

IN THE COURT OF DISTRICT MUNSIF AT MADURANTAKAM

PRESENT: Tmt.R.Mahalakshmi., B.A., B.L., L.L.M.,
District Munsif, Madurantakam

Tuesday, the 2nd day of June, 2026

O.S.No.101/2020

CNR No.TNCG14-000-106-2020

Kali

...Plaintiff

Vs.

Subramani

...Defendant

This suit is coming up for final hearing before me in the presence of Tr.E.Rajan Gandhi, Advocate for Plaintiff and Tr.S.Rajkamal, Advocate for defendant and after perusing the records and after hearing the arguments on both sides and upon perusal of records and having stood over for consideration till this day, this court delivered the following:

JUDGMENT

The suit is filed by the Plaintiff for the relief of mandatory injunction directing the defendant to demolish illegal house construction over the suit B schedule common path way and for the relief of permanent injunction restraining the defendant, his men, agents, servants or representatives from in any way put up compound wall over the suit B schedule property and for costs.

2. The brief averments in the plaint:-

(i) The plaintiff states that the suit 'A' schedule property is the Grama Natham Property and he is in absolute possession and enjoyment of the said property. Initially he put a hut in the said property and after obtaining Grama Natham Patta no.15 in his name he constructed a terraced house in the year 2010 in suit 'A' schedule property and obtained EB service connection and paying house tax.

(ii) The plaintiff further states their runs east-west village cement road. There is a common path way in S.No.214/34 which starts from the village cement road and it is

path way to reach the plaintiff 'A' schedule property. The said path way is 7 feet breadth and 200 feet length which runs north-south to reach plaintiff's house and other persons plot situated on the northern side of plaintiff's house. The plaintiff states that there is no other way to reach the plaintiff house except the common path way which runs in grama natham Survey Number 214/34.

(iii) The plaintiff further states that the defendant is having the property in S.No.214/37 which is situated on the eastern side of suit 'B' schedule path way. The defendant property is situated very next to the village cement road. The plaintiff and others are continuously using 'B' schedule common path way and they are in possession and enjoyment of the said path way. The plaintiff states that the suit 'B' schedule property is the only way available to the plaintiff to reach his house and also for other persons.

(iv) The plaintiff further states that the defendant has no right to obstruct the plaintiff from using the suit 'B' schedule common path way to reach his 'A' schedule property from village cement road. Further the plaintiff states that during the year 2018, the defendant wantonly encroached suit 'B' schedule common path way to an extent of 2 ½ feet on the western side and constructed his house in the part of suit 'B' schedule common path way. Though the plaintiff gave several applications before revenue officials for unlawful occupation of defendant over suit 'B' schedule common path way, no effective steps was taken. Hence the plaintiff is constrained to file the present suit for mandatory injunction and permanent injunction.

3. Written statement filed by the defendant, is as follows:

(i) The Defendants denies each and every averments in the plaint except those that are specifically admitted herein. This suit is not maintainable in law and facts. The averments in the plaint are false.

(ii) The defendant states that the defendant's ancestors were in title and possession and enjoyment of the property situated in Old S.No.32/1 measuring an extent of 12 ¾

cents which is situated in Andavakkam village and they constructed a house and also formed a cattle shed in the eastern side and there is a well in the back side of the property and western side is used for storing haystack. The defendant states that originally the defendant's grandfather namely Kristappa Pillai was in possession and enjoyment of the more than 12 $\frac{3}{4}$ cents in Perumal Koil Street, Andavakkam.

(iii) The defendant further states that at that time there was only tailed house constructed with bricks wall with vacant site in the back portion with a well exclusively belongs to the defendant's family. Further the defendant states that the said Perumal Koil Street runs towards east to west and the tailed house runs from western side to eastern side and runs from south to north. The defendant further states that so called suit 'B' schedule property common path way in S.No.214/34 runs from south to north to a breadth of 5 feet only on the western side of the defendant's property.

