

IN THE COURT OF PRINCIPAL DISTRICT JUDGE AT TIRUVALLUR

**PRESENT: Tmt.S.SELVA SUNDARI, M.L.,
Principal District Judge, Tiruvallur**

Monday, the 26th day of February, 2024

Probate O.P. No.381/2022
(CNR No. : TNTR010060912022)

In the Matter of the Last Will
and Testament
dated 08.07.2016 executed by
late. **S. JAGADEESAN**,
(died on 03.02.2017)

J. Kasthuri
W/o late. S. Jagadeesan,

....Petitioner

Versus

NIL

...Respondent

This petition is coming on for final hearing on 03.02.2024 in the presence of M/s R. Damodaran, and having Paper Publication and General Publication being effected, there are No objectors and upon perusing the entire case records, this Court delivers the following:-

ORDER

Petition filed by the petitioner under Section 232, 234 and 276 of Indian Succession Act to permit the petitioner to prove the Will dated 08.07.2016 executed by his husband namely late. S. Jagadeesan (died on 03.02.2017) in common form and to grant an order of probate thereof to have effect throughout India.

2. The averments in the Petition filed by the Petitioner is as follows:-

According to the petitioner, the petitions schedule property with larger extent originally belonged to one Thayammal , W/o Mottai Naicker having purchased the same under a registered sale deed dt. 22.11.1943 vide Document No.2250/1943. After

the death of Thayammal, her legal heirs partitioned the same under Koorchit dt. 30.05.1970, in which the petitioner's father in law, namely M. Sadagopan was allotted 4 ¼ cents and he was in possession and enjoyment of the same by constructing a thatched house therein. He died leaving the petitioner's husband Jagadeesan and two other sons namely Ravichandran and Chandrasekarn to succeed to his estate. They have partitioned the same under an unregistered partition by Koorchit dt. 20.07.1999 and the 'A' schedule property as mentioned in the Koorchit fell to the share of the petitioner's husband Jagadeesan. Thereafter, the said Chandrasekar settled his share to his sister Raji @ Rajakkukmari by way of settlement. The petitioner and her husband S. Jagadeesan had no issues. While so, during his life time, petitioner's husband S. Jagadeesan executed a registered Will dt. 08.07.2016 vide Document No.20/2016 in the presence of witnesses P. Dhanasekar and Malligeswari. Petitioner's husband S. Jagadeesan died on 03.02.2017 leaving his wife, the petitioner herein and his mother Vaduvambal as his legal heirs. Subsequently, his mother also died on 29.11.2018. Thus, after the death of his husband, the petitioner being the only legal heir alive and also the only beneficiary under the Will is entitled to the petition schedule property. Hence, the petitioner has come forward with this petition to probate the Will dated 08.07.2016 executed by her husband.

3. Paper Publication and General Publication were effected and there were no other objectors.

4. In continuation, on the petitioner's side, the petitioner was examined as PW1, and one of the attester of the Will namely Malligeswari was examined as

PW2 and marked Ex.P1 to Ex.P10.

5. Now the points for consideration in this petition are,

1. ***Whether the Will executed by deceased S. Jagadeesan on 08.07.2016 , in favour of the petitioner is to be probated?***
2. ***Whether this petition is to be allowed?***

6. **POINTS:**

Heard petitioner side.

This petition is filed by the petitioner seeking for probating of the Will dated 08.07.2016 executed by S. Jagadeesan , which is his last Will and Testament.

7. The petitioner in order to substantiate his case was examined herself as PW1. The petition schedule property with larger extent originally belonged to one Thayammal. Certified copy of the sale deed dated 22.11.1943 in her name is **Ex.P5**. After her death, her legal heirs including her son M. Sadagopan, partitioned the same under Koorchit dt. 30.05.1970. The Koorchit dated 30.05.1970 is **Ex.P6**. After the death M. Sadagopan, his three sons namely, petitioner's husband S. Jagadeesan , one Ravichandran and Chandrasekaran have partitioned the said property by way of Koorchit dated 20.07.1999, wherein the petition schedule property fell to the share of petitioner's husband, S. Jagadeesan. While so, during his life time, petitioner's husband S. Jagadeesan executed a registered Will on 08.07.2016 , thereby bequeathing the petition schedule property to his wife, i.e. the petitioner herein. The Will is **Ex.P1**. Subsequently, petitioner's husband S. Jagadeesan, died on 03.02.2017 leaving his wife, the petitioner herein and his mother Vaduvambal as his legal heirs. His death certificate and legal heir certificate are **Ex.P2** and **Ex.P3** respectively.

