



A.No.3280 of 2023 in TOS.No.10 of 2023

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RESERVED ON : 19.07.2023

PRONOUNCED ON : 20.10.2023

A.A.NAKKIRAN, J.

ORDER

1. The above Testamentary Original Suit has been filed to grant Letters of Administration, with the Will annexed in favour of the Plaintiff, as the legatee of the deceased Testatrix. The above application has been filed against the Plaintiff and the 2nd Defendant, by the proposed party/Applicant, represented by his Power of Attorney, to implead him as the 2nd Defendant in the above suit
2. The case of the Applicant herein, as averred in the affidavit filed in support of this application, is as follows:-
 - (a) The Applicant, authorizing his Power Agent, one Parthiban, to appear on his behalf and contest the suit in OS.No.112 of 2016, seeking for partition and possession of the properties owned by Late Veerapathira Chettiyar, had executed a registered Power of Attorney Deed, dated 18.10.2016. Subsequently, the Applicant, authorizing the said Power Agent to appear, contest and file petitions etc., on his behalf in respect of all other cases relating to the properties owned by Late Veerapathira Chettiyar and Alamelu Ammal, had executed another Power of Attorney, dated



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A.No.3280 of 2023 in TOS.No.10 of 2023

01.11.2016 in his favour. The 2nd Respondent has filed OP.No.377 of 2012 to probate the Will, dated 21.06.2004 executed by Late V.Alamelu Ammal and on contest, it was converted into TOS.No.44 of 2013. The 1st Respondent has also filed OP.No.715 of 2012 to probate the Will dated 29.01.2010 in his favour and it was converted into TOS.No.10 of 2023. The properties described in the Wills, dated 29.01.2010 and 21.06.2004 were originally owned by Late Veerabathiran and Late Alamelu Ammal and both of them died intestate and issueless on 26.4.1986 and 10.6.2011 respectively. The Applicant has also filed a suit in OS.No.112 of 2016, claiming 1/9th out of 1/4th share allotted to the family of Duraisamy Chettiar, brother of Veerabathiran Chettiar. The properties of Late Veerabathiran Chettiar and Alamelu Ammal devolve upon the legal heirs of the deceased Late Arumugham, Late Veerappan, Late Duraisamy, Late Shanmugham and Late Thangavel. In the present TOS, the Plaintiff suppressed the true legal heirs of Late Veerabathiran Chettiar and his wife Late Alamelu Ammal and created forged documents, namely, the Wills dated 29.01.2010 and 21.06.2004. The Applicant was not aware of the above said proceedings in respect of the properties of Late Veerabathiran Chettiar and Alamelu Ammal, prior to filing of the suit in OS.No.112 of 2016 and the said suit was decreed on 22.03.2016 and subsequently, the petition to set aside the same filed by the 1st



A.No.3280 of 2023 in TOS.No.10 of 2023

Respondent was allowed.

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(b) The respondents filed an implead petition in A.No.1028 of 2021 in TOS No.44 of 2013 and OP.No.715 of 2013. The principal of the Applicant was arrayed as the 18th Respondent in OP.No.715 of 2013 and the 22nd respondent in TOS.No.44 of 2013. On contest, OP No.715 of 2013 was converted into TOS.No.10 of 2023 and the suit in OS.No.112 of 2016 was transferred to this Court as TR.CS No.23 of 2023, which is pending. Since the Applicant is a rightful sharer in the properties found in the Schedule of the alleged Will, he is a necessary party to this litigation. Since the 2nd respondent's counsel orally withdrawn his objection in TOS.No.10 of 2023, the matter was listed before the Master for recording of evidence. The Applicant is one of the objectors. The Applicant filed a caveat petition in SR No.3869 of 2023 dated 13.06.2023 in TOS No. 10 of 2023 and it was returned for reason that OP was converted as TOS. In such circumstances, it is prayed to implead the Applicant, represented by his Power of Attorney Agent, as the 2nd Defendant in the above suit.

3. In the counter affidavit filed by the Plaintiff, it is averred as follows:-

(a) This application filed by the Power Agent, without getting leave of this Court is not maintainable. The Applicant has not produced a copy of the alleged Power of Attorney. Except the 2nd respondent herein, none of the other respondents in O.P.No.715 of 2013 filed Caveat, questioning the



WEB COPY



A.No.3280 of 2023 in TOS.No.10 of 2023

validity of the Wills, executed by Late Alamelu Ammal. In fact, the 2nd Respondent, who had filed his objections to prove the Will, has filed his consent affidavit for grant of Letters of Administration and withdrew his objections. The three Wills were marked as Ex.P3, Ex.P9 & Ex.P10. Already the evidence of the 2nd respondent herein was recorded. With a view to protract the proceedings, the present application has been filed.

