



T.O.S.No.19 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Date : 27.01.2025

CORAM:

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

T.O.S.No.19 of 2024

(O.P No.602 of 2022)

M.Arunachalam

.. Plaintiff

..Vs.

M.Sundaramoorthy

.. Defendant

Prayer: Original Petition has been filed under Sections 222 and 276 of the Indian Succession Act of XXXIX of 1925 for the grant of probate in respect of the last Will and Testament of the deceased T.S.Mahalingam. Against this petition, a Caveat was filed by the Caveator. As per order of this Court, the Original Petition No.602 of 2022 was converted into Testamentary Original Suit No.19 of 2024.

For Plaintiff : Mr.M.Sampath Rajkumar

For Defendant : Set Exparte



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JUDGMENT

The Testamentary Original Suit is filed for grant of Probate in respect of the last Will and Testament of the deceased T.S.Mahalingam.

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

The petitioner/plaintiff, the 3rd respondent/defendant and the respondents 1, 2, 4 to 6 in the main O.P are sons, wife and daughters respectively of late T.S.Mahalingam. The said T.S.Mahalingam died on 14.06.2013 leaving behind the plaintiff, defendant and the respondents 1, 2, 4 to 6 in the main O.P and he executed his last Will and Testament on 11.03.2013. There is no next of kin or other person 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 are likely to come into the petitioner/plaintiff's hand does not exceed in the aggregate a sum of Rs.36,78,000/- and the net amount of the said assets after deducting all items which the plaintiff is as per law allowed to



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deduct is only of the value of Rs.36,58,000/-. No application has been made to any District Court or Delegate or to any other High Court for the probate of any Will of the said deceased with or without Will annexed of his property and credits. The petitioner/plaintiff hereby undertakes to duly administer the property and credits of the said late T.S.Mahalingam, in any way concerning his 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 defendant, neither the defendant nor his counsel had chosen to appear before this Court and filed their written statement. Hence, the defendant was set exparte on 14.11.2024.



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

5. The plaintiff examined himself as P.W.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 11.03.2013. Ex.P1 is the original last Will and Testament executed by the Testator T.S.Mahalingam. Ex.P4 is the original death certificate of the deceased of T.S.Mahalingam and the same has been filed to prove that the deceased died on 14.06.2013. Ex.P5 is the legal heirship certificate which shows that the plaintiff, the defendant, and the respondents 1, 2, 4 to 6 in O.P are the legal heirs of the testator. Ex.P7 is the settlement deed dated 06.07.1966 executed in favour of the deceased T.S.Mahalingam.

6. The attestors of the Will dated 11.03.2013 viz., N.Radhakrishnan and M.Srividya were examined as P.W.2 and P.W.3. In their evidence, P.W.2 and P.W.3 have stated that the testator executed his last Will and Testament on 11.03.2013 in their presence and they subscribed their



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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. P.W.4, Manickavalli, who is the daughter of the deceased T.S.Mahalingam was also examined as P.W.4 and in her evidence, she stated that her mother Meenakshi, herself and other sisters viz., Rajeswari, R.Kamatchi and R.Subhashini (respondents 1, 2, 4 to 6 in O.P) have already filed consent affidavits for granting probate of the Will and she has no objection to grant probate in favour of the plaintiff. The evidence of P.W.2 and P.W.3 has not only proved the execution, but also attestation of the Will.

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.



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8. In the result, this Testamentary Original Suit is decreed as prayed for and the Registry is directed to issue probate in respect of the Will dated 11.03.2013. No costs.

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Index : Yes/No
Speaking/Non-speaking order
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Witnesses examined on the side of the plaintiff:

P.W.1. - M.Arunachalam
P.W.2 - N.Radhakrishnan
P.W.3 - M.Srividya
P.W.4 - Manickavalli

Exhibits produced on the side of the plaintiff:

Ex.P1 11.03.2013 Original last Will and Testament of T.Mahalingam
Ex.P2 07.05.2013 Original Doctor's prescription to T.S.Mahalingam
Ex.P3 14.06.2013 Original Doctor's certificate of death of T.S.Mahalingam
Ex.P4 19.07.2013 Original Death certificate of T.S.Mahalingam
Ex.P5 05.10.2018 Legal heirship certificate
Ex.P6 ... Photocopy of Aadhar card of the petitioner
Ex.P7 06.07.1966 Original Settlement deed

Witnesses & documents on the side of the defendants:

Nil.

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A.A.NAKKIRAN,J.

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