

**IN THE COURT OF THE PRINCIPAL DISTRICT MUNSIF,
VEDASANDUR**

**PRESENT: THIRU.B.PETER, M.A., B.L.,
PRINCIPAL DISTRICT MUNSIF,
VEDASANDUR**

Thursday the 12th day of March 2026

O.S.No.46/2008

Tmt.Aisha Beevi

.....Plaintiff

/Vs./

Tmt.Rahima Beevi

..... Defendant

The suit was filed on 07.02.2008 and when it came for final hearing on 02.03.2026, in the presence of **Thiru.B.Ganesan**, the learned counsel appearing on behalf of the Plaintiff and of the **Thiru.N.Palanisamy**, the learned counsel appearing on behalf of the upon hearing the both side arguments, perusing the case records and having stood over for consideration till this day, this court delivers the following....

Judgement

This suit is filed for the relief of bare injunction restricting the defendants and their henchmen not to interfere with the peaceful possession of the plaintiff over the suit property.

1. Summary of the plaint :

The suit property is the 'CD' portion in the plaint plan. The suit property and portion lying on the southern side was purchased by the plaintiff for proper consideration from her mother through the registered sale deed dated 2.5.1994, and is in possession and enjoyment over it. As shown in the plaint plan 'DE' the common wall having the 21 feet length is lying east-west from the beginning. The suit property is situated in the Northern side of the 1st item in the sale deed dated 2.5.1994. It is "CDEFG" in the plan. The 2nd item in the sale deed is shown as ABCDEFGH. In the beginning house site Patta No:297 in the name Khatheejabeevi. After purchase, the plaintiff mutated the patta in her name and pays house tax and enjoy the same. The backside wall of the thatched house of the defendant was situated close to DE common wall on western side and little distance of north. On 7.4.2007, when the plaintiff and her husband was out of station, the defendant dismantled his old house and without raising wall within the boundaries in S.No.1975/19, dug in two places of the southern portion to raise wall and the construct building as shown in the plan. The plaintiff returned home on the same day and questioned such activities and because of that, the defendant disturbs and prevents the plaintiff from raising the wall in the CD portion in the plan. Hence the suit property CD line is lying open. Owing to that situation, the privacy of the plaintiff is affected. Also, on 6.7.1994, 04.09.1994 the vendor of the plaintiff and the defendant entered into agreements before the village elders for keeping the common wall -DE line as the boundary for both and can raise walls in their property are the

common wall can be demolished and can be build a new wall by bearing expenses by both. Hence the defendant has no right for raising objection for building a wall in the land belonging to the plaintiff. At such situation, the defendant sent a legal notice on 19.08.2007 by stating false facts. The plaintiff sent a reply notice on 27.08.2007 denying the alleged facts, On 30.01.2007 when the plaintiff attempted to build a East-West wall, the defendants with the assistance of her men prevented it. Hence the suit is laid.

2. Summary of the Written statement by the defendant :

(2.1) Plaintiff plan and its description is not correct and description of suit property is not correct. Also, the description about the boundaries of the suit property is not correct. The plaintiff with malafide intention to grab the property of the defendant created a forged sale deed as if the plaintiff purchased the property from Khatheejabeevi and the same is not valid. The said sale deed shall not bind the plaintiff. And plaintiff failed to explain about how the suit property belonged to the vendor of the plaintiff. If the suit property belonged to plaintiff's mother no necessity arises for having sale deed. Hence the sale deed is only nominal. The averments made in the paragraphs 3 to 14 are false. The averments as to the fact that CD line in common wall is false. In fact the house in new ward, S.No.694 A/2A 1A 1A1 and old door No.13A,B for which the new door no.13C having the extent of 32 feet East-West and 52 feet south north is the self acquired property of Uduman Beevi, the great-grandma of the defendant. The said Uduman Beevi paid kist and taxes and after

her death, her daughter Mymoon Beevi, and after Mymoon Beevi, the mother of the defendant Aysha Beevi enjoyed and executed a settlement deed in favour of the defendant on 25.11.1988 and handed over the possession. Based on that, the defendant obtained patta and pays kist and absolutely enjoys. Since the husband of the defendant works in Balsur, Orissa the defendant also lived there, for the past 15 years. In the land belonging to the defendant, there is a thatched house having the extent of 9x11feet and the rest is lying vacant.