(b) A normal line of succession has been intercepted by the three registered Wills, dated 09.02.1997, 21.06.2004 and 29.01.2010. All the testamentary dispositions are through registered Wills and the signatures found thereon are that of Alamelu Ammal. Under such circumstances, it would be a futile exercise to implead the applicant, who has no interest, but is acting as a proxy. The applicant is neither a necessary nor a proper party for adjudication of the rights of the parties in the Testamentary proceedings. The applicant has filed an application for impleading in November, 2016, but however he did not pursue the same till 2023. Subsequently, A.No.1028 of 2021 filed by the Plaintiff for impleading was ordered on 27.10.2022, but however he did not file his objections. D.Rajagopal had been impleaded as the 18th Respondent, despite which, he had not filed his objection till date. Thus, he is estopped from claiming any right. It is, therefore, prayed to dismiss the above application.

4. In the counter affidavit filed by the 2nd Defendant, it is averred as follows:-



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(a) The 18th Respondent in O.P.No.715 of 2013 did not file any caveat.

Having regard to his health condition at the intervention of family well wishers, the Respondents 1 and 2 realized that all the 3 Wills executed by Late.V. Alamelu Ammal dated 9.2.1997, 21.6.2004 and 29.01.2010 are genuine and hence, he has given his consent affidavit for grant of Letters of Administration. Only a Power of Attorney has come before this court only to create unnecessary litigation. It is not known what prevented D.Rajagopal, the original 18th respondent from filing a caveat. Even in the present application, nothing has been said about the genuineness of the Will or otherwise by the applicant. The question of title is alien to the testamentary proceedings and as such, the disputed questions of title of testatrix cannot be gone into in a TOS. The application for impleading is neither genuine nor bona fide, but intended to protract the proceedings and hence, it is prayed to dismiss this application.

5. In the rejoinder affidavit filed by the Applicant, it is averred as follows:-

(a) A copy of the power of Attorney, dated 01.11.2016 is filed along with an application, seeking leave of this Court. The averments in the counter of the 1st Respondent run contrary to the averments made by the Plaintiff for transfer of the Suit filed by him to be tried along with this TOS No.10 of 2023. The Applicant is a proper and necessary party to the litigation. The respondents trace their relationship through the heirs of said Alamelu



WEB COPY



A.No.3280 of 2023 in TOS.No.10 of 2023

Ammal. Indeed the said Alamelu Ammal had no absolute right to bequeath certain properties vide the alleged Will dated 29.10.2010.

(b) The 1st respondent's only contention is that no one filed any objection and the 2nd respondent, who entered caveat also, withdrew his objection and hence, the 1st respondent is entitled for Letters of Administration. Pursuant to the Will dated 29.10.2010, the Respondents 1 and 2 have colluded together to defeat the legitimate rights of the heirs of Veerapathiran Chettiar. He filed a Caveat on 13.06.2023 in Diary No.3869, which was returned by the Registry on the pretext that Caveat could not be entered in a Testamentary Original Suit. The 1st respondent is arrayed as the 2nd defendant and the 2nd respondent is arrayed as the 37th defendant in Tr.CS.No. 22 of 2023 and they filed a written statement. The 2nd respondent specifically denied the Will dated 29.01.2010. The Applicant, due to his advanced age and health condition, he had authorized the power agent to represent him before this court. Hence, the present application seeking to implead him represented by the Power of Attorney Agent has been filed.

6. This Court heard Mr.S.R.Raghunathan, the learned counsel for the Applicant, Mr.P.Krishnan, the learned counsel for the 1st Respondent and Mr.R.Thiagarajan, the learned counsel for the 2nd Respondent.

7. The learned counsel for the Applicant has submitted that the Applicant is a



A.No.3280 of 2023 in TOS.No.10 of 2023

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proper and necessary party to the proceedings as evident from the averments in the affidavit of Jeyaprakash filed in support of A.No.1705 of 2021. The learned counsel would further submit that the suit properties were inherited by late Alamelu Ammal from her husband and hence, the same will devolve upon the heirs of her husband and hence, D.Rajagopal has a caveatable interest and therefore, the Applicant is a necessary party to the proceedings and that since the caveat filed by him is not numbered, the present application has been filed to implead him. The learned counsel would further submit that since OP No.715 of 2013 has been converted into TOS.No.10 of 2023, this application to implead is maintainable. The learned counsel for the Applicant would further submit that the Applicant was impleaded in the OP No.715 of 2013 only on 27.10.2022 as the 18th Respondent and the time to carry out amendment was extended on 30.11.2022, however, no notice was served on the applicant. In the application to implead the principal of the Applicant, it is admitted that the respondents therein, including D.Rajagopal, have caveatable interest and hence, the Applicant is a necessary party to be impleaded, as prayed for.

