



SA.No.998 of 2007

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 09.11.2023

CORAM

THE HON'BLE Mr.JUSTICE **C.KUMARAPPAN**

S.A.No.998 of 2007

and

MP.No.1 of 2007

K.Kuppusamy

... Appellant

- Vs -

1. State of Tamil Nadu
Rep. by its Dist-Collector,
Thiruvarur.
2. The Executive Engineer,
Cauvery Division,
Public Works Department,
Thanjavur.
3. The Sub-Divisional Engineer,
Cauvery Sub Division,
Peralem.

... Respondents

Second Appeal is filed under Section 100 of the Civil Procedure Code against the judgment and decree dated 14.03.2007 and made in A.S.No.36 of 2006 on the file of Sub-Court, Tiruvarur reversing the judgment and decree dated 25.02.2005 made in O.S.No.164 of 1999 on the file of District Munsiff Cum Judicial Magistrate Court at Nannilam.



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For Appellant : Mr.T.Girish

For Respondents : Mr.Edwin Prabhakar
Special Government Pleader
Assisted by Mr.C.Sathish
Government Advocate

JUDGMENT

The appellant herein is the plaintiff before the Trial Court and the respondents herein are the defendants before the Trial Court.

2. For the sake of convenience, the parties will be referred to according to their litigative status in the suit.

3. **Brief facts which give rise to the Second Appeal are as follows:-**

According to the plaintiff, they have been in continuous possession of the suit property bearing R.S.No.59, which is classified as “River Poramboke” since 1944. It is the submission of the plaintiff that, their predecessor in title are having title deeds which are dated 29.03.1947 and 30.11.1951. The plaintiff further submits that his title deed in respect of the suit property is of the year 1966. The plaintiff further submits that they put up a terrace building in the suit property by spending a sum of Rs.5,00,000/- and that they have been exercising the right over the suit property for more



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than 45 years. It is their submission that, in the meanwhile, the defendants issued a notice dated 28.05.1999 under the Land Encroachment Act. According to this plaintiff, when the defendants have lost the right in respect of the suit property, they cannot issue any notice under the Land Encroachment Act. Hence, prayed for the relief of declaration and for consequential injunction.

4. Resisting the above contention, the defendants plead that, the alleged Sale Deed of the year 1966 will not confer any right to the plaintiff, as their vendor did not have any right over the suit property. The defendants further submits that, even according to the plaintiff, the suit property was classified as River Poramboke. The defendants dispute the long possession of the plaintiff for more than 30 years, and it is the further submission of the defendants that the very suit is not maintainable in view of the bar of jurisdiction under the Land Encroachment Act. Hence, these defendants prayed to dismiss the suit.

Evidence & Documents:-

5. Before the Trial Court, the plaintiff has marked 18 documents as Exs.A1 to A18, and examined 3 witnesses as PW1 to PW3. On behalf of the defendants, one witness was examined as DW1 and as a Court documents, 2



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documents have been marked as Exs.C1 & C2 and no documents have been marked on behalf of the defendants.

6. The Trial Court have gone into various aspects, and has found that there was a continuous uninterrupted possession of the plaintiff for more than 50 years eventually granted the relief of declaration. Aggrieved with the said finding, the defendants filed First Appeal. The First Appellate Court has found that in order to prove the possession of the plaintiff, they produced tax receipt only from the year 1970 -1998 and that no Revenue records have been produced in respect of their predecessor-in-title. Therefore, arrived at a conclusion that the relief of adverse possession has not been proved in a manner known to law and ultimately allowed the appeal and thereby, dismissed the suit. Aggrieved by the order of the First Appellate Court, the plaintiff is before this Court.

7. Substantial Question of Law:-

At the time of admission of the Second Appeal, this Court has formulated the following substantial question of law:-

“(i) Whether the Court cannot draw presumption of continuous state of affairs with regard to possession forwards and backwards, by reason of production of document of



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possession from 1917 especially Registered Sale Deeds of the years 1947, 1951 and 1961?”

