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IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON :08.02.2021

PRONOUNCED ON :22.02.2021

CORAM:

THE HON'BLE MR.JUSTICE T.RAVINDRAN

S.A.No.1430 of 2008
and
M.P.No.1 of 2008

K.A.Ibrahim
Son of Abdul Salam,
No.1/162 (old no/2/33)
Mosque street,
Nerkundram,
Chennai - 107.

... Appellant/Appellant/Defendant

Vs.

P.Kalaiselvi,
Wife of Panchatcharam,
Plot no.124, Pallavan Nagar,
Nerkundram,
Chennai - 620 107.

... Respondent/Respondent/Plaintiff

Prayer:

Second Appeal filed under Section 100 of C.P.C., against the judgment and decree dated 31.01.2008 passed in A.S.No.50 of 2004 on the file of the Additional District and Sessions Judge cum Fast Track Court No.IV, Poonamallee, confirming the judgment and decree dated 16.08.2004 passed in O.S.No.301 of 2004 on the file of the District Munsif Court, Poonamallee.

For Appellant : Mr.V.Raghavachari

For Respondent: Mr.A.Palaniappan

* * * * *



J U D G M E N T

Challenge in this second appeal made to the judgment and decree dated 31.01.2008 passed in A.S.No.50 of 2004 on the file of the Additional District cum Sessions Judge, Fast Track Court No.IV, Poonamallee, confirming the judgment and decree dated 16.08.2004 passed in O.S.No.301 of 2004 on the file of the District Munsif Court, Poonamallee.

2. For the sake of convenience, the parties are referred to as per the rankings in the trial court. The defendant in O.S.No.301 of 2004 is the appellant in this second appeal.

3. Suit for declaration, possession and future mense profits.

4.The case of the plaintiff in brief is that the suit property described in the plaint schedule was purchased by the plaintiff from one Moolchand Dugar for a valid consideration by way of a sale deed dated 25.01.1985 and since then, it is she, who has been in the possession and enjoyment of the suit property and prior to the same, her vendor had been in the possession and enjoyment of the suit property from the year 1967 onwards and when the plaintiff was away from the suit property, the defendant with the help of local politicians, attempted to trespass in to the suit property on 06.07.1987 and also endeavored to put up some unauthorized and illegal construction thereon, however, the abovesaid attempts of the defendant had been resisted by the plaintiff and hence the plaintiff was forced to file the suit in O.S.No.1239 of 1987 on the file of the District Munsif Court, Poonamallee against the defendant for the relief of permanent injunction and obtained an exparte order of injunction in I.A.No.1637 of 1987 in O.S.No.1239 of 1987 and the defendant filed a caveat against the plaintiff on 24.04.1992 and intruded and trespassed into the suit property with the help of his henchmen and adamantly constructed the building in the suit property and the plaintiff filed the petition for the appointment of an Advocate Commissioner to inspect the suit property with the help of Taluk Surveyor and one Mr.P.R.S.Bharanivel, Advocate was appointed as the Advocate Commissioner and he had inspected the suit property on 18.06.1994 with the help of Taluk Surveyor and found out the defendant's encroachment and filed his report which would go to show that the defendant had trespassed and put up the construction in the suit property. The defendant has no right, title or interest over the suit property and hence the plaintiff is necessitated to file the present suit for declaration of her title to the suit property and for the consequential relief of vacant possession of the suit property, after the removal of the unauthorized and illegal superstructure put up by the defendant,



the plaintiff issued a legal notice dated 16.10.1995 to the defendant and the abovesaid notice had been returned as "not claimed". The defendant is in the unlawful possession and enjoyment of the suit property and he is liable to pay Rs.100/- per month till the delivery of the vacant possession and enjoyment of the suit property and hence according to the plaintiff he has been necessitated to institute the suit against the defendant for appropriate reliefs.

