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O.P. No.61 of 2025

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 18.11.2025

CORAM :

THE HONOURABLE MR.JUSTICE P.DHANABAL

O.P. No.61 of 2025

R.Vijaya Baskar S/o G.Rathinam Chetty

... Petitioner

vs.

1. R.Natanasabapathy

2. R.Suriaprakasam

3. R.Sekar

4. G.Lalitha

5. R.Padmalakshmi

6. M.Tharani

... Respondents

PRAYER: Original Petition is filed under Sections 222 and 276 of the Indian

Succession Act 1925 r/w under Order XXV Rule 4 of Madras High Court

Original Side Rules for issuing Probate.

For petitioner : Mr. G.Ashokapathy

For respondents : No appearance

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ORDER

This petition has been filed under Sections 222 and 276 of the Indian Succession Act read with Order XXV Rule 4 of Madras High Court Original Side Rules seeking to grant Probate of the Will dated 13.06.1994 executed by Late G.Rathinam Chetty to have effect limited to the State of Tamil Nadu.

2. According to the petitioner, he is the son as well as executor of the Will executed by the deceased G.Rathinam Chetty. The petitioner and the respondents 1 to 3 are the sons of the deceased testator and the respondents 4 to 6 are the daughters of the said deceased testator. The wife of the testator, R.Visalakshmi died on 15.11.2016. The testator was the absolute owner of the properties described in the petition. The said property was purchased by the testator during his lifetime. The parents of the testator predeceased him. The testator executed a Will dated 13.06.1994 bequeathing the immovable properties in favour of the petitioner, respondents 1 to 3, who are sons after reserving a life estate in favour of his wife, R.Visalakshi and the respondents 4 and 5, are daughters of the

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testator. The petitioner was appointed as executor of the said Will executed by the testator Late G.Rathinam Chetty. Thereafter, the testator died on 04.02.1999 and his wife, R.Visalakshi died on 15.11.2016 leaving behind the petitioner and the respondents as the only legal heirs. The market value of the schedule mentioned properties would not exceed Rs.1,80,00,000/-.

3. The testator had appointed the petitioner as the executor of the Will and the petitioner and the respondents 1 to 3 are the beneficiaries of the said Will and the respondents 4 to 5 have no objection. Except the petitioner and the respondents, there are no other next of kin to the testator to be impleaded. The respondents 1 to 3 have given their consent by filing affidavit that they have no objection to grant probate in favour of the petitioner. The 1st and 2nd attesting witnesses in the Will are no more. The signature of the 1st attesting witness has been identified by his son, K.Maheswaran and the said K.Maheswaran has also filed his affidavit in support of the same. The wife of the 2nd attesting witness and daughter-in-law of the testator affirms the signature of the testator in the Will.

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4. The amount of assets which is likely to come to the petitioner, respondents 1 to 3 hand does not exceed in the aggregate sum of Rs.1,80,00,000/-. The petitioner had undertaken to duly administer the specified property and credits of the deceased in any way concerned his Will by paying the debts first and then the legacies therein bequeathed so far as the assets will extend and to make full and true inventory thereof and exhibits the same in this Court within the six months from the date of the grant of probate to the petitioner and also to render to this Court a true account of the said property within one year from the said date.

5. In order to prove the claim of the petitioner, P.W.1 to PW3 were examined on the side of the petitioner and Ex.P.1 to Ex.P.6 were marked. Ex.C1 to Ex.C.3 were also marked.



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6. PW1, the petitioner herein, in his evidence had narrated the averments made in the petition stating that he has filed this petition for grant of Probate of the Last Will and Testament executed by the deceased Late G.Rathinam Chetty on 13.06.1994. The said Will and testamant has been marked as 'Ex.P.3'. PW2, who is the third party/ daughter-in-law of the said G.Rathinam Chetty in her evidence, had stated that the signatures found in Ex.P.3 Will are that of her father-in-law. Since the attesting witnesses are not available, the person who has acquaintance with the handwritings and signatures of testator was examined as PW3 and he has deposed that he is the son of C.B.Kalyanaraman, who is one of the attesting witnesses. He has identified the signature of the 1st attesting witness in the Will. Moreover the Will is 30 years old document and was produced before this Court from proper custody, thereby there is a presumption under Section 90 of the Evidence Act. At this juncture, it is relevant to rely upon a judgment of Hon'ble Supreme Court in ***Marathal (died) and another vs. Kanniammal (died) and others reported in 2024 SCC Online Mad 5153*** where it has been held that "*....insofar as the "Will" is concerned, if attesting witnesses*

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are available, then they should be examined in terms of Section 68 of

Evidence Act, if the witness is not available, then route under Sections 69 to

71 is available to the profinder, if the 'Will' is more than 30 years old and

produced from proper custody, Section 90 is available to the Court to draw

a presumption regarding its "due execution" and "attestation" and if the 'Will'

is more than 30 years old and produced from proper custody, it is shown

that the attesting witnesses are alive and not produced before the Court, it

may resort to presumption under Section 114 illustration (g) instead of one

under Section 90 of Evidence Act". In the case on hand, the deceased

Mr.Rathinam Chetty had executed the Will on 13.06.1994, i.e., before 30

years and the Will has been attested by two attestors and they are no more.

Therefore, one Mr. K.Maheshwaran, son of the 1st attesting witness to the

Will, viz., C.B.Kalyanaraman, has been examined as PW3. He has identified

the Will and the signature of his father, viz., 1st attestor to the Will. The third

party to the Will, viz., P.W.2, Meenakshi, who is the daughter-in-law of the

testator had identified the signature found in the Will is that of her father-in-

law. The respondents 1 to 3 have filed their consent affidavits to grant



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letters of administration to the petitioner. Therefore, the petitioner, through the evidences and documents, have amply proved the execution of Will.

Therefore, the petitioner is entitled to the relief as prayed for in the petition.

Therefore, the execution of the Will and attestation are duly proved in accordance with law.

8. In the result, the Original Petition is **allowed** and the Will executed by Late G.Rathinam Chetty. dated 13.06.1994 is hereby probated.

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Index : Yes/No
Speaking Order : Yes/No
ssd

APPENDIX:

List of Petitioner side Witnesses:

PW1 : Mr.R.Vijaya Baskar
PW2 : Mrs.Meenakshi
PW3 : Mr.K.Maheshwaran



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List of Petitioner side Documents:

Exhibit No.	Date	Description of Documents.
Ex.P.1	09.02.1977	Photocopy of the conditional sale deed executed by the Tamilnadu Housing Board in favou of the deceased testator G.Rathinam Chetty.
Ex.P.2	30.11.1984	Copy of the release deed housig board in favour of deceased testator G.Rathinam Chetty
Ex.P.3	13.06.1994	Original Will of deceased G.Rathinam Chetty
Ex.P.4	09.05.2001	Photocopy of the legal heirship certificate of Mr.G.Rathinam Chetty
Ex.P.5	25.11.2024	Online copy of Death certificate of Mr.G.Rathinam Chetty
Ex.P.6	25.11.2024	Online copy of Death certificate of Mrs.R.Visalakshi

List of Court documents:

Exhibit No.	Date	Description of Documents.
Ex.C.1	-	Consent affidavit of Mr.Natanasabapathy, 1 st respondent
Ex.C.2	-	Consent affidavit of Mr.Suriaprakasam, 2 nd respondent.
Ex.C.3	-	Consent affidavit of Mr.Sekar, 3 rd



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respondent.

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