



A.S(MD)No.215 of 2015

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Dated: 25.03.2024

CORAM:

THE HON'BLE MR.JUSTICE **P. DHANABAL**

A.S(MD)No.215 of 2015

and

M.P(MD) No.1 of 2015

1. The State of Tamil
through its District Collector,
Tirunelveli.

2. Kulasekarapatti Panchayat
through its Panchayat
Kurumbalaperi

..Appellants/Defendants

Vs.

S.Jawaharlal Nehru

.. Respondent/ Plaintiff

Prayer : This Appeal Suit has been filed under Section 96 of C.P.C., against the judgment and decree dated 30.04.2010 made in O.S.No. 176 of 2004 on the file of the I Additional District Judge, Tirunelveli

For Appellant : Mr. N. Muthuvijayan

For Respondents : Mr.J. Barathan

JUDGMENT

This Appeal Suit has been filed as against the judgment and decree passed in O.S. No. 176 of 2004 on the file of I Additional District Judge, Tirunelveli, wherein the respondent herein has filed



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the suit for declaration in respect of 2nd item of property and for recovery of possession and also for awarding damages for a sum of Rs.22, 36,000/- and for costs. The trial Court had decreed the suit in its entirety therefore the defendants have preferred this appeal.

2. For the sake of convenience and brevity, the parties herein after will be referred to as per their status/ranking in the Trial Court.

3. The brief facts of averments of the plaint are as follows:

The first schedule properties were encroached by the father of the plaintiff T.R.Subramania Nadar in the year 1950 and thereafter, he removed the thatched houses and constructed tiled house and has been running shops. The panchayat also allotted door numbers to those shops. Whiles, on 29.04.1991, the father of the plaintiff executed a Will in favour of his sons. The father of the plaintiff died on 28.01.1992. After the demise of his father, the Will came into force. As per the Will, the first item of the property was allotted to Masilamani, the second item of the property was allotted to Kamaraj and the third item of the property was allotted to this plaintiff. Thereafter, they enjoyed their shares separately.



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Thereafter, the first of the first schedule property was purchased by the plaintiff and his brother Kamaraj through a sale deed dated 17.11.1993. Thereafter, they orally partitioned the properties and the western side property was allotted to Kamaraj and the eastern side property was allotted to the plaintiff. The said property allotted to the plaintiff has been described as second schedule property. Thereafter the plaintiff constructed houses in that property and obtained door Nos. 10/774, 775, 776, 777, 778 and 784 respectively. In that property in door No.10/774, the plaintiff was running a medical shop in the name of Gomathi Medicals and the other properties were rented to third parties.

3.1.The plaintiff and his father have been enjoying the second schedule property from the year 1950 continuously, openly and without any interruption with the knowledge of one and all for more than statutory period. Whiles, without following the procedures, the defendants forcibly evicted the plaintiff and the tenants along with their family members on 18.01.2002. However, the plaintiffs are entitled to the property by way of adverse possession. On 18.01.2002 at about 7.30 am., the defendants without any prior notice demolished the buildings. Due to that sudden demolition, the plaintiff left his belongings in the buildings and ran away. The



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defendants not even permitted them to take their belongings. On 18.01.2002 itself, the structure of the building was demolished. Since the demolished portions were dumped in the house, they are unable to enter into the house. The household utensils and refrigerator and other things placed in the medical shop were also damaged. The damaged properties were removed with the help of police. The defendants have damaged the building worth about Rs. 12,00,000/- and other belongings worth about Rs.8,86,000/- referred in the third schedule of the property. The defendants are liable to pay 1.5 lakhs towards the mental agony caused to the appellant. In total, the defendants are liable to pay a sum of Rs.22,36,000/-. Now the property is left as a vacant site. After demolition of the property, four months later, they issued notice under Section 6 of Tamil encroachment Act on 19.06.2002. Since already the properties were demolished, the plaintiff has not taken any steps against the notice.

