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C.M.A No.2472 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 01.11.2023

CORAM

MR.JUSTICE N.SESHASAYEE

C.M.A.No.2472 of 2023

1.Vinaayak Kannan @ Ganesh Vaitheeswaran
2.K.Aravind @ Kumaresh

... Appellants

Vs.

NIL

... Respondent

Prayer: Civil Miscellaneous Appeal filed under Section 299 and 384 of Indian Succession Act, 1925 r/w. Order XLI of the Code of Civil Procedure, 1908, seeking to set aside the fair order and decretal order dated 20.12.2022 in probate O.P.No.220 of 2022 passed by the Principal District Judge, Tiruvallur.

For Appellants : Manoj Sreevalsan

JUDGMENT

The appellants herein are unsuccessful petitioners in Probate O.P.No.220 of 2022 on the file of the Principal District Court, Tiruvallur. The said O.P came to be dismissed by the learned District Judge essentially on the ground that the appellants herein could not establish the recital in the



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Will of the testator that the properties dealt with thereunder were his self acquired properties. There are no respondents.

2.Heard Mr.Manoj Sreevalsan, the learned counsel for the appellant.

3.This Court perused the entire order of the learned District Judge. The learned District Judge was substantially correct in approaching the issue correctly but appeared to have deviated later. The learned Judge was on the right track when she held that a Probate Court need not delve into the title of the testator but did exactly that. A probate Court is a conscience keeper of the testator and all that it needs to satisfy is the genuineness of the Will and that it is beyond suspicion. Even the angle of suspicion can only relate to the factum of execution of the Will and not anything to do with the title to the properties dealt with under the Will.

4.This Court, therefore, finds the learned District Judge may have to re-appraise the matter in the light of what is herein above stated.

5.Accordingly, the order of the learned District Judge dated 20.12.2022 is set aside and the matter is remanded back to the learned District Judge



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for a *de novo* re-appraisal.

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6.This Civil Miscellaneous Appeal stands allowed. No costs.

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Anu

Index: Yes/No

Speaking Order / Non-Speaking Order

Neutral Citation: Yes / No

To

The Principal District Judge, Tiruvallur.



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N.SESHASAYEE, J.

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