

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 06.04.2018

PRONOUNCED ON:11.04.2018

CORAM:

THE HON'BLE MR.JUSTICE T.RAVINDRAN

S.A.Nos.719 & 720 of 2004

Vimala Appellant in both appeals
Vs.

Manickammal Respondent in both appeals

Prayer in S.A.No.719 of 2004:

Second Appeal filed under Section 100 of C.P.C., against the judgment and Decree passed in A.S.No.17 of 1997 on 30-04-2003 by the Subordinate Judge of Poonamallee confirming the decree and judgment passed in O.S.No.988 of 1985 on 23-07-1996 by the District Munsif of Poonamallee.

Prayer in S.A.No.720 of 2004:

Second Appeal filed under Section 100 of C.P.C., against the judgment and Decree passed in A.S.No.18 of 1997 on 30-04-2003 by the Subordinate Judge of Poonamallee confirming the decree and judgment passed in O.S.No.1224 of 1985 on 23-07-1996 by the District Munsif of Poonamallee.

For Appellant : Mr.S.Balasubramanian

For Respondent : No representation

No appearance

Set exparte

Vide order dated 06.04.2018

C O M M O N J U D G M E N T

The second appeal Nos.719 and 720 of 2004 are directed against the judgment and decrees dated 30.04.2003 passed in A.S.Nos.17 of 1997 and 18 of 1997 on the file of the Subordinate Court, Poonamallee confirming the judgment and decrees dated 23.07.1996 passed in O.S.Nos.988 of 1985 and 1224 of 1985 on the file of the District Munsif Court Poonamallee.

2.Both suits have been laid by the respective parties i.e. the suit in O.S.No.988 of 1995 has been laid by the appellant and the suit in O.S.No.1224 of 1985 has been laid by the respondent for the relief of permanent injunction in respect of the property situated in survey number 46/1A2. Materials placed on record go to show that, prior to the present suits, a suit in O.S.No.446 of 1976 has been pending between the parties concerned, in respect of the property comprised in survey No.46/1B. However, in so far as the present matter is concerned, it is seen that the property involved pertains to survey No.46/1A2 and accordingly, it is found that the appellant having failed to establish that survey No.46/1A2 is in her possession and enjoyment and on the other hand, as rightly determined by the Courts below, from Exs.B10 to B12 namely the adangal extracts, the Kists receipt and the certificate issued by the Tashildar concerned, evidencing that, it is only the respondent, who has been in possession and enjoyment of the suit survey number 46/1A2, the Courts below is found to have upheld the case of the respondent and held that, it is only the respondent, who has been in possession and enjoyment of the suit property involved in the matter. That apart, the appellant's husband examined as P.W.1 has categorically admitted that there is no 'B' memo in favour of the appellant in respect of the suit survey number and also admitted that the suit survey number is only in the possession and enjoyment of the respondent and accordingly tendered evidence in the matter. Thus, the courts below on that basis also coupled that Exs.B10 to B12 upheld the case of the respondent that, it is only the respondent, who has been in possession and enjoyment of the suit property.

3.However, it is found that evidence has been let in by the appellant as if, the respondent had trespassed into the suit property pending the lis. However, if really, as put forth by the appellant, the respondent had trespassed into the suit property illegally pending the lis and thereby occupied the suit property, the appellant on coming to know of the same, would have taken appropriate steps to amend the plaint for the recovery of the possession of the suit property alleged to have been trespassed by the respondent pending the lis. On the other hand, it is found that the appellant in her written statement has not stated anything about the alleged trespass of the respondent and stressed that only she is in the possession and enjoyment of the suit property. If the above case of the appellant is true, she would have taken necessary steps to amend the plaint for the possessory relief. Though, it is seen that steps had been taken to amend the plaint, inasmuch as, there is no whisper as to when the respondent had trespassed into the suit property, accordingly, it is found that the said effort taken by the appellant for amending the plaint has come to be negated by the Court below and it is also seen that, this Court has also confirmed the dismissal of the order of the

amendment application in the civil Revision Petition. Thus, on a whole, when from Exs.B10 to B12, it is seen that the respondent has been possession and enjoyment of the suit property even prior to 1984, it is seen that the claim of their appellant that, she is in possession and enjoyment of the suit property without any material in support of her case as such cannot be accepted. Further, when the materials placed by the appellant are found to be pertaining to other property comprised in survey No.46/1B, it is seen that the Courts below were justified in negating the case of the appellant and upholding the case of the respondent.