3.2.On 29.05.2002, the plaintiff issued reply notice to the defendants but the defendants suppressed the reply notice and passed order on 19.06.2002, stating that on 31.05.2002 as if the plaintiffs have sent a reply. The first defendant issued notice dated 31.08.2002, stating that the plaintiff had filed an appeal, but he never filed an appeal. Since the plaintiff and his father have been in possession and enjoyment of the properties, the right of the



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defendants extinguished by the Limitation Act. The defendants unlawfully and arbitrarily removed the buildings without any notice and caused damages. The plaintiff issued notice under Section 80 of CPC dated 05.12.2002 and the same was received by the defendants but they have not sent any reply. Therefore the plaintiff filed the suit.

4. The gist of the written statement are as follows:

The suit is not maintainable either in law or on facts and the same is liable to be dismissed in limine. The plaintiff is not entitled to any relief as prayed for. The land which had been under the enjoyment of the plaintiff is a Government land which was classified a Oorani Poramboke and water course Poramboke. Paying ground rent, professional tax and house tax to the local body will in no way prevent the right of the Government from retrieving the Poramboke land. The documents created in respect of Poramboke land will not bind the Government. The sale deed said to have been executed by the plaintiff is null and void. The land said to be partitioned among the legal heirs of the encroachers is not valid in law. The total extent of land is 0.37.5 hectares, in which, 32 cents of land had been encroached upon by the plaintiffs and 17 others and had constructed RCC tiled roof building for conducting commercial purposes. The then Kulasekarapatti Panchayat had issued notices to the



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encroachers to vacate the above said land. Then the encroachers had given undertaking to the Panchayat President that they would not construct any permanent structure in the Poramboke land.

4.1 In the Fasli 47/4, the plaintiff and other encroachers had continued their encroachment and they were booked under the Land Encroachment Act in BMA 184 to 201/1411. Notices under Section 7 of the Land Encroachment Act were served on the encroachers on 24.07.2001. As they refused to receive the notices, they were served by affixtures on a conspicuous place of the business premises. Finally eviction notices under Section 6(2) of Land Encroachment were also issued on 10.10.2001 and the same were also served on 14.10.2001 by affixing the copies as stated above. Eviction was carried out from 18.01.2002 to 20.02.2002. In addition to the notices served on the encroaches under the Land Encroachment Act, the notice was also published in the Village by beating of tom tom. The eviction was done in accordance with law. The building was used as shops and it cannot be termed as essential place and thereby the movable properties as listed in the plaint are all false.

4.2.As per the order passed by the Hon'ble First Bench of High Court in W.A. Nos. 1193/2002, 1194/2002, dated 24.05.2002, that the restitution be kept in abeyance and directed to issue fresh notice to the encroachers. As per the direction of the this Court dated



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24.05.2002, fresh notices under Section 7 of Tamil Nadu Land Encroachment Act were served to the plaintiff and other encroachers. The time prescribed in the notice expired on 05.06.2002. The plaintiff has submitted his written objection through registered post on 03.06.2002. In the said objection, the plaintiff has not stated about the damages to the movable properties as listed in the plaint. Thereafter, on 31.08.2002, as per the order of the Hon'ble High Court dated 09.07.2002, in Writ Petition Nos. 2442 to 24439 of 2002, personal hearing was conducted regarding the grievance and at that time also the plaintiff has not submitted anything to the District Collector.

4.3.The Government of Tamil Nadu in their order in G.O.Ms.No.105, Revenue Department, dated 07.03.2001, have constituted District Level Committee to carry out the eviction of encroachers in Government land. Accordingly it was decided to evict the encroachers in the said land in Kulasekarapatti Panchayat during the period from 18.01.2002 to 20.01.2002. The defendants were acting in accordance with law and hence, they are not responsible for damages, if any, due to the eviction. The relief of declaration of title cannot be granted since the properties belongs to Government. The plaintiff is also not entitled to recovery of possession. There is



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no cause of action for the suit and thereby the suit is liable to be dismissed.

5. Based on the above said pleadings and hearing both sides, the trial Court has framed the following issues:

- 1) Whether the suit claim is barred by Resjudicata?
- 2) Whether the plaintiff is entitled to declaration of title to the second schedule property?
- 3) Whether the plaintiff is entitled for the relief of recovery of possession of the second schedule property?
- 4) Whether the plaintiff is entitled to claim damages as prayed for. If so to what amount ?
- 5) To what other relief the parties are entitled to?

