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C.M.A.(MD).No.1256 of 2005

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 18.01.2024

CORAM

THE HONOURABLE DR.JUSTICE G.JAYACHANDRAN

C.M.A.(MD).No.1256 of 2005

Michael Arcanchels

.. Appellant/2nd Respondent

Vs.

1.Anthony Francis @ David

.. 1st Respondent/Petitioner

2.Amalraj

3.Anthony Michael @ S.Michael anthony

4.Anjel Mary

5.Vimala Rani

..Respondents 2 to 5/
Respondents 1 & 3 to 5

PRAYER: Civil Miscellaneous Appeal filed under Section 299 of Indian Succession Act, 1925, praying to allow this appeal and set aside the order in Probate O.P.No.5 of 1996 dated 09.07.2004 on the file of Principal Sub Court, Nagercoil.

For Appellant : Mr.T.Selvakumaran

For Respondents : Mr.D.Saravanan
for M/s.T.Sathya Selvi for R-1
R-2 & R-3 – Ex parte
No appearance for R-4 and R-5



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JUDGMENT

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The Civil Miscellaneous Appeal is filed by one of the legal heirs of Yesuadimai and Gnanamirtham. In a probate proceedings initiated by Anthony Francis @ David without impleading the two legal heirs, by name, Agnus @ Arisiya Ammal and Mary Roselin, probate was granted after examining the contesting witnesses and by following other formalities. However, for non-inclusion of the two legal heirs, the present Civil Miscellaneous Appeal is filed challenging the order passed in Probate O.P.No.5 of 1996 dated 09.07.2004.

2. It is an admitted fact that Yesuadimai and Gnanamirtham had left behind eight issues. However, in the probate proceedings, two of the daughters, who are unmarried, were not included. Though the written statement filed by the appellant/second respondent had pointed out the non-inclusion of two legal heirs, the Court below had not considered that fact and had proceeded with the probate petition and granted the same.

3. In view of non-inclusion of the necessary party, the probate granted by the Court below is liable to be set aside. Accordingly, the order passed



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by the Principal Sub Court, Nagercoil in Probate O.P.No.5 of 1996 dated 09.07.2004 is set aside and the matter is remanded back to the Court below.

The two legal heirs shall be impleaded and the probate petition shall be proceeded in accordance with law.

4. Accordingly, the Civil Miscellaneous Appeal is allowed. There shall be no order as to costs.

18.01.2024

NCC : Yes / No
Index : Yes / No
Internet : Yes / No
Lm

To

1.The Principal Sub Court,
Nagercoil.

2.The Section Officer,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.



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DR.G.JAYACHANDRAN,J.

Lm

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