8. Submissions of either side counsel:-

The learned counsel for the plaintiff would vehemently contend that by virtue of the sale deed of the year 1947 pertains to their predecessor-in-title, their possession can be established since 1947, and that they have been in continuous possession and enjoyment of the suit property, and that their possession and enjoyment could be established by way of putting up construction in the suit property and through the assessment made by the respondent. It is the submission of the learned counsel for the plaintiff that the Revenue records would exemplify their possession with a knowledge to the defendant. The learned counsel relied upon the judgment of this Court in the case of *Muthammal Vs. The State of Tamil Nadu and Ors* reported in **MANU/TN/8321/2006**. Therefore, prayed to allow this appeal.

9. Per contra, the Learned Special Government Pleader would strenuously contend that, whenever a declaration is sought for based upon adverse possession, in the Government property, it has to be viewed very carefully as the plaintiff is claiming right over the public property. The



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Learned Special Government Pleader would further submits that the very suit is hit by the provisions of Section 12 of Tamil Nadu Land Encroachment Act, 1905. It is also the submission of the learned Special Government Pleader that there is no proof as to the adverse possession and would submit that the continuous possession since 1947 is of no use as it was not with the knowledge of the defendant. Therefore, would pray to dismiss the appeal. The learned Special Government Pleader relied upon the following judgments in support of their case:-

- 1. *Ravinder Kaur Grewal and others Vs. Manjit Kaur and others* [(2019) 8 SCC 729];**
- 2. *T.K.Shanmugam Vs. The State of Tamil Nadu & others* [2015-5-LW.397];**
- 3. *N.Kuttalingam and others Vs. The State of Tamil Nadu* [(2008) 3 MLJ 624];**
- 4. *S.Kumarasamy and Others Vs. State of Tamil Nadu* [2020 SCC OnLine MAD 306];**
- 5. *State of Rajasthan Vs. Harphool Singh* [(2000) 5 SCC 652];**
- 6. *Government of Kerala & another Vs. Joseph and others* [2023 LiveLaw (SC) 621].**

10. I have given my anxious consideration to either side submissions.



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Analysis of the submissions:-

11. Admittedly, no substantial question of law has been framed in respect of bar of jurisdiction. Under Section 100 of The Civil Procedure Code, this Court is competent to formulate a additional substantial question of law at the time of hearing of the Second Appeal, if such substantial question of law has not been framed at the time of admission. Therefore, this Court deems it appropriate to formulate the following additional substantial question of law:-

“Whether the suit filed by the appellant/plaintiff is maintainable in view of the bar provided under Section 14 of the Tamil Nadu Land Encroachment Act?”

12. It is pertinent to mention here that both the counsel have submitted their argument even in respect of the Additional Substantial Question of law formulated today. While perusing the cause of action, the very suit was instituted based upon the notice under Ex.A14 dated 18.05.1999. Admittedly, the said notice was issued under Section 6 of “The Tamil Nadu Land Encroachment Act, 1905” [hereinafter called “Act”]. The said Act has provided appeal remedy under Section 10. If any notice is issued under



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Section 6 of the Act, then the affected person can move an appeal before the Collector. According to Section 10(A) of the Tamil Nadu Land Encroachment Act, such an appeal has to be filed within 30 days from the date of the decision or order received by the parties.

13. Therefore, it is very much clear that under the Tamil Nadu Land Encroachment Act, a separate mechanism is provided to deal with the issue that would emanate under Section 6 of The Land Encroachment Act. If that being the case, Section 14 is the bar of jurisdiction to the Civil Courts. For ready reference Section 14 is extracted hereunder:-

“14. Bar of jurisdiction of Courts:- Notwithstanding anything contained in any law for the time being in force, no order passed or proceeding taken by any officer or authority or the State Government under this Act shall be called in question in any Court, in any suit or application and no injunction shall be granted by any Court in respect of any action taken or to be taken by such officer or authority or the State Government in pursuance of any power conferred by or under this Act.”