6. Before the trial Court on the side of plaintiff, they have examined P.W.1 and P.W.2 and documents Ex.A1 to A.1136 were marked. On the side of the defendant D.W.1 was examined and documents were marked as Ex.B.1 to B.11. The commissioner report and plan was marked as court documents.

7. After considering the evidences adduced on both sides the trial Court has decreed the suit in favour of the plaintiff. As against



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the decree and judgement the defendants have preferred this appeal on the following grounds.

Grounds of Appeal

1) The trial Court ought to have considered that the suit survey No. 348/1 in Kulasekarapatti Village is classified as Oorani Poramboke which belongs to the Government

2) The trial Court ought to have taken into consideration that the Revenue Department booked B. Memo against the plaintiff relating to the suit survey number 348/1 and notices sent to all the encroachers including the plaintiff on 25.07.2001 under Section 7 of the Land Encroachment Act.

3) The trial Court failed to see that an undertaking was given by Subramania Nadar to the President of Panchayat which confirms that the suit property belongs to the Government and accordingly the suit deserves dismissal.

4) The trial Court ought to have considered that mere submitting tax receipts, electricity cards, telephone bills, income taxbill will not establish that the plaintiff is the owner of the property and execution of Exs.A1 and A2 among the family members of the plaintiff will not affect the right of the Government property.



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5) The trial Court ought to have considered that not only the encroachment of the plaintiff was removed but encroachments of others also. None of the encroachers, except the plaintiff filed the suit for declaration over the suit property, which establishes that the plaintiff is not the owner of the suit property.

6) The trial court ought to have taken into consideration that only against the eviction notice issued on 19.06.2002 the plaintiff has filed W.P.No.24423 of 2002 before the Principal Bench of this Court.

8. The learned Special Government Pleader appearing for the appellants would contend that the property belongs to the Government and it has been classied as Oorani Poramaboke. The plaintiff and others have encroached the property and thereby they issued notice to the encroaches including the plaintiff on 25.07.2001. The said notices were served to the encroachers including the plaintiffs, but they refused to receive the notices and thereby the said notice was affixed in the premises of the plaintiff and other encroachers. Thereafter notice under Section 6 of Tamil Nadu Land Encroachment Act was issued on 10.10.2001. Since the encroaches have refused to receive the notices the notices were



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affixed in their doors. Thereafter, the encroachments were removed by the authorities. Since the authorities have acted under the provisions of Tamil Nadu Land Encroachment Act, as per Section 14 the civil suit is barred. The receipt of notice was also admitted by the plaintiff. The appellants/defendants have followed the procedure and then only carried out the eviction process. The plaintiff has filed the suit for declaration of property, which is classified as Oorani Poramboke i.e., water body and he admitted that the property belongs to the plaintiff and he only claims adverse possession.

8.1. The plaintiff has not been in possession and enjoyment of the property and he is not the owner of the property and he paid penalty charges to the Government and thereby his possession is permissive possession and he cannot claim any right and title over the property. The plaintiff has claimed damages alleging that he constructed the building for 12 lakhs and the properties worth about Rs. 8,86,000/- were also damaged and he also claimed Rs.1.5 lakhs for mental agony. But there is no documents produced by the plaintiff to prove his contention and for his claim for Rs.22,36,000/-. The trial Court without appreciating the evidence adduced by the defendants and without considering that the plaintiff has not proved his case, the trial Court decreed the suit erroneously, therefore, the



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decree and judgment passed by the trial court are liable to be set aside.

9. The learned Special Government Pleader has relied the following judgments:

1) V. Pandiammal vs. The District Collector, Officer of the Collectorate, Madurai and others reported in CDJ 2023 MHC 292.

2) Mahakavi Bharathiyar Nagar Residents Welfare Association rep. by its Secretary P.Chinnasamy, Sivagangai vs. The Special Commissioner and Commissioner of Land Administration, Chennai and others reported in CDJ 2023 MHC 4917.