(2.2) In the thatched house, the mother of the defendants lived with the children of the defendant. Aysha Beevi was affected with Muthamai disease - a sort of eye disease and the plaintiff taking advantage of the same, encroached 1 1/2 in the southern portion and built a bathroom having 8x10 feet. After returning from Orissa and having come to know recently the plaintiff questioned the same before the village elders. The plaintiff agreed to remove the same but kept on postponing the same. The defendant demolished the thatched house and attempted to build a new house and the plaintiff disturbs. Hence on 19.08.2007 legal notice was issued to the plaintiff to remove the encroachment. The plaintiff sent reply notice. Again on 10.02.2008 the defendant with the assistance of the village elders asked the plaintiff to remove the encroachment and not to disturbs the defendant to build a new house. But the plaintiff delayed. Hence the defendant filed O.S.No.152/2008 was filed for the relief of declaration and injunction. The plaintiff did not approach the court with clean hands. The plaintiff had no cause of action, no prima facie case, balance of convenience.

Hence the suit is to be dismissed.

3. After careful perusal of the plaint, written statements and documents available on record this court framed the following Issues:

1.) Whether the plaintiff is entitled for the relief of permanent injunction as prayed for?

2.) To what other relief?

4. On the side of the plaintiff, the plaintiff was examined as PW1, Ex.A1 to Ex.A11 marked. On defendant side the defendant was examined as DW1, Ex.B1 to Ex.B13 marked and DW2 was examined Ex.B14 to Ex.B17 were marked.

5. Determination Issue No.1:

The suit if filed by the plaintiff for the relief of permanent injunction.

6. In Sudhakar Reddy Vs. Lakshamma 2014 (4) ALT 647 the Hon'ble Supreme Court held that,

" In a suit for perpetual injunction, the court has to consider who is in possession of the suit schedule property as on the date of filing of suit. However the court can incidentally look in the title of the parties in as injunction of circumstances so warranted.

In Balkrishna Dattatraya Galande Vs. Balkrishna Rambharose Gupta &

another 2019 Law suit (SC) 140, the Hon'ble Supreme Court held that,

" In a suit filed U/S.38 of specific Relief Act, permanant injunction can be granted only to a person who is in acutal possession of the property. The plaintiff has to prove actual possession of grant of permanant injunction.

7. To prove the possession over the suit property, the plaintiff has exhibited, Ex.A3 Ex.A4 and Ex.A5. Of them, Ex.A3 is the patta standing in the name of plaintiff's mother and is issued under Natham settlement scheme. The PW1 admitted in her evidence that this suit is filed based on the Ex.A3, Ex.A4 is the chitta standing in the name of plaintiff. Ex.A5 is the tax receipt standing in the name of the plaintiff.

8. The case of the plaintiff is that the suit property belonged to plaintiff's mother Khadeeja Beevi and the plaintiff purchased through a sale deed Ex.A2 from her mother. By virtue of Ex.A2, the suit property and others as per Ex.A1 belongs to the plaintiff. And the plaintiff is in the possession and enjoyment over the same by paying tax as per Ex.A5. The DE portion in the plaint plan is the common wall which is the boundary for dividing the plaintiff's and the defendant's property. On 7.4.2007 when the plaintiff and her husband were out the defendant demolished her thatched house and encroached the 'CD' portion in the plan - the suit property and dug in two places to build pillar, in stead of doing the same, within her boundaries.

9. The defendant in her written statement denied the title of the plaintiff, denied the fact that 'DE' is common wall. The defendant pleaded that the land in Vedasandur, new ward 5, S.No.694 A/2A, 1A 1A, whose old door No.13A, B and new door no 13C, having the extent of 32 feet East west and 52 feet north south belonged to Uduman Beevi, the great grandma of the defendant. After Uduman Beevi, her daughter Mymoon Beevi, got and enjoyed and after Mymoon Beevi, Aysha Beevi got and enjoyed and Aysha Beevi mother of the defendant executed a settlement deed in favour of the defendant on 25.11.88, and handed over the possession. For the past 15 years, the defendant lived with her husband in Balashur, Orissa for business. The defendant's mother lived in the thatched house along with children of the defendant and Aysha Beevi suffered from eye disease. Taking advantage over the situation, the plaintiff encroached in the southern portion of the property of the defendant and built a bath room having the extent of 8x10 feet. It was attempted to solve the issue before the village elders. But the plaintiff, though agreed to remove the encroachment failed to keep the word and delayed. Hence, on 19.08.2007, defendant issued legal notice to the plaintiff who in turn sent a reply notice on 10.02.2008 with false facts. Hence the defendant filed suit No. 152/2008 for the relief of declaration and injunction.

10. On the side of the defendant, in support of denying the title of the plaintiff and establishing the title of the defendant, Ex.B1 which is the settlement deed executed in favour of the defendant by Aysha, the mother of the defendant. was marked. Ex.B2 is

the patta issued under Natham settlement scheme on 16.04.1992. Ex.B2 is the chitta. Ex.B4 is the Adangal. Ex.B5 is the tax receipt dated 2008-2008. Ex.B7 is the encumbrance certificate. Ex.B10 is the legal notice dated 19.08.2007 of the defendant sent to the plaintiff. Ex.B11 is the reply notice dated 27.08.2007 sent by the plaintiff to the legal notice of the defendant. Ex.B14 is the sale deed dated 2.04.1974 executed by Ibrahim in favour of the Rahmeth beevi. Ex.B15 is the sale deed dated 30.07.1974 executed by Rahmeth beevi in favour of the plaintiff's mother. Ex.B16 is the sale deed dated 2.05.1994 executed by the plaintiff's mother in favour of the plaintiff.

