

**IN THE COURT OF THE I ADDITIONAL SUBORDINATE JUDGE,
ERODE.**

PRESENT : THIRU. G. ASHOK PRASATH, B.A., B.L., M.S.E.N.,
I ADDITIONAL SUBORDINATE JUDGE, ERODE.

On Tuesday, the 8th day of July 2025

On Thiruvalluvar Varudam 2056, Tamil Visuvavasu Year, Aani Thingal 24th day

I.A.No.01/2024

in

O.S.No.266/2024

P.M.Sadhasivam

..Petitioner/Plaintiff

/vs/

P.Kalaiamuthan

...Respondent/Defendant

This petition has come up on for final hearing before this court in the presence of Thiru.S.Shanmugham, learned advocate for the petitioner, and Thiru.P.C.Palanisamy, learned advocate for the respondent upon hearing both sides, on perusal of available materials on record and having stood over for consideration till this day, this court delivers the following:-

ORDER

1. This Petition has been filed Under Order 39 Rule 1, 2 and Section 151 of CPC to granting temporary injunction restraining the respondent, his men, assigns and agents in any way altering the physical features more particularly by constructing any permanent structure in any nature within the plaint "B" Schedule properties till the disposal of the suit and grand interim injunction to the said effect till the disposal of this application and pass such other and further reliefs.

2. The Brief Averments of the Petition are as follows.:-

3. The petitioner have filed the above suit for declaration, possession, and mandatory injunction and for permanent injunction. Petitioner purchased a total extent of 1945 square feet in site No.50 situated in R.S.No.369/7 in Periasemur village under three registered sale deeds dated 17.08.2017 and 18.08.2017 registered as D.Nos the 1831/2017 and 1832/2017 and 1834/2017 before the Surampatti Sub Registration office. It is submitted that the original owners of R.S.No.364/1, 364/2,3,5 368/1P and 368/2, 3 R.S.No.369/1P and 369/7 divided there corresponding agricultural lands into house sites by forming 40 feet road north south and 30 feet roads north south and east west on both sides of the above 40 feet road and got layout approval plan from the senior deputy director of Coimbatore town and country planning under the file No.L.P.R(C.N)No.7899/85 C.P.N.R LPR(C.N) No.210/85 dated 5.12.1985. The house sites are located then at periasemur town panchayat, periyasemur village, erode taluk district now at erode municipal corporation limit.

4. Vendor namely S.K.Raju purchased eastern portion of site No.50 with a total extent of 1945 square feet in R.S.No.369/7 under a registered sale deed dated 5.12.1995 from the legal heirs of N.Krishnasamy namely 1. Karupaya 2. Nallasenathipathi 3.K.Gomathi through their power agent P.R.Nachiappan. as already stated the plaintiff purchased the aforesaid property under the two sale deeds dated 17.08.2017 and one sale deed dated 18.08.2017 thorough power agent

annakodi. The property covered under the aforesaid three sale deeds are described as “A” schedule properties in the suit.

5. Petitioner purchased an extent of 1945 square feet with specific boundaries in the eastern portion of house site No.50 situated in R.S.No.369/7 and took possession of the suit A schedule properties and petitioner is in exclusive enjoyment of the same ever since from the date of purchase. Schedule properties covered under the 3 sale deeds are situated in R.S.No.369/7. It is the eastern portion of house site No.50 situated in R.S.No.369/7. While so it is submitted that the defendant seemed to have purchased an extent of 1200 square feet in the site No.50 situated in R.S.No.368/1P and 368/2, 3 of periyasemur village, Erode Taluk under a registered sale deed dated 6.7.2009. The defendants property is situated in R.S.No.368/1P and 368/2, 3 only, petitioners properties are situated in R.S.No.369/7 in the east of R.S.No.368/1P and 368/2, 3. It is submitted that the previous sale deeds of the respondent clearly described the eastern boundary as கிருஷ்ணசாமி கவுண்டர் பாக பூமிக்கும் மேற்கு, the respondent's property is situated in a separate survey number situated in the east of petitioner property. The said N.Krishnasamy was the original owner of R.S.No.369/7.

