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O.P. No.695 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved On : **22.10.2024**

Delivered On : **30.01.2025**

CORAM

THE HONOURABLE MR.JUSTICE RMT.TEEKAA RAMAN

O.P. No.695 of 2023

Sandya Mohanan

... Petitioner

Vs.

Bavani

... Respondent

PRAYER: Original Petition filed under Section 372 of the Indian Succession Act, 1925 read with Order XXV Rule 6 of the Madras High Court Original Side Rules, to grant her with power to collect the Debts of specified in the schedule hereto.

For Petitioner : Mr.L.Rajasekar

For Respondent : No appearance

ORDER

This petition has been filed under Section 372 of the Indian Succession Act, 1925 read with Order XXV Rule 6 of the Madras High Court Original Side Rules in the matter of the certain debts in respect of



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late Vishwanathan Nair.

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2. The petitioner herein Sandya Mohan who has filed this petition is a resident of Chennai. The respondent Bavani, who is the wife of Late Vishwanathan Nair showing the address at Malapuram, Kerala.

3. According to the petitioner, the petitioner is the wife of the brother-in-law of the deceased while the respondent is the wife of the deceased. The petition proceeds on the basis that since the owner of the various deposits mentioned in the schedule is died as no issues and she is the only survivor of the Late Vishwanathan Nair and hence she is entitled to all bank deposit to the Late Vishwanathan Nair. She has annexed the entire property Fixed Deposit amount to the tune of Rs.21,00,000/-. She enters in the witness box and examined herself as PW1 and marked Ex.P1 to Ex.P29. Death certificate of Viswanathan Nair is Ex.P1 and Aadhar Card is Ex.P2. Death certificate and legal heir certificate of Leelavathy Amma is marked as Ex.P4 and Ex.P5 and death certificate and legal heir certificate of Mohanan is marked as Ex.P6 and Ex.P7. Aadhar card of the petitioner is marked as Ex.P8. Ex.P9 to Ex.P19 relating to various pass books and deposit receipts made by the said Late Vishwanathan Nair



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and Ex.P20 to Ex.P26 are relating to communication between the party and the deceased Vishwanathan Nair with the Bank and the communication by the Bank with the petitioner to call upon her to produce the succession certificate. Paper publication was effected and marked as Ex.P28.

4. Heard the learned counsel for the petitioner.

5. According to the petitioner Counsel since the whereabouts of the respondent is not known for more than 7 years, the Court has to presume that the respondent is dead and she is the only survivor in the branch of the deceased Vishawanathan Nair and hence seeks the certificate in respect of several Fixed Deposit to the tune of Rs.21,00,000/- be granted to the petitioner and the petitioner further undertakes to file surety as required by this Court.

6. On perusal of the petition at para No.16, it is specifically stated that “petitioner states that notice of this petition may be served on Mrs.Bavani”. Wife of Late Vishwanathan Nair residing at Koolody House, Chellur, Naduvattam Village, Kuttipuram, Malapuram, Kerala-



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679 591 and paper publication was effected.

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7(a). The learned counsel would state that at para No.10 of the petition as well as the evidence of PW1 she has stated that after the death of the said Vishwanathan Nair, the respondent/wife of Late Vishwanathan Nair could not be contacted and the deceased did not have any Clause-I, legal heirs and hence succession certificate may be granted to the petitioner. Even as per the petition averments, the respondent is alive and address is mentioned as extracted at para No.16 of the petition assumes significance.

7(b). The scope of the succession certificate as contemplated under Section 373(3) of the Indian Succession Act which provides procedure before the Court is provided. The proceedings under the Indian Succession Act for the issuance of Succession Certificate concerns only with *prima facie* right to collect the amount and sub Section 3 and 4 of the Section 376 is clear to the effect that the Judge need not decide the right to the certificate without determining the question of law or it appears to *prima facie* the best title thereto. However, it remains to be stated that there is a specific version in the Sub Section 3 of Section 376



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is that grant a certificate to the applicant if he appears to the person having *prima facie* best title thereto.

8(a). This Court is of the considered view that the succession certificate application entitles the petitioner to collect the asset. It is only for the purpose of collection, the succession certificate is issued but the title is not decided.

