

Munusami Naicken Vs. Munusami Naicken

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Court : Chennai

Decided On : Oct-20-1922

Reported in : AIR1923Mad227; 76Ind.Cas.1041

Judge : Spencer and ;Venkatasubba Rao, JJ.

Appellant : Munusami Naicken

Respondent : Munusami Naicken

Judgement :

1. The District Munsif in this suit decided all the issues in the suit and finally dismissed the suit on his finding on issue No. VIII that the suit was one in effect for partial partition. The Subordinate Judge decided only the eighth issue which related to the question of maintainability of the suit as being one for partial partition, rightly taking the view that the suit was not bad on that account, and he remanded the suit to the lower Court for fresh disposal. This order of remand to the lower Court for a fresh disposal on the merits cannot be supported. It is inconsistent with the learned Subordinate Judge's view that the suit was not one for partial partition, as he found in the first part of his judgment. It is clear that no amendment of the plaint was necessary. He should, therefore, have disposed of the appeal under Order XLI. Rule 24, Civil Procedure Code, as the evidence upon the record had been found sufficient by the District Munsif to find upon all the issues. Issue No. IV raised the question, 'What are the family properties and debts, if any, to be divided?' The District Munsif, in paragraph No. 7, says that he had mentioned all

the properties and debts to be divided but that they cannot be particularised until a Commissioner has gone to the spot and reported.

2. If the finding of the District Munsif and the evidence upon this issue was not sufficient for passing a preliminary decree the proper course for the Subordinate Judge to adopt was to call for a finding from the lower Court under Rule 25 Order XLI, before disposing of the appeal.

3. We must set a side the Subordinate Judge's Order remanding the whole case for fresh' disposal and direct him to hear and determine the appeal, except on issue VIII in the light of our remarks. The costs of this civil miscellaneous appeal will be costs in the cause.

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