



C.R.P.(MD)No.583 of 2021

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED: 06.03.2025

CORAM:

THE HONOURABLE MS.JUSTICE R.POORNIMA

C.R.P.(MD)No.583 of 2021

and

C.M.P.(MD)Nos.3156 and 3157 of 2021

Marimuthu Nadar Higher Secondary School,
Rep. Through its Secretary,
Marimuthu (Former),
Thalaivaipuram,
Chettiyarpatti Village,
Rajapalayam Taluk,
Virudhunagar District.

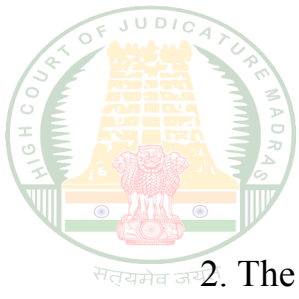
A. Balaji, (Now),
S/o.Arumugasamy,
Secretary,
Marimuthu Nadar Higher Secondary School,
Thalaivaipuram,
Chettiyarpatti Village,
Rajapalayam Taluk,
Virudhunagar District.

(Cause title accepted vide court order dated
19.03.2021 made in CMP(MD).No.2768/2021
in CRP(MD).SR.No.16350/2021 by JNBJS) ... Petitioner/6th Defendant

Vs.

1. Dr.Thilagavathi

... 1st respondent / plaintiff



C.R.P.(MD)No.583 of 2021

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2. The District Collector,
Soolakarai,
Collectorate,
Virudhunagar District.
 3. The District Revenue Officer,
Virudhunagar District.
 4. The Revenue Divisional Officer,
Saatchiayapuram,
Collectorate,
Virudhunagar District.
 5. The Tahsildar,
Rajapalayam Taluk,
Mudangiyaru Road,
Virudhunagar District.
 6. The President,
Thalaiyaipuram Grade II-Village Panchayat,
Chettaiyarpatti,
Rajapalayam Taluk,
Virudhunagar District.
- ... 2 to 6 Respondents /
1 to 5 Defendants

Prayer: The Civil Revision Petition has been filed to set aside the order passed by the learned Sub Court, Srivilliputhur in O.S.No.21 of 2021 of 2021 and strike off the same.

For Petitioner	: Mr.C.Vakeeswaran
For R1	: Mr.V.Karthikeyan
For R2 to R5	: Mr.B.Ramanathan Additional Government Pleader
For R6	: No Appearance



C.R.P.(MD)No.583 of 2021

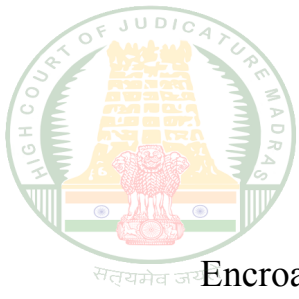
ORDER

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This civil revision petition has been filed to call for the records relating to the plaint in O.S.No.21 of 2021 on the file of the Sub Court, Srivilliputhur and strike off the same.

2. The revision petitioner/6th defendant states that the 1st respondent herein had filed a Suit before the Sub Court, Srivilliputhur in O.S.No.21 of 2021 for the relief of declaration, declaring the 3rd item of the scheduled property in S.No.386/9 i.e., the lane belongs to the 1st respondent and for consequential injunction restraining the petitioner and other from interfering the peaceful possession and enjoyment over the 3rd item of suit scheduled property which is a Lane and classified as Government Poramboke land in the revenue records.

3. The revision petitioner/6th defendant having its office adjoining to the lands using the common land along with the other adjacent owner. The plaintiff is the encroacher of the Government land and constructed a building. Therefore, the 4th defendant/Tahsildar issued an encroachment notice under Section 7 of the Tamil Nadu Land

