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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 23.01.2026

CORAM

THE HON'BLE MR.JUSTICE P. DHANABAL

O.P.No.613 of 2024

Chandrakanth B.Davey

..Petitioner

Vs.

1. Latha G.Soni
2. Asha M.Bhatt
3. Hetal Pandya
4. Unnati Tiwari
5. Anish Kumar Thakar

..Respondents

Prayer:

Original Petition filed under Sections 232 and 276 of the Indian Succession Act r/w Order XXV Rule 5 of O.S.Rules to grant Letters of Administration to the petitioner, as the beneficiary / grandson under the Will having limited effect within the State of Tamilnadu

For Petitioner: Mr.Dilip Kumar
for M/s Shah & Shah

For Respondents: Mr.T.Vardhaman Jain for R3
R1, R2 and R4 – Served – No appearance

O R D E R

This petition has been filed under Sections 232 and 276 of the Indian Succession Act r/w Order XXV Rule 5 of O.S.Rules to grant Letters of Administration to the petitioner to the estates and credits of the deceased having effect through out the State of Tamil Nadu.

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2. After filing of this petition, this Court directed the petitioner to effect paper publication in any one of the issue of Tamil Daily and also in English daily and the paper publication was also effected and there is no any objection from any party. Thereafter, the case was posted for recording evidence and the evidence was also recorded. On the side of the petitioner, PW1 and PW2 were examined and Ex.P.1 to Ex.P.14 were marked.

3. According to the petitioner, a property comprised in No.44, (Old No.30) Raghunayakulu Street, Park Town, Chennai admeasuring to an extent of 2013 sq. ft. was originally belonged to one Chotalal Davey. The said Chotalal Davey died on 07.05.1976 and left his last Will and Testament dated 15.02.1973 and appointed his only adopted son Bhanuprasad Davey as the sole executor. The said Bhanuprasad Davey died on 11.12.2011 without having proved the said Will and the petitioner is the grand son of the deceased Chotalal Davey and son of Bhanuprasad Davey. The respondents 1 and 2 are the daughters of Bhanuprasad Davey and the respondents 3 to 5 are the legal heirs of one Lakshmi J.Thakar (deceased), who is the sister of the petitioner.

3.1. The deceased Chotalal Davey left behind his last registered Will and Testament dated 15.02.1973 in a sound and disposing state of

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mind and appointed his adopted son, Bhanuprasad Davey as the sole executor in the presence of one Bhagavatlal R.Davey, who accompanied Mr.Chotalal R.Davey to the Registration Office and he is one of the identifying witness. Further, attesting witnesses namely Mr. Ravishankar and Mr.Shantilal Davey are no more. Therefore, the petitioner has filed an Application No.6000 of 2025 to examine the said Bhagavatlal Davey with regard to due execution of the Will and the same was allowed by this Court vide order dated 18.12.2025. Consequently, the said Bhagavatlal Davey was examined as P.W.2 and he identified the signature of the testator and one of the attestors. The respondents 2 and 3 have filed their consent affidavits to grant Letters of Administration to the petitioner. The amount of assets which are likely to come into the petitioner's hand does not exceed aggregate sum of Rs.1,69,18,000/-. The deceased Chotalal R.Davey executed the registered Will dated 15.02.1973 in favour of his adopted son, Bhanuprasad Davey and the petitioner and the respondents are the legal heirs of Bhanuprasad Davey. Therefore, the petitioner prayed to grant letters of administration in his favour and respondents have given consent affidavits to grant Letters of Administration in favour of the petitioner.

4. The petitioner herein, was examined as PW1 and Mr.Bhagavatlal R.Davey, third party, who is the relative to Chotalal

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Davey was examined as P.W.2. A perusal of evidences of PW1 and P.W.2 and documents, viz., Ex.P.1 to Ex.P.14 revealed that the petitioner and the respondents are the legal heirs of the deceased and no any objection has been raised either by any of the respondents or any other party to grant letter of administration to the petitioner.

5. A registered Will dated 15.02.1973 was executed by the deceased Mr.Chotalal Davey in the presence of two attesting witnesses. The said two attesting witnesses are no more. The said Will is more than 50 years old document. The original Will has been marked as Ex.P.1 by PW1. Since the Will is more than 50 years old document and it has been produced from proper custody, a presumption under Section 90 of Indian Evidence Act is available. 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 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 profounder, 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*

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'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.Chotalal Davey, had executed the Will on 15.02.1973, i.e., before 50 years and the Will has been attested by two attestors namely Mr. Ravishankar and Mr.Shantilal and now, they are no more. Therefore, one Mr. Bhagavatlal R.Davey has been examined as PW2, after obtaining permission from this Court, vide A.No.6000 of 2025 dated 18.12.2025. He has identified the Will and the signatures of the testator and both the attestors and he has also filed an affidavit to that effect. The respondents have also filed their consent affidavits to grant 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.

6. Accordingly, this Original Petition is ***allowed*** and Letters of Administration, to the estates and credits of the deceased Mr. Chotalal Davey in favour of the petitioner, is granted.

7. Issue Letters of Administration in favour of the petitioner. The petitioner is directed to duly administer the properties and credits of the

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deceased more fully described in the schedule. The petitioner is directed to execute a **security bond** each for a sum of **Rs.25,000/- (Rupees Twenty Five Thousand only)** in favour of the **Assistant Registrar (O.S.II), High Court, Madras.** The petitioner is further directed to render true and correct accounts once in a year.

23.01.2026

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

APPENDIX:

List of Petitioner side Witnesses:

PW1 : Mr. Chandrakanth B.Davey

PW2 : Mr.Bhagavatlal R.Davey

List of Petitioner side Documents:

Exhibit No.	Date	Description of Documents.
Ex.P.1.	15.02.1973	Original registered Will and testament executed by Chotalal Davey.
Ex.P.2	-	Original Death certificate of Chotalal Davey
Ex.P.3	-	Computer generated Death Certificate of Mr.Bhanu Prasad C.Davey.
Ex.P.4.	-	Computer generated Death Certificate of Mrs.Ganguben.
Ex.P.5	-	Photocopy of legal heirship certificate of Mr.Bhanu Prasad C.Davey
Ex.P.6.	-	Computer generated Death Certificate of Mr.D.Ravishankar
Ex.P.7.	-	Computer generated Death certificate of M.Shouthilol (Death certificate of 2nd attesting witness, whose name is wrongly recorded as Mr.Shouthilol)

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Ex.P.8.	-	Computer generated death certificate of Mr.Suresh.Suresh Ramnath Devey
Ex.P.9.	-	Computer generated death certificate of Mrs.Thakerlaxmi Jayesh Kumar
Ex.P.10	2022-2023	Computer generated property tax general revision 2022-2023 in respect of the property stands in the name of Mr.Bhanu Prasad C.Davey
Ex.P.11	-	Affidavit of assets showing the net value of estate as Rs.1,69,18,000/-
Ex.P.12	15.10.2025	Copy of Paper publication effected in one issue in English daily 'Trinity Mirror'
Ex.P.13	23.10.2025	One issue of paper publication in English daily 'Makkal Kural'
Ex.P.14	-	Certificate under Section 63(4)(c) of BSA in respect of computer generated documents.

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