

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 10.04.2015

CORAM

THE HONOURABLE MS. JUSTICE R. MALA

S.A.No.1878 of 1998

1.Ganthimathi

2.D.Prema

.. Defendants1&2/Respondents1&2/
Appellants

Vs

1.M.Sampath Reddiar

2.M.Jayakannan

3.M.Vishnupathi

.. Plaintiffs/Appellants/Respondents

4.S.Sampath

5.S.Jayakannan

.. Defendants3&4/Respondents#&4/
Respondents

Prayer: Second appeal filed under Section 100 of C.P.C. against the Judgment and decree dated 29.10.1997 passed by the learned Subordinate Judge at Poonamallee in A.S.No.72 of 1994 reversing the judgment and decree dated 29.07.1994 of the learned District Munsif, Poonamallee made in O.S.No.539 of 1984.

For Appellants : Mr.R.Swaminathan

For Respondents

R1 to R3 : Mr.G.K.Ilanthiraiyan

R4 & R5 : No appearance

J U D G M E N T

This second appeal is filed against the Judgment and decree passed in A.S.No.72 of 1994 dated 29.10.1997 7.12.1994 by the learned Subordinate Judge at Poonamallee, reversing the Judgment and Decree of the District Munsif, Poonamallee in O.S.No.539 of 1984 dated 29.07.1994.

2.The appellants' arguments were heard. When the matter was posted for respondents' arguments, the learned counsel appearing for the respondents 1 to 3 Mr.G.K.Ilanthiraiyan made the following endorsement:

"It is submitted that the respondents 1 and 2 died long back. Now the 3rd respondent alone alive. Pending appeal, the appellants filed suit in O.S.No.227/2000 in respect of the same property pertaining to this Second Appeal against the respondents 1 to 3 for declaration and decreed in their favour. After that they also put up construction by multistoried building. As such, after death of the respondents 1 and 2, the 3rd respondent had given up his claim made in the suit filed by them in O.S.No.534/1984 on the file of the DMC, Ambattur. Therefore, it is prayed that this Hon'ble Court may be pleased to pass appropriate order."

He further submit that respondents 4 and 5 are the vendors of the appellants. After preferring this appeal, the appellants herein filed O.S.No.227 of 2000 for declaration and injunction and that has been allowed. The respondents 1 and 2 were died and the third respondent has given up his right. Hence, he has no objection for this appeal being allowed.

3.The suit for bare injunction filed by the respondents has been dismissed and against which, A.S.No.72 of 1994 was filed and the same was also allowed where injunction has been granted only on the basis of Patta and kist receipt. Against which, the present second appeal has been preferred.

4.Considering the submission of the learned counsel appearing for the respondents 1 to 3 that after filing of the second appeal, the appellant filed O.S.No.227/2000 on the file of the District Munsif Court, Ambattur for declaration and injunction in respect of the present suit property. Since the appellant who is in possession has constructed multistoried building which shows that he is in possession and enjoyment of the suit property. The present appeal has been filed for bare injunction. Since the appellant is in possession and enjoyment, the decree and judgment passed by the First Appellate Court is hereby set aside and the decree and judgment of the Trial Court is hereby restored.

5.In fine,

- The Second Appeal is allowed.
- The decree and judgment passed by the learned Subordinate Judge at Poonamallee in A.S.No.72 of 1994 dated 29.10.1997 is hereby set aside and the decree and judgment passed by the learned District Munsif, Poonamallee in O.S.No.539 of 1984 dated 29.07.1994 is hereby restored.

- There shall be no order as to cost.

Sd/-
Deputy Registrar (Judicial)

/true copy/

Sub Asst. Registrar

cse

To

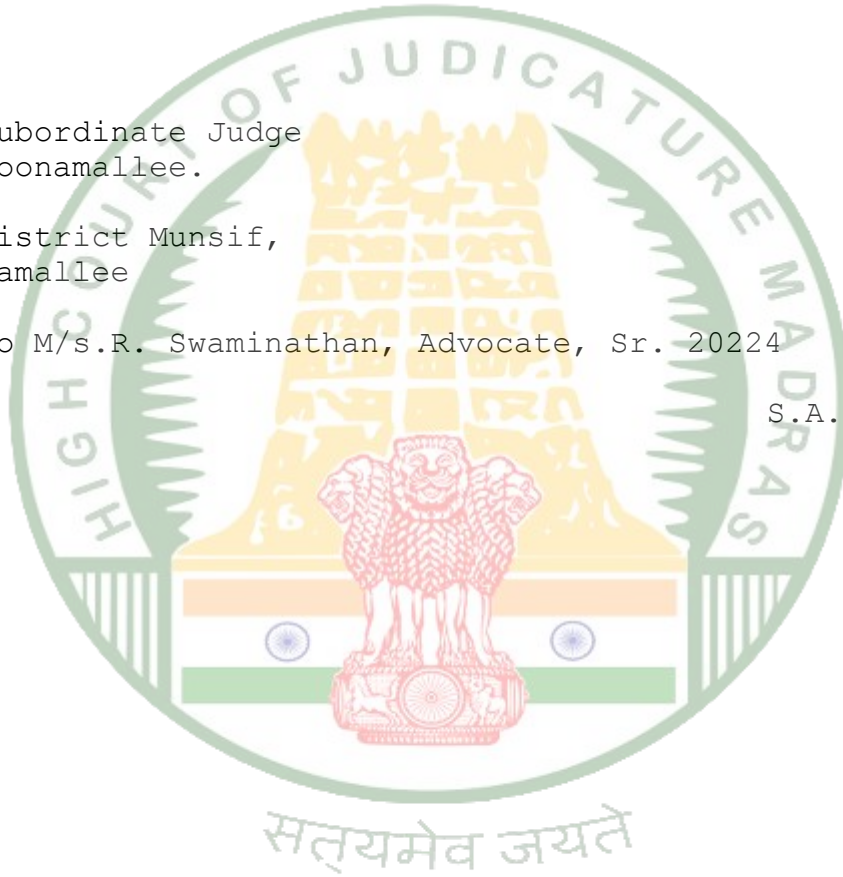
1.The Subordinate Judge
at Poonamallee.

2.The District Munsif,
Poonamallee

2 ccs to M/s.R. Swaminathan, Advocate, Sr. 20224

S.A.No.1878 of 1998

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