5.The defendant resisted the plaintiff's suit contending that the plaintiff's suit is not maintainable either in law or on facts and after denying the case projected by the plaintiff in the plaint, according to the defendant, the appointment of the Advocate Commissioner in the earlier suit laid by the plaintiff in O.S.No.1239 of 1987 is true, however the report filed by the Advocate Commissioner is incorrect as the Surveyor who had assisted him had not properly identified and measured the suit property. The defendant has also filed his objections to the Commissioner's report and plan before the Court. Hence, the report of the Advocate Commissioner is not a conclusive one. It is false to state that the plaintiff had issued a legal notice to the defendant which had been returned as " unclaimed". The defendant is permanently residing in the address given in the plaint. The defendant has never been in the possession and enjoyment of the suit property, especially belonging to the plaintiff and therefore he is not liable to pay Rs.100/- per month as well as future mense profits as claimed in the plaint and the suit laid by the plaintiff is not at all maintainable and the plaintiff had already filed a civil suit before the District Munsif Court, Poonamallee for permanent injunction and subsequently amended for the relief of possession and the suit is still pending and during the pendency of the said suit, the plaintiff has again come forward with the present suit which would clearly reveal that the plaintiff has used the Court as her tool which cannot be legally sustainable. The defendant has filed a detailed written statement in O.S.No.1239 of 1987 and at no point of time, the plaintiff or her predecessors in interest had been in the possession and enjoyment of the suit property. The defendant is in the possession and enjoyment of the property measuring about 6 cents for the past several decades on the south of the alleged plaintiff's property and put up a fence and also a residential house for his dwelling purpose. Immediately after the property of the defendant, there is more than 12 feet down land situated and the said land is claimed by the plaintiff. The land in the occupation of the defendant was duly assigned by the Government of Tamil nadu and he had obtained patta. The claim of the plaintiff that the defendant had trespassed into the suit property in the year 1992 is incorrect and there is no plot bearing Plot No.158 in the layout. The measurements and the boundaries given in the plaint



are fictitious. The plaintiff is not interested to adjudicate the matter and one Moolchand Dugar is the root cause and he has filed the fictitious suit with the intention of squatting on the defendant's property and Moolchand Dugar had forged the signature of the plaintiff and filed the suit. There is no cause of action for the suit and the documents relied upon by the plaintiff are not at all related to the suit property and therefore the suit is liable to be dismissed.

6. In support of the plaintiff's case, P.Ws.1 to 3 were examined. Exs.A1 to A29 were marked. On the side of the defendant, D.Ws.1 and 2 were examined. Exs.B1 to B23 were marked. Exs.C1 to C3 were also marked.

7. On a consideration of the oral and documentary evidence adduced in the matter and the submissions put forth by the respective parties, the Courts below were pleased to grant the reliefs of declaration and possession as claimed by the plaintiff. Aggrieved over the same, the present second appeal has been preferred by the defendant.

8. At the time of admission of the second appeal, the following substantial questions of law were formulated for consideration.

a) Having voluntarily abandoning the earlier suit in O.S.No.1239 of 1987 is the plaintiff entitled to the relief on a subsequent suit on the same cause of action?

b) Whether the Courts below are right in decreeing the suit, when the plaintiff had failed to obtain the leave of the Court under Order 2 Rule 2 of the Civil Procedure Code?

c) Whether the Courts below are right in placing reliance on the report of the Advocate Commissioner of a suit which had been dismissed as withdrawn?

d) Whether the Courts below are right in granting the relief for the plaintiff when she had failed to discharge her burden to establish the title over the suit property?

9. The unsuccessful defendant before the Courts below, the appellant in this Second Appeal is questioning the maintainability of the suit laid by the plaintiff on two grounds. According to the defendant, the suit laid by the plaintiff is barred under Order 2 Rule 2 CPC. However on a perusal of the written statement preferred by the defendant, it is found that the defendant has not specifically put forth the plea of the non-maintainability of the suit as being barred under Order 2 Rule 2 CPC. In such view of the matter, when



there is no specific plea raised by the defendant in the written statement that the suit is barred under Order 2 Rule 2 CPC, as rightly contended by the plaintiff's counsel, at this juncture, ie., in the second appeal stage, without any plea put forth by the defendant in specific that the suit is barred under Order 2 Rule 2 CPC, the defendant cannot be allowed to raise the same and in such view of the matter, the contention of the defendant's counsel that the plaintiff's suit should be dismissed threshold as being barred under Order 2 Rule 2 CPC, as such, cannot be countenanced.

