



A.Nos.2261 & 2262 of 2023 in

TOS.No.45 of 2022

R.N.MANJULA,J.

These applications have been filed by the third parties who are the legal heirs of the deceased plaintiff to implead themselves as the plaintiffs and for certain amendment in the suit.

2. The Original Petition in O.P.No.15 of 2022 was filed for grant of probate for the Will dated 05.07.2021 executed by one M.Palaniappa. When the Original Petition was filed, there were two respondents. However, it is the respondent / defendant who had filed a caveat and objected the petition. Hence the suit got converted into TOS.No.45 of 2022.

3. The learned counsel for the third party applicants submitted that the plaintiff who was appointed as an executor died and hence the prayer in the testamentary original suit should be amended from grant of Probate to grant of Letters of Administration. It is further submitted that the plaintiff is an executor-cum-beneficiary in the Will and hence the third party applicants who are the legal heirs of the deceased plaintiff should be added as legal heirs of the deceased plaintiff.

4. The learned counsel for the respondent / defendant submitted that since the executor died, no one can replace his position; hence, the applications are void. It is further submitted that unless the Will is not



proved, no right can be accrued to the deceased Nandakumar's parents.

By stating so, it is claimed by the learned counsel for the respondent that the applicants have got no *locus standi* to file these applications and these applications should be dismissed.

5. Earlier, the learned counsel for the respondent / defendant also raised an objection that the other respondent in the original petition who did not file caveat should also be impleaded as a party in his capacity as a legal heir of the deceased plaintiff. It is not in dispute that the Original Petition was filed for grant of Probate by the deceased plaintiff who was appointed as an executor. The deceased plaintiff is not only an executor, he is also the beneficiary of the Will. Hence the prayer has to be converted from grant of Probate to grant of Letters of Administration and there need not be any confusion on this aspect.

6. Since the executor was also a beneficiary, on his death, his legal heirs should be impleaded as proposed parties / plaintiffs. It is claimed by the learned counsel for the respondent / defendant that one of the respondent in the original petition who did not file any caveat is also the legal heir of the deceased plaintiff and he should also be impleaded. In fact, the other respondent had already been a party to the Original Petition in O.P.No.15 of 2015 and when the matter got converted into TOS, he was not impleaded as a party because he did not raise any caveat. Since the other respondent has not raised any objection and he



was not a party to the testamentary original suit, there is no question of impleading him.

7. Even though the executor died and he is not replacable, the fact remains that the executor is also a beneficiary. On his death, it is quite natural that his legal heirs have to be impleaded as parties. Only by impleading the legal heirs of the deceased plaintiff, the matter can be proceeded further. Hence these applications should be allowed.

8. In the result, the applications filed for impleading the third parties as plaintiffs and the amendment in the plaint are allowed.

19.06.2023

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