

Ammal Vs. Saminadaier

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Court : Chennai

Decided On : Jan-16-1895

Reported in : (1895)5MLJ63

Appellant : Ammal

Respondent : Saminadaier

Judgement :

1. In our opinion the order of the District Munsif of the 10th June 1893 and his decree dismissing the suit were wrong in point of law. It is quite clear that the adopted son is the legal representative of the person to whom he is adopted. This being so would prevent the institution by him of any fresh suit. An application was made on his behalf within due time claiming to be legal representative and therefore under Section 366 it was not competent to the Court to order that the suit should abate. The order of the District Munsif above mentioned must be taken to be an order within the meaning of Section 367, for we agree with the judge that a dispute within the meaning of that section need not be between persons., claiming to represent the deceased plaintiff. The title to represent being denied, there is in the present case a dispute between the claimant and the defendant. We therefore think that the District Judge ought to have entertained the appeal. We also think that an appeal lay against the decree dismissing the suit (*Bhikhaji Ram Chandra v. Purushotam* I.L.R. (1085) B. 220

2. We must set aside the decrees of the Courts below and also the order of the District Munsif and remand the case to the Court of first instance for disposal.
3. The costs incurred in the lower appellant Court and in this Court must be paid by Respondent, and the other costs must be provided for in the fresh decree.

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