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Court : Chennai

Decided On : Sep-25-1933

Reported in : 150Ind.Cas.26; (1934)66MLJ175

Appellant : Subbaya Naicker and ors.

Respondent : Sankarappa Naicker and ors.

Judgement :

Ramesam, J.

1. This Second Appeal arises out of a suit for a declaration and injunction and in the alternative for the recovery of possession of certain land in the village of Panthapuli in the Sivagiri Zamindari. The Plaintiff claims the suit land on patta from the Zamindar who is the 9th Defendant. In the alternative he claims a refund of Rs. 300 from the Zamindar. Defendants 1 to 8 are the villagers of Reddiarpatti, a hamlet of Panthapuli. They claim that the suit land is part, of their village and it is communal land and therefore the Zamindar was not entitled to grant patta for it to anybody. The first issue raises the question whether the suit land is assignable by the 9th Defendant. The second raises the question whether there was in fact an assignment. The third and fifth issues relate to possession. The District Munsif decreed the Plaintiff's suit. There was an appeal by Defendants 1 to 8. After the appeal was filed, the 6th Appellant died and Appellants 1, 5 and 7 stated that they did not want to press the appeal. The result was that there were only four

appellants who were willing to proceed with the appeal. It does not appear that there was any application filed by these people to declare that they were sufficient to represent the whole village or in the alternative if the Court thought otherwise for permission to add as many as may be required as appellants for the purpose of representing the whole village. The Subordinate Judge thought that these appellants were not competent to prosecute the appeal, and on this ground dismissed it. Now, if his judgment merely consisted of this decision there is nothing more to stay. All that has to be done is to consider whether the dismissal of the appeal is correct or not. But he has curiously enough written four paragraphs (3 to 6) deciding all the points on the merits in favour of the appellants and against the respondents.

2. On this appeal it is argued by the learned Advocate for the Appellants that it was not proper for the Subordinate Judge to have dismissed the appeal altogether. The proper procedure in such a matter was indicated by me in *Venkatakrishna Reddi v. Srinivasachariar* I.L.R. (1930) Mad. 527 : (1930) 61 M.L.J. 135. It is for the Court to say whether the parties that remained on record are competent to represent the whole village. If it thinks that they are competent, it can proceed with the appeal after expressing that opinion. But if it thinks that some more persons are necessary to represent the whole village it ought to give an opportunity to the particular party to supplement the existing number by the addition of other persons according to the directions of the Court. Strictly this is not a matter of bringing legal representatives on record because the case is not prosecuted in respect of any personal rights of the deceased persons. Instead of following this course the Subordinate Judge simply dismissed the appeal. On this ground the Second Appeal has to be allowed and the case has to be remanded to the Lower Court for fresh disposal according to law. But it is necessary for me to state what I think of the other findings recorded by the Subordinate Judge. In my opinion when he once made up his mind to dismiss the appeal on the ground of defect in the prosecution of the case probably one would have thought it was unnecessary to express any opinion on the merits on the other points especially when they are complicated. It is true that sometimes Courts may give findings on the other points in the case to avoid loss of time in case the appellate Court takes a different view on the point on which the case is disposed of, and to avoid a

further remand or call for findings on the other points undisposed of. In this view I must express my opinion on the findings of the Subordinate Judge on the three other points whether they should be accepted or whether fresh findings should be called for.

3. [His Lordship after coming to the conclusion that the findings of the Subordinate Judge on all points as to possession and enjoyment of lands were unsatisfactory, proceeded to say:]

4. The case must therefore go back for fresh disposal according to law on all the points raised in the case. Costs of this appeal to abide the result. The appellants will be entitled to a refund of the Court-fee paid on the memorandum of appeal.

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