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2. **Brief averments made in the Petition and Affidavit filed by the 3rd**

Petitioner : The 3rd Petitioner / Testamentary Legal heir of the 1st Defendant in his affidavit had stated that, the Respondents have filed the suit for the relief of declaration over the suit properties and the first defendant is his maternal grand mother and 2nd Defendant is his mother and the first defendant while she was in sound state of disposing mind, out of her own volition had executed a registered Will dt. 23.07.2019 in his favour and as per the Will she has given right to proceed with the suits and execution petition as her legal heir and gave right to him to enjoy fruits of the decree and since the respondents and others are restraining him from taking possession of suit properties and other properties, filed various suits over the suit properties found in the Execution Petition No. 2/2001 and on 12.08.2019, her maternal grand mother was died leaving behind her him as her testamentary legal heir and as the right to sue survives, he has filed this petition to recognize him as testamentary legal heir and hence prayed to allow the petition.

3. **Brief averments made in the counter filed by the 1st Respondent / 1st**

Plaintiff and adopted by the Respondents 2, 3 / Plaintiffs 2, 3 : The petition is not maintainable. All the averments made in the affidavit are denied. The Petitioner ought to have filed the petition u/o. 22, Rule 4, but he had filed this petition u/o. 1, Rule 10 CPC, which is applicable to third parties and the procedures are not followed by the petition as contemplated in law and hte respondents have filed the suit against the 1st de3fendant and the alleged Will was executed on 23.07.2019 and the testator would stated about the alleged Will before this court prior to her death or it must be brought to the notice of this court within 90 days from the date of death of testator, but after lapse of 21 months, the present

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petition was filed and the suit was abated against the petitioner and hence petition for condone the delay and set-aside the abatement were not filed by the petitioner and hence prayed to dismiss the petition.

4. ***Now the point for consideration is; Whether the petition filed to implead the 3rd Petitioner as testamentary legal heir of the 1st Defendant is to be allowed or not?***

5. No oral and documentary evidence have been adduced on either side.

6. The learned counsel for the Petitioners contended by reiterating the averments made in the affidavit and prayed to allow the petition.

7. The learned counsel for the Respondents 1 to 3 / Plaintiffs contended by reiterating the averments made in the counter and vehemently opposed to allow the petition.

8. Both side rival contentions are heard carefully. On perusal of the records, it comes to know that, the Respondents / Plaintiffs have filed the above suit against the Defendants 1 and 2 for the relief of permanent injunctions. During pendency of the suit, the first defendant was reported dead. The suit was posted for taking steps to implead the L.Rs. of the deceased 1st Defendant. But, the Respondents / Plaintiffs have filed an amendment petition in I.A. No. 1/2020 to record the death of the 1st defendant, since her daughter is already on record as second defendant and thereby the said petition was allowed on 30.03.2021. Subsequently, the present petition u/o. 1, Rule 10 CPC is filed stating that the 3rd Petitioner is the

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testamentary heir of the deceased 1st Defendant and hence he has to be impleaded as 3rd Defendant.

9. At this stage, it is relevant to extract the definition of Section 2 (11) of CPC, which defines ***legal representative*** as follows;

2 (11) - “legal representative” means a person who in law represents the estate of a deceased person, and includes any person who intermeddles with the estate of the deceased and where a party sues or is sued in a representative character the person on whom the estate devolves on the death of the party so suing or sued;

The 3rd Petitioner herein claims that on 23.07.2019, the deceased 1st Defendant had executed a registered will in his favour in respect of the suit properties and as he represents the estate of the deceased 1st defendant he is to be added as a party to the suit. Here, it is also relevant to refer order 1, Rule 10 (2) of CPC.

Order 1, Rule 10 (2) Court may strike out or add parties : The Court may at any stage of the proceedings, either upon or without the application of either party, and on such terms as may appear to the Court to be just, order that the name of any party improperly joined, whether as plaintiff or defendant, be struck out, and that the name of any person who ought to have been joined, whether as plaintiff or defendant, or whose presence before the Court may be necessary in order to enable the Court effectually and completely to adjudicate upon and settle all the questions involved in the suit, be added.

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10. In this case, as the third petitioner claims as the testamentary legal heir of the deceased 1st Defendant, his presence before the court is necessary in order to effectually and completely to adjudicate upon and settle all the questions involved in the suit and accordingly, this court is inclined to allow this petition.

IN THE RESULT, the petition filed by the Petitioners to implead the 3rd Petitioner as 3rd Defendant in the above suit is allowed. There shall be no orders as to the costs.

This order is typed by me in my official Laptop, corrected and pronounced by me in the open court on this the 30th day of June 2022.

(Sd/- G. Yuvaraj)

Principal District Munsif,

Attur.

Annexure : Nil

(Sd/- G. Yuvaraj)

Principal District Munsif,

Attur.

P.D.M. Court, Attur.

DRAFT / FAIR ORDER

in I.A. No. 2 of 2021 in O.S. No. 33 /2012.

Dated : 30.06.2022