10. From the pleas put forth in the plaint, it is seen that in respect of the same subject matter ie., the suit property, prior to the institution of the present suit, the present suit having been laid on 22.03.1996, the plaintiff had laid the suit against the defendant in O.S.No.1239 of 1987 on the file of the District Munsif Court, Poonamallee for the relief of permanent injunction and it is also noted that the plaintiff had obtained the order of interim injunction in the abovesaid suit in I.A.No.1637 of 1987 and the abovesaid factors are not in dispute. Now according to the plaintiff, despite the order of interim injunction granted in the said suit and also the fact that the Advocate Commissioner had also been appointed in the abovesaid suit to inspect the suit property with the help of Taluk Surveyor and also put forth the case that the Advocate Commissioner with the aid of Taluk Surveyor had noted the defendant's encroachment into the suit property and filed the report and the plan, would proceed further that in the abovesaid circumstances, the plaintiff has been obliged to file the present suit for the reliefs of declaration and possession and for future mense profits. Therefore, it is evident that on a reading of the plaint, when the present suit has been laid by the plaintiff against the defendant, the earlier suit laid by her in O.S.No.1239 of 1987 was pending.

11. In the written statement, the plea has been specifically taken by the defendant that the present suit is not at all maintainable as according to the defendant, when the earlier suit laid for the relief of permanent injunction has been subsequently amended for the relief of possession and the same is still pending and therefore it is put forth that the plaintiff would not be legally entitled to come forward with the present suit and thus stated that the plaintiff's present suit has got to be dismissed without any further reference, as according to the defendant, the plaintiff had used the Courts as a tool to secure the reliefs prayed for by her which cannot be legally sustained.

12. No specific issue has been framed by the trial court as regards the maintainability of the plaintiff's suit,



particularly, the suit by the plaintiff having been laid when the earlier suit preferred by the plaintiff in O.S.No.1239 of 1987 was pending on the date of the filing of the present suit. Particularly, when the defendant has taken the plea in the written statement that the plaintiff's suit is not maintainable in view of the pendency of the suit laid by the plaintiff in respect of the subject matter in O.S.No.1239 of 1987 is pending and moreso, when according to the defendant, the plaintiff has also amended the reliefs and sought for the relief of possession in the said suit, despite the abovesaid position, the trial court has not framed any issue as regards the maintainability of the plaintiff's suit.

13. However the trial court would answer the said point in its judgment in Para No.40 which are extracted below:

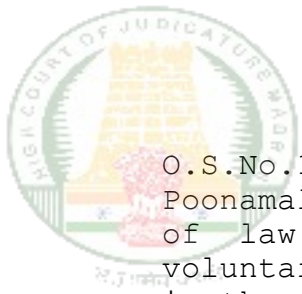
"The plaintiff has earlier filed a suit in O.S.No.1239 of 1987 in which she had prayed for permanent injunction. After knowing that the defendant had encroached the suit property though she had amended the said suit. This comprehensive suit was filed at Sub Court which is transferred to this court when the pecuniary jurisdiction is increased. The earlier suit was also withdrawn by the plaintiff since the fact of pendency of the earlier suit was mentioned in this suit and there is no abuse of process of law by the plaintiff ."

From the abovesaid discussions made by the trial court, it is found that the plaintiff had withdrawn the earlier suit laid by her in O.S.No.1239 of 1987.

14. In the appellate court, no specific point has been raised as regards the maintainability of the plaintiff's suit. Considering the defence raised by the defendant in the written statement, however the first appellate court would answer the said point in Para No.19 of its judgment which are reproduced below:

" The respondent/plaintiff was in peaceful possession and enjoyment till 1987. Then the appellant trespassed into the suit property and put up construction. Therefore the respondent filed O.S.No.1239 of 1987 for interim injunction. Since the appellant had put up construction, she withdraw the suit as not pressed with a liberty to file a fresh suit. Thus O.S.No.301 of 2004 was filed for the declaration, injunction and mesne profits."

