

IN THE COURT OF PRINCIPAL DISTRICT JUDGE, VELLORE,
VELLORE DISTRICT.

Present : Tmt.S.Ananthi, B.A.,B.L.,
Principal District Judge, Vellore.

Wednesday, the 27th day of March 2019

Probate O.P. No. 07 / 2018

J. Umamaheswaran @ Umapathy . . . Petitioner

// versus //

NIL Respondent

This petition having stood over for consideration before me and coming on for final hearing on 12.03.2019 in the presence of Thiru.R.J.Mohan, learned counsel for the petitioner, Paper Publication and General Publication being effected, no objectors, upon perusing the entire case records, this court delivers the following :-

ORDER

Petition filed under Order 25 rule 4, Section 222 and 276 of Indian Succession Act 1925 to grant a probate for the Will dated 06.02.2012 in respect of the petition mentioned property.

2. Brief averments of the Petition :-

The deceased Andalammal is native of Vellore district and she possessed of assets and maintaining account bearing account number

10845551215 through State Bank of India - Vellore branch. The deceased Andalammal was survived by one son who predeceased her and till her life time the petitioner herein has been taking care & Custody of her and in fact all the medical expenses relating to her ailments has been done by the petitioner. The said Andalammal has died in the year 2012 dated 20.03.2012 leaving behind the petitioner to succeed to her estate. The deceased during her lifetime has executed an unregistered will in the name of the petitioner in the year 2012 during the month of February dated 6th in presence of two attesting witnesses and the same has been attested by G.Krishnamurthy Advocate, Notary public.

3) The will aforesaid has been executed by the testator with full knowledge in full free of sound mind, free from any compulsion, coercion and with full consent. The will aforesaid is the last testament of the deceased and there is no difference of opinion in any one's mind in execution of the aforesaid will in name of petitioner. The petitioner hereby approached the Bank aforesaid to disburse the pending amount in account of deceased on the basis of will executed in his name recently on 05.12.2016 by way of sending notice through his counsel for which the Bank has sent an

reply stating that they need an court order of probation of aforesaid will or to get succession certificate and hence the petitioner hereby approaches the court to get probated the so called will just to safeguard his rights in the Bank assets concerned and to administer the same, make full inventory thereon to that effect. The petitioner hereby undertakes to exhibit the proper inventory in the court within one year from the date of probation and also undertakes to bear the probate charges.

4) Paper Publication and General Publication was effected and there was no objectors for the petition. In continuation, on the petitioner side PW1 to PW3 were examined and Ex P1 to Ex P7 were marked.

5) Now the points for consideration in this petition are :-

1) Whether the Will dated 06.02.2012 executed by Late. Andalammal in favour of the petitioners are to be probated?

and

2.To what other relief?

6) POINTS No.1 and 2:-

The Petitioners filed this petition granting an order to probate of the Will dated **06.02.2012** , said to be executed by **Late. Andalammal** in favor

of the petitioner. The petitioner is examined as PW1. The attester to the Will is examined as PW2 . The Scribe of the Will is examined as PW3. Ex P1 to Ex P7 were marked on the side of the Petitioner / PW1 through his evidence in support of the petition averments.

7) Ex P1 is the Copy of Aadhar Card of the petitioner. Ex P2 is the Original Bank pass book of Andalammal. Ex P3 is the Death Extract of the deceased Andalammal. Ex A4 is the Original unregistered Will dated 06.02.2012 executed by Andalammal in favour of the petitioner. Ex P5 is the notice dated 05.12.2016 sent by the Advocate. Ex P6 is the Reply from the Bank. Ex P7 is the xerox copy of Aadhar card of PW2.

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

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.

9) The Hon'ble Apex Court held in

**Jagdish Chand Sharma // Versus // Narain Singh Saini (D)
through Lrs. & Ors., 2015 SAR (Civil) 640**

Will - Mandatory essentials of a valid execution and attestation of
- Failure of deficiency in adherence thereto - Consequences of.

A. Indian Succession Act, 1925 - Sec 63 - Execution of unprivileged will under - Mandatory essentials of a valid execution and attestation of Failure or deficiency in adherence thereto - Consequences of 1 Testator would have to sign or affixed fix his mark to the will or the same has to be signed by same other person in his presence and on his direction - 2 Further the signature or mark of the testator or the signature of the person signing for him has to be so placed that it would appear that in was intended thereby to give effect to the writing as Will - 3 Section 63 further mandates that the will shall have to be attested by two or more witnesses each of whom has seen the testator sign or affix his mark to the will or has seen some other person sign it, in the presence and on the direction of the testator or has received from the testator, personal acknowledgment of his signature or mark or the signature of such other person, and that each of the witnesses has signed the Will in the presence

of the testator - But it would not be necessary that more than one witness be present at the same time and no particular form of attestation - It cannot be gainsaid that the above legislatively prescribed essentials of a valid execution and attestation of a Will under the Act are mandatory in nature, so much so that any failure or deficiency in adherence thereto would be at the pain of invalidation of such document/instrument of disposition of the property.

Jagdish chand sharma /v/ Narain Singh Saini (Dead) Through LRS and Others, [2015 (2) T.N.C.J.563 (SC)]

Prescribed essentials of a valid execution and attestation of a Will are mandatory in nature Any failure or deficiency in adherence thereto would be at the pain of invalidation of such instrument of disposition of property.

10) From the evidence of PW1 to PW3 and from the entire case records reveals that the deceased Andalammal executed a Will in the name of the petitioners as per Ex P4. In the said Will, in para no.3, the said Andalammal gave right to the petitioner in respect of the Bank Transaction. The petitioner in his evidence deposed that that the said Will is last Testament executed by the said Andalammal and that as per the terms of the said Will, the petitioner is entitled to amount lying in the bank. In order to

prove the Will as per Section 63 and 68 of Indian Evidence Act, on the petitioner side the attestor of the Will was examined as PW2. Thiru.G.Krihsnamoorthy, Advocate cum Notary Public, who prepared the Will is examined as PW3. Both of them adduced evidence thereby corroborating the evidence of PW1.

11) As per the Section 63 and 68 of Indian Evidence Act the 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 of the execution of the 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 the Attestor as PW2 and there are no suspicious circumstances surrounding the Will. From the evidence of PW1 and PW2, Ex P1 to Ex P7, the Will is proved beyond reasonable doubt . Under such circumstances, I am inclined to entertain this petition and it is answered to the point that the unregistered Will dated 06.02.2012 executed by Late.Andalammal in favour of the petitioner is to be probated by the petitioner in respect of the petition mentioned property and

the points are answered accordingly.

In the result, this petition is allowed. The true copy of the Will is to be annexed with the Certificate of Probate. Issue Certificate.

Dictated to steno-typist, typewritten by him, directly corrected and pronounced by me in the open court on 27th day of March 2019.

**Principal District Judge,
Vellore District.**

1. List of witnesses examined on the side of the petitioner:

P.W.1 / Thiru.J.Umamaheswaran
P.W.2 / Thiru.T.Mahendiran
P.W.3./ Thiru.G.Krishnamoorthy

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

Ex P1	---	:	Xerox copy of Aadhar card of the petitioner
Ex P2	---	:	Original bank Pass Book of Anadalammal
Ex P3	---	:	Death Extract of Andalammal
Ex P4	06.02.2012	:	Original Unregistered Will executed by Late.Andalammal in favor of the petitioners
Ex P5	05.12.2016	:	Copy of Notice issued by the Advocate
Ex P6	16.12.2016	:	Reply issued by the Bank
Ex P7	---	:	Xerox copy of Aadhar card issued by Bank

P.D.J.