

**IN THE COURT OF SUBORDINATE JUDGE,  
MADURANTAKAM.**

**Present: Mr. T. GANESH, B.A., B.L.,  
Subordinate Judge,  
Madurantakam.**

**Thursday, this 2<sup>nd</sup> day of January 2025**

**I.A.No.1/2024**

**in**

**O.S.No. 90/2018**

**(CNR.No.TNCG13 – 000351-2018)**

K.Shanmugam

...Petitioner/ Plaintiff

..Vs..

1. K.Nandakumar

2. N.Saraswathi

...Respondents/ Defendants

This petition coming up for final hearing on 10.12.2024 in the presence of Mr.R.S.Renganathan, counsel for petitioner, Mr.E.Elango, counsel for the respondents, and having heard the arguments on both sides and having perused the records, having stood over for the consideration of this court till date, this court delivered the following;

**ORDER**

This petition is filed by the petitioner under section 151 of CPC to try both suits in O.S.No.90 of 2018 and O.S.No.75 of 2019 jointly by recording

*I.A.1/2024 in O.S.90/2018, AFT, dated 02.01.2025, Sub Judge, Madurantakam*

common evidence in O.S.No. 90 of 2018 as its filed for larger relief and to pass such other suitable orders.

**2. Petition in brief:**

Petitioner has filed the suit as against the respondents/defendants for the relief of declaration of his title over the suit "B" schedule property in survey No. 19/14D of Kolampakkam Village and for recovery of possession of the same from the respondents/defendants and also for mandatory injunction as against the respondents/defendants to remove the compound wall illegal put up by them in the suit "B" schedule property belongs to him. 1<sup>st</sup> respondent/1<sup>st</sup> defendant filed a suit O.S.No. 75 of 2019 before this Hon'ble Court against the petitioner for the relief of permanent injunction in respect of survey No. 19/4 of Kolampakkam Village by alleging that he put up compound wall only in his property in survey No. 19/4 of Kolampakkam Village and not in survey No. 19/14D belongs to the petitioner. Petitioner also filed his written statement in O.S.No. 75 of 2019.

Advocate commissioner appointed by this Hon'ble Court in I.A.No. 438 of 2018 in O.S.No.90 of 2018 submitted his report and plan wherein the learned advocate commissioner stated that the respondents/defendants by encroaching a portion (shown as triangular shape marked as BCD in advocate commissioner plan) in survey No. 19/14D belongs to the petitioner and put up compound wall to the length of 17.2 meters with height of 5 feet on the north- south direction. Parties to both the suits in O.S.No. 90 of 2018 and O.S.No. 75 of 2019 pending before this Hon'ble Court are one and the same and further the issues involved in the suit is that whether the defendants in O.S.No. 90 of 2018 put up compound wall illegally in survey No. 19/14D belongs to plaintiff or the

compound wall is constructed in survey No. 19/4 as alleged by the 1<sup>st</sup> defendant in his suit O.S.No. 75 of 2019 and further the other issues are involved in both the suits are ancillary issues to the above said main issue. So, the parties to the suit in both the cases to be let in evidence on their respective suits regarding the above said main issue and other ancillary issues related to it. If both the suits are tried separately and independently it would take and consume more and much time in recording evidence in both the cases independently on either side of the parties and further in such case there may be chances for over lapping of evidences which may cause and leads to confusion to decide both the cases on merits and further if the cases tried separately and independently without affording parties an opportunity for joint trial it may or will deliver of conflicting judgments in both the cases. So, to avoid all those complications both the suits O.S.No. 90 of 2018 and O.S.No. 75 of 2019 may be tried together jointly and both the suits may be disposed of on merits by and through a joint trial by recording common evidence in O.S.No. 90 of 2018 as larger relief is asked in the said suit. Unless both the above said original suits are tried together jointly and disposed of on merits by and through a joint trial, it would cause loss and hardship to both parties to the suit and further trying the both suits on merits by and through jointly trial no prejudice would be caused to both parties to the suit.