14. Therefore, it is very much clear when there is a separate mechanism is provided to challenge the notice, the filing of suit before the Civil Court is bar under Section 9 of The Civil Procedure Code. Therefore,



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this Court is of the view that the very suit is not maintainable in view of the above discussion.

15. Coming to the other substantial question of law namely whether the presumption can be drawn since 1947 based upon the Sale Deed, before we delve into that aspect, this Court deems it appropriate to discuss in respect of the legal position of the adverse possession against the Government.

16. The learned Special Government Pleader would rely upon the **Ravinder Kaur's** case [cited supra] and would contend that in respect of an adverse possession, the essential conditions are that the possession must be adequate in continuity, adequate in publicity and adverse to a competitor in denial of title. It is also relevant to mention the **Joseph's** case (cited supra) and the relevant paragraphs are paragraphs 21 & 28 and the same are extracted as follows:-

21. Before proceeding to do so, it is essential to take note of the law governing such a claim. After a perusal and consideration of various judgments rendered by this Court, the following principles can be observed:

21.1. Possession must be open, clear, continuous and hostile to the claim or possession of the other party; all three classic



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requirements must coexist- nec vi, i.e., adequate in continuity; nec clam, i.e., adequate in publicity; and nec precario, i.e., adverse to a competitor, in denial of title and knowledge;

(a) In Radhamoni Debi v. Collector of Khulna, the Privy Council held that-

“The possession required must be adequate in continuity, in publicity, and in extent to show that it is possession adverse to the competitor.”

(b) Further, the Council Maharaja Sri Chandra Nandi v. Baijnath Jugal Kishore observed-

“It is sufficient that the possession should be overt and without any attempt at concealment, so that the person against whom time is running ought, if he exercises due vigilance, to be aware of what is happening.”

(c) A Bench of three judges of this Court in Parsinni v. Sukhi held that

“Party claiming adverse possession must prove that his possession must be ‘nec vi, nec clam, nec precario’ i.e. peaceful, open and continuous. The possession must be adequate, in continuity, in publicity and in extent to show that their possession is adverse to the true owner.”

(d) In Karnataka Board of Wakf v. Govt. of India (two-Judge Bench) it was held:—

“It is a well-settled principle that a party claiming adverse possession must prove that his possession is “nec vi, nec clam, nec precario”, that is, peaceful, open and continuous. The possession



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must be adequate in continuity, in publicity and in extent to show that their possession is adverse to the true owner. It must start with a wrongful disposition of the rightful owner and be actual, visible, exclusive, hostile and continued over the statutory period.”

This case was relied on in the case of M. Venkatesh v. Bangalore Development Authority (three-Judge Bench), Ravinder Kaur Grewal v. Manjit Kaur (three-Judge Bench).

(e) This Court in a recent case of M Siddiq (D) through LRs v. Mahant Suresh Das (five-Judge Bench) reiterated this principle as under -

“748. A person who sets up a plea of adverse possession must establish both possession which is peaceful, open and continuous - possession which meets the requirement of being ‘nec vi nec claim and nec precario’. To substantiate a plea of adverse possession, the character of the possession must be adequate in continuity and in the public because the possession has to be to the knowledge of the true owner in order for it to be adverse. These requirements have to be duly established first by adequate pleadings and second by leading sufficient evidence.”

21.2. The person claiming adverse possession must show clear and cogent evidence substantiate such claim;

This Court in Thakur Kishan Singh v. Arvind Kumar¹⁵ (two-Judge Bench) held that -

“5. A possession of a co-owner or of a licensee or of an agent or a permissive possession to become adverse must be established by cogent and convincing evidence to show hostile animus and



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possession adverse to the knowledge of real owner. Mere possession for howsoever length of time does not result in converting the permissive possession into adverse possession...”

Reference may also be made to M. Siddiq (supra).

