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IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 28.03.2024

PRONOUNCED ON : 02.09.2024

CORAM:

THE HON'BLE MR.JUSTICE A.A.NAKKIRAN

A. No. 1128 of 2024 in T.O.S. No. 67 of 2016

The application has been filed seeking for to implead the petitioner herein as one of the defendants in the above TOS.

2. The learned counsel for the applicant submits that on receipt of notice in the O.P. No.981 of 2015, the applicant approached a counsel to file vakalat and objection. Unfortunately, the same was not proceeded with. Further, the applicant has earlier filed the application in A.1029 of 2022 in the aforesaid suit before this Court to implead the applicant along with her sister namely Rukmani Nachiar, as defendants 4th and 5th defendants. Due to pressure posed upon by some of the relatives, to the counsel of the applicant, the applicant has withdrawn the said application.



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3. It has been further submitted by the learned counsel for the applicant that after the withdrawal of the said application, the respondents 1 & 2 trying to act indifferently by allowing some other parties to get impleaded as parties ignoring the applicant's right as a class II legal heir. In any event in order know the fate of the will and the interest of the parties therein, it is just and necessary to implead the applicant as one of the defendants in the above TOS. If the applicant is not impleaded, she will be put into irreparable loss and hardship. On the other hand no prejudice will be caused to the other side. Hence, he prays to implead the applicant, as one of the defendants in the above TOS and render justice.

4. The learned counsel for the 1st respondent submits that even though notice was duly served on 19.01.2016 to the Applicant herein, in the O.P No.981 of 2015 itself, by ranking as the 2nd respondent, she has not chosen to file objection Affidavit in support of Caveat Petition to participate in the Trail. The Applicant herein despite service of notice from this Hon'ble court failed to avail the opportunity. Further, the Applicant has earlier filed similar Application in A.No.1029 of 2021. Later, she withdrew herself and



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hence A.No.1029/2021 for implead herself as a proposed Defendant in T.O.S.No. 67 of 2016 was dismissed as withdrawn on 09.07.2021.

5. It has been further submitted by the learned counsel for the 1st respondent that even though the Applicant herein being a Class II Legal heirs of the deceased D.Baskaran and she has caveatable interest in the O.P.No. 981/2015, she lost her right to contest the Testamentary proceedings and thus the present application is only an abuse of process of law. Hence, the said Application is not maintainable either in law or on facts of the same has to be dismissed in limine.

6. Heard both sides and perused the materials available on records.

7. On a perusal of the records, it is admitted fact that notice has been duly served to the applicant in the above O.P. No.981 of 2015 being ranked therein as 2nd respondent. However, the applicant has failed to file Caveat Petition to participate in the Trail. Thereafter, the Applicant has also



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filed A.No.1029 of 2021 seeking the same prayer of this application before this Court. But, since the applicant herself has withdrawn the aforesaid application, it was dismissed as withdrawn on 09.07.2021.

8. While there were various occasions to contest the suit as aforesaid, the applicant has not come forward to participate in the proceedings in both O.P. and TOS. Further, the reasons for not contesting both in O.P. and TOS are not satisfied with. Without availing these opportunities, the applicant has filed once again the present application praying to implead her, it seems that the present application is filed to protract the TOS proceedings. Hence, this Court is not inclined to allow the said application.

9. In the result, the application stands dismissed. No costs.

02.09.2024

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A.A. NAKKIRAN, J,

Lbm

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