

Baggiammal Vs. Appadurai Gramany

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Court : Chennai

Decided On : Mar-07-1910

Reported in : 6Ind.Cas.722

Judge : Miller, J.

Appellant : Baggiammal

Respondent : Appadurai Gramany

Judgement :

Miller, J.

1. The respondent was not served with a summons under Section 42 nor was any order made as against him in the first instance. The order of the 18th May was not an order to eject him and as I read the order of the 30th June, the Judge did not do more than decline to interfere on his behalf with the proceedings taken under the original order. Consequently, the respondent was not a party to the order under which he was ejected but a party holding the position of a person other than the judgment-debtor when the case is a case of dispossession under a decree.

2. The learned Judge has applied the provision of the Code of Civil Procedure by virtue of the provision of Section 48, Presidency Small Cause Courts Act, and I am asked to hold that they do not give him jurisdiction so to do and that a person dispossessed under Chapter VII has no remedy but the suits given by Sections 45

and 46. I have not been referred to any authority, bearing on the question but it seems to me that the language of Section 48 is wide enough to give the necessary jurisdiction. The case is closely analogous to that of dispossession of a third party under a decree and Chapter VII makes no express provision of the procedure to be adopted in such a case.

3. It states that the party aggrieved may have a remedy by suit but that, it seems to me, will not prevent the application of Section 48, other procedure than that of the Civil Procedure Code not being prescribed.

4. I cannot, therefore, say that the order was made without jurisdiction.

5. The petition is dismissed with costs.

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