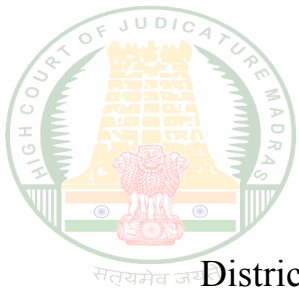


C.R.P.(MD)No.583 of 2021

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Encroachment Act, 1905 against which the 1st respondent filed W.P. (MD)No.146312 of 2020, in which he had stated that the subject matter of the land is a 'Natham land' and seeks patta. While disposing of the writ petition, this Court directed the Tahsildar to call for an explanation to the 1st respondent / 1st plaintiff within 2 weeks from the date of receipt of the order. On 15.12.2020 the 1st respondent / Plaintiff has made explanation to the 5th respondent on receipt of the same 5th respondent should pass order within 6 weeks. Thereafter, the Tahsildar of Rajapalayam under a memo no ந.க.அ/6/2596/2020 dated 06.01.2021 holding that passed an order in S.No.386/9 to an extent of 0.00.13.0 sq.ft of land has been classified as Government Poramboke land in the revenue records and the lane and rejected the request of the plaintiff and directed the plaintiff remove the encroachment.

4. The revision petitioner/6th defendant further argued that as per Section 10 of the Tamil Nadu Land Encroachment Act, 1905, any decision or order passed by a Tahsildar or Deputy Tahsildar under this Act, an appeal shall be preferred before the District Collector and to the Commissioner of Land Administration from any decision or order of a

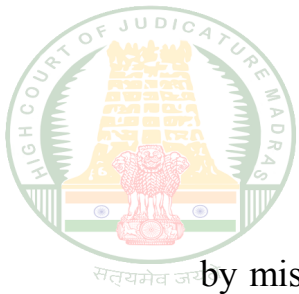


C.R.P.(MD)No.583 of 2021

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District Collector passed otherwise than on appeal. Section 10(A) of the Tamil Nadu Land Encroachment Act, 1905, contemplates any decision or order passed under Revision, this Act may be revised either *suo motu* or on (a) application by the District Collector, if such decision or order was passed by a Deputy Tahsildar, Tahsildar or Collector, (b) by the commissioner of land administration if such decision or order passed by any officer other than the appellate authority, (c) by the State Government if such decision or order was passed by the appellate authority or the Commissioner of Land Administration

5. He further argued that under Section 14 of the Tamil Nadu Land Encroachment Act, 1905, there is a 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 and he had filed a suit seeking exclusive right over the property



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by misleading the court by stating that he is in possession and enjoyment of the property and suppressing the fact that the application of patta has already been rejected by the revenue officials.

6. The revision petitioner/6th defendant has relied upon the Judgment of this Court in the case of **G.Annadurai vs. The District Collector, Kanchipuram District & Others**, reported in **2013-3-LW-802**.

Relevant portion of the said judgment reads as under:-

“23. In the light of the object of Tamil Nadu Land Encroachment Act, 1905, and the provisions thereof, the expression, “in respect of an order of proceeding”, has to be viewed that the proceeding or action taken by the competent authorities under the Act, is with reference to the object of the Act, i.e., removal of encroachments. The intention of the Legislature is very clear that no order or proceeding can be challenged in a Court, as the provisions of the Act, provide for a machinery and also set out appellate and revisional jurisdiction. It cannot be said that an encroacher, who had been in possession and enjoyment of the Government property over a statutory period, is prohibited under the Act from approaching a Civil Court, to seek for a declaration, on the grounds that he has perfected title, by adverse possession. Though title of the Government is accepted, still, law permits assertion of a person's right or title over the property only in a Civil Court. Assignment of land by the Government proves that the ownership vests with the Government. As the revenue authorities are not competent to decide title or grant any declaration relief, a person claiming adverse possession of Government property, has no other



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C.R.P.(MD)No.583 of 2021

alternative except to approach the Civil Court. But at the same time, one has to ascertain from the facts, material on record and also the conduct of the party, opposing the action or proceeding, taken under the provisions of the Act, the time and the stage, as to when the action of the authorities is indirectly challenged in the Court. The words “in respect of ” have to be given the plain meaning, “connected with or attributable to” and therefore, when the petitioner has failed to substantiate his claim, before the authorities, and when the petitioner, has not approached the civil court, at the earliest point of time, and when the correctness of the orders passed against him are under challenge before the revisional authority, it would be inappropriate to entertain a suit for declaration that he has perfected titled, by adverse possession.