21.3. *Mere possession over a property for a long period of time does not grant the right of adverse possession on its own;*

(a) In Gaya Prasad Dikshit v. Dr. Nirmal Chander (two-Judge Bench) this court observed-

“1... It is not merely unauthorised possession on termination of his licence that enables the licensee to claim title by adverse possession but there must be some overt act on the part of the licensee to show that he is claiming adverse title. It is possible that the licensor may not file an action for the purpose of recovering possession of the premises from the licensee after terminating his licence but that by itself cannot enable the licensee to claim title by adverse possession. There must be some overt act on the part of the licensee indicating assertion of hostile title. Mere continuance of unauthorised possession even for a period of more than 12 years is not enough.”

Reference may also be made to Arvind Kumar (supra); Mallikarjunaiah v. Nanjaiah¹⁷ (two-Judge Bench); Uttam Chand (supra).

21.4. *Such clear and continuous possession must be accompanied by animus possidendi - the intention to possess or in other words, the intention to dispossess the rightful owner; in Karnataka Board of Wakf (supra) it was observed-*

“...Physical fact of exclusive possession and the animus possidendi



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to hold as owner in exclusion to the actual owner are the most important factors that are to be accounted in cases of this nature...

(a) The case of Annakili v. A. Vedanayagam (two-Judge Bench) also shed light on this principle as under -

“24. Claim by adverse possession has two elements : (1) the possession of the defendant should become adverse to the plaintiff; and (2) the defendant must continue to remain in possession for a period of 12 years thereafter. Animus possidendi as is well known is a requisite ingredient of adverse possession. It is now a well-settled principle of law that mere possession of the land would not ripen into possessory title for the said purpose. Possessor must have animus possidendi and hold the land adverse to the title of the true owner. For the said purpose, not only animus possidendi must be shown to exist, but the same must be shown to exist at the commencement of the possession...”

(b) In Des Raj v. Bhagat Ram (two-Judge Bench) this Court observed-

“21. In a case of this nature, where long and continuous possession of the plaintiff-respondent stands admitted, the only question which arose for consideration by the courts below was as to whether the plaintiff had been in possession of the properties in hostile declaration of his title vis-à-vis his co-owners and they were in know thereof.”

(c) This court in L.N. Aswathama v. P. Prakash (two-Judge Bench) had observed that permissive possession or possession in the absence of Animus possidendi would not constitute the claim of adverse



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possession.

(d) It was also held in the case of Chatti Konati Rao v. Palle Venkata Subba Rao²¹ (two-Judge Bench) -

“15. Animus possidendi as is well known is a requisite ingredient of adverse possession. Mere possession does not ripen into possessory title until the possessor holds the property adverse to the title of the true owner for the said purpose. The person who claims adverse possession is required to establish the date on which he came in possession, nature of possession, the factum of possession, knowledge to the true owner, duration of possession and that possession was open and undisturbed...”

(Emphasis supplied)

Referring to the above judgment Subha Rao (*supra*) this Court has reiterated the cardinality of the presence of Animus possidendi in a case concerning adverse possession in Brijesh Kumar v. Shardabai (dead) by LRs.(two-Judge Bench).

21.5. Such a plea is available not only as a defence when title is questioned, but is also available as a claim to a person who has perfected his title;

The prior position of law as set out in Gurudwara Sahab v. Gram Panchayat Village Sirthala (two-Judge Bench) was that the plea of adverse possession can be used only as a shield by the defendant and not as a sword by the plaintiff. However, the position was changed later by the decision of this Hon'ble Court in the case of Ravinder Kaur (*supra*) had held that - “...Title or interest is acquired it can be used as a sword by the plaintiff as well as a shield by the defendant



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within ken of Article 65 of the Act and any person who has perfected title by way of adverse possession, can file a suit for restoration of possession in case of dispossession...”

The position in Ravinder Kaur (supra) was followed in Narasamma v. A. Krishnappa (Dead) Through LRs.[24](#) (three-Judge Bench).

21.6. *Mere passing of an ejectment order does not cause brake in possession neither causes his dispossession;*

In Balkrishna v. Satyaprakash[24](#) (two-Judge Bench) this Court held:

“...Mere passing of an order of ejectment against a person claiming to be in adverse possession neither causes his dispossession nor discontinuation of his possession which alone breaks the continuity of possession.”