Hence the petitioner prays to pass an order for joint trial of both suits in O.S.No.90 of 2018 and O.S.No.75 of 2019 pending on the file of this Hon'ble Court to dispose of the both the suits by and through joint trial by recording common evidence in O.S.No. 90 of 2018 as its filed for larger relief and to pass such other suitable orders.

### **3. Counter of respondents in brief:**

The respondents deny the allegations set out in the affidavit. The 1<sup>st</sup> defendant filed the suit in O.S 75/2019 as against the petitioner for permanent injunction in respect of S.No. 19/4 to an extent of 0611 Sq meters bounded on the east by Sivaprakasa mudaliar, west by Kistappa mudaliar, south by street and north by Paramasivam mudaliar. The respondent is the absolute owner of the eastern side of the suit property, i.e S.No. 19/4 and they are in exclusive possession and enjoyment of the same. Patta also issued by the government after due enquiry. Respondents constructed house in the said property and residing therein. He put up wall in his property alone and not in the property of the petitioner. Before putting compound wall, this respondent has measured their property with the help of surveyor. They never encroached into the petitioner's/plaintiff's property as alleged in the petition. They are already put up a compound wall in their property i.e S.No: 19/4 much prior to the earlier suit in O.S.No: 7/2017, filed by the petitioner/plaintiff before the Hon'ble District Munsiff at Maduranthagam. This respondent further submits that at the time of construction of the compound wall, the petitioner/plaintiff also present. The petitioner/plaintiff has not objected the same.

Petitioner/plaintiff has filed the above suit as against the respondents for declaration and recovery of possession in respect of S.No. 19/4D. Petitioner has filed an application to appoint an advocate commissioner to measure the suit property with help of surveyor and the Hon'ble court also pleased to appoint an advocate commissioner in I.A.No: 438/2018. Learned Advocate Commissioner has not properly measured the suit property. He measured the western side of the suit property. Respondents requested the learned Advocate Commissioner to

measure the property on the eastern side of the suit property. But he refused for the same. If the learned Advocate Commissioner has measured on the eastern side of the suit property, the truth will come out. Respondents also already filed a memo before this Hon'ble court on 23.01.2021, with regard to the measurement. Both the suits in O.S.No. 90/2018 and O.S.No. 75/2019, the properties are not one and same. Only to drag the further proceedings the present petition is vexatiously filed by the petitioner. This respondent further submits that they are also ready to commence the suits separately. Hence the respondents pray for dismissal of the petition.

4. Heard both sides and perused the records.

**5. Point:**

*“Whether this application can be allowed?”*

In nut shell the dispute between both parties in respect of construction wall in whose property. Petitioner contends that the respondents constructed wall in his property and filed the suit for declaration and recovery of possession in O.S 90/2018. Likewise, the 1<sup>st</sup> respondent filed the suit in O.S 75/2019 for permanent injunction in respect of his property as such the wall was constructed by him in his property. Hence the petitioner files this application to try both suits jointly.

Admittedly parties are one and the same in both suits. Respondents defend this application as such suit properties are different and hence the application has to be dismissed. No doubt that the survey numbers in both suit differs. But it is pertinent to note that the dispute was, in which property the disputed compound wall was constructed. As rightly pointed out by the

petitioner the main dispute was in respect of the construction of compound wall. Main issue between the both parties also focussed only upon the same. Hence if both suits are tried jointly there is no doubt that the valuable time of the court will be saved. If they tried separately it will lead to complicated proceedings. No loss or prejudice will be caused to respondents if both suits are tried jointly. Hence there is no bar to allow this application and this point is decided accordingly.

**6. Result:**

In fine this petition is allowed that the both suits in O.S 90/2018 and O.S 75/2019 shall be tried jointly and the evidence shall be taken in O.S 90/2018. No costs.

Directly typed in my personal lap-top, corrected and pronounced by me in the open court, this 2<sup>nd</sup> day of January 2025.

Subordinate Judge,  
Madurantakam.

**I. Petitioner side evidence and Exhibits : Nil**

**II. Respondents side Evidence and Exhibits : Nil**

Subordinate Judge,  
Madurantakam.

**TNCG130003512018**

