

**In the Court of the I Additional Subordinate Judge, Nagercoil
Present:- Tmt.V.Irudaya Rani, M.Sc., M.L.,**

**I Additional Subordinate Judge.,
Nagercoil.
Friday, the 8th day of August, 2025.**

C.M.A. No. 6/2021

1. Muthukrishnana

2. Ida Mary

.....Appellants/ Petitioners

Vs.

1.The Spl. Officer, B.D.O.,
Rajakkamangalam.

2. The president,
Kanyakulam Panchayat

3. The DRO, Nagercoil.

4. The Thasildhar, Agastheeswaram Taluk.

5. The District Collector,
Kanyakumari District.

... Respondents/ Respondents

**On Appeal from the order and decretal order passed by the Learned I
Additional District Munsif, Nagercoil in I.A.2/2020 in O.S.No.202/2020, dated
27.07.2021.**

Between:

1. Muthukrishnana

2. Ida Mary

.....Petitioners/ Plaintiffs

Vs.

- 1.The Spl. Officer, B.D.O.,
Rajakkamangalam.
 2. The president,
Kanyakulam Panchayat
 3. The DRO, Nagercoil.
 4. The Thasildhar, Agastheeswaram Taluk.
 5. The District Collector,
Kanyakumari District.
- ... Respondents/ Defendants

This appeal came up before me for final hearing on 29.07.2025 upon perusing the material records placed in this case and upon hearing the arguments of Thiru.Radha Krishnan, Advocate for the Appellants and Government Pleader for the Respondents and having stood over till this day for consideration, this court delivered the following

JUDGMENT

The Appellants/ Petitioners have preferred this appeal against the fair order and decreetal order passed by Learned I Additional District Munsif, Nagercoil in I.A.2/2020 in O.S.202/2020, dated 27.07.2021.

2.Brief averments of the petition in I.A.2/2020 in O.S.202/2020 on the file of I Additional District Munsif, Nagercoil:

From 15.01.1983 the 1st petitioner and his father has been enjoying the plaint schedule property without any interruption for an extent of 105 cents. On 06.05.2003 the 1st petitioner executed a possessory rights transfer deed in the name of his wife who is the 2nd petitioner and she mutated the revenue records in her name and the

petitioner's are in joint possession of the petition schedule property. Thereafter the 1st petitioner's constructed a house bearing door No.2/26A and residing in the house and also continuously running the bricks making factory in the petition schedule property and paying revenue, business taxes, obtained electricity connection No.07-131-005-1337 and water connection. As such the petitioners are in the possession and enjoyment of the plaint schedule property. The petitioners/plaintiffs are having adverse possession over the plaint schedule property and having valid right and title over the plaint schedule property. the plaint schedule property originally belongs to the Government of Tamil Nadu. On 18.11.2017 the 1st respondent sent a notice to the 1st petitioner to vacate the petition schedule property. On 29.11.2017 the 1st petitioner / plaintiff sent his reply to the respondents. The petitioners are having valid license to run the factor. On 02.11.2020 the officials from the panchayat and some other persons illegally entered in to the plaint schedule building and attempted to evict the petitioners/plaintiffs for the plaint schedule property forcibly without any prior information. Hence this petition.

3) The respondents have filed counter in I.A.2/2020 in O.S.202/2020 on the file of I Additional District Munsif, Nagercoil:

This court has no jurisdiction to entertain the subject matter involved in the suit because the suit is barred under the provisions of Tamilnadu Land Encroachment Act. The Description of the property contained in the plaint schedule is in correct and misleading. The petition scheule property is a puramboke property which absolutely and exclusively belongs to the State. The plaintiff has no right or

title over any portion of the suit property. The plaintiffs are nor entitled to claim any injunction against the true owner. The revenue authorities have booked 'B' memo case against the petitioners and subsequently the petitioner have been evicted from the suit property and thereafter there is no 'B' memeo cases against them. As per settlement 'A' register, the property comprised in R.S.No.430/5 of Putheri Village with an extent of 1.62.50 hectares is classified as government purambooke mayanam. In this land an extent of 0.42.50 hectares was under the encroachment of one Thiru. Krishnana son of Anbaih Nadar and 'B' memeo of Rs.200 per fasli was imposed on him until fasli 1428. The petitioners or their predecessor in-title are not having any long continuous and hostile possession over the suit property as alleged at any point of time. The 1st respondent is having right to issue notice to vacate the plaintiffs from the suit property and as such the plaintiffs are evicted from the suit property. The 1st petitioner being an encrocher is not entitled to transfer any right to the 2nd petitioner as alleged. As per the proceedings of Zonal Deputy Tahsildar, Agastheeswaram in B1/2015/2018 dated 23.06.2019, the 'B' memo was cancelled and the land was handed over to the panchayat Department for the construction of Solid Waste management under Swach Bharath Scheme as per District Collector's order B1/162/2020 dated 03.10.2010 and the building for the said purpose has been constructed for a tune of Rs.21,66,000/- (Rupees Twenty One Lakhs Sixty Six Thousand) and the work has been completed in the suit property. Hence the petition be dismissed with costs.

4. On the side of the petitioners no oral and documentary evidence and respondents no oral evidence and Ex.R1 to R3 were marked.