3) Government of Tamil Nadu, rep by the District Collector, Tiruchirapalli and another vs. Arohamerry reported in CDJ 2022 MHC 3647.

4) Ranjene Venkatraman vs. The District Collector, Thanjavur Collectorate, Tanjore and Others reported in CDJ 2017 MHC 1169.

10. The learned counsel appearing for the respondent would contend that the respondent/plaintiff has filed suit for declaration, recovery of possession and damages. The schedule properties belongs to the respondent/plaintiff and his father encroached the property and constructed a thatched house and thereafter in the



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year 1950 after removal of thatched house constructed tiled house and thereafter executed the Will in respect of those properties and after the demise of his father, the plaintiff and his brother partitioned the properties as per the Will and they are enjoying the properties. Thereafter, the plaintiff and his brother Kamaraj purchased the property through sale deed dated 17.11.1993 and thereafter, the said property was partitioned between the plaintiff and his brother. As per the partition eastern side portion of the property was allotted to him and the western side portion was allotted to his brother. In the eastern side, the plaintiff constructed houses by getting permission from panchayat and six door numbers were given. In the door No. 10/774 the plaintiff was running medical stores business and the other houses were rented out to the tenants. Thus the plaintiff and his predecessors have been in possession and enjoyment of suit property for more 50 years without any interruption, continuous and hostile possession over the properties and thereby they are entitled to properties through adverse possession.

11. On 18.01.2002, at about 7.30 a.m., without any prior notice the defendants came along with machineries and demolished the super structure and also damaged the things placed inside the properties worth about Rs.8,86,000/-. The value of the building is Rs.



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12 lakhs. The plaintiff is claiming a sum of Rs.1,50,000/- lakhs towards mental agony. The defendants after intervention of the High Court once again issued notice on 19.06.2002 under Section 6 of Tamil Nadu Encroachment Act . Thereafter, again notice was issued by order dated 31.08.2002. The defendants have never issued notice prior to the demolition and in the trial Court, the defendants also admitted the continuous possession of the plaintiff and also admitted that notices were issued after demolition through the evidence of D.W.1. Therefore, the trial Court has correctly applied the law and decreed the suit and hence, the appeal is liable to be dismissed.

12. This Court heard both sides and upon hearing both sides and perusing the records and the judgment of the trial Court, the points for determination in this appeal are

- 1) Whether the suit is barred by the provision of Section 14 of Tamil Nadu Land Encroachment Act?
- 2) Whether the appellant/defendants evicted the appellant/plaintiff without prior notice?
- 3) Whether the plaintiff is entitled to decree for declaration of the second schedule of the suit property?
- 4) Whether the plaintiff is entitled to relief of recovery of possession over the second schedule of the suit property?



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5) Whether the plaintiff is entitled to damages as prayed for in the plaint ?

6) whether the judgement and decree of the trial court are sustainable in law and on facts?

7) Whether the appeal is liable to be allowed or not?

8) To what relief ?

Point No.1

13. In this case the plaintiff has filed the suit for declaration, declaring that the second schedule of the suit property belongs to the plaintiff and the consequential relief of recovery of possession and for damages of Rs. 22,36,000/-. According to the plaintiff, the property is a poramboke land. The father of the plaintiff encroached the property and thereafter continuously the plaintiff and his predecessor have been enjoying the property for more than 50 years. While so, suddenly on 18.01.2002, the defendants without any prior notice demolished the super structure and damaged the properties worth about Rs. 22,36,000/-. The defendants denied the claim of the plaintiff and according to the defendants they acted under the Tamil Nadu land Encroachment Act. Already they have issued notice under Section 7 of the Tamil Nadu Land Encroachment Act and thereafter, issued notice under Section 6 of Tamil Nadu land Encroachment Act and thereafter only they removed the



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encroachments. Therefore, suit is barred by Section 14 of Tamil Nadu land Encroachment Act.