21.7. *When the land subject of proceedings wherein adverse possession has been claimed, belongs to the Government, the Court is duty-bound to act with greater seriousness, effectiveness, care and circumspection as it may lead to Destruction of a right/title of the State to immovable property. In State of Rajasthan v. Harphool Singh (two-Judge Bench) it was held:*

“12. So far as the question of perfection of title by adverse possession and that too in respect of public property is concerned, the question requires to be considered more seriously and effectively for the reason that it ultimately involves destruction of right/title of the State to immovable property and conferring upon a third-party encroacher title where he had none.”



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Further, in Mandal Revenue Officer v. Goundla Venkaiah (two-Judge Bench) it was stated:

“...It is our considered view that where an encroacher, illegal occupant or land grabber of public property raises a plea that he has perfected title by adverse possession, the court is duty-bound to act with greater seriousness, care and circumspection. Any laxity in this regard may result in destruction of right/title of the State to immovable property and give an upper hand to the encroachers, unauthorised occupants or land grabbers.”

21.8. *A plea of adverse possession must be pleaded with proper particulars, such as, when the possession became adverse. The court is not to travel beyond pleading to give any relief, in other words, the plea must stand on its own two feet. This Court has held this in the case of V. Rajeshwari v. T.C. Saravanabava²⁷ (two-Judge Bench):*

“...A plea not properly raised in the pleadings or in issues at the stage of the trial, would not be permitted to be raised for the first time at the stage of appeal...”

It has also been held in the case of State of Uttrakhand v. Mandir Sri Laxman Sidh Maharaj²⁸ (two-Judge Bench):

“...The courts below also should have seen that courts can grant only that relief which is claimed by the plaintiff in the plaint and such relief can be granted only on the pleadings but not beyond it. In other words, courts cannot travel beyond the pleadings for granting any relief...”

Mandir Sri Laxman Sidh Maharaj (supra) was relied on in Dharampal (Dead) v. Punjab Wakf Board²⁹ (two-Judge Bench) on



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the same principle.

21.9. *Claim of independent title and adverse possession at the same time amount to contradictory pleas. The case of Annasaheb Bapusaheb Patil v. Balwant³⁰ (two-Judge Bench) elaborated this principle as:*

“15. Where possession can be referred to a lawful title, it will not be considered to be adverse. The reason being that a person whose possession can be referred to a lawful title will not be permitted to show that his possession was hostile to another's title. One who holds possession on behalf of another, does not by mere denial of that other's title make his possession adverse so as to give himself the benefit of the statute of limitation. Therefore, a person who enters into possession having a lawful title, cannot divest another of that title by pretending that he had no title at all.”

This principle was upheld in the case of Mohan Lal v. Mirza Abdul Gaffar³¹ (two-Judge Bench) -

“4. As regards the first plea, it is inconsistent with the second plea. Having come into possession under the agreement, he must disclaim his right thereunder and plead and prove assertion of his independent hostile adverse possession to the knowledge of the transferor or his successor in title or interest and that the latter had acquiesced to his illegal possession during the entire period of 12 years, i.e., up to completing the period of his title by prescription nec vi, nec clam, nec precario. Since the appellant's claim is founded on Section 53-A, it goes without saying that he admits by implication that he came into possession of the land lawfully under the



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agreement and continued to remain in possession till date of the suit. Thereby the plea of adverse possession is not available to the appellant.”

The Court in Uttam Chand (supra) has reiterated this principle of adverse possession.

21.10. *Burden of proof rests on the person claiming adverse possession.*

This Court, in P.T. Munichikkanna Reddy v. Revamma³² (two-Judge Bench), it held that initially the burden lied on the landowner to prove his title and title. Thereafter it shifts on the other party to prove title by adverse possession. It was observed:—

“34. The law in this behalf has undergone a change. In terms of Articles 142 and 144 of the Limitation Act, 1908, the burden of proof was on the plaintiff to show within 12 years from the date of institution of the suit that he had title and possession of the land, whereas in terms of Articles 64 and 65 of the Limitation Act, 1963, the legal position has underwent complete change insofar as the onus is concerned : once a party proves its title, the onus of proof would be on the other party to prove claims of title by adverse possession... .”

