



A.No.2662 of 2023 in

O.P.No.128 of 2022

R.N.MANJULA,J.

This application has been filed to dispense with the service of further notice as against the 1st respondent.

2. The Original Petition in O.P.No.128 of 2022 has been filed by the petitioner for seeking probate in respect of the Will dated 12.05.2021.

3. It is submitted by the learned counsel for the applicant / petitioner that several notices have already been taken as against the 1st respondent and they could not be served in view of the fact that he is not available. Subsequently, paper publication was also effected and with that, service of notice as against the 1st respondent is deemed to have got completed. It is further submitted that in view of the one of the endorsement made by the bailiff that the 1st respondent left the country, an order has been passed to issue a fresh notice to his correct address on 08.03.2023. So it is submitted that the 1st respondent left the country before 30 years and notices have been sent by the petitioner to his last known address and with the effect of substitution of service, the process of service of notice



itself has been completed.

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4. The records would show that repeated notices have been ordered against the 1st respondent and notices cannot be served upon him. After the steps were taken by the petitioner, substitution of service has been ordered and the same was also effected successfully. Since the 1st respondent is said to have left the country long back and his whereabouts were not known, it is impractical to expect the petitioner to issue any fresh notice to any other address other than the address which was last resided and known.

5. It is further submitted that the Will specifically excludes 1st respondent and hence, the matter cannot be kept pending for service of notice once again. If the 1st respondent had left the place long back and his whereabouts are not known, there is no point in directing the petitioner to take a fresh notice against the 1st respondent after the substituted service has been effected. The substituted service already been effected can be considered as completion of process of notice against the 1st respondent. Even in the absence of 1st respondent, the



petitioner has got a duty to prove the validity and the genuineness of the Will.

6. Taking into consideration of the impracticality and the impossibility in complying the order of fresh notice to the correct address of the 1st respondent, I feel it is appropriate to dispense fresh notice and record the substituted service as completion of service.

7. In view of the above stated reasons, this application is allowed.

07.07.2023

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