14. In this case, the suit has been filed by the plaintiff for the relief of declaration of title of the plaintiff over the suit property. There is no relief of declaration in respect of the notices issued by the authorities under the Tamil Nadu Land Encroachment Act. At this juncture, it is relevant to extract Section 14 of Tamil Nadu land Encroachment Act:

Bar of jurisdiction of Courts- not withstanding anything contained in law for time being in force no order or proceeding taken by any officer of 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 so conferred by or under this Act.

15. Therefore, in this case, suit is filed only for declaration and recovery of possession over the suit property and hence, there is no bar to civil Court to decide the title of the property.



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16. In this context, the learned Special Government Pleader has relied on the following judgments:

1) V. Pandiammal vs. The District Collector, Officer of the Collectorate, Madurai and others reported in CDJ 2023 MHC 292.

2)Mahakavi Bharathiyar Nagar Residents Welfare Association rep. by its Secretary P.Chinnasamy, Sivagangai vs. The Special Commissioner and Commissioner of Land Administration, Chennai and others reported in CDJ 2023 MHC 4917.

3) Government of Tamil Nadu, rep by the District Collector, Tiruchirapalli and another vs. Arohamerry reported in CDJ 2022 MHC 3647.

4) Ranjene Venkatraman .vs. The District Collector, Thanjavur Collectorate, Tanjore and Others reported in CDJ 2017 MHC 1169.

17. On a careful perusal of the above said judgments it is clear that there is a specific bar under Section 14 of Tamil Nadu land Encroachment Act for the civil Court entertaining proceedings challenging the action initiated under the said Act. But in this case the suit is filed for declaration of title over the suit property. Therefore, there is no bar to file the present suit to establish the title of the plaintiff. As far as the prayer in respect of damages is



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concerned, the plaintiff has sought for the relief of damages based on the acts done by the defendants. Whiles, it is appropriate to answer for this issue, at the time of answering the issue of recovery of damages, whether notices were issued or not have to be decided. Therefore, the answer to this question is depending upon proving the notice issued to the defendants. Hence, it is appropriate to discuss about this issue in respect of applicability of bar under Section 14 of Tamil Nadu land Encroachment Act for the relief of damages and issuance of notice could be decided later. Thus the point is answered.

Point No.2

18. According to the plaintiff, without any prior notice, the defendants have demolished the properties on 18.01.2002. According to the defendants, they issued notice on 25.07.2001 under Section 7 Tamil Nadu land Encroachment Act and notice under Section 6 of Tamil Nadu Land Encroachment Act was issued on 10.10.2001. According to the defendants, the encroachers refused to receive the notice and thereby the notices were served by affixing in the doors. The plaintiff denied the service of notice. In this context, the defendants have produced the proceedings of Tahsildar, Tenkasi as Ex.B.2, wherein the notices issued under Sections 6 and 7 of Tamil Nadu Land acquisition Act have clearly mentioned about the



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serving of notice to the encroached persons and in that notices the name of the respondent/plaintiff also mentioned in column No. 15.

19.As per the said notices section 7 notice was issued on 25.07.2001 and section 6 notice was issued on 10.10.2007. In this context, D.W.1 in his evidence stated that a notice under Section 7 of Tamil Nadu land Encroachment Act for the Fasli 1411 in BMA 184-201/1411 and thereafter, 6(2) notice was issued on 10.10.2001 and the plaintiff refused to receive the notices and the notices were affixed in the door. Thereafter only they started the eviction proceedings, but at the same time, the defendant/DW1 admitted that they have not produced any register in respect of tapals and they have not filed the returned covers. The buildings were demolished prior to the notices Ex.B.6 and ExB.7. Therefore, there is no proof to show that the notices were served to the plaintiff, except Ex.B.4. Ex.B.4 is official record maintained by Government authorities and it is a presumption under the law that the Government records available in the offices are maintained in accordance with law, unless the contrary is proved. Here the plaintiff has not proved the contrary and not even suggested to D.W.1 that those notices were created, therefore, the defendants have proved that they have served the notices prior to the demolition.