15. Thus it is evident that both the trial court as well the appellate court has failed to consider the maintainability of the plaintiff's suit particularly when on the date of the presentation of the plaintiff's suit, the suit laid by the plaintiff in respect of the same subject matter was pending in



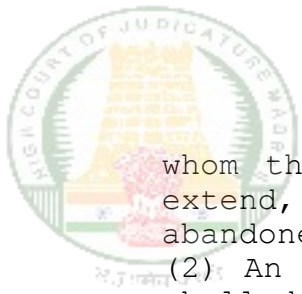
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O.S.No.1239 of 1987 on the file of the District Munsif Court, Poonamallee. The defendant has raised the substantial question of law in the second appeal that when the plaintiff had voluntarily abandoned the earlier suit in O.S.No.1239 of 1987, is the plaintiff entitled for the relief in the subsequent suit on the same cause of action. As above pointed out, only alleging that the defendant is endeavoring or attempting to trespass into the suit property, the plaintiff has laid the suit in O.S.No.1239 of 1987 for the relief of permanent injunction. Further, as above noted, the plaintiff has also obtained the order of interim injunction in the abovesaid suit. It is further noted that despite the order of interim injunction, the defendant had, according to the plaintiff, trespassed into the suit property and put up the construction. As held by the trial court and put forth by the defendant in the written statement, the plaintiff is also found to have amended the relief sought for in O.S.No.1239 of 1987 by including the relief of possession. Now, for the same reliefs ie., particularly for securing the relief of vacant possession of the suit property, after the removal of the unauthorized and illegal superstructure put up by the defendant in the suit property, the present suit has been laid by including the relief of declaration. It is thus noted that the reliefs claimed by the plaintiff in the present suit could have been very well prayed for by the plaintiff in the earlier suit laid by her and in the event of establishing her case the plaintiff, would have been entitled to secure all the reliefs to which she may be entitled to, qua the subject matter in the earlier suit itself. However, during the pendency of the earlier suit, the plaintiff has come forward with the present suit. What happened to the earlier suit, whether the same had been withdrawn or dismissed as not pressed, no clear picture is available. According to the trial court, the earlier suit laid by the plaintiff has been withdrawn. Be that as it may, it is thus found that when the plaintiff has levied the earlier suit in O.S.No.1239 of 1987 in respect of the same subject matter, the plaintiff having withdrawn the said suit or abandoned the said suit or not prosecuted the said suit to its logical conclusion, the question is whether the plaintiff would be entitled to maintain the present suit, particularly during the pendency of the earlier suit. The proposition of law with reference to the same had been outlined in the Code of Civil Procedure under Order 23 Rule 1 which are extracted below:

ORDER XXIII- WITHDRAWAL AND ADJUSTMENT OF SUITS

[301][1 . Withdrawal of suit or abandonment of part of claim-
(1) At any time after the institution of a suit, the plaintiff may as against all or any of the defendants abandon his suit or abandon a part of his claim:

Provided that where the plaintiff is a minor or other person to



whom the provisions contained in rules 1 to 14 of Order XXXII extend, neither the suit nor any part of the claim shall be abandoned without the leave of the Court.

(2) An application for leave under the proviso to sub-rule (1) shall be accompanied by an affidavit of the next friend and also, if the minor or such other person is represented by a pleader, by a certificate of the pleader to the effect that the abandonment proposed is, in his opinion, for the benefit of the minor or such other persons.

(3) Where the Court is satisfied,–

(a) that a suit must fail by reason of some formal defect, or

(b) that there are sufficient grounds for allowing the plaintiff to institute a fresh suit for the subject-matter of a suit or part of a claim, it may, on such terms as it thinks fit, grant the plaintiff permission to withdraw from such suit or such part of the claim with liberty to institute a fresh suit in respect of the subject-matter of such suit or such part of the claim.

(4) Where the plaintiff–

(a) abandons any suit or part of claim under sub-rule (1), or

(b) withdraws from a suit or part of a claim without the permission referred to in sub-rule (3), he shall be liable for such costs as the Court may award and shall be precluded from instituting any fresh suit in respect of such subject-matter or such part of the claim.

