



AS No.283 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 27-02-2023

CORAM

THE HONOURABLE MR. JUSTICE S.M.SUBRAMANIAM

AS No.283 of 2021

And

CMP Nos.13620 of 2021 and 22730 of 2022

Parvathiammal (Deceased)

G.Deepesh Babu

.. Appellant

vs.

B.Indira

.. Respondent

PRAYER : This Appeal Suit is filed under Section 96 read with Order XLI, Rule 1 of the Civil Procedure Code against the judgment and decree dated 13.03.2020 passed by the learned I Additional District Judge at Thiruvallur in OS No.305 of 2007.

For Appellant

: Mr.C.Sankar

For Respondent

: Mr.G.Thyagarajan

1 / 6



AS No.283 of 2021

WEB COPY

JUDGMENT

The present Appeal Suit has been instituted against the judgment and decree dated 13.03.2020 passed by the learned I Additional District Judge at Thiruvallur in OS No.305 of 2007.

2. The legal heir of the original defendant Parvathiammal filed the present Appeal Suit, challenging the judgment and decree dated 13.03.2020 passed by the learned I Additional District Judge at Thiruvallur in OS No.305 of 2007.

3. The learned counsel for the appellant, in his opening arguments, contended that the judgment and decree dated 13.03.2020 passed by the learned I Additional District Judge at Thiruvallur in OS No.305 of 2007 was passed against a dead person/original defendant. Thus the decree is invalid. To substantiate the said contention, he drew the attention of this Court with reference to the Death Certificate of the original



AS No.283 of 2021

defendant Parvathiammal, which reveals that she died on 26.07.2019.

WEB COPY

4. Admittedly, the judgment and decree dated 13.03.2020 passed by the learned I Additional District Judge at Thiruvallur in OS No.305 of 2007. The suit was decreed in favour of the plaintiff and thus the legal heir of the original defendant-Parvathiammal filed an Appeal Suit before this Court.

5. Since the appellant did not get an opportunity to defend the case before the Trial Court and more-so, the learned counsel for the respondent herein raised an objection that the appellant is not the legal heir of the original defendant Parvathiammal and the adoption is invalid. All these grounds are to be adjudicated with reference to the documents and evidences. Since the decree itself had been passed against the dead person, it is a fit case for remand and for fresh adjudication.

6. Accordingly, the judgment and decree dated 13.03.2020 passed by the learned by the learned I Additional District Judge at



AS No.283 of 2021

Thiruvallur in OS No.305 of 2007 is set aside and the case is remanded back to the Trial Court/I Additional District Judge at Thiruvallur for fresh adjudication and the Trial Court shall dispose of the suit on merits and in accordance with law and by affording opportunity to all the parties. The appellant shall implead himself in the original suit by filing an appropriate application along with the documents, if any. The Trial Court shall dispose of the suit as expeditiously as possible.

7. In view of the above, the judgment and decree dated 13.03.2020 passed by the learned by the learned I Additional District Judge at Thiruvallur in OS No.305 of 2007 stands set aside and consequently, the present Appeal Suit is allowed. However, there shall be no order as to costs. Consequently, the connected miscellaneous petitions are closed.

27-02-2023

Speaking Order/Non-Speaking Order.

Neutral Citation : Yes/No.

Internet : Yes/No.

Index: Yes/No.

Svn

To



AS No.283 of 2021

The I Additional District Judge,
Thiruvallur.

WEB COPY

S.M.SUBRAMANIAM, J.

Svn



WEB COPY



AS No.283 of 2021

AS No.283 of 2021

27-02-2023