



O.P.No.674 of 2023

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C.V.KARTHIKEYAN,J.

This Original Petition has been filed under Sections 222 and 276 of the Indian Succession Act, 1925 along with the relevant Rules of the Original Side of Madras High Court seeking probate of the last Will dated 05.03.2001 executed by Mr.V.Nagarajan, who died on 04.02.2002 leaving behind the petitioner and the respondents as his legal heirs. The 1st petitioner, the 1st and 2nd respondents are the son, wife and daughter of the deceased, V.Nagarajan.

2.In the petition filed it had been stated that the petitioner and all the respondents were not aware of the execution of Will. It is also stated that they had thereafter executed a registered deed of partition on 04.02.2009, which was registered as Document No.157 of 2009 in the office of the Sub-Registrar, T-Nagar. Thereafter, in February 2023, the 1st respondent came across the Will. Both the attesting witnesses had died and the petitioner had contacted the daughter of the first attesting witness. It is only thereafter that this petition has been filed seeking probate of the Will.

3.After following due procedure, the petitioner was directed to tender



evidence and accordingly, he examined himself as PW-1. He marked the original Will dated 05.03.2001 as Ex.P1. The Death Certificate of his father was marked as Ex.P2. The Death Certificate of his mother was marked as Ex.P3. The Legal Heirship Certificate of his father was marked as Ex.P5.

4.Since both the attesting witness had died, the petitioner had taken recourse to Section 69 of the Indian Evidence Act and recorded the evidence of PW-2, Mrs.S.Sakunthala, daughter of Mr.R.Srinivasan, who was the first attesting witness of the Will dated 05.03.2001. An Advocate Commissioner had been appointed by this Court to record the evidence of the said witness and the report of the learned Advocate Commissioner had been filed in the Court. PW-2 affirmed the Will and also the signature of her father and she also stated that she has personal knowledge of execution of the Will and the Will was executed in the father's house and she was presented at the time of execution of Will. The second attesting witness, V.Thyagarajan is the brother of V.Nagarajan. The petitioner also examined RW-1, Meenakshi Ramkumar, the 2nd respondent, and marked Exs.R1 and R2.



5. In view of the evidence adduced, this Original Petition stands allowed. The probate may be issued in favour of the petitioner in accordance with the rules.

6. In view of the fact that the learned Advocate Commissioner had gone over to Mumbai to record the evidence of PW-2, quite apart from the initial remuneration of Rs.30,000/- toward expenses, which should have been naturally incurred by the learned Advocate Commissioner and for the efforts taken, an additional remuneration of Rs.15,000/- is granted. This should be paid directly by the petitioner to the Advocate Commissioner.

28.06.2024

smv

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smv



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