

MHBI050011522022



Received On : 10/11/2022
Registered On : 10/11/2022
Decided On : 05/12/2023
Duration : Yrs.01 Ms.00 Ds.24

IN THE COURT OF JT.CIVIL JUDGE (S.D.), AMBAJOGAI
TQ.AMAJOGAI, DIST.BEED.

(BEFORE : MR.M.Y.WAGH)

MISC.CIVIL APPLN.NO.702/2022.

EXHIBIT NO. 20/A

- 01.** Madhukar S/o Sahebrao Hare,
age 75 years, occupation Agriculture,
- 02.** Sudhakar S/o Sahebrao Hare,Applicant
age 70 years, Occ. Agriculture,
Both R/o Jawalgaon, Tq. Ambajogai,
Dist. Beed.

Appearance : **Adv. S.M.Patil**

CLAIM : **Application under Section 276 of**
Indian Succession Act 1925 to Grant
Probate.

J U D G M E N T
(Dated 5th December, 2023.)

01. This is an application filed by the applicants under Section 276 of the Indian Succession Act to grant probate.

02. The sum and substance of the application of the applicant is that ; The applicants are the real brothers inter-se i.e. one Bhagoji S/o Rangnath Hare, resident of village Jawalgaon Tq. Ambajogai was real cousin brother of applicants. Said Bhagoji S/o Rangnath Hare was married with one Watsala long back as per Hindu rites, religion and customs, but unfortunately Bhagoji Hare and his wife Watsalabai were not blessed with any issue. Bhagoji S/o Rangnath Hare died before many years that too issueless leaving behind him his only legal heir i.e. his wife namely Watsalabai. Bhagoji Hare was owner and possessor of his ancestral land Gut No. 313, admeasuring 1 Hec 42 Are of Village Jawalgaon Tal Ambajogai. But due to his old age, this land was being cultivated by the present applicants and after the death of Bhagoji, Watsala was being maintained by the present applicants till her death, as there was nobody to her is close relation than the present applicants. The above said land was recorded in the revenue record in the name of

Bhagoji S/o Rangnath Hare. And after the death of Bhagoji Hare, this land Gut No. 313 admeasuring 1 Hec 42 Are as duly recorded in the name of his wife Watsala Hare as owner but as stated above, said Watsala was residing with the present applicants after the death of her husband, and thereafter also till her death which occurred on 26-09-2020 this land as such remained in joint possession and enjoyment of both this applicants continuously since the death of bhagoji Hare. Applicants continued to remain very close with Watsala W/o Bhagoji Hare and she was being emotionally and by all means was supported by them as well as she was being very well maintained by both these applicants till her death. And therefore, there was naturally emotional attachment, love and affection of Watsala W/o Bhagoji Hare for both the applicants as they are real cousin brother-in-laws of Watsala W/o Bhagoji Hare. She decided to bequeath her land Gat No. 313 admeasuring area 1 Hec 42 R of village Jawalgaon Tq. Ambajogai Dist. Beed both present applicants. She has executed will on 13.07.1995 and registered it Vide documents No. 2125/1995 . She is died on 26.09.2020. Hence, probate be granted to applicants as prayed.

03. I have carefully gone through the record. Heard the advocate

for the applicants. After careful perusal the application as well as affidavit of applicant on record, it appears from death certificate at Exh. 15 that Watsala W/o Bhagoji Hare was died on 26.09.2020. Moreover after perusal the daily newspaper 'Ambajogai Times' dated 30/11/2022 it appears that the proclamation was duly published in the said newspaper but till today nobody has filed any objection in the present application. Applicant has also produced on record 7/12 extract of Gat No. 313 of village Jawalgaon Tq. Ambajogai, certified copy of Will of Watsala W/o Bhagoji Hare registered at Sr. No. 2125/1995 Dated 13.07.1995. The applicant No. 1 examine him self at Exh. 12. He stated that Watsalabai voluntarily wish to transfer her property to the applicants after his death thus, she has executed Will in favour of applicants in presence Hanumant Mukundrao Nakure and Trimbak Bhimrao Katare. The original registered document of Will is misplaced. The applicant demanded its original copy with sub-registrar Ambajogai. He was informed that original registered document is misplaced from their office. Hence, present applicant produce certified copy of said document. The applicant may prove document by secondary evidence in view of Sec. 65 (c) of The Indian Evidence Act, when original has lost or destroyed.

03. The probate can be issued on copy of Will when original Will has been lost or misplaced. The Sec. 237 of The Indian Succession Act, 1925 contemplates provision with regard to Probate of copy or draft of lost Will as under -

“When a Will has been lost or mislaid since the testator's death, or has been destroyed by wrong or accident and not by any act of the testator and a copy or the draft of the Will has been preserved, probate, may be granted of such copy or draft, limited until the original or a properly authenticated copy of it is produced.”

04. As per section 68 of Indian Evidence Act, the will should be proved by examining attesting witness. In the matter in hand, petitioners have examined Mr. Hanumant Mukundrao Makure being attesting witness of said Will. He stated that the contents of Will was stated by Watsala Hare in his presence. The said Will registered Vide document No. 2125/1995 on 13.07.1995. Therefore, it clearly shows that, deceased Watsala Hare desire to bequeath the property to the applicants. Accordingly, she made Will in their favour. The oral testimony of the

attesting witness is sufficient to believe that at the time of execution of the will, deceased was in a sound state of mind and not under the influence of any intoxicant. Therefore, petitioners have duly proved the will at Exh.16.

05. Though objection were called out by publishing the proclamation in daily news paper “Ambajogai Times” Dated 30/11/2022 (Exh.9), no one come forward to raise objection to the claim of petitioners. The oral testimony of the attesting witness is sufficient to believe that at the time of execution of the will, deceased was in a sound state of No mind and not under the influence of any intoxicant. No any other Will of Watsala Hare brought on record. Therefore, I hold that the present Will of Watsala Hare is her last Will duly executed to devolve her assets i.e. land bearing No. Gat No. 313 area 1 Hec 42 R in favour applicant No. 1 and 2. Thus, the applicant No. 1 may be appointed as executors of said Will. Therefore, I have no hesitation to held that this application is deserved to be allowed. The probate of certified copy of Will (Exh. 16) may be issued in view of Sec. 237 of The Indian Succession Act. In the result, I proceed to pass following order.

ORDER

1. Application is hereby allowed.
2. Issue Probate in the name of executor Madhukar S/o Sahebrao Hare to give effect to the will Exh.16 executed by deceased Watsala W/o Bhagoji Hare, with respect to property land bearing Gat No. 313 admeasuring area 1 Hec 42 Are.
3. Superintendent, Senior Division, Ambajogai is hereby directed to file report in respect of Court fees by verifying Valuation of the property mentioned in the present application.
4. The applicants are directed to pay requisite Court fee, if any.

Dated : 05/12/2023.

Sd/-
(M.Y.Wagh)
Jt. Civil Judge (S.D.),
Ambajogai.

CERTIFICATE

I affirm that the contents of this PDF file are word to word as per original judgment/ order.

Dictated on : 05/12/2023.

Transcribed on : 05/12/2023.

Signed on : 05/12/2023.

Date:05/12/2023.

Place: Ambajogai.

Sd/-

(P.S.Kulkarni)

Marathi Stenographer

Civil Court, S.D., Ambajogai.