The Court reiterated this principle in the case of Janata Dal Party v. Indian National Congress (two-Judge Bench):

“...the entire burden of proving that the possession is adverse to that of the plaintiffs, is on the defendant...”

21.11. *The State cannot claim the land of its citizens by way of adverse possession as it is a welfare State.*



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[*State of Haryana v. Mukesh Kumar (two-Judge Bench)*]

28. In first appeal, the Court noted that no independent commission, or verification had been carried out of the age of the trees on the basis of which possession was being calculated. In view of this uncontroverted position, whether the standard of proof as held by this Court in *Harphool Singh (supra)* in no uncertain terms -

“When the property was a vacant land before the alleged construction was put up, to show open and hostile possession which could alone in law constitute adverse to the State, in this case, some concrete details of the nature of occupation with proper proof thereof would be absolutely necessary and mere vague assertions cannot by themselves be a substitute for such concrete proof required of open and hostile possession.”

(Emphasis supplied)

cannot be termed as met. An estimation of age of the trees cannot be, by any stretch, termed as sufficient proof required to disturb the title that undisputedly rests with the Government as also testified by PW-1 and PW-2. Proper and concrete proof as required would need for the claimants to show some proof of possession, other than statements which may be vague. It is also clear from the above discussion that merely a long period of possession, does not translate into the right of adverse possession. Surmises, conjectures and approximations cannot serve the basis for taking away the right over land resting with the State and place the said bundle of rights in the hands of one who did not have any such rights.”

17. The learned Government Advocate has also relied upon the judgement of Hon’ble Supreme Court in ***Harphool Singh’s*** case [cited supra]



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to support his contention. Wherein, the Hon'ble Supreme Court held that, whenever adverse possession involves a public property, the Court needs to have more effective and serious consideration in respect of the issue. Here, the plaintiff by referring the Sale deed-Exs.A1 to A3 projecting their possession since 1947. According to the legal principle as discussed herein above, the possession must be continuous, open and should be notorious and denial to the right of real owner. Here, to substantiate such denial, the plaintiff relied upon the tax receipt, which is marked as Exs.A4 to A13. However, the learned Special Government Pleader would submit that there is no proof to the effect that this house tax receipts are pertains to the suit property. Even while cross-examining the defendants, they have categorically denied the issuance of such receipts to the suit property. Therefore, this Court is of the firm view that Exs.A4 to A13 cannot be construed to prove the notorious possession of the plaintiff against the defendants.

18. Even for argument sake, if we construe that these documents should prove the notorious possession of the plaintiff, it is only from 15.01.1970, qua within 30 years. To derive possessory title against the Government, the possession must have been for 30 years as per Article 112



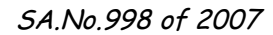
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of Limitation Act.

19. But in our case, within 30 years, the notice under Section 6 of the Land Encroachment Act has been issued. Therefore, the statutory period of 30 years, so as to have adverse possession has not been completed. Thus, this Court is of the firm view that the finding of fact recorded by the First Appellate Court that the plaintiff has not perfected title by adverse possession is based on material and well merited. Hence, the same is liable to be confirmed.

20. At this juncture, the learned counsel for the plaintiff would draw the attention of this Court to the *Muthammal's* case (cited supra). But on close reading of the above judgment, it is in respect of a Natham property, whereas the suit property herein is a River Poramboke. In this regard, the learned counsel for the respondents relied on *T.K.Shanmugam's* case (cited supra) and would contend that by virtue of Tamil Nadu Protection of Tanks and Eviction of Encroachment Act, any encroachment in the water body has to be removed without giving any requisition. The relevant portion of the said judgment is as follows:-

“40. As noticed above, the Division Bench while adding a word of caution that they are not advocating a general principle to