28. Upon perusal of the plaint averments, it is clear that the suit property is a Government property and that proceedings have been initiated under the Act and thus admitting the title of the property, the Revision petitioner/plaintiff and others have been taking steps to obtain, assignment from the Government. But then, the authorities, have initiated proceedings for eviction under the Act. The proceedings initiated against the Revision Petitioner/plaintiff has reached the stage of revision, under Section 10(A) of the Act and at this juncture, the Revision Petitioner/plaintiff has filed the suit in December 2012 for declaration.

29. No doubt, the revenue authorities cannot adjudge the declaratory rights, in so far as the title to the properties is concerned. But, in the case on hand, as rightly observed by the Court below, there is no dispute over the title of the suit properties and even the Revision petitioner/plaintiff, and others have admitted that the suit property is a Government poromboke and that is why they have sought for assignment of house sites. When the Government's



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C.R.P.(MD)No.583 of 2021

title to the property is accepted, then it is not open to him to seek for any declaration, beyond the statutory period.

31. All along, the Revision Petitioner / plaintiff had remained quiet, for so many years, even after an adverse order under Section 6 of the Act has been passed, and now, taking advantage of the prayer in the suit, he has attempted to undo, whatever that has been done earlier by the statutory authorities under Sections 6 and 10 of the Act, and the same cannot be permitted. If at all the Revision Petitioner / Plaintiff had perfected title, by adverse possession, over the Government Property, action for declaration of title ought to have been made, the moment his possession and enjoyment has been interfered with and not after the statutory authorities have exercised their jurisdiction and passed adverse orders. In the light of the above discussion, this Court is of the view that no manifest illegality can be attributed to the order dated 01.02.2013 passed by the learned Subordinate Judge, Tambaram, in rejecting the plaint.”

7. He further relied upon the unreported judgment of this Court in the case of ***K.S.Nallasamy and others vs. Ramasamy Gounder and others*** in **CRP.(PD)No.310 of 2021**. Paragraph 16, 17 and 18 of the said judgment reads as under:-

“16. Section 14 of the Tamil Nadu Land Encroachment Act, 1905 is as follows:-

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



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C.R.P.(MD)No.583 of 2021

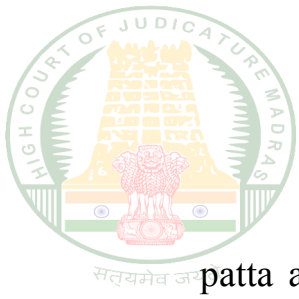
under this Act shall be called in question in any court, in any suit or application and no injunction shall be granted by any court in respect of any action taken or to be taken by such officer or authority or the State Government in pursuance of any power conferred by or under this Act”.

17. There is a clear bar to any Civil Court to entertain any suit or to grant any relief in any suit in which proceedings under the said Act been initiated. In this case, proceedings had been initiated as is evident from the documents filed before this Court. Notices had been issued specifically under the Tamil Nadu Land Encroachment Act, 1905 calling upon the plaintiffs not to encroach on the very suit properties itself, namely, R.S.Nos.161 & 163, Vanipudur Village by putting up either gate or putting up compound wall detrimental to the interest of the villagers and quite selfishly for the benefit of their own selves to the exclusion of every other villager. This cannot be permitted. This is prohibited.

*18. In **T.Arivandandam vs. T.V.Satyapal**, (1977) 4 SCC 467, the Hon'ble Supreme Court held as follows:-*

“2. Here is an audacious application by a determined engineer of fake litigations asking for special leave to appeal against an order of the High Court on an interlocutory application for injunction. The sharp practice or legal legerdmain of the petitioner, who is the son of the 2nd respondent, stultifies the court process and makes a decree with judicial seals brutum fulmen. The long arm of the law must throttle such litigative caricatures if the confidence and creditibility of the community in the judicature is to survive...”

8. He further argued that the 1st respondent earlier sought for



C.R.P.(MD)No.583 of 2021

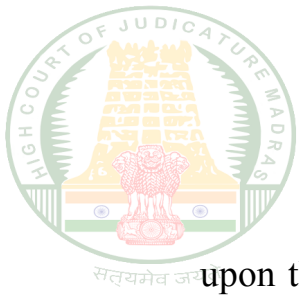
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patta and now seeks declaration of title. Both are contrary and the trial Court without going into the merits of the case also granted *status quo* which is improper.

