



T.O.S.No.30 of 2014

WEB COPY IN THE HIGH COURT OF JUDICATURE AT MADRAS

Date : 30.01.2024

CORAM:

THE HON`BLE MR.JUSTICE A.A.NAKKIRAN

T.O.S.No.30 of 2014

(O.P No.56 of 2013)

RM.Nachiappan

...Plaintiff

..Vs.

1.P.Valliammai
2.S.Nachammai
3.RM.S.Kannappan
4.R.Annamayil
5.K.Srinivasan
6.K.Chinthamani
7.K.Muthumeena

...Defendants

Prayer: Original Petition has been filed under Sections 222 and 276 of the Indian Succession Act read with Order XXV Rule 4 of the Madras High Court Original Side Rules, 1950, for the grant of Probate in respect of the last Will and Testament of the deceased R.M.Chinthamani Achi. Against this petitioner, a



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Caveat was filed on 10.04.2013 by the Caveators abovenamed. The supporting affidavit was filed on 18.04.2013. As per the order of Court dated 05.09.2014 in O.P.No.56 of 2013, the Original Petition is directed to be converted into Testamentary Original Suit.

For Plaintiff : Mr.B.Arvind Srevatsa

For Defendants : Set exparte

J U D G M E N T

The Testamentary Original Suit is filed for grant of Probate in respect of the last Will and Testament of the deceased R.M.Chinthamani Achi.

2.The brief facts of the case of the plaintiff are as follows:

The petitioner/plaintiff is the son of Late N.Ramanathan Chettiar and RM. Chinthamani Achi. The 1st and 2nd respondents are the daughters and the 3rd respondent is the son of the deceased RM. Chinthamani Achi. The said



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RM.Chinthamani Achi died on 22.11.2009 leaving behind her son Nachiappan and 3 daughters, namely, (i)Annapoorani, (ii)P.Valliammal and (iii)S.Nachammai as her legal heirs. The husband of the testatrix N.Ramanathan Chettiar predeceased her on 03.12.2002. One of the daughters, K.Annaporani died on 09.02.2011 leaving behind the respondents 3 to 7 as her legal heirs. The parents of the testatrix deceased long ago. The respondents 1 to 7 are the next kins to the deceased through K.Annapoorani. Thus, the petitioner has impleaded all the next of kins or other persons interested as party/respondents. There is no next of kin or other persons interested to be impleaded. The plaintiff is the executor named in the Will and hence, the petitioner/plaintiff, in his capacity as the executor of the said Will, has filed the main Original Petition for the grant of probate. The amount of assets which is likely to come to the petitioner/plaintiff's hand does not exceed in the aggregate a



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sum of Rs.16,06,965/- and the net amount of the said assets after deducting all items which the plaintiff is as per law allowed to deduct is only of the value of Rs.16,06,965/-. The petitioner is seeking probate of the Will dated 20.09.2002 regarding house property at Sevvur, Sivagangai District and the physical shares mentioned in Annexure - I and investments in mutual funds mentioned in Annexure III alone. Regarding Annxure II shares, they are in demat form and the respondents can transfer in their favour through executor as per their entitlement. The shares in PLC Leather & Leather Products allotted to the petitioner under the Will, are in the process of transfer in his name. This petition is filed within three years from the date of the death of testatrix. No application has been made to any District Court or Delegate or to any other High Court for probate of any Will of the said deceased or Letters of Administration with or without Will annexed of her property



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and credits. The petitioner/plaintiff hereby undertakes to duly administer the property and credits of the said late RM.Chinthamani Achi, in any way concerning her Will by first paying his debts and then the legacies therein bequeathed so far as his assets will extend and to make a full and true inventory thereof and exhibit the same in this Court within six months from the date of grant of probate to the petitioner herein and also to render to this Court a true account of the said property and credits within one year from the said date. Hence, he prays to grant probate of the Will.

3.Though summons were served on the defendants, neither the defendants nor their counsel had chosen to appear before this Court. Hence, the defendants were set exparte on 31.01.2024.



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4. Heard the learned counsel for the plaintiff and perused the records.

5. The plaintiff examined himself as P.W.2 and Dr.C.T.Alagappan, one of the attestors of the Will dated 20.09.2002 was examined as P.W.1 and he had narrated the averments made in the petition stating that the plaintiff has filed the main Original Petition for the grant of probate in his favour in respect of the Last Will and Testament executed by the testator on 20.09.2002. Ex.P1 is the Will of RM.Chinthamani Achi dated 20.09.2002. Ex.P.2 is the affidavit of attesting witness of Dr.C.T.Alagappan. Ex.P.1 and Ex.P.2 have been marked by the learned Advocate Commissioner. Ex.P.3 is the xerox copy of the Death Certificate of RM.Chinthamani Achi dated 18.10.2012. Ex.P.4 is the xerox copy of the Death



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Certificate of N.Ramanathan Chettiar dated 17.11.2012. Ex.P.5

is the xerox copy of the Death Certificate of K.Annapoorani dated 15.02.2011. Ex.P.6 series is all the signature of S.Ramasamy found in the affidavit of S.Ramasamy who attesting the Will dated 20.09.2002.

6.One of the attestors of the Will dated 20.09.2002, viz., Dr.C.T.Alagappan was examined as P.W.1. In his evidence, P.W.1 has stated that the testator executed his last Will and Testament on 20.09.2002 in his presence and in the presence of one S.Ramasamy and they subscribed their respective names and signatures at the foot of the testamentary paper as witnesses thereto. While executing the Will, the testator was in a sound and disposing state of mind and in his presence, the attesting witnesses subscribed their signature in the Will. The evidence of P.W.1 has not only proved the execution, but also



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attestation of the Will.

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7. In view of the above facts, I am of the view that the plaintiff has proved the execution and attestation of the Will. Hence, the plaintiff is entitled for the issuance of probate in favour of him.

8. In the result:

(i) This Testamentary Original Suit is decreed as prayed for and the Registry is directed to issue probate in respect of the Will dated 20.09.2002.

(ii) This Court, taking into consideration the nature of relationship between the parties, is not inclined to award costs.

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Index : Yes/No
Internet : Yes
Speaking/Non-speaking order
mps



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Witnesses examined on the side of the plaintiff:

P.W.1. - Mr.RM.Nachiappan

P.W.2 - Dr.CT.Alagappan

Exhibits produced on the side of the plaintiffs:

S. No.	Exhibits	Date	Description
1.	P-1	20.09.2002	Original Will of RM.Chinthamani Achi
2.	P-2	07.08.2023	Affidavit of attesting witness of Dr.C.T.Alagappan
3.	P-3	18.10.2012	Xerox copy of the Death Certificate of RM.Chinthamani Achi
4.	P-4	17.11.2012	Xerox copy of the Death Certificate of N.Ramanathan Chettiar.
5.	P-5	15.02.2011	Xerox copy of the Death Certificate of K.Annapoorani
6.	P-6 series	20.09.2002	All the signature of S.Ramasamy found in the affidavit of S.Ramasamy who attesting the Will.



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Witnesses & documents on the side of the defendants:

Nil.

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A.A.NAKKIRAN,J.

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