(iv) Further the defendant states that the defendant's grandfather had 4 sons namely Manickkam Pillai, this defendant's father Muniya Pillai, Boobala Pillai and Ekambaram Pillai. After death of grandfather the defendant's father and his brothers were in joint possession and enjoyment of the said 12 $\frac{3}{4}$ cents. Subsequently this defendant's father and his brothers orally partitioned to the said house property and other properties in the year 1977 in the presence of all their family members. As per the oral partition this defendant's father and Boobala Pillai were both allotted equal share both in the tailed house and in the cattle shed and in addition, the Well in the back side was allotted to the defendant's father i.e., this defendant's father was allotted with western side of the tailed house and in western side of the cattle shed with well.

(v) The defendant further states that the Boobala Pillai was allotted with eastern side of the tailed house and in the eastern side of the cattle shed. The other brothers namely Manickkam Pillai was allotted partly in New S.No.214/37 in the eastern side and Ekambaram was allotted with in S.No.214/36 respectively.

(vi) Further the defendant states that another oral partition were entered between the family members and the entire old tiled house has been demolished with the consent of

all and after demolition the entire 12 $\frac{3}{4}$ cents was divided among them respectively under oral partition. As per the oral partition the defendant was allotted with the western portion in S.No.214/37 along with well and trees in the vacant back side and the Boopalan Pillai's son Mohan was allotted with the eastern portion and Ekambaram Pillai was allotted with S.No.214/36 and in addition the said Babu was also allotted partly in S.No.214/37.

(vii) The defendant further states that based on the above oral partition this defendant constructed a terraced building in the year 2018 in the western portion in S.No.214/37 and removed the well by closing the same in the vacant back side and Mohan constructed the building on the eastern side. Further the defendant states that there is a common path way on the western side of the defendant's house measuring an extent of 5 feet breadth running towards south-north for the use of the defendant, plaintiff and other adjoining residence and for other persons from back side residents. It is not correct to state that the common path way is 7 feet. Further the defendant states that the same was also evidenced by revenue records FMB. In that FMB it is clearly and categorically mentioned as only 5 feet and in the natham adangal register also it is mentioned that S.No.214/34 is poromboke land and classified as vazhi. The defendant further states that there is no dispute regarding the ownership of the property owned by both parties and only issue is the common pathway.

(viii) The defendant further states that the plaintiff alone encroached 'B' schedule property common path way to an extent of 2 $\frac{1}{4}$ feet breadth and constructed a house in the year 2010, under Kalaingar Group housing project and hence the common path way was diminished to 5 feet breadth. Hence the plaintiff to hide his house encroachment of 2 $\frac{1}{2}$ feet in the common path way, has falsely filed the present suit as if the defendant encroached the common path way and constructed the building. The defendant further states that there is no necessity for the defendant to encroach common path way and hence the present suit is filed by the plaintiff is not maintainable and hence the suit is liable to be dismissed with costs.

4. On perusal of pleadings and documents, the following issues were framed.
 1. **Whether the B schedule of property measuring to an extent of 7' breadth and 200 feet length running south to north from village cement road is a common pathway?**
 2. **Whether the defendant has encroached the 'B' schedule of property to an extent of 2 ½ feet on western side and 25 feet n the north to south?**
 3. **Whether the plaintiff is entitled for the relief of mandatory injunction against the defendant over the 'B' schedule common pathway?**
 4. **Whether the defendant is trying to put up compound wall on the back portion on the western side of the 'B' schedule of property?**
 5. **Whether the plaintiff is entitled for the relief of permanent injunction over the 'B' schedule of property?**
 6. **To what other reliefs, the Plaintiff is entitled for?**
 7. **Whether the plaintiff is entitled over cost of the suit?**
5. For the sake and convenience of this court the above issues already framed by this court, are re-casted as follows:
 1. **Whether the plaintiff is entitled for the relief of mandatory injunction with respect to suit 'B' schedule property as prayed for?**
 2. **Whether the plaintiff is entitled for the relief of permanent injunction over the suit 'B' schedule of property as prayed for?**
 3. **Whether the suit 'B' schedule property measuring to an extent of 7 feet breadth and 200 feet length running south to north from village cement road is a common pathway?**
 4. **To what other reliefs, the Plaintiff is entitled for?**
 5. **Whether the plaintiff is entitled over cost of the suit?**
6. On the Plaintiffs side, PW1 and PW2 were examined and Exhibits A1 to A5 were marked. On the side of Defendant, DW1 was examined and Exhibits B1 to B6 were

marked and Ex C1 to Ex C6 were marked.