(5) Nothing in this rule shall be deemed to authorise the Court to permit one of several plaintiffs to abandon a suit or part of a claim under sub-rule (1), or to withdraw, under sub-rule (3), any suit or part of a claim, without the consent of the other plaintiffs.]

16. A perusal of the abovesaid provisions of law would go to show that at any point of time after the institution of the suit, the plaintiff as against all or any of the defendants may abandon his suit or abandon a part of his claim. So far as the voluntary withdrawal of the plaintiff's suit against the defendant, there is no issue. However, it is found that as above pointed out, during the pendency of the earlier suit, the plaintiff in respect of the same subject matter and also in respect of the same cause of action, as according to the plaintiff, pending the earlier suit, the defendant had illegally trespassed into the suit property and put up the construction and when it is noted that the plaintiff had also amended the relief in the abovesaid suit by including the prayer for possession of the suit property, when the plaintiff had decided not to prosecute the earlier suit for one reason or the other, the plaintiff should have approached the court concerned under Order 23 Rule 1(3), enabling her to withdraw the earlier suit with the liberty to institute a fresh suit in respect of the subject matter. However, there is no material on record to show that the plaintiff had withdrawn the earlier suit in O.S.No.1239



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of 1987 with the permission of the court. The resultant position is that the plaintiff having abandoned the earlier suit laid by her and as above pointed out, considering the pendency of the earlier suit in respect of the same subject matter, when the plaintiff has laid the present suit and the reliefs sought for in the earlier suit and the present suit are more or less found to be similar and in respect of the same cause of action, as the plaintiff had abandoned the earlier suit or withdrawn the earlier suit without the permission as referred to in Order 23 Rule 1(3) CPC, as outlined under Order 23 Rule 1(4) CPC, when the plaintiff has abandoned any suit or withdrawn any suit laid by him and when as above pointed out, the subject matter in the earlier suit and the present suit is one and the same, the plaintiff would be precluded to institute any fresh suit in respect of such subject matter or such part of the claim. The position of law being above, the trial court cannot easily brush aside the same and proceed to hold that the present suit laid by the plaintiff is maintainable only on the ground that the plaintiff had disclosed the same in the plaint. Mere disclosure of the earlier suit would not be sufficient to enable the plaintiff to maintain the present suit legally. When the law provides that the plaintiff is entitled to abandon or withdraw the earlier suit only for the reasons mentioned under Order 23 Rule 1(3) CPC and when the plaintiff has failed to establish that she comes within the parameters as provided under Order 23 Rule 1(3) and when the plaintiff as above stated, had not obtained any permission of the court to withdraw the earlier suit, as rightly contended by the defendant, the plaintiff has abused the process of law by instituting one suit after another suit against the defendant to suit her convenience one way or the other and endeavored to secure the reliefs against the defendant by abusing the court process. The abovesaid endeavor of the plaintiff cannot be countenanced in the eyes of law and therefore I hold that the plaintiff having voluntarily abandoned the earlier suit in O.S.No.1239 of 1987, hence she is not entitled to maintain the subsequent suit ie. O.S.No.301 of 2004 on the same cause of action and on that score, it is found that the plaintiff's suit is liable to be thrown out or rejected.

17. The plaintiff, alleging that the defendant had encroached into the suit property to which she has title, accordingly has laid the present suit for necessary reliefs. The suit property is described as follows:

"All that piece and parcel of house site and land bearing plot No.158, comprised in S.No.75/2B at Village No.100, Nerkundram Village, Saidapet Taluk, Chengai MGR District, having a linear measurement of East to West 45 feet, North to South 28 feet (1260 sq.ft) Ac.0.03 cents bounded on the north by plot No.157, South by S.No.75.5, East by 30 feet road, and west by

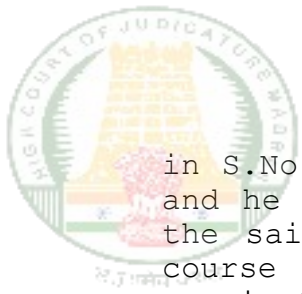


plot No.149.

