



O.P.No.178 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on :05.11.2024

Pronounced on :08.11.2024

Coram:

THE HONOURABLE DR.JUSTICE G.JAYACHANDRAN

ORIGINAL PETITION NO.178 OF 2021

D.Yukeshwaran

(Amended as per the order of the
Hon'ble High Court dated 08.11.2023
in A.No.185/2023)

.. Petitioner

/versus/

1.V.Nagalingam
2.V.Dilli
3.Kousalya(deceased)
4.Kamala
5.Kumar

(brought on record as 5th respondent as
LR of deceased 3rd respondent Kousalya
by the Hon'ble Court in A.No.466/2022
by order dated 10.02.2022)

.. Respondents



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Prayer: Original Petition has been filed under Section 232 and 276 of Indian Succession Act, 1925 (Act No.XXXIX of 1925) for issue of Probate under Section XXV, Rule 5 of the Original Side Rules to grant Letters of Administration with the Will annexed to him as the grandson/sole beneficiary under the said Will of the said deceased having effect limited to the State of Tamil Nadu.

For Petitioner :Mr.S.Shyamala

For R1,R2, R4 :Mr.V.Haritha
R5-No appearance
R3-died

ORDER

This Original Petition has been filed under Section 232 and 276 of Indian Succession Act, 1925 (Act No.XXXIX of 1925) to grant Letters of Administration under Section XXV, Rule 5 of the Original Side Rules in respect of the last Will and Testament of G.Venkatesa Achari, who died on 23.12.1996.



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2. During his lifetime, G.Venkatesa Achari has purchased the schedule mentioned property by way of a sale deed in the year 1980 and in respect of that property, he had executed a Will dated 01.06.1995 in favour of his grand son D.Yukeshwaran, S/o Dilli. The said Will been duly registered at Sub Registrar Office, Sembium as Doc.No.101 in Book-III.

3. The said Will was attested by two persons namely (i)S.Vinayagam and (ii)Samuvel. The Testator G.Venkatesa Achari died on 23.12.1996 leaving behind his wife, two sons and two daughters by name (1) Amirthammal, (2)V.Nagalingam, (3)V.Dilli, (4)Kousalaya (Deceased) (4)Kamala. His wife Amirthammal died on 08.06.2000. In his Will, he reserved the right and interest of the schedule mentioned property to his wife and absolute interest to his grandson, who is petitioner herein.

4. On the death of Amirthammal, the petitioner been vested with absolute right over the property under the Will and therefore, he has filed this petition to grant Letters of Administration.



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5. To substantiate his claim, the petitioner has examined himself as PW-1 and marked the following nine documents as Ex.P1 to Ex.P9.

Sl. No.	Exhibits	Documents
1.	Ex.P1	Original registered Will and Testament dated 01.06.1995 executed by Mr.M.G.Venkatesa Achari.
2.	Ex.P2	Original Death Certificate of Mr.M.G.Venkatesa Achari
3.	Ex.P3	Original Death Certificate of Mrs.Amirthammal
4.	Ex.P4	Computer Generated Legal Heirship Certificate of Mr.M.G.Venkatesa Achari.
5.	Ex.P5	Photocopy of the property Tax demand Card stands in the name of Mrs.Amirthammal
6.	Ex.P6	Affidavit of Assets showing the Net Value of the estate as Rs.9,99,000/-
7.	Ex.P7	Copy of the Paper publication effected in one issue of Tamil Daily “Makkal Kural” dated 08.07.2024.
8.	Ex.P8	Copy of the Paper publication effected in one issue of English Daily “Trinity Mirror”dated 15.07.2024.
9.	Ex.P9	Certificate under Section 65B of the Indian Evidence Act, 1872.

