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C.M.A.No.3013 of 2023

**IN THE HIGH COURT OF JUDICATURE AT MADRAS**

DATED: 18.12.2023

CORAM

**MR.JUSTICE N.SESHASAYEE**

C.M.A.No.3013 of 2023

N.Karthikeyan

... Appellant

Vs

NIL

... Respondent

**Prayer:** Civil Miscellaneous Appeal filed under Section 299 of Indian Succession Act, 1925, seeking to set aside the order dated 25.01.2023 in Probate Original Petition No.148 of 2020 on the file of the Principal District Judge, Kancheepuram District, Chengalpattu.

For Appellant : Mr.D.R.Arun Kumar



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## **JUDGEMENT**

The appellant herein challenges an order passed by the Principal District Court, Kancheepuram District, Chengalpattu in Probate O.P.No.148 of 2020, by which the learned Principal District Judge has dismissed the appellant's application for grant of probate. The subject matter of the Will is a few items of immovable properties that originally belonged to a certain Krishnasamy. Krishnasamy died leaving behind his wife, Uma, as his sole heir. Uma died on 29.05.2020, and a few months prior to that, to be precise, on 13.01.2020, she had executed a Will bequeathing all her properties in favour of the appellant, who is her nephew through her brother.

2.On the demise of Uma, the appellant approached the Principal District Court for grant of probate *vis-a-vis* a Will, that too this Court does not even require probate within the scheme of the Indian Succession Act, 1925. It is essentially because the Will in question is a Hindu Will, that was not executed within the limits of presidency town, and none of the properties fall within the jurisdiction of the original side of this Court.



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3.The learned Principal District Judge entertained the probate but chose to dismiss the petition. The grounds are that: (a) the Will was not a registered Will; (b) the petitioner had not effected mutation in the revenue records; and (c) the petitioner had not produced any evidence to prove that the testator lived with the legatee.

4.Mr.D.R.Arun Kumar, learned counsel for the appellant submitted that not one of the grounds stated herein are legally tenable grounds on the basis of which the learned Principal District Judge can dismiss the petition seeking probate. He submitted that the appellant has examined P.W.2, one of the attesting witnesses.

5.This Court concurs with the submissions of the learned counsel for the appellant. However, there could be one ground on which the learned Principal District Judge should have drawn attention, and this is embodied in Section 283 (1) (c) of the Indian Succession Act, 1925, where the Probate Court is mandated to issue special citation / notice to all those who may be interested to witness the proceedings. Here is a situation where Uma has inherited a property



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succeeded to the estate of her husband, and the appellant may not be a successor in law under Section 15 of the Hindu Succession Act, 1956. In fitness of things, the appellant may have to implead all those who are likely to succeed to the estate but for the Will.

6. Not one reason which appears to have influenced the approach of the learned Principal District Judge can be a ground for denying probate. In all such matters, a probate Court is only required to investigate whether the testator was in a free state of mental disposition. To satisfy the same, the Court ordinarily looks to the testimony of an attesting witness. However, the learned District Judge has relied on extraneous factors far distant from the criteria essential for disproving the genuineness of the Will. This Court, therefore, sets the order passed by the learned District Judge aside and remands the matter back to the learned Principal District Judge.

7. The learned counsel for the appellant would now interject to make a submission that since law does not require probating the Will, the appellant may also be given an opportunity to withdraw the very petition, if he considers it fit.



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8.On remand, the matter is now made available before the Trial Court for a *de novo* consideration. It is now for the appellant to take a call whether he wants to withdraw it or not.

9.This Civil Miscellaneous Appeal stands allowed accordingly. No Costs.

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Index : Yes/No  
Speaking order/non-speaking order  
Anu

To

The Principal District Judge, Kancheepuram District,  
Chengalpattu.



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N.SESHASAYEE, J.

Anu

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