S.Udayakumar



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ORDER

This petition has been filed under Section 258 and 276 of the Indian Succession Act, 1925 read with Order XXV Rule 5 of the High Court Original side Rules in the matter of the Indian Succession Act XXXIX of 1925 and in the matter of last Will and Testament of the deceased V.Saraswathi.

2. The above named V.Saraswathi, died on 26.05.2014 at No.80, Ward I, Pillaiyar Koil Street, Kiliyanur Post, Villupuram District being the native place and ordinary residence of the deceased. At the time of her death, the said Saraswathi left properties at Kiliyanur Village, Villupuram District, the fixed deposit invested in various companies at Chennai and Tindivanam, Bank Accounts in Chennai and Tindivanam and the jewels kept in the safety locker of T.N.S.C.Bank, Kotturpuram Branch, Chennai. The deceased Saraswathi has executed a Will and Testament in favour of her mother S.Sarojini dated 21.10.2013. The said Sarojini is the executrix named in the Will, executed by the deceased Saraswathi. The mother Sarojini and the respondent herein are the beneficiaries under the Will executed by the deceased Saraswathi. The



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respondent is the only daughter of the deceased Saraswathi. The husband of the deceased Saraswathi viz., S.Vivekandan has obtained a decree of divorce against her. The amount of assets which are likely to come to hands of the mother of the deceased does not exceed in the aggregate a sum of Rs.25,73,019/- and the net amount of the said assets after deducting all the items which the mother of the deceased is by law allowed to deduct is only of the value of Rs.25,53,019/-. The deceased left behind the following persons as her legal heirs:

Sl.No	Name	Relationship	Now arrayed
1.	V.Chamundeswari	Daughter	Respondent
2.	S.Sarojini (Died)	Mother	Petitioner
3.	S.Vivekandhan	Husband (Diverse	

3. The executrix S.Sarojini filed O.P.No.157 of 2015 before this Court for the issuance of Probate Annexed with the Will dated 21.10.2013. The respondent has filed Caveat and so the O.P.No.157 of 2015 was converted into a suit and it was numbered as T.O.S.No.25 of 2015. Out of sincere negotiation between the parties and their respective counsels entire dispute between the plaintiff and defendant has amicably settled. The memo of compromise more fully set out in the schedule of



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the orders therein and was further pleased to decree the T.O.S.No.25 of 2015 in terms of the compromise memo and a registry was directed to grant probate in favour of the plaintiff. Before completion of the administration of the Estate, the executrix Sarojini died intestate on 07.07.2023 in her village at Kiliyanur, Vanur Taluk, Villupuram District leaving behind the petitioner, the only son to succeed her estate. Except the petitioner, she left behind no other legal heir. The petitioner undertakes to duly administer the properties and credits of the said Saraswathi (deceased) and in anyway concerning her Will by paying first her debts and then the legacies herein bequeathed, so far as the assets will extend and to make a full and true Inventory thereof.

4. At this juncture, it is necessary to refer Section 258 of the Indian Succession 1925, states that if an executor to whom probate has been granted died leaving a part of the Testators un-administered, a new representative may be appointed for the purpose of administering such part of the estate.

5. Now the petition is filed for the Letters of administration in favour of the petitioner in respect of the Will executed by the deceased



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Saraswathi within the limitation of Tamilnadu. During the evidence before the Master, PW2-Janakiraman, one of the attestor has spoken about how the deceased Saraswathi has affixed her signature and at the time of assigning her signature she was in a good state of mind and good health at the time of the execution and in the presence of the executrix, Mohan has also signed as the first attestor (examined as PW1) marked Ex.P1-the certified copy of the decree dated 09.06.2023 in T.O.S.No.25 of 2015 passed by this Court. Ex.P2 is the certified copy of the judgment dated 09.06.2023 in T.O.S.No.25 of 2015 passed by this Court. Ex.P3 is the original Will dated 21.10.2013 executed by Saraswathi. Ex.P4 is the computer generated death certificate of Sarojini. Ex.P5 is the computer generated legal heir certificate of Sarojini. Ex.P6 is the Original Probate Order dated 21.10.2013 in O.P.No.157 of 2015 passed by this Court. Ex.P7 is the Affidavit of Assets showing the net value of the Estate as Rs.25,53,019/- and Ex.P8 is the certificate under Section 65B of the Evidence Act, 1872.

6. On a combined reading of evidence PW1 & PW2 and Ex.B1 to Ex.B7, I find that the Will executed by Saraswathi is proved in the manner known to law and since the Will already deposited in



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T.O.S.No.25 of 2015 wherein the parties have arrived at a compromise as per the pleadings and evidence of PW1 and hence, I find there is no impediment in granting the Letters of Administration annexed with the Will. In the said T.O.S.25 of 2015 by an order dated 09.06.2023, the memo of compromise was effected whereby both the parties, the petitioner and the defendants are entitled to 50% each.

7. In the result, this Original Petition in **O.P.No.236 of 2024** is **allowed** and Letters of Administration to be issued in accordance with rules. Such Letters of Administration shall have effect throughout the State of Tamilnadu. The petitioner is directed to execute a security bond for a sum of Rs.25,000/- (Rupees Twenty Five Thousand only) in the name of the Assistant Registrar (Original Side-II) of this Court. The petitioner is further directed to render true and correct accounts once in a year.

27.12.2024

Internet : Yes/No
Index : Yes/No
NCC : Yes/No

PJL



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APPENDIX

Petitioner's witness:

P.W.1 – K.S.Mohan

P.W.2 – M.Janakiraman



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Petitioner's Exhibits:

<i>Exhibits</i>	<i>Date</i>	<i>Documents</i>
P1	09.06.2023	Certified Copy of the decree in T.O.S.No.25/2015.
P2	09.06.2023	Certified Copy of the judgment in T.O.S.No.25/2015.
P3	21.10.2013	Original Will executed by V.Saraswathi
P4	14.07.2023	Computer generated death certificate of Mrs.Sarojini.
P5	23.08.2023	Computer generated legal heir certificate of Sarojini.
P6	21.10.2013	Original Probate Order in O.P.No.157/2015
P7	26.02.2024	Affidavit of Assets showing the net value of the Estate as Rs.25,53,019/-
P8	30.08.2024	Certificate under Section 65B of the Evidence Act, 1872.
P9	30.08.2024	Affidavit of M.Janakiraman, the attesting witness filed under Order XXV Rule 4(c) of O.S.Rules.

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RMT.TEEKAA RAMAN, J.

PJL

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