11. From the careful perusal of the documents placed by both sides, it becomes clear that the plaintiff is in possession over the southern portion from the 'CD' line in the plan and the defendant is in the possession over the northern portion from the CD. The suit property is the CD line as per the plaint plan. The plaintiff pleads that in the CD line - the suit property the defendant dug pits in two places to erect pillars and to raise building. On the contrary the defendant pleaded that DE is not the common wall and the plaintiff encroached 8x10 feet land in the southern portion of the property belonging to the defendant. The alleged facts being so PW1 admitted in her cross examination in one place that the suit was filed because her property was encroached. In other place, again PW1 admitted in her cross examination stating that, "பிரதிவாதிகள் அவர்களது இடத்தில் இருந்து கூரை வீட்டை இடித்து புதுவீடு

கட்டுவதற்காக பில்லர் அமைத்தார்களா? என்றால் அமைத்தார்கள், எங்கள் இடத்தில் 2 அடி தள்ளி பில்லர் அமைத்தார்கள் என்றாலும், அவர்களை வீடுகட்டவிடக்கூடாது என்பதற்காக ஆக்கிரமிப்பு செய்ததாக கட்சி கட்டி வருகிறீர்கள் என்றால் எங்கள் இடத்தை ஆக்கிரமிப்பு செய்ததால் நாங்கள் வழக்கு தாக்கல் செய்துள்ளோம். Yet in another place, the PW1 admitted deposing," மேற்படி கூரைவீட்டை அகற்றி RCC வீடு கட்டுவதற்கு வானம் தோண்டிய போது தான் இந்த வழக்கு தாக்கல் செய்யப்பட்டது என்றால் எனது நிலத்தில் ஆக்கிரமிப்பு செய்ததால் வழக்கு தாக்கல் செய்தேன். In the plaint, it is stated that the defendant instead of erecting wall with in her boundaries, encroached CD line in the plaint plan, and dug pits in two places to build house. The above evidence makes it amply clear that the defendant has encroached the suit property.

12. The defendant challenged the title of the plaintiff by setting another title and also questioned the title of the plaintiff through Ex.B14 to Ex.B16 which were not marked by the plaintiff. PW1 in her cross examination admitted that though she is in custody of Ex.B15 she did not produce the same before this court and why the plaintiff did not choose to mark those documents when pleaded by the defendant by written statement is only known to her. DW2 deposed that, the plaintiff's mother executed

Ex.B16 excessively showing the extent more than what is in Ex.B14 and Ex.B15. In such situation the plaintiff should have gone for filing a comprehensive suit for declaration and injunction in the well considered opinion of this court.

13. Because, **What is held by Hon'ble Supreme Court in Anathula Sudhakar V.P.Buchi Reddy (2008)4 SCC 594**, is "Where the title of the plaint is not disputed, and he is not in possession, his remedy is to file a suit for possession and seek in addition, if necessary an injunction. A person out of possession, can not seek the relief of injunction simpliciter, without claiming the relief of injunction. Where the plaintiff is in possession but his title to the property is in dispute, or under a cloud, or where the defendant asserts title there to is also a threat of dispossession from the defendant, the plaintiff will have to suit for declaration of title and the consequential relief of injunction. Where the title of the plaintiff is under a cloud or in dispute and he is not in possession or not able to establish possession, necessarily the plaintiff will have to file a suit for declaration, possession and injunction".

14. In the suit, with regard to the suit property, not only the PW1 admitted that the defendant encroached and dug pits in two different places to build house in the suit property, but also, the defendant sets another title by creating cloud over the title of the plaintiff and denied as stated above, existence of the common wall - DE in the plaint plan. In such situation, the plaintiff should have chosen for filing a comprehensive suit for declaration, possession and injunction.

15. The plaintiff also pleaded that on 6.7.1954, 4.9.1994 agreements were entered between the mother of the plaintiff and the defendant, that the 'DE' common wall shall be demolished and build a new one bearing expenses by both or keeping the common wall as boundary, and shall raise wall in their own respective properties. The burden of proof lies with that plaintiff. In prove of the same, Ex.A7, Ex.A8 were marked by the plaintiff. PW1 admitted in the cross examination that in both Ex.A7, Ex.A8 the signatures of the plaintiff's Mother and the defendant were not found. On perusal of Ex.A7 and Ex.A8 it is known that the signature of the mother of the plaintiff's and the defendant were not found and on the back of Ex.A8 the left thumb impression of the plaintiff was found dated 4.09.1994. The defendant denied the genuiness of Ex.A7, Ex.A8 in the written statement. Unfortunately in the opinion of this court, Ex.A7, Ex.A8 were not proved, and even if is presumed to be true, the defendant denied the existence of the common wall in the plan. So the plaintiff can not rely upon Ex.A7, Ex.A8 to support her case. To sum up, the plaintiff failed to file a comprehensive suit for declaration possession and injunction, when the defendant is alleged to be in possession as admitted by PW1, When the defendant sets upon another title challenging the title of the plaintiff creating cloud over it.

