



Application No. 5539 of 2023
in
O.P. No. 819 of 2022

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C.V.KARTHIKEYAN, J.

The settlees of a property, which is now involved in the litigation in C.S. No. 38 of 2015 before the Original Side of this Court have filed this application seeking to implead themselves in this Original Petition, which has been filed seeking probate of a Will. It is stated that the executor did not have any title to execute a Will with respect to the property and that the applicants are the owners of the property.

2. But, it is however contended on behalf of the respondents by the learned counsel for the petitioner in the Original Petition that in the Will itself, the executor had clearly stated that the right would flow depending upon the nature of the judgment delivered in the pending litigation. Though the number of the litigation has been wrongly given in the Will, the parties are well aware of the nature of litigation and the said litigation, which is now pending, viz., C.S. No. 38 of 2015.



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3. At this stage, the petitioners do not have any right to implead themselves and their caveatable interest is quite restricted. But if at all a probate is granted then a *right in rem* is created and at that stage, the petitioner would certainly have a liberty to file application seeking revocation on the ground that they are also interested parties.

4. In this regard, due reference can be made to ***Elizabeth Antony –vs- Michel Charles John*** (AIR 1990 SC 1576).

5. The learned counsel for the petitioner also made the following endorsement:-

“The petitioners are withdrawing the present impleading petition with liberty to challenge the order of probate whenever the same is allowed.”

With liberty to the petitioner to approach this Court again seeking revocation of any order granted, this petition stands dismissed.

10.06.2024



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