9. He further relied upon the judgment of the Hon'ble Supreme Court in the case of *Tarivandandam vs. T.V.Satyapal and another* reported in **(1977) 4 SCC 467** and stated that, it was held in paragraph 5 of the said order, that there is a clear bar to entertain the suit by the trial Court and liable to be struck down.

10. Per contra, learned counsel for the 1st respondent/plaintiff argued that he has filed a suit for declaration of title and he had produced all the details of the previous rejection order and further stated that if the suit is barred by any law it is the only remedy available in the Code of Civil Procedure. The revision petitioner should approach the trial Court by filing a petition under Order VII Rule 11 of CPC and he has no right to approach this Court to invoke Article 227 of the Constitution.

11. The learned counsel for the 1st respondent/plaintiff relied



C.R.P.(MD)No.583 of 2021

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upon the judgement of the Hon'ble Supreme Court in the case of **Srihari Hanumandas Totala vs. Hemant Vithal Kamat**, reported in **(2021) 9 SCC**

99. Paragraph 11 and 17, 24, 27 and 28 of the said judgment reads as under:-

“11. The application under Order 7 Rule 11 was dismissed by the trial Judge on 01.07.2019 for the following reasons:-

11.1. With respect to non-payment of the court fee, according to Order 7 Rule 11 (c), a plaint would only be rejected if the plaint is written on a paper that is insufficiently stamped, and the court requires the plaintiff to supply the requisite stamp paper within a time fixed and despite such an order, the plaintiff fails to do so. In this case, no such order was passed by the Court.

11.2. The cause of action had been specifically pleaded by the first respondent in Para 5 of the plaint.

11.3. In order to reject a plaint for the suit being barred by any law under Order 7 Rule 11(d), the court needs to be guided by the averments in the plaint and not the defence taken. The grounds taken by the appellant – that the issues raised had been decided by the decree of the trial court in O.S.No.103 of 2007 and affirmed on appeal by the High Court – were the defence of the appellant. Thus, these cannot be taken into account while rejecting a plaint under Order 7 Rule 11 CPC. Moreover, the issue as to whether the suit is barred by res judicata cannot be decided in an Order 7 Rule 11 application but has to be decided in the suit.

17. Order 7 Rule 11(d) CPC provides that the plaint shall be rejected “where the suit appears from the statement in the



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plaint to be barred by any law". Hence, in order to decide whether the suit is barred by any law, it is the statement in the plaint which will have to be construed. The court while deciding such an application must have due regard only to the statements in the plaint. Whether the suit is barred by any law must be determined from the statements in the plaint and it is not open to decide the issue on the basis of any other material including the written statement in the case. Before proceeding to refer to precedents on the interpretation of Order 7 Rule 11(d) CPC, we find it imperative to refer to Section 11 CPC which defines res judicata:

11. Res judicata – No court shall try any suit or issue in which the matter directly and substantially in issue has been directly and substantially in issue in a former suit between the same parties, or between parties under whom they or any of them claim, litigating under the same title, in a court competent to try such subsequent suit or the suit in which such issue has been subsequently raised and has been heard and finally decided by such court."

24. In a more recent decision of this Court in Shakti Bhog Food Industries Ltd. vs. Central Bank of India, a three Judge Bench of this Court, speaking through A.M.Khanwilkar, J., was dealing with the rejection of a plaint under Order 7 Rule 11 by the trial Court, on the ground that it was barred by limitation. The Court referred to the earlier decisions including in Saleem Bhai v. State of Maharashtra, Church of Christ Charitable Trust and observed that: (Church of Christ Charitable Trust case, SCC p. 714, para 11)

"11... It is clear that in order to consider Order 7 Rule 11, the Court has to look into the averments in the plaint and the same can be exercised by the trial court at any stage of the suit. It is also clear that the averments in the written statement are immaterial and it is the duty of the court to scrutinise the