4.In the light of the above discussions, the Courts below have properly appreciated the materials placed on record in the right perspective, both factually as well as legally and also took into consideration the earlier litigation between the parties in O.S.No.446 of 1976 and accordingly, rightly rejected the relief sought for by the appellant against the respondent for permanent injunction and rightly upheld the relief of permanent injunction sought for by the respondent against the appellant and when it is found that O.S.No.446 of 1976 is not connected with the suit property involved in the present matter, it is seen that, there are no merits in the second appeals and in fact, in my considered opinion, no substantial question of law is found to be involved in the second appeals, in any event, the substantial questions of law formulated in the second appeals, for the reasons aforesaid, are answered against the appellant and in favour of the respondent.

5.In conclusion, both the second appeals fail and are accordingly dismissed. No costs. Consequently, connected miscellaneous petition, if any, is closed.

-s/d-

Assistant Registrar(CCC)

True Copy

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Sub-Assistant Registrar

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To

1. The Subordinate Judge,
Subordinate Court,
Poonamallee.

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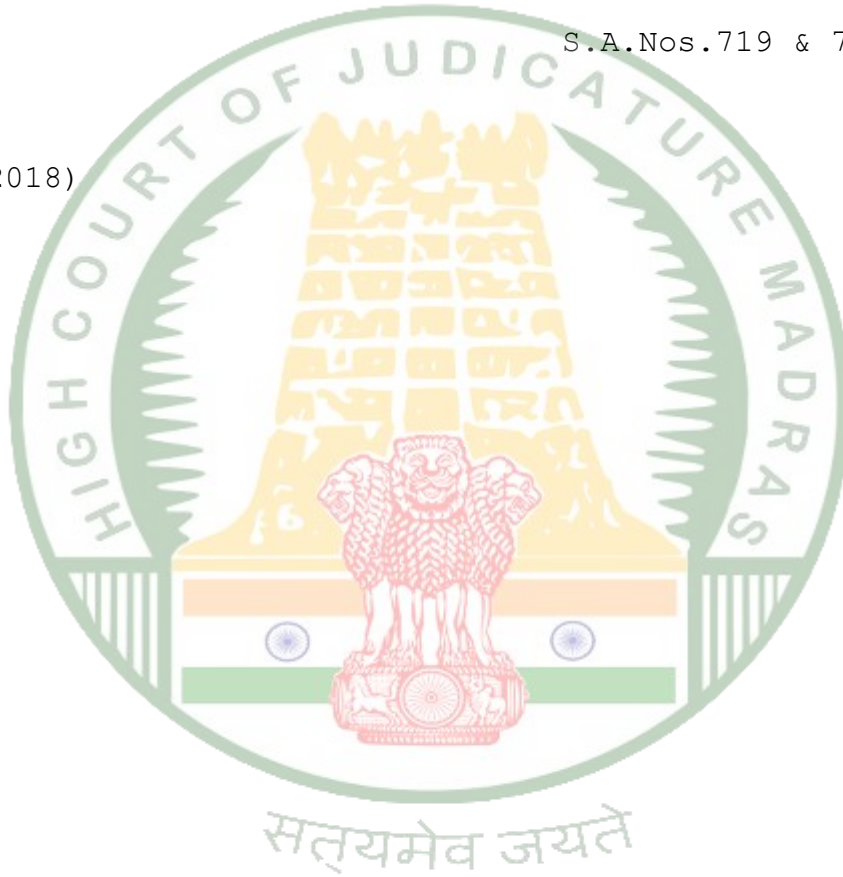
2. The District Munsif,
District Munsif Court,
Poonamallee.

3. The Section Officer,
VR Section,
High Court.

+1 CC to Mr.S. Balasubramanian, Advocate sr 26531.

S.A.Nos.719 & 720 of 2004

SP(23/04/2018)



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