

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 13.11.2018

Coram

THE HONOURABLE MR. JUSTICE M.V.MURALIDARAN

C.M.A.No.2473 of 2018

Angayee

.. Appellant / Petitioner

Vs

Nil

.. Respondent/Respondent

PRAYER: This Civil Miscellaneous appeal is filed under Section 299 of Indian Succession Act, 1925, against the Fair and Decretal order dated 18.06.2018 made in Probate.O.P.No.5 of 2018 on the file of the Principal District Judge, Namakkal, Namakkal District.

For Appellant : Mr.C.Veeraraghavan

JUDGMENT

The relief sought for in this Civil Miscellaneous appeal is to set aside the Fair and Decretal order dated 18.06.2018 made in Probate.O.P.No.5 of 2018 on the file of the Principal District Judge, Namakkal, Namakkal District.

2. It is the case of the appellant that the appellant has preferred an original petition in Probate O.P.No.5 of 2018 before the learned Principal District Judge, Namakkal, for the grant of certificate of Probate in favour of the appellant as per the Will dated 27.04.1984 executed by Angammal, Muthu Padaiyachi and Ammaiappan to enforce the Will in respect of the petition mentioned property.

3. After hearing the arguments of the petitioner/appellant herein, the learned Principal District Judge, Namakkal dismissed the petition. Aggrieved against the order dated 18.09.2018, the appellant is before this Court.

4. The learned counsel for the petitioner would submit that the appellant is the beneficiary of the Will and one of the legal heirs who was examined as PW2 and has also supported the claim of the appellant. He would further submit that the Will was executed on 27.04.1984 and the appellant is in possession and enjoyment of the property even prior to the Will and after

the death of the testators nobody is claiming the property except the appellant herein.

5. Heard the learned counsel for the appellant and perused the materials available on record.

6. On a perusal of the records, it is seen that the lower Court has dismissed the petition on the ground that the appellant has not chosen to examine two attestors of the Will. Therefore, this Court is inclined to allow this appeal by remitting back the petition in Probate O.P.No.5 of 2018 on the file of the learned Principal District Judge, Namakkal. However, the appellant is directed to implead the two attestors of the Will and examine them as witnesses in Probate O.P.No. 5 of 2018 within a period of two weeks from the date of receipt of a copy of this order. Thereafter, the learned Principal District Judge, Namakkal is directed to pass an appropriate order and dispose the same in accordance with law.

7. With the above direction, this Civil Miscellaneous Appeal is allowed. No costs.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

vum

To

- 1) The Principal District Judge,
Namakkal
Namakkal District.
- 2) The Section Officer,
VR Section, High Court, Madras (2 copies)

BR(CO)
SSM(04/01/2019)

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