



C.M.P.No.2105 of 2023 i..
A.S.No.77 of 2015

C.M.P.No.2105 of 2023
in
A.S.No.77 of 2015

K.GOVINDARAJAN THILAKAVADI,J.

This Civil Miscellaneous Petition has been filed to remand back the appeal to trial Court for examination of attesting witness in respect of the Will dated 10.04.2012.

2. Heard both sides.

3. The learned counsel appearing for the petitioner/second respondent would submit that the first respondent herein filed the suit in O.S.No.172 of 2012 on the file of the District Additional Court, Namakkal for the relief of partition and separate possession in respect of the suit properties. He would further submit that the suit properties consist of four items and the suit was dismissed as against the first respondent.



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4. Aggrieved by this, the first respondent herein has preferred the above appeal. The further contention of the petitioner/second respondent is that his father Varadhappa gounder died on 20.05.2022 leaving behind the petitioner/second respondent himself and the first respondent and petitioner/second respondent as his legal heirs. It is further contended that his father Varadhappa gounder executed a registered Will dated 10.04.2012 in Doc.No.33 of 2012 in favour of the petitioner/second respondent bequeathing the properties which are the subject matters of the appeal. Hence, it has become necessary for the petitioner/second respondent to prove the genuineness of the Will which was executed in his favour in accordance with Section 68 of Indian Evidence Act, and in order to prove the genuineness of the Will, the attesting witnesses and scribe are to be examined. Hence, the petitioner/second respondent prays for remanding the matter to the trial Court and for adducing evidence in respect of execution and genuineness of the Will. The same was not objected on the side of the respondents.



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5.Hence, the matter is remanded back to the trial Court to prove the execution and genuineness of the alleged Will. Both parties are directed to appear before the trial Court and to let-in evidence to establish the execution and genuineness of the Will. The Trial Court is directed to complete the proceeding within a period of two months from the date of receipt of a copy of this order.

6.With the above direction, this Civil Miscellaneous Petition stands allowed.

20.02.2023

vsn

Index:Yes/No

Speaking Order : Yes/No



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