8. On the other hand, the learned counsel for the 1st Respondent, while reiterating the averments made in his counter affidavit, has submitted that it would be a futile exercise to implead the applicant, who has no interest, but is acting as a proxy and that this application lacks bona fide and the same is



devoid of merits and hence, prayed for dismissal of this application.

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9. Like wise, the learned counsel for the 2nd Respondent, while advancing arguments in line with his counter affidavit, has submitted that the 3rd party/ Applicant, having received the notice, has not chosen to question the genuineness of the Wills for the past 10 years and that even in the present application, nothing has been said about the genuineness of the Will and that the application for impleading is neither genuine nor bona fide, but intended to protract the legal proceedings and hence, he prayed for dismissal of this application.

10. This Court considered the submissions of the learned counsel on either side and also perused the materials placed on record.

11. Admitted facts are that the 2nd Respondent herein has filed OP.No.377 of 2012 to probate the Will, dated 21.06.2004 executed by the deceased Testatrix V.Alamelu Ammal and it was converted into TOS.No.44 of 2013. The 1st Respondent has also filed OP.No.715 of 2012 to probate the Will dated 29.01.2010 of the same deceased Testatrix and it was converted into TOS.No.10 of 2023 and that the Applicant herein has also filed a suit in OS.No.112 of 2016, claiming 1/9th out of 1/4th share allotted to the family of Duraisamy Chettiar, brother of Veerabathran Chettiar and it was transferred to this Court as TR.CS No.23 of 2023, which is pending.

12. It is also alleged that the properties described in the Wills, dated 29.01.2010



A.No.3280 of 2023 in TOS.No.10 of 2023

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and 21.06.2004 were allegedly owned by Late Veerabathiran and Late Alamelu Ammal and both of them died intestate and issueless on 26.4.1986 and 10.6.2011 respectively. The properties of Late Veerabathiran Chettiar and Alamelu Ammal devolve upon the legal heirs of the deceased Late Arumugham, Late Veerappan, Late Duraisamy, Late Shanmugham and Late Thangavel. It is stated by the Applicant that originally, the Applicant, authorizing his Power of Attorney, Parthiban, to appear on his behalf and contest the suit in OS.No.112 of 2016, seeking for partition and possession of the properties owned by Late Veerapathira Chettiyar, had executed a registered Power Deed, dated 18.10.2016 and another Power of Attorney dated 01.11.2016 in his favour.

13.In the present TOS, according to the Applicant, the Plaintiff suppressed the true legal heirs of Late Veerabathiran Chettiar and his wife Late Alamelu Ammal and created forged documents, namely, the Wills dated 29.01.2010 and 21.06.2004 and he was not aware of the above said proceedings in respect of the properties of Late Veerabathiran Chettiar and Alamelu Ammal, prior to filing of the suit in OS.No.112 of 2016.

14.It is seen from the records that by order dated, 27.10.2022, made in A.No.1028 of 2021 in TOS.Nos.44 of 2013 and OP.No.715 of 2013, filed by the Plaintiff for impleading the proposed parties, the Applicant had been impleaded as the 18th Respondent in OP.No.715 of 2013 and the 22nd



A.No.3280 of 2023 in TOS.No.10 of 2023

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respondent in TOS.No.44 of 2013. Thereafter, OP No.715 of 2013 was converted into TOS.No.10 of 2023 and the suit in OS.No.112 of 2016 was transferred to this Court as TR.CS No.23 of 2023.

15.In the written statement filed in TOS.No.44 of 2013, by the 1st Respondent/Plaintiff herein, it is stated in paragraph 32 that the Applicant herein is one of the proper parties left out in the plaint. In A.No.2023 of 2021 in TOS.No.44 of 2013, filed by the 2nd Defendant, seeking to implead the proposed Respondents, the Applicant has been cited as one of the proposed parties, who have an interest in the estate of the deceased Testatrix.

16.It is the further contention of the Applicant that after impleading him as the 18th Respondent in the present OP, no notice was served on him. The learned counsel for the Respondents is unable to answer as to whether such notice was served on him. On perusal of the records, it is not known as to whether such notice was served or not. In the above circumstances, it is to be held that the Applicant represented by his Power of Attorney Agent, has a

A.A.NAKKIRAN, J.

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caveatable interest in the present suit and hence, he is a necessary and proper party to be impleaded in the present TOS.

17.In fine, this application is allowed, as prayed for. No costs.



A.No.3280 of 2023 in TOS.No.10 of 2023

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20.10.2023

Index:Yes/No
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Pre-Delivery Order in
A.No.3280 of 2023
in TOS.No.10 of 2023