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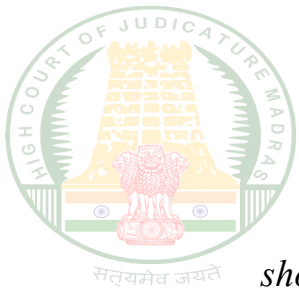


C.R.P.(MD)No.583 of 2021

averments/pleas in the plaint. In other words, what needs to be looked into in deciding such an application are the averments in the plaint. At that stage, the pleas taken by the defendant in the written statement are wholly irrelevant and the matter is to be decided only on the plaint averment. These principles have been reiterated in Raptakos Brett & Co. Ltd. vs. Ganesh Property and Mayar (H.K.) Ltd. vs. Vessel M.V.Fortune Express.”

27. Be that as it may, on a reading of the plaint, it is evident that the first respondent has not made an attempt to conceal the fact that a suit regarding the property was pending before the civil court at the time. It is also relevant to note that at the time of institution of the suit (O.S.No.138 of 2008) by the first respondent, no decree had been passed by the civil court in O.S.No.103 of 2007. Thus, the issues raised in O.S.No.103 of 2007, at the time, had not been adjudicated upon. Therefore, the plaint, on the face of it, does not disclose any fact that may lead us to the conclusion that it deserves to be rejected on the ground that it is barred by principles of res judicata. The High Court and the trial court were correct in their approach in holding, that to decide on the arguments raised by the appellant, the court would have to go beyond the averments in the plaint, and peruse the pleadings, and judgment and decree in O.S.No.103 of 2007. An application under Order 7 Rule 11 must be decided within the four corners of the plaint. The trial Court and the High Court were correct in rejecting the application under Order 7 Rule 11(d).

28. For the above reasons, we hold that the plaint was not liable to be rejected under Order 7 Rule 11(d) and affirm the findings of the trial court and the High Court. We clarify however, that we have expressed no opinion on whether the subsequent suit is barred by the principles of res judicata. We grant liberty to the appellant, who claims as an assignee of the bona fide purchaser of the suit property in an auction conducted by KSFC, to raise an issue of the maintainability of the suit before the Additional Civil Judge, Belgaum shall consider whether a preliminary issue



C.R.P.(MD)No.583 of 2021

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should be framed under Order 14, and if so, decide it within a period of 3 months of raising the preliminary issue. In any event, the suit shall be finally adjudicated upon within the outer limit of 31.03.2022.”

12. The learned counsel for the 1st respondent/plaintiff further relied upon the judgment of this Court rendered in the case of ***M.Kishanlal vs. K.Pushpavalli @ Elizabeth Pushpavalli*** in **CRP(PD) No.1512 of 2021** dated 05.01.2022, wherein the learned Single Judge relied upon the judgment of the Hon'ble Supreme Court in the case of ***Virudhunagar Hindu Nadargal Dharma Paribalana Sabai and Others vs. Tuticorin Educational Society and Others***, reported in **(2019) 9 SCC 538**, held that the High Court will refrain from exercising jurisdiction under Article 227 of the Constitution of India, not merely as a measure of self-imposed restriction, but as a matter of discipline and prudence, when a remedy under the Code of Civil Procedure is available to the party for approaching the High Court and this is not a fit case to excise jurisdiction under Article 227 of the Constitution and therefore, states that revision petition itself is not maintainable as without approaching the Court for rejection of the plaint, the petitioner has no right to approach this Court under Article 227 of the Constitution of India and try to dismiss the civil



C.R.P.(MD)No.583 of 2021

revision petition.
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13. The learned Additional Government Pleader appearing for the respondents 2 to 5 argued that the Tahsildar rejected the request of the petitioner to grant patta, since the property is a poramboke land and eviction order issued by Tahsildar directed the plaintiff to evict the land. He further argued that the exclusive patta could not be granted in favour of the individual. He further argued that the trial Court after knowing that the plaintiff encroached the Government Poramboke land granted an injunction. No Court has right to grant injunction against the encroacher who had occupying the Government Poramboke land.