8(b). However, in the instant case, it is the specific case of the petitioner that at the time of the death of the original depositor by name Vishwanathan Nair, he has left no Clause-I legal heir, but she had herself stated in the petition that the wife of the deceased namely, Bavani is residing in Kerala in the above stated address. Therefore the very allegation or the averment made in the petitioner and the affidavit that the said Vishwanathan Nair died without any Clause-I legal heir has no legs to stand since wife of the deceased is the Clause-I heir as per Hindu Law. Therefore when the Clause-I heir is admittedly alive even as per the pleadings of the petitioner is extracted supra, this Court is unable to accept and uphold the contention advanced by the learned counsel for the petitioner that the deceased Vishwanathan Nair died without Clause-I



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8(c). The scope of the enquiry under Section 372 of the Indian Succession Act for the purpose of issuance of succession certificate and the scope of the certificate so issued are as stated supra. When the wife is very much alive, it cannot be stated that the said Vishwanathan Nair died without Clause-I legal heir. The entire case has been filed under the premise that there is no Clause-I heir for the said Vishwanathan Nair. Hence, I find that the petitioner has not made out a *prima facie* case to the best title thereto and hence the certificate to the application can be made only if it appears to the person having *prima facie* best title thereto and the procedure that has to be adopted for granting succession certificate is summary procedure and wife of the deceased is said to be living in Kerala State in the above stated address. In a summary proceedings, this Court cannot decide the title. It is the scope of the above stated provision of law and when the wife is said to be alive it cannot be stated that the said Vishwanathan Nair died without any Clause-I heir and thus I find both on fact and law the prayer cannot be granted.

9. In this view of the matter, this Original Petition is **dismissed**. It is open to the petitioner to seek appropriate relief before the appropriate



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forum under the appropriate provision of law.

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Internet : Yes/No

Index : Yes/No

NCC : Yes/No

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APPENDIX

Petitioner's witness:

P.W.1 – Sandhya Mohan

Petitioner's Exhibits:

<i>Exhibits</i>	<i>Documents</i>	<i>Nature</i>
P1	Death Certificate of Mr.Vishwanathan N Nair.	Computer generated certificate
P2	Aadhar Card of Late Mr.Vishwanathan N Nair.	Photostat
P3	Death Certificate of Leelavathy Amma.	Photostat
P4	Legal Heirship Certificate of Late Leelavathy Amma.	Photostat
P5	Death Certificate of S.Mohanan	Computer generated certificate
P6	Legal Heirship Certificate of S.Mohanan.	Photostat
P7	Aadhar Card of the Petitioner.	Photostat
P8	Fixed Deposit Receipt bearing Account No: 855782 issued by Union Bank of India standing in the name of Mr.Vishwanathan N Nair.	Original
P9	Fixed Deposit Receipt bearing Account No: 855783 issued by Union Bank of India standing in the name of Mr.Vishwanathan N Nair	Original



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Exhibits	Documents	Nature
P10	Fixed Deposit Receipt bearing Account No: 855784 issued by Union Bank of India standing in the name of Mr.Vishwanathan N Nair	Original
P11	Fixed Deposit Receipt bearing Account No: 855785 issued by Union Bank of India standing in the name of Mr.Vishwanathan N Nair.	Original
P12	Term Deposit Receipt bearing Account No: 565636 issued by State Bank of Mysore in the name of Mr.Vishwanathan N Nair	Original
P13	Re-investment Deposit Receipt bearing Account No: 0823186 issued by State Bank of Mysore in the name of Mr.Vishwanathan N Nair.	Original
P14	Term Deposit Receipt bearing Account No: 273061 issued by State Bank of Mysore in the name of Mr.Vishwanathan N Nair.	Original
P15	Bank Pass Book issued by State Bank of Mysore to Mr.Vishwanathan N Nair	Original
P16	Savings Pass Book issued by Union Bank of India to Mr.Vishwanathan N Nair.	Original
P17	Savings Account Pass Book issued by RBL Bank Limited, Anna Nagar in the name of Mr.Vishwanathan N Nair.	Original
P18	Letter dated 22.03.2017 from M/s. State Bank addressed to Mr.Vishwanathan N Nair with regard to Locker Deposit.	Copy of the letter
P19	Fixed Deposit advice in RBL Bank held by Late Mr.Vishwanathan N Nair.	Original
P20	Letter dated 07.04.2022 sent by the petitioner to the Branch Manager, The Ratnakar Bank Ltd., requesting to settle the amount in respect of the account standing in the name of Mr.Vishwanathan N Nair.	Copy of the letter
P21	Letter dated 07.04.2022 sent by the Petitioner to the Chief Manager, Union Bank of India, requesting to settle the amount in respect of the account standing in the name of Mr.Vishwanathan N Nair.	Copy of the letter



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Exhibits	Documents	Nature
P22	Letter dated 07.04.2022 sent by the Petitioner to the Branch Manager, State Bank of India, requesting to settle the amount in respect of the account standing in the name of Mr.Vishwanathan N Nair.	Copy of the letter
P23	Acknowledgement Card from RBL Bank Ltd.,	Original
P24	Acknowledgement Card from State Bank of India.	Original
P25	Acknowledgement Card from Union Bank of India.	Original
P26	Reply Letter dated 22.04.2022 from RBL Bank Limited addressed to the petitioner asking for succession certificate.	Original
P27	Certificate under Section 65B of the Indian Evidence Act, 1872.	Original
P28	Paper publication effected in one issue of Tamil Daily "Makkal Kural" dated 21.06.2024.	Copy of the paper publication.

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RMT.TEEKAA RAMAN, J.
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