16. For the reasons stated above, the court has no hesitation in dismissing the suit by declining the relief of injunction to the plaintiff as prayed for. Accordingly the 1st issue is answered against the plaintiff.

17. Issue No.2:

Since issues no 1 is answered against the plaintiff no other relief can be granted for the plaintiff. Accordingly this issue is answered against the plaintiff.

In the result, this suit is dismissed. Considering the relationship between the parties, the parties are directed to bear their own costs.

Directly dictated to the steno-typist typed by her, corrected and pronounced by me in open court on this the 12th day of March 2026.

**Principal District Munsif Judge,
Vedasandur.**

1. Plaintiff side Witness :

1.PW₁ - Aisha Beevi

2. Plaintiffs side documents :

Serial No	Date	Documents	Nature of the documents
Ex.A1	-----	Plaint plan	Original
Ex.A2	02.05.1994	Sale deed	Original
Ex.A3	10.04.2002	The patta standing in the name of plaintiff.	Certified copy

Serial No	Date	Documents	Nature of the documents
Ex.A4	24.08.2007	The chitta standing in the name of plaintiff	Certified copy
Ex.A5	20.06.2007	Tax receipt	Original
Ex.A6	-----	Photograph (no negative) showing the layout of the claimed property	Original
Ex.A7	06.07.1994	The agreement regarding the disputed property and the common wall	Certified copy
Ex.A8	04.09.1994	Panchayat Muchalikka	Certified copy
Ex.A9	19.08.2007	copy of the notice of the lawyer	Certified copy
Ex.A10	27.08.2007	Reply notice with postal receipt	Office copy
Ex.A11	-----	Acknowledgemnt card	Original

3. Defendants side Witness:-

- 1.DW1 - Rahima Beevi
- 2.DW2 -Arabuali

4. Defendants side documents:-

Serial No	Date	Documents	Nature of the documents
Ex.B1	25.11.1988	settlement deed executed by Aysha Beevi, in favour of the defendant	Original copy
Ex.B2	16.04.1992	House cite patta No.1819 issued by Natham settlement Tasildhar	Original copy
Ex.B3	11.01.2007	chitta	Original copy
Ex.B4	11.01.2007	Adangal	Original copy
Ex.B5	2005-2006 2006-2007 2007-2008	Property tax receipts issued by the town coucil Vedasandur	Original copy
Ex.B6	26.03.2008	Water bill receipt paid by the defendant	Original copy
Ex.B7	11.12.2007	01.01.1943 to 26.11.2007 Encumbarance Certificate	Original copy
Ex.B8	10.10.2007	Electricity bill payment receipt	Original copy
Ex.B9	09.07.2007	The letter sent by the Vedasandur Taluk chief to the vedasandure police Inspector requesting police to give protection durin the survey	Original copy
Ex.B10	19.08.2007	The notice sent by the defendant to the plaintiff and the above mentioned sister, Raikan, through his lawyer and the acknowledgement of receipt	Original copy

Serial No	Date	Documents	Nature of the documents
Ex.B11	27.08.2007	Reply notice sent by the plaintiff through his lawyer to the notice sent by the lawyer dated 19.08.2007.	Original copy
Ex.B12	03.09.2007	The reply notice sent by the plaintiff's sister Raikan to her notice dated 19.08.2007 sent by the defendant	Original copy
Ex.B13	22.11.2008	Commissoner Report, Map	Original copy
Ex.B14	02.04.1974	A deed of sale written by Amjeet Ibrahim to Umar Farroq's wife, Rahamad Beevi	SRO Copy
Ex.B15	30.07.1974	The purchased deed written by Umar Farroq's wife Rahamat Beevi to the plaintiff's mother Khatheejabeevi	SRO Copy
Ex.B16	02.05.1994	Sale deed executed by plaintiff mother Kadeejabeevi in favour of plaintiff	SRO Copy
Ex.B17	-----	Commissoner's report and map filed in petition I.A.391/2008 in OS.No.152/2008 (Since the above document should be filed through	Court Certified copy

Serial No	Date	Documents	Nature of the documents
		the relevant court commissioner, the plaintiff objects to the use of this witness without examining him).	

**Principal District Munsif Judge,
Vedasandur.**