18. Therefore according to the plaintiff, the suit property is the house site land bearing Plot No.158 comprised in S.No.75/2B measuring an extent of 0.03 cents bounded within the specific boundaries. The plaintiff traces her title to the suit property based on Exs.A1 to A3. Now according to the defendant, he is entitled to 6 cents of land and the same is located to the south of the plaintiff's property and he had put up the construction only in the property belonging to him. To sustain the defendant's entitlement of 6 cents of land, the defendant has placed reliance upon the documents marked as Exs.B3 and B4 namely the UDR pattas. Thus it is found that by way of Exs.B3 and B4, the defendant has established that he has the entitlement of 6 cents of land. Now the point for consideration is whether the construction put up by the defendant is lying in Plot No.158?

19. In this matter, the plaintiff has not endeavored to come forward to depose about her case. It is only P.W.1 one Mangalchand who has come forward to depose on behalf of the plaintiff. Therefore, according to the defendant, P.W.1 would not be competent to speak about the case projected by the plaintiff and the plaintiff having failed to enter into the witness box, an adverse inference is to be drawn against her. The abovesaid contention raised by the defendant had been brushed aside by the trial court by holding that since the plaintiff had projected the oral and documentary evidence to prove her case, the abovesaid plea cannot be accepted.

20. When a specific plea has been taken by the defendant that he had put up the construction in the property belonging to him acquired under Exs.B3 and B4, the trial court has relied upon the Commissioner's report marked as Ex.C1 and as the Commissioner in his report has found two terraced buildings, two bathrooms, toilet and well in Plot No.158, thereby proceeded to hold that there are some constructions at Plot No.158 and on that basis, held that it is only the defendant who had trespassed in Plot No.158, which is the suit property. From the materials available on record, it is found that the Advocate Commissioner had been accompanied by the Taluk Surveyor, at the time of inspection. The Taluk Surveyor had been examined as D.W.2. The plan of the Taluk Surveyor has been marked as Ex.C3. The plan of the Advocate Commissioner has been marked as Ex.C2. The Taluk Surveyor examined as D.W.2 has deposed that he had shown the suit property in green colour and the suit property is Plot No.158 and no encroachment is noted by me in Ex.C3 plan in Plot No.158 and at the time of inspection, the said plot was vacant without any superstructure and the plot lying to the south of Plot No.158, the plot in S.No.75/5 is located and plot



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in S.No.75/5 is in the possession and enjoyment of the defendant and he does not remember whether there is any superstructure in the said plot. The above is the evidence of D.W.2 during the course of chief examination. During the course of cross examination, he would only state that he does not remember whether the Plot No.158 was vacant or with superstructure at the time of inspection and further stated that to the south of Plot No.158, the defendant's house is located and Plot No.158 is lying in S.No.75/2B and he had properly identified Plot No.158. Therefore, from the above said evidence of D.W.2, the Taluk Surveyor, it is evident that he had not found any superstructure in Plot No.158, which according to the plaintiff is the suit property. When according to D.W.2, there is no superstructure in Plot No.158 and when he had clearly given linear measurements of Plot No.158 in his plan Ex.C3, if really, any superstructure had been noted by him at the time of inspection, he would have definitely disclosed the same in the plan marked as Ex.C3. Therefore when Ex.C3, the plan of the Taluk Surveyor does not indicate that the suit property comprised in plot No.158 consists of any superstructure and on the other hand, when D.W.2 has specifically deposed that he had not noted any superstructure and Plot No.158 was vacant and the position being above, it has not been explained by the plaintiff as to how the Advocate Commissioner who had been appointed in the earlier suit, has come forward with report that the superstructure are available in Plot No.158. Therefore, as rightly contended by the defendant's counsel, the plaintiff being the suitor and the plaintiff having laid the suit for appropriate reliefs and when the plaintiff is mainly relying upon the Advocate Commissioner's report and plan and when the Advocate Commissioner had not been appointed in the present suit and he had been appointed in the earlier suit laid by the plaintiff, which the plaintiff has not prosecuted and abandoned the same, in such view of the matter, merely from the alleged superstructure put up in the suit property, it cannot be held straightaway that the superstructure said to be available in Plot No.158, as given by the Advocate Commissioner in his report, had been put up by the defendant by encroaching into the suit property. It is to be noted that the defendant had also filed his objections to the Commissioner's report and plan. Therefore to obviate the doubts and the inconsistencies in respect of Ex.C2, the plan of the Advocate Commissioner and Ex.C3, the plan of Taluk Surveyor vis-a-vis the evidence of Taluk Surveyor examined as D.W.2 and when the plaintiff has not endeavored to project her case by summoning the Advocate Commissioner and examining him and if he had been examined, the defendant would have had the opportunity to cross examine the Advocate Commissioner vis-a-vis the Ex.C3 plan of the Taluk Surveyor as well as the evidence adduced by the Taluk Surveyor and the factors being above, as rightly contended by the defendant's counsel and to cap it all, the plaintiff having