14. He also relied upon the judgement of this Court in the case of the *State of Tamil Nadu Rep. by District Collector, Thanthonimalai and Others vs. S.Venkatachalam and Others*, reported in **2018 6 CTC 297**. Paragraph 24 (f) of the said judgment reads as follows:-

“24(f). All the District Collectors in the State of Tamil Nadu are hereby directed to issue suitable directions to their Subordinate Officers to take



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C.R.P.(MD)No.583 of 2021

appropriate steps for strike of the complaints wherever the cases already filed and pending are in which attracting the provisions under the Tamil Nadu Public Premises (Eviction of Unauthorised Occupants) Act, 1975 and Tamil Nadu Land Encroachment Act, 1905 within their respective jurisdictional Courts without any delay.”

15. Heard the learned counsel on either side and perused the materials available on record.

16. The 1st respondent / plaintiff has filed a suit before the trial Court seeking declaration of title and injunction in respect of suit schedule land which is classified as poramboke land. He had earlier filed a petition before the revenue officials requesting to grant patta but his request was rejected on 06.01.2021 by the Tahsildar of Rajapalayam and directed the plaintiff to remove the encroachments.

17. Section 10 of the Tamil Nadu Land Encroachment Act, 1905, provides that if the party aggrieved by the order of Tahsildar, an appeal shall lie to the Collector.



C.R.P.(MD)No.583 of 2021

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18. Section 10A of the Tamil Nadu Land Encroachment Act, 1905 confers revisionary power stating that any decision or order passed under this Act may be revised either suo motu or on application -

- (a) by the District Collector, if such decision or order was passed by a Deputy Tahsildar, Tahsildar or Collector;
- (b) by the Commissioner of Land Administration if such decision or order was passed by any officer other than the appellate authority;
- (c) by the State Government, if such decision or order was passed by the appellate authority or the Commissioner of Land Administration.

19. Section 14 of the Tamil Nadu Land Encroachment Act, 1905 bars the jurisdiction of the Civil Court. However, the petitioner without availing appeal or revision remedies against the order of the Tahsildar as provided under the Act and without offering any explanation directly approach the Civil Court, which is not maintainable. The only objection by the respondent is that if the suit were to be challenged, the



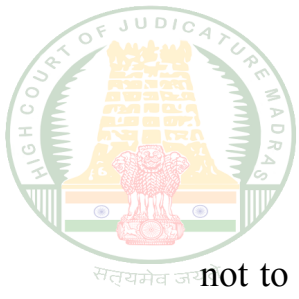
C.R.P.(MD)No.583 of 2021

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petitioner should file a petition under order 7 Rule 11 of CPC and therefore, the contention is that the respondent has no right to approach the High Court directly to struck of the plaint.

20. Article 227 of Constitution of India grants the High Court the power of Superintendence over all the Courts and Tribunals within its jurisdiction. However, only in exceptional cases viz., if the suit is frivolous, barred by Statute the High Court has the power to struck of. In this context, Section 14 of the Tamil Nadu Land Encroachment Act bars the jurisdiction of the Civil Court and prohibits unauthorised use of the Government lands. This Court rely upon the judgement reported in **2013-3-LW-802** rendered in the case of ***G.Annadurai vs. The District Collector, Kanchipuram District & Others***, it has been held that no Civil Court should entertain a suit filed by a person who is in possession and enjoyment of a Government property and further held that no injunction should not be granted.

21. The above judgement which is squarely applicable to this case, since the Act bars the jurisdiction of the Civil Court, this Court ought



C.R.P.(MD)No.583 of 2021

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not to have entertain the suit and granted injunction. Therefore, the suit is liable to be struck of.

22. In the result, this Civil Revision Petition is allowed and the plaint in O.S.No.21 of 2021 on the file of Subordinate Court, Srivilliputhur is struck of. No costs. Consequently, connected miscellaneous petitions are closed.

06.03.2025

NCC :yes/No
Index :yes/No

rgm

To

- 1.The Subordinate Court,
Srivilliputhur.
- 2.The Record Keeper,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.

19/20



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C.R.P.(MD)No.583 of 2021

R.POORNIMA, J.

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C.R.P.(MD)No.583 of 2021
and
C.M.P.(MD)Nos.3156 and 3157 of 2021

06.03.2025