7. Heard. Perused the records.

8. Recast Issue No.1:-

1. Whether the plaintiff is entitled for the relief of mandatory injunction with respect to suit 'B' schedule property as prayed for?

(i) The specific case of the plaintiff is that the suit 'A' schedule property in S.No.214/31 belongs to the plaintiff and he is in possession and enjoyment of the same and obtained patta no.15 in his name and suit 'B' schedule property is a common path way starts from the village cement road which runs in south-north direction. According to plaintiff the suit 'B' schedule property is the only path way to reach the plaintiff's house and other plots.

(ii) The contention of the plaintiff is that the defendant's property in S.No.214/37 is situated on the eastern side of suit 'B' schedule property and the defendant has encroached an extent of 2 ½ feet in the suit 'B' schedule common path way is western side and constructed a part of his house over the suit 'B' schedule property.

(iii) The learned counsel for the plaintiff submitted that the suit 'A' schedule property in S.No.214/31 belongs to the plaintiff and defendant property is situated in S.No.214/37. Further the learned counsel submitted that common pathway is situated in S.No.214/34. The learned counsel submitted that the case of the plaintiff is that the defendant encroached 2 ½ feet in the common pathway and defendant property is situated on the eastern side of the common pathway. The learned counsel further submitted that two advocate commissioner was appointed in this case. The learned counsel further submitted that in I.A.No.6/2023 there is no report regarding head surveyor details. Further the advocate commissioner in his report has not stated about the point and distance of all properties.

(iv) It is admitted by both parties that there is no dispute with respect to suit 'A' schedule property. The real dispute between the parties is with regard to alleged

encroachment made by the defendant over the suit 'B' schedule common path way. Therefore the burden lies upon the plaintiff to establish the actual encroachment made by the defendant in the suit 'B' schedule property.

(v) The learned counsel for the defendant submitted that the defendant has not encroached any portion of the property in suit 'B' schedule property. The learned counsel further submitted that the defendant constructed his house near to the pathway and further while the defendant was constructing the wall the plaintiff obstructed and quarreled with the defendant and hence the criminal case was registered against the plaintiff, keeping this vengeance the plaintiff has filed the present case. Further the learned counsel submitted that the plaintiff has not proved the case and advocate commissioner report clearly shows that the defendant has not encroached any property. Further the learned counsel submitted that the no 3rd party independent witness on the side of plaintiff. Hence the learned counsel submitted that the plaintiff has failed to prove the case.

(vi) In the present case, the plaintiff to prove his case mainly relied on Ex A1 to Ex A5. Except Ex A5, Photos and CD to show the path way description the other documents i.e., Ex A1 to Ex A4 relates to the title and possessory documents of the plaintiff with respect to suit 'A' schedule property and as there is no dispute with respect to Suit 'A' schedule property it is not necessary to appreciate the said Ex A1 to A4. Further on Perusal of Ex A5, photos and CD it shows the location of the common path way and defendant's property, which is not sufficient to conclusively establish the correct extent and nature of alleged encroachment. Hence the exact area purportedly encroached by defendant cannot be ascertained.

(vii) Further it is seen that two advocate commissioner's report and plan was filed before this court. Though the First Advocate commissioner reported that there was an encroachment to an extent of 1.66 sq.mt. in suit 'B' schedule property by the defendant, The said report i.e., Ex C1 to Ex C3 was specifically objected by the defendant that the measurement was not taken with proper identification of survey stone and further the commissioner report has not disclosed the encroachment made by the plaintiff in suit 'A'

Schedule property as reported by the Firka Surveyor and hence there were discrepancies in the report given by firka surveyor and advocate commissioner report.