6. Petitioner submit that respondent have no manner of right, title possession or enjoyment of petitioner property described hereunder in the schedule. While so, the respondent encroached an extent of 600 square feet in the month of April 2022 in vacant site on the western side and put up an asbestos sheet shed and compound wall.

Petitioner gave complaint to the police authority and they enquired the matter. The respondent undertake to measure the property with the help of a government surveyor and if it is found that there was an encroachment in my property, solve the dispute as per the survey measurement before the police officials.

7. Petitioner gave application to town inspector of survey, erode Municipal Corporation. Accordingly. The town sub inspector of survey measured the property and gave a plan on 10.10.2022. In the survey plan it was found that there is an encroachment of 600 square feet in petitioner's property. Petitioner orally demanded the respondent to remove the measurement of 600 square feet in petitioner's property several times. But the respondents evading the petitioners request with some malafide intention. Petitioner also issued a legal notice to the respondent to remove the encroachment within 15 days of the receipt of the notice through his advocate. The respondents received the notice and gave a reply contains false allegations.

8. Petitioner submit that the allegations contained in the reply notice are false. It is false to say that petitioner did not purchase the 1945 square feet. It is also not correct to say that he had no encroachment 600 square feet and put up asbestos sheet shed and compound wall. It is also false to say that he did not know the complaint given by petitioner to the police and measured the property with the help of a surveyor. It is absolutely false that he had in purchased 1200 square feet in site No.50 situated R.S.No.369/7 from the vendor. It is also no correct to say that the respondent had not encroached the 600 square feet in petitioner property.

9. Petitioner submit that the portion encroached and occupied by the respondent is clearly described in the B Schedule. The property encroached by the respondent is 600 square feet of petitioner's properties shown as B Schedule hereunder. The occupation of the plaint B schedule properties by the respondent is an illegal occupation and the possession is illegal and unlawfull. The act of the respondents high handed one.

10. The respondent have no manner of right, title in the B schedule properties described hereunder in the schedule. The suit A schedule properties are absolutely belonged to petitioner by purchase under three sale deeds dated 11.08.2017 and 18.08.2017 for a valuable consideration. The B schedule properties are encroached portion by the respondent. Now the respondent making hectic attempts to altering the physical features more particularly by constructing permanent construction in the suit B schedule property. If the respondent succeeding in his attempt, petitioner alone put to irreparable loss and injury. Hence this petition.

11. The Brief Averments of the Counter filed by the Respondent are as follows:-

12. The respondent submit that on Kaliappan purchased a vacant house site situated in R.S.No.368/3 of Periyasemur village bearing site No.50 of A block with an extent of 2400 square feet from one Duraisamy Gounder under a sale deed dated 17.02.1988 vide document No.47/1988 before SRO, Surampatti. It is an approved layout as per C.No.7899/85 CPNR.3LP/R(CN)NO.210/85 dated 05.12.1985. on

30.11.2006 the said kaliappan sold an extent of 1200 square feet on the eastern half of site No.50 within boundaries to one Mohammed Rafeek vide doc.No.3203/2006 before SRO, Surampatti. The said Mohammed Rafeek has submitted a plan for construction of the building in the said site No.50. He also had paid the property tax. He was in possession and enjoyment over the property till he sold the property to his defendant respondent.

13. On 06.07.2009 the said Mohammed Rafeek sold an extent of 1200 square feet on the eastern half of site No.50 within boundaries to the defendant vide doc.No.1858/2009 before SRO, surampatti. Subsequently the defendant constructed a RCC building and ACC sheet building in area of 300 square feet and another building in an extent of 700 square feet with a cement roof and he left the remaining area as a vacant site. The plaintiff has also raised a compound wall on the northern, eastern and southern side of the property. The defendant is in possession and enjoyment over the property purchased by him from the date of sale deed till date.

14. Subsequently on 31.01.2012 the defendant had executed a settlement deed in favour of his sister namely mythili in respect of the common half share in the above said property vide document No.221/2012 before SRO, Surampatti. The said mythili is in possession and enjoyment over the property along with this defendant. The said mythili is also necessary party to the suit. She was not added as party to the proceedings. Therefore the suit is bad for non-joinder of necessary parties.

