

A.No.3886 of 2016
in T.O.S. No.28 of 2010

PUSHPA SATHYANARAYANA, J.

This application is filed by the applicant/second defendant to transpose him as second plaintiff in the above T.O.S.

2. Heard the learned counsel for the applicant/second defendant as well as the learned counsel for the second respondent.

3.T.O.S. is filed for grant of probate with respect to the Last Will and Testament of V.R.Ramakrishnan dated 03.02.1997. As per the said Will, the testator had appointed his brother M.R.Kandasamy as executor of the Will. The bequeath has also made in favour of the applicant, who is the second defendant herein. The other beneficiary under the Will is the first defendant Amirthammal @ R.Rama Amirtham, who is the wife of the testator. O.P. No.8 of 2009 was filed by the executor M.R.Kandasamy for probate of the Will. Hence, the wife of the testator filed caveat. It was converted into T.O.S. No.28 of 2010. Before proving of the Will, the executor M.R.Kandasamy died on 16.02.2016. Hence, the second defendant

K.Karthikeyan, who is the son of the testator, sought to be transposed as second plaintiff in the suit.

4. Section 232 of the Indian Succession Act enables grant of administration to universal or residuary legatees in certain situation.

It is useful to extract Section 232 of the Indian Succession Act.

"232. Grant of administration to universal or residuary legatees – When – (a) the deceased has made a Will, but has not appointed an executor or, (b) the deceased has appointed an executor who is legally incapable or refuses to act or who has died before the testator or before he has proved the Will, or (c) the executor dies after having proved the Will but before he has administered all the estate of the deceased, an universal or a residuary legatee may be admitted to prove the Will and letter of administration with the Will annexed may be granted to him of the whole estate, or of so much thereof as may be un-administered."

5. As per the said Act, the executor of the Will died before proving the Will. Hence, the legatee who is the second defendant sought to be transposed as second plaintiff. The other legatee is already contesting the suit. Now the application is resisted by the respondent. In view of the statutory position, the objections cannot

be sustained and the applicant/second defendant is transposed as second plaintiff in the T.O.S.

6.The applicant is directed to carry out the amendment within a period of two weeks.

19.08.2016

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Note: Issue order copy on 24.08.2016

PUSHPA SATHYANARAYANA, J.

vga

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19.08.2016