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*systematically works with a view to grab Government property. In such scenario while taking a 'conscious decision', the Government cannot ignore the fiduciary duty of care and responsibility cast upon it and simultaneously analyse as to why such dis-use has occurred. The plethora of decisions on the point elucidate the basic principle of the public trust doctrine when the water bodies vest with the Government, placing the Government in the capacity of a trustee, there is little option except to strictly adhere to the trust and faith reposed and if the Government has failed to protect these water bodies, it amounts to breach of the public trust and in such cases, the duty of the Government is more onerous to restore the land back to its original position and thereby restore the trust reposed on it. **Therefore, we are not inclined to accept the proposition that merely because a water body has put to dis-use that by itself would be a good ground to regularise the encroachments.***

44. The Government Orders starting from 30.12.2006 in G.O.(Ms) No. 854, Revenue Department and subsequent Government Orders in G.O.Ms. No. 498, 711, 34, 43 and 372 dated 05.09.2007, 30.11.2007, 23.01.2008, 29.01.2010 and 26.08.2014 respectively, with particular reference to encroachments in water bodies are in clear violation of the public trust doctrine. Moreover, Article 51-A of the Constitution of India enjoins that it shall be the duty of every citizen of India, inter alia, to protect and improve the national environment including forests, lakes, rivers, wildlife and to have compassion for living creatures. This Article is not only fundamental in the governance of the country but a duty on the State



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to apply these principles in making laws and further to be kept in mind in understanding the scope and purport of the fundamental rights guaranteed by the Constitution including Articles 14, 19 and 21 of the Constitution and also the various laws enacted by Parliament and the State Legislatures. But unfortunately, the State, by passing the above said Government Orders, actively encourages encroachers of water bodies, to indulge in illegal and unlawful activities and also bent upon regularizing their possession which has to be deprecated.

45. In the light of the above, we answer the reference on the following terms:— The provisions of the Tamil Nadu Protection of Tanks and Eviction of Encroachment Act, 2007, does not in any manner dilute the observations/directions issued in L. Krishnan v. State of Tamil Nadu reported 2005-3-L.W. 313 : 2005 (4) CTC 1, as quoted with the approval by the Hon'ble Supreme Court in Jagpal Singh v. State of Punjab, reported in 2011-3-L.W. 17 : (2011) 11 SCC 396, and the observations contained in paragraph 20(d)(e) of the judgment of the Division Bench in T.S. Senthil Kumar v. Government of Tamil Nadu, reported in 2010-3-MLJ-771 and that the tanks which do not fall within the purview of the Tamil Nadu Protection of Tanks and Eviction of Encroachment Act, 2007, also require protection from encroachment and any encroachment made in such tanks or water bodies have to be removed by following the provisions of the Tamil Nadu Land Encroachment Act, 1905.”

Thus, this Court holds that the plaintiff has miserably failed to prove their case.



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21. For easy assimilation of the above discussion, this Court deems it appropriate to recapitulate the above discussion.

1. Though there are documents since 1947 in respect of the suit property, it was executed between the parties admittedly in respect of a River Poramboke. To put it in other words, the executant of the document did not have any right over the property so as to transfer to the subsequent purchaser.
2. Since the executant did not have any right over the property, no title could be passed to the plaintiff.
3. There are no document to prove the possession with a knowledge and notorious and adverse to the defendants.
4. Even if the tax receipts are presumed for argument sake as document to show the commencement of notorious possession, still statutory period of 30 years has not been completed on the date of issuance of Section 6 notice under Ex.A14.
5. To crown it all, the very suit is not maintainable under Section 14 of Tamil Nadu Land Encroachment Act.

Hence, this Second Appeal is liable to be dismissed.

22. In the result, the substantial question of law is answered in favour of the respondents and the Second Appeal is dismissed. There shall be no order as to costs. Consequently, connected MP is also closed.

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Index : yes/no

Speaking/Non Speaking Order

Neutral Citation Case: Yes/No



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C.KUMARAPPAN, J

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To

1. The Sub Court,
Tiruvarur.

2. The District Munsif-cum-Judicial Magistrate,
Nannilam.

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