also not chosen to enter into the witness box for one reason or the other, all put together, the Courts below are found to have erred in placing reliance on the unreliable report of the Advocate Commissioner appointed in the suit which had been dismissed as withdrawn or abandoned by the plaintiff and therefore the determination of the Courts below that the defendant had put up the unlawful construction by encroaching into the suit property comprised in Plot No.158, as such, cannot be countenanced.

21. When the plaintiff has failed to establish her case by adducing acceptable and reliable materials particularly, qua the alleged encroachment and the construction of the superstructure in the suit property comprised in Plot No.158 and the plaintiff had not even endeavored to enter into the witness box to project her case and when the evidence of P.Ws.1 to 3 do not inspire evidence acceptability and reliability in manner particularly, P.W.1 found to be not acquainted with the facts and circumstances of the case more particularly qua the alleged encroachment said to have been made by the defendant into the suit property and as above pointed out, the plaintiff having abandoned the earlier suit and not obtained necessary permission from the court concerned and resultantly, the present suit laid by the plaintiff being barred under Order 23 Rule 1(4) CPC, the judgment and decrees of the Courts below cannot be sustained. Though it is found that the defendant has admitted that he is not claiming any right over the plaintiff's property and had put up the construction only in 6 cents lying south of the alleged plaintiff's property and the plaintiff having failed to establish the cause of action put forth by her to sustain the present suit by adducing acceptable and reliable materials, accordingly, it has to be held that the plaintiff has failed to discharge her burden to establish her title, possession and enjoyment of the suit property or the alleged encroachment of the defendant into the suit property as projected by her and therefore the reasonings and conclusions of the Courts below for upholding the plaintiff's case are found to be based on the improper appreciation of the pleadings, oral and documentary evidence projected in the matter and therefore the same could only be held to be perverse, illogical and irrational and resultantly, for the reasons aforementioned, the substantial questions of law 1,3 and 4 are accordingly answered against the plaintiff and infavour of the defendant and the second substantial question of law 2 is answered in favour of the plaintiff and against the defendant.

22. In the light of the abvoesaid discussions, the judgment and decree dated 31.01.2008 passed in A.S.No.50 of 2004 on the file of the Additional District cum Sessions Judge, Fast Track Court No.IV, Poonamallee, confirming the judgment and decree



dated 16.08.2004 passed in O.S.No.301 of 2004 on the file of the District Munsif Court, Poonamallee are set aside and resultantly the suit laid by the plaintiff in O.S.No.301 of 2004 is dismissed with costs. Accordingly, the second appeal is allowed with costs. Consequently, connected miscellaneous petition, if any, is closed.

Sd/-
Assistant Registrar(CS-V)

//True Copy//

Sub Assistant Registrar

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To

1. The Additional District and Sessions Judge,
Additional District and Sessions
cum Fast Track Court No.IV,
Poonamallee.

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

+1cc to Mr.V.Raghavachari, Advocate, S.R.No.10347

S.A.No.1430 of 2008
and
M.P.No.1 of 2008

GJ(CO)
CB(15/09/2021)