5. Appeal Grounds:-

The order is contrary to law. The lower court failed to consider the documents that have been filed by the petitioners along with the suit. They have obtained license from the Panchayat for conducting bricks manufacturing company by paying licence fees. From the year 1983 the 1st petitioner and his father are in absolute possession over the suit property and thus the petitioner is entitled to claim adverse possession. The lower court has failed to observe that the possession of the schedule property by the petitioner is continuous, hostile, open, actual and exclusive for a period of about 37 years, and thus they are entitled to possess the land by adverse possession. The petition filed by the petitioner under order 39 Rule 1 and 2 is for a temporary injunction restraining the respondents from disturbing the petitioner's peaceful possession and enjoyment over the petition schedule property. The lower court has failed to notice that the petitioners have paid house tax, land tax E.B Bill even after the cancellation as alleged in the Ex.R2. thus the officials have accepted the possession of the petitioners over the schedule property and they have issued land tax receipt, house tax receipt and license for the year 2020 ie., after the cancellation as per Ex.R2. The lower court has failed to observe that even after the construction of solid waste management as alleged in Ex.R1 the petitioners are in continuous, uninterrupted open and actual possession over the schedule property without any hindrance to the construction under Swach Bharat Scheme. In any view of the matter the order and the decretal order passed by the lower court is not sustainable and the

petition under order 39 Rule 1 and 2 of the Code of Civil Procedure 1980 is liable to be allowed.

6. After hearing both side and perusal of records the following points are framed for the disposal of civil miscellaneous appeal.

1) Whether the petitioner is entitled to the relief of interim injunction ?

2) Whether the appeal is to be allowed ?

7. Point No.1 and 2:-

Heard both sides. Records perused. The appellants herein is the plaintiffs in the original suit and had filed the application under Order 39 Rule 1 and 2 of CPC for an order of ad-interim injunction. The trial court after hearing both parties had negatived the claim and dismissed the application. Hence this present appeal is filed.

8. The petitioner filed the suit for declaration, Permanent Injunction and for other reliefs. Admittedly, the petition schedule property is a puramboke land. According to the petitioners, the petitioners are in possession and enjoyment of the petition schedule property from 15.01.1983. Thus, the petitioners are having adverse possession over the petition schedule property and having valid right and title over the petition schedule property.

9. The respondents raised the contention that the petition schedule property is a puramboke land, which is absolutely and exclusively belongs to the state. Further, the authorities have taken the petition schedule property under the Tamil Nadu Land

Encroachment Act. Hence the suit is barred as per the provisions enshrined under the said Act.

10. On the side of petitioners no documents are produced and no oral evidence has been adduced. On the side of respondents no oral evidence has been adduced. On the side of the respondent filed three Exhibits. Ex.R1, is copy of the proceedings of the District Collector. Ex.R2, is copy of the proceedings of the Tahsildar. Ex.R3, is Photo of the petition schedule property.

11. On perusal of Ex.R2 issued 'B' memo for the petition schedule property, has been canceled by the respondent. As per settlement 'A' register the property comprised in R.S No.430/5 of Putheri Village, within extent of 1.62.50 hectares is classified as Government poramboke mayanam. Hence, the petition schedule property is being poramboke land. If the 'B' memo has been issued to the petitioners regarding the lands in question the petitioners are admittedly encroaches of Government land. Hence, the possession of the petitioners, was recognized by the Revenue Department with condition that they shall vacate and hand over possession to the Revenue Department when required the property to the Department for public purpose.

12. On perusal of Ex.R1, R1 shows that the petition schedule property was handed over to the Panchayat Department for construction of solid waste management under Swach Bharath Scheme as per the 5th respondents order dated 03.10.2020 and the building also constructed in the said property for a tune of

Rs.21,66,000/-. Now the work has also been completed in the petition schedule property.

13. At this juncture, as per section 14 of the Tamil Nadu Land Encroachment Act.

Section 14 reads as follows: 14. Bar of jurisdiction of courts: Notwithstanding anything contained in any law for the time being in force no order passed or proceedings 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

With the above provision of law and from the foregoing discussions this court is very much convinced that bar of jurisdiction provided under Section 14 squarely applied to the facts of the case on hand. As such, it would not be proper in the interest of justice to grant an order of temporary injunction till the disposal of the suit as prayed for in the petition. Accordingly, the point is answered in negative.

14. Hence, this court finds that the trial court has considered the pleadings of both parties and decided the issue correctly as per law.

15. As discussed above, this court does not find any grounds to interfere with the order of the trial court. Accordingly the points are answered.

In the result

The miscellaneous appeal is dismissed by confirming the order passed by the Learned 1st Additional District Munsif, Nagercoil in I.A.2/2020 in O.S.202/2020 dated 27.07.2021. No cost.

This judgment dictated to the Steno-typist and typed by her and taken printout, corrected and pronounced by me in the open court on the 8th day of August 2025.

I Additional Subordinate Judge,
Nagercoil.

Witnesses examined on the side of the Appellants:- Nil

Witnesses examined on the side of the Respondents:- Nil

Exhibits marked on the side of the Appellants:-

Exhibits marked on the side of the respondents:- Nil

I Additional Subordinate Judge,
Nagercoil.

C.M.A. No. 6/2021,
Fair / Draft Judgment,
08.08.2025.