Subsequently, his mother Vaduvambal also died on 29.11.2018. Her death certificate is **Ex.P4**. Subsequently, one of the son of M. Sadagopan, namely S. Chandrasekaran settled his share to his sister G. Raji (a) Rajakumari by way of settlement deed dt. 02.12.2010. Certified copy of settlement deed is **Ex.P7**. Copy of aadhar card of the petitioner is **Ex.P8**.

8. Petitioner has examined one of attestors of the Will namely, Tmt. Malligeswari as PW2. She has deposed about her attesting in the Will and execution of the same by S. Jagadeesan on 08.07.2016 and also attesting of the same by another witness, Dhanasekar. The signature of PW2 in the Will is **Ex.P9**. Copy of her aadhar card is **Ex.P10**.

9. On coming to the facts of the case, the petition schedule property with larger extent originally belonged to one Thayammal having purchased the same under registered sale deed on 22.11.1943, which is evident from Ex.P5, sale deed. After her death, her legal heirs partitioned the properties by way of Koorchit on 30.05.1970, it is evident from Ex.P6, Koorchit. Under the said Koorchit, the petitioner's husband's father, i.e. petitioner's father in law M. Sadagopan was allotted 4 $\frac{1}{4}$ cents. After the death of M. Sadagopan, his three sons namely, petitioner's husband S. Jagadeesan, one Ravichandran and Chandrasekaran have partitioned the property belonging to their father by way of Koorchit dated 20.07.1999, wherein the petition schedule property fell to the share of petitioner's husband, S. Jagadeesan. During his life time, petitioner's husband S. Jagadeesan executed a registered Will on 08.07.2016, thereby bequeathing the

petition schedule property to his wife, i.e. the petitioner herein. It is evident from the registered Will, Ex.P1. While so, petitioner's husband S. Jagadeesan, died on 03.02.2017 leaving his wife, the petitioner herein and his mother Vaduvambal as his legal heirs. It is evident from his death certificate, Ex.P2 and legal heir certificate, Ex.P3. Subsequently, his mother Vaduvambal also died, which is evident from her death certificate, Ex.P4.

10. After the death of the Testator, S. Jagadeesan on 03.02.2017, the Will came into force. Hence, the petitioner, being the only beneficiary in the Will has come forward with this petition to probate the Will for administration of the petition schedule property.

11. There are no objectors to this petition inspite of Paper Publication and General Publication. Hence, the petitioner's counsel prayed to probate the Will executed by the Testator, S. Jagadeesan.

12. In general, a Will has to be proved by sufficient attesting witnesses as stated in Section-68 of the Indian Evidence Act which reads as follows:-

Section-68:

Proof of execution of document required by law to be attested, it shall not be used as evidence until one attesting witness at least has been called for the purpose of proving its execution, if there be an attesting witness alive, and subject to the process of the Court and capable of giving evidence.

Provided that it shall not be necessary to call an attesting witness in

proof of the execution of any document, not being a will, which has been registered in accordance with the provisions of the Indian Registration Act, 1908 (16 of 1908) unless its execution by the person by whom it purports to have been executed is specifically denied.

