



3. In the meanwhile on 24.12.2022, the original petitioner (plaintiff) expired. Copy of his death certificate is annexed at Exhibit A to the application.

4. It is brought to the notice of this Court that the original petitioner (plaintiff) was not only an executor, but also one of the beneficiaries under the subject Will. The applicants herein are the legal heirs of the deceased petitioner/plaintiff and they have approached this Court for amending the pleadings in an appropriate manner, for deleting the name of the original petitioner/plaintiff and for showing the applicants as petitioner/plaintiff Nos.1(a) to 1(e), on the basis that they are entitled to the benefits, to which the original petitioner/plaintiff was entitled under the subject Will. Since the proposed amendment would result in the beneficiaries under the Will, seeking appropriate reliefs, the original petition would have to be amended, to be treated as a testamentary petition for grant of letters of administration with Will annexed.

5. Considering the fact that the testamentary petition for grant of probate was filed as far back as in the year 1999 and it was converted into a suit in the same year, this Court is inclined to allow the present application.

6. The learned counsel for the caveators submits that in such circumstances, a fresh petition ought to be filed by the applicants for grant of letters of administration with Will annexed. It is further submitted that all the legal heirs of the deceased, cited in the original testamentary petition, ought to be served afresh for the present application to be considered.

7. This Court is of the opinion that considering the length of time for which the proceedings have been pending before this Court and in the light of the fact that the original petitioner/plaintiff, apart from being an executor, was also a beneficiary under the subject Will, the present application can be allowed, without insisting upon a fresh petition being filed for grant of letters of administration with Will annexed.

8. Insofar as serving all the legal heirs cited in the original petition is concerned, it is an admitted position that all the legal heirs were indeed served, when the testamentary petition for grant of probate was filed in the year 1999. Only the defendants before this Court chose to file caveats to oppose the grant. They have been served with the application, through their advocates, and therefore, there can be no impediment in granting the prayers made in the present application.

9. In view of the material placed on record and in the interest of justice, the application is allowed in terms of prayer clauses (a), (b) and (c) of the application.

10. The amendment be carried out within two weeks from today.

(MANISH PITALE, J.)

*Priya Kambli*