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20. The learned counsel appearing for the respondent brought to the knowledge of the court that already the other encroaches filed Writ petitions wherein this Court held that there is no notice served to the encroachers and thereby, this Court ordered to serve notice once again to the encroachers. Therefore, it is clear that the defendants have not served notice to the encroaches.

21. The plaintiff has not filed any documents in respect of the other encroachers and the plaintiff particularly stated that he has not filed any writ petition before this Court. Whiles, it is not appropriate to refer the order passed in writ petition in respect of other encroachers. Further there is no evidence to show that the Ex.B.4 notices were filed before this Court in the earlier writ proceedings and this Court has to see the available records in this particular case. There is no records to show that the document Ex.B.4 is created later. Therefore the defendants have proved that they started proceedings after serving notices to the plaintiff. Thus the point is answered.

Point No.3

22. The plaintiff sought for the relief of declaration of title. According to the plaintiff, his father encroached the property and he



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put up a thatched house and thereafter in the year 1950 removed the thatched house and put up tiled house and thereafter, he executed the Will dated 29.04.1991 in favour of the plaintiffs. The plaintiff's father died on 28.01.1992. The first item of the suit property is covered under the Will. After the demise of the father of the plaintiff, his sons including the plaintiff enjoyed the property separately. The first second of first scheduled property was purchased by the plaintiff and his brother Kamaraj through sale deed dated 17.11.1993 and thereafter they partitioned the properties and eastern side half share was enjoyed by plaintiff, western side half share was allotted to his brother Kamaraj. In that suit property, he constructed a building by investing Rs.12,00,000/- and separate door numbers were also given by panchayat and he was running medical shop in door No.10/774. Therefore he is entitled to the property by way of adverse possession. Therefore, according to the plaintiff, he is entitled to the property through will dated 29.04.1991 and thereafter, he along with his brother purchased the property from one of his brother Masilamani. Therefore, even according to the plaintiff, he is entitled to the suit property only through the Will dated 29.04.1991. He has not produced any documents to show that he was enjoying the properties for more than 50 years.



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23. In this context the learned counsel appearing for the respondent relied the evidence of D.W.1, who admitted in the cross examination that the plaintiff was in possession and enjoyment of the suit properties for more than 60-71 years. Mere oral admission is not sufficient and the suit is being filed by the plaintiff for the relief of declaration and he has to prove his case with sufficient records. Once the plaintiff admitted that the property belongs to the Government, he has to prove his case with sufficient records and he has to prove that his possession is hostile to the Government. In order to prove the continuous possession, he has not produced any documents and that he only relied on the Will and based on the Will the properties are allotted to the plaintiff and his brother. The plaintiff purchased the property and there is no record to prove his adverse possession for more than statutory period. The plaintiff has to prove his adverse possession, but he failed to prove that his possession is *nec vi, nec clam, nec precario*.

24. Even according to the plaintiff, he constructed the building and obtained door numbers but he has stated in the proof affidavit that he constructed the building only in the year 1996 and therefore, the plaintiff failed to prove his continuous possession and the adverse possession for more than the statutory period to prove the



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adverse possession. The plaintiff has failed to prove his continuous possession without any interruption with the knowledge of one and all including the defendants. Since the plaintiff has sought for the relief of declaration based on adverse possession and this Court also discussed and decided that the plaintiff has failed to prove his adverse possession, he is not entitled to a decree for declaration in respect of second schedule suit property. Thus, the point is answered.

Point No.4

25. Already this Court has decided in the previous point that the plaintiff is not entitled to decree for declaration and the relief of recovery of possession is consequential to the relief of declaration and thereby the plaintiff is not entitled to the consequential relief of recovery of possession. Thus, the point is answered.