13. The petitioner in his evidence deposed that the said Will is the last Testament executed by the deceased S. Jagadeesan in favour of the petitioner and in terms of the Will, petitioner is entitled to petition schedule property. In order to prove the Will as per Sections 63 and 68 of Indian Evidence Act, on the petitioner's side, one of the attestors of the Will namely, Tmt. Malligeswari was examined as PW2. She deposed about her attesting as well as about attesting of another witness Dhanasekar in the registered Will executed by S. Jagadeesan on 08.07.2016. She has also deposed that she signed in the Will as attested witness and also after that the Testator signing in the Will, by corroborating the evidence of P.W.1. Therefore, after the death of Testator, the Will came into effect. There are no other objectors for this petition.

14. As per Sections 63 and 68 of Indian Evidence Act, the burden of proving due and valid execution of a Will is on the Propounder who has to prove the Will. The propounder of the Will has to prove the legality, execution and genuineness of the said will by proving absence of suspicious circumstances surrounding the Will and also by proving the testamentary capacity and the signature of the Testator. In this case, the petitioner has proved the Will by way of examining one of the attestors, PW2 Malligeswari who has deposed about the execution of the registered Will

executed by the Testator S. Jagadeesan on 08.07.2016. The evidences of PW2 support the execution of the Will in favour of petitioner.

15. Petitioner is none other than the wife of the Testator. The petitioner states that she and the testator, had no issues. The petitioner and the testator's mother Vaduvambal are his only legal heirs and the said Vaduvambal also died. Even there is no objection from the public and it was confirmed through general publication and paper publication. So, it appears that there are no suspicious circumstances surrounding the Will. Thus, from the evidences of P.W.1 and PW2 and Ex-P1 to Ex-P10, it is crystal clear that the petitioner is the beneficiary under the Ex.P1, Will.

16. Thus, considering the relationship between the petitioner and the deceased Testator, the Will is proved beyond reasonable doubt and there is no impediment to issue the Certificate of Probate of the Will in favour of petitioner in respect of petition schedule property.

17. Under the above circumstances, the Will executed by deceased S. Jagadeesan on 08.07.2016 shall be probated in favour of petitioner in respect of the petition schedule property and the points are answered accordingly.

In the result, this petition is allowed in respect of petition schedule mentioned property. The True Copy of the Will executed on 08.07.2016 by the deceased, S. Jagadeesan, S/o M. Sadagopan, (died on 03.02.2017) is to be annexed with the Certificate of Probate. Issue Certificate.

Dictated to the Steno-Typist, transcribed by him, corrected and pronounced by

me in the Open Court, on this the 26th day of February, 2024.

Sd./- S. Selva Sundari
PRINCIPAL DISTRICT JUDGE
TIRUVALLUR

Annexures :

1. List of Witnesses examined on the side of the Petitioner:-

P.W.1 – Tmt. J. Kasthuri (Petitioner)

P.W.2- Tmt. V. Malligeswari,

2. List of Exhibits marked on the side of the Petitioner:-

- | | | | |
|--------|---|------------|---|
| Ex-P1 | – | 08.07.2016 | Registered Will executed by petitioner's husband S. Jagadeesan |
| Ex-P2 | - | 16.10.2023 | Death certificate of petitioner's husband S. Jagadeesan |
| Ex-P3 | - | 08.06.2017 | Legal Heir certificate of petitioner's husband S. Jagadeesan |
| Ex-P4 | - | 20.12.2018 | Death certificate of Vaduvambal |
| Ex-P5 | - | 22.11.1943 | Certified copy of the sale deed in the name of Thayammal under Document No.2250/1943 |
| Ex.P6 | - | 30.05.1970 | Certified copy of Koorchit executed among legal heirs of Mottai Naicker |
| Ex.P7 | - | 02.12.2010 | Certified copy of settlement deed executed by S. Chandrasekaran in favour of G. Raji (a) Rajakumari |
| Ex.P8 | - | | Copy of aadhar card of the petitioner (compared with original) |
| Ex.P9 | - | 08.07.2016 | Signature of PW2 Tmt. Malligeswari in the Will executed by S. Jagadeesan |
| Ex.P10 | - | | Copy of aadhar card of PW2 Tmt. Malligeswari (compared with original) |

Sd./- S. Selva Sundari
PRINCIPAL DISTRICT JUDGE
TIRUVALLUR