6. Since the whereabouts of both the attesting witnesses is not traceable, one Mr.B.Rajendran, S/o Mr.Batchu Achari, who is the brother's



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son of Testator Venkatesa Achari was examined as PW-2. He has spoken about his acquaintance with the signature of Venkatesa Achari. Notice sent to the attesting witnesses returned with endorsement 'no such person' and the returned covers along with affidavit of service marked as Ex.P10. The affidavit of PW-2 regarding his acquaintance with the signature of testator being his paternal uncle, is marked as Ex.P11. Adhar Card of the witness is marked as Ex.P12.

7. Section 68 of Indian Evidence Act, 1872 equivalent to Section 67 of Bharatiya Sakshiya Adhiniyam, 2023, say that to prove the documents which requires by law to be attested, atleast one of the attesting witness to be called for the purpose of proving its execution.

8. If no such attesting witness can be found, it must be proved that the attestation of one attesting witness at least is in his handwriting and that the signature of the person executing the document is in the handwriting of that person.



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9. In the case in hand, by examining PW-2, who is well acquaintance with the signature of the testator, the petitioner has satisfied the second limb of Section 68 of Bharatiya Sakshya Adhiniyam, 2023, which is equivalent to Section 69 of Indian Evidence Act, 1872.

10. Regarding the proof of the attesting witnesses, notice sent to the attesting witnesses were returned with endorsement 'no such person' in the address. This fact is proved by marking Ex.P10 (series) through PW-2. The first limb of Section 69 of Indian Evidence Act, 1872, which is equivalent to Section 68 of Bharatiya Sakshya Adhiniyam, 2023 could not be complied, in view of the fact that the whereabouts of these two attesting witnesses is not known.

11. In the given circumstances, if the Will is not propounded, the parties to be entitled for the property of the late Venkatesa Achari will be his two sons and two daughters, they are arrayed as respondents 1 to 4. They



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have no objection for grant of Letters of Administration in favour of the petitioner admitting the execution of the Will.

12. Notice sent to respondents 1 and 2 served. Notice sent to respondents 3 and 4 returned as 'unserved'. Since the 3rd respondent was reported dead, notice sent to the 5th respondent, who is the son of the deceased 3rd respondent, was returned as unserved with endorsement 'no such person'. The paper publication effected in one issue of Tamil daily 'Makkal Kural' and one issue of English daily 'Trinity Mirror' on 08.07.2024 and 15.07.2024 respectively. The copy of the paper publication marked as Ex.P7 and Ex.P8. Despite paper publication, no objection received from the public or any person, who have right or interest in the property.

13. Taking into consideration of these facts cumulatively, this Court is of the view that Letter of Administration can be granted to the petitioner herein, who being the grand son of the testator and the probable legal heirs put to notice and no objection received from them.



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As a result,

(i) This Original Petition is allowed and Letters of Administration to be issued in accordance with Rules. Such Letters of Administration shall have effect throughout the State of Tamil Nadu.

(ii) 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.

(iii) The petitioner is further directed to file an inventory of assets and statement of accounts within a period of six months and one year respectively.

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Index:yes/no
Internet:yes/no
Speaking Order/Non Speaking order
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Petitioner's witness:-

PW-1:Mr.D.Yukeswaran

PW-2:Mr.B.Rajendran

Documents marked:-

Ex.P1	Original registered Will and Testament dated 01.06.1995 executed by Mr.M.G.Venkatesa Achari.
Ex.P2	Original Death Certificate of Mr.M.G.Venkatesa Achari
Ex.P3	Original Death Certificate of Mrs.Amirthammal
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Ex.P7	Copy of the Paper publication effected in one issue of Tamil Daily "Makkal Kural" dated 08.07.2024.
Ex.P8	Copy of the Paper publication effected in one issue of English Daily "Trinity Mirror"dated 15.07.2024.
Ex.P9	Certificate under Section 65B of the Indian Evidence Act, 1872.
Ex.P10	The signatures found in Ex.P1 Will are that of PW-2's paternal uncle Mr.g.Venkatesa Achari.
Ex.P11	Affidavit of PW-2
Ex.P12	Photocopy of PW-2 Aadhar Card

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DR.G.JAYACHANDRAN,J.

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delivery Order made in
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