Point No.5

26. The plaintiff has sought for the relief of damages as against the defendants stating that the defendants have demolished the properties of the plaintiff and he has spent Rs.12,00,000/- for the construction of the building and things which were placed in the suit property were damaged to the tune of Rs. 8,86,000/- and he also prayed for Rs.1,50,000/- towards mental agony. This Court in the point no.2 decided that the defendants have evicted the plaintiff



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after due notice to the plaintiff. Once the defendants issued notice to the plaintiff by invoking provision of Tamil Nadu Land Encroachment Act, the plaintiff cannot question the above said acts through civil Court under Section 14 of Tamil Nadu Land Encroachment Act. There is a bar under Section 14 of Tamil Nadu Land Encroachment Act to initiate civil proceedings as against the Act done by the authorities by invoking the powers conferred under the Tamil Nadu Land Encroachment Act. Therefore, in view of the decision arrived by this Court in the previous point that the defendants have evicted the plaintiff after issuing notice to the plaintiff he cannot question the act of the defendants as per the bar created under Section 14 of Tamil Nadu Land Encroachment Act. Moreover, the plaintiff has not produced any piece of evidence to prove the alleged damage caused to him. Even according to the plaintiff, he was running medical store in one portion and other portions were rented out to the tenants. The plaintiff has mentioned so many things which were alleged to have been damaged, but there is no evidence to show how those items were stored in the medical store has to be explained by the plaintiff. Obviously, there is no evidence to that regard. While the tenants occupied the same properties, how the plaintiff can claim damages for those portions. Further the plaintiff has not produced any piece of paper to prove that the plaintiff mentioned items were damaged at



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the time of eviction. Hence the plaintiff miserably failed to prove his case through sufficient evidence. Therefore, the plaintiff is not entitled to damages as prayed for in the plaint. Thus, the point is answered.

Point Nos.6 & 7

27. The plaintiff has filed suit for the relief of declaration, recovery of possession and for damages and the trial Court has decreed the suit based on the evidences adduced by both the parties. The trial Court has failed to consider the document/Ex.B.4, the notices sent to the defendants under Section 7 and 6(2) Tamil Nadu Land Encroachment Act. Merely because of non production of registers tapal registers, the Court cannot reject the documents filed by the defendants. The plaintiff has not even disputed the document Ex.B.4 the notices issued by the defendants through cross examination. Therefore, the trial Court had lost its sight in respect of the notices issued by the defendants. Further, the trial Court failed to consider that the plaintiffs have not filed any documents to prove their continuous possession for more than the statutory period and the plaintiff mainly relied on the Will and the sale deed in the year 1993. Prior to that no documents were filed by the plaintiff.



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28. The trial Court relied upon the evidence of D.W.1, where he admitted that the plaintiffs are in possession for more than 60-70 years. D.W.1 was working in the Commissioner office only for few years and he has not even perused the records and there is no evidence as to how he stated about the possession of the plaintiff and only because of the oral admission made by the defendants' side evidence, the Court cannot presume that the plaintiff was in possession of the property for more than statutory period. It is the duty of the plaintiff to prove his own case by adducing oral and document evidences, but the plaintiff was not even examined any independent witness to prove his continuous possession not produced any documents. Further the plaintiff has not produced any documents to prove the damages caused to him and not even produced any piece of evidence in respect of values of things alleged to have been damaged and also not even produced bills for the purchase of the above said items mentioned in the item 3 of the plaint schedule and further the trial Court failed to consider that the the defendants have issued notice under section 7 and 6(2) of Tamil Land Encroachment Act and they they acted as per the provisions of the Act and thereby, there is a bar under Section 14 to take action against the officials who acted against the provisions of Tamil Nadu



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Land Encroachment Act. Therefore, the trial Court has not considered the above said aspects and simply decreed the suit as prayed for. Therefore, the decree and judgment passed by the trial Court are unsustainable and liable to be set aside. Therefore, as discussed above this court is of the opinion that the appeal is liable to be allowed by setting the judgement and decree of the trial Court. Thus, these points are answered.

Point No.8

29.In view of the discussion made in point Nos. 1 to 7, the plaintiffs are not entitled to any relief through the suit and this Court has also decided that this appeal is to be allowed. Therefore, the decree and judgment passed by the trial Court are liable to be set aside.

30. In the result, this appeal is allowed and the decree and judgment passed in O.S.No.176 of 2004 on the file of the I Additional District Judge, Tirunelveli are set aside and suit is dismissed. No cost. Consequently connected miscellaneous petition is closed.

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NCC : Yes/No
Index : Yes/No
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