(viii) In these circumstances the court appointed second advocate commissioner to remeasure the suit properties with the help of District Head Surveyor. Subsequently Suit 'A' and 'B' Schedule properties were measured and Second Advocate commissioner filed his report along with Deputy Taluk Surveyor report which is marked as Ex C4 to Ex C6. On perusal of Ex C4 to Ex C6 it reveals that the Suit 'A' and 'B' Schedule properties were measured by properly identifying the survey stone and further Deputy Inspector of Surveyor has given a report stating that the plaintiff only encroached some portion of property in S.No.214/30 and also planted coconut tree in suit 'B' schedule property and the same is substantiated from Ex C4 Advocate commissioner report and further it is evident from Ex C4 wherein the Advocate commissioner reported that defendant has not encroached any extent in Suit 'A' and 'B' schedule. Therefore the second advocate commissioner's report assumes greater significance and weighs more evidentiary value than the first advocate commissioner report since measurements were taken with the assistance of qualified Deputy Inspector of surveyor with reference to the survey stones along with relevant revenue records. Further the report contains detailed methodology in identifying the survey stone and measurement from that point. Hence this court inspires greater confidence in the second advocate commissioner report i.e., Ex C4 to Ex C6.

(ix) Further though plaintiff examined PW2 he is not as independent witness and he is relative to the plaintiff further PW2 he has not deposed anything regarding the alleged encroachment made by the defendant. Further it reveals from PW2 testimony that there existed a dispute between the plaintiff and defendant concerning the common pathway and construction of defendant house. Therefore the evidence of PW2 does not advance the case of the plaintiff on the issue of encroachment.

(x) Therefore in the suit for mandatory injunction relating to encroachment the plaintiff must establish the alleged encroachment by clear and cogent evidence. Though in the present case the plaintiff alleged that the defendant has encroached the portion of

2 ½ feet in suit 'B' schedule property the same is not sufficiently proved by the plaintiff through oral and documentary evidence. Thus this issue is answered against the plaintiff.

9. Recast Issue No.2:-

2. Whether the plaintiff is entitled for the relief of permanent injunction over the suit 'B' schedule of property as prayed for?

As this Court already decided in issue No.1 that plaintiff failed to establish alleged encroachment by the defendant in the suit 'B' schedule property, the relief of Permanent Injunction over the suit 'B' schedule property to restrain the defendant from putting upon compound wall on the same facts is also answered against the plaintiff.

10. Recast Issue No.3

3. Whether the suit 'B' schedule property measuring to an extent of 7 feet breadth and 200 feet length running south to north from village cement road is a common pathway?

As there is no dispute between both parties with respect to suit 'B' schedule property as a common pathway, and the defendant also not seriously disputed the existence of 'B' schedule property as a common pathway. Hence it is admitted by both parties that 'B' schedule property is a common pathway and as real controversy between the parties is not with regard to nature of 'B' schedule pathway but with regard to alleged encroachment made by defendant, this issue does not survive and answered accordingly.

11. Recast Issue No.4:-

4. To what other reliefs, the Plaintiff is entitled for?

The plaintiff is not entitled to any other reliefs.

12. Recast Issue No.5:-

5. Whether the plaintiff is entitled over cost of the suit?

The plaintiff is not entitled for costs.

13. In the result, the suit is dismissed. No costs.

Dictated to the Stenographer, typed by her and corrected and pronounced by me in open court on this the 2nd day of June, 2026

District Munsif
Madurantakam

Plaintiff Side Witnesses:-

PW1- Kali
PW2- Veeramani

Plaintiff side Documents:-

Ex. A1- Patta (original)
Ex. A2- House tax receipts (4 nos.) (original)
Ex. A3- EB card (original)
Ex. A4- EB receipts (4 nos.) (original)
Ex. A5- Photos (3 nos.) along with CD

Defendant side Witness:-

DW1- Subramani

Defendant side Documents:-

Ex. B1- House tax receipts (2 nos.) (original)
Ex. B2- Water tax receipts (2 nos.) (original)
Ex. B3- EB card (original)
Ex. B4- EB card (original)
Ex. B5- Reply sent by Public Information Officer, Madurantakam to defendant under RTI Act in Na.ka.No.2789/2018/ஆ 1 dated 26.07.2018
Ex. B6- True copy of FIR dated 29.10.2019

Court side Documents:-

- Ex C1 Advocate commissioner's report
- Ex C2 Firka Surveyor report
- Ex C3 Advocate commissioner plan
- Ex C4 Advocate commissioner's report
- Ex C5 Deputy Inspector of Surveyor report
- Ex C6 Advocate commissioner plan

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