15. The property tax for the said property stands in the name of the defendant

and his sister Mythili. They are paying the property tax for the house bearing Door No.23/43 from 2011 to till date. They also obtained an electric service connection S.C.No.04012005822. The defendant and the said mythili are in possession and enjoyment over the property with a knowledge of the plaintiff.

16. The plaintiff has alleged purchased the suit A schedule property situated in R.S.No.369/7 under 3 sale deeds dated 17.08.2017 and 18.08.2017 vide document Nos.1837/2017, 1832/2017 and 1834/2017 respectively. The description of property mentioned in the above sale deeds are not based upon any proper document. The description in suit A schedule property is incorrect.

17. The defendant is unaware that the plaintiff has measured the suit A schedule property with the help of government surveyor. The defendant did not receive any notice from the surveyor before taking measurements. But the plan enclosed by the plaintiff is not an authenticated one. The defendant did not make any encroachment in the plaintiff property as alleged. The plaintiff alone is making attempts to encroach upon the defendant property. The encroached portion as alleged by the plaintiff is the suit B schedule of property is totally denied as false. On 23.04.2024 the plaintiff issued a notice to the defendant containing false allegation. The defendant had issued a suitable reply notice dated 20.05.2024.

18. The plaintiff is highly influential in that locality. Hence he insisted the defendant to sell his property. But he refused. Therefore the plaintiff started giving all sorts of troubles and interfering the defendants peaceful possession and enjoyment

over the property purchased by him. The plaintiff is not entitled for the relief as prayed for. There is no cause of action to file this court and one alleged is false and dismiss the suit with costs.

19. Heard both sides. No oral and documentary evidence was adduced on either side, Whether the petition deserves to be allowable or not?

On Point:

20. The petitioner side argued that the petitioner have filed the above suit for declaration, possession, and mandatory injunction and for permanent injunction. Petitioner purchased a total extent of 1945 square feet in site No.50 situated in R.S.No.369/7 in Periasemur village under three registered sale deeds dated 17.08.2017 and 18.08.2017 registered as D.Nos the 1831/2017 and 1832/2017 and 1834/2017 before the Surampatti Sub Registration office. It is submitted that the original owners of R.S.No.364/1, 364/2,3,5 368/1P and 368/2, 3 R.S.No.369/1P and 369/7 divided there corresponding agricultural lands into house sites by forming 40 feet road north south and 30 feet roads north south and east west on both sides of the above 40 feet road and got layout layout approval plan from the senior deputy director of Coimbatore town and country planning under the file No.L.P.R(C.N)No.7899/85 C.P.N.R LPR(C.N) No.210/85 dated 5.12.1985. The house sites are located then at periasemur town panchayat, periyasemur village, erode taluk district now at erode municipal corporation limit.

21. Vendor namely S.K.Raju purchased eastern portion of site No.50 with a

total extent of 1945 square feet in R.S.No.369/7 under a registered sale deed dated 5.12.1995 from the legal heirs of N.Krishnasamy namely 1. Karupaya 2. Nallasenathipathi 3.K.Gomathi through their power agent P.R.Nachiappan. as already stated the plaintiff purchased the aforesaid property under the two sale deeds dated 17.08.2017 and one sale deed dated 18.08.2017 thorough power agent annakodi. The property covered under the aforesaid three sale deeds are described as “A” schedule properties in the suit.

22. Petitioner purchased an extent of 1945 square feet with specific boundaries in the eastern portion of house site No.50 situated in R.S.No.369/7 and took possession of the suit A schedule properties and petitioner is in exclusive enjoyment of the same ever since from the date of purchase. Schedule properties covered under the 3 sale deeds are situated in R.S.No.369/7. It is the eastern portion of house site No.50 situated in R.S.No.369/7. While so it is submitted that the defendant seemed to have purchased an extent of 1200 square feet in the site No.50 situated in R.S.No.368/1P and 368/2, 3 of periyasemur village, Erode Taluk under a registered sale deed dated 6.7.2009. The defendants property is situated in R.S.No.368/1P and 368/2, 3 only, petitioners properties are situated in R.S.No369/7 in the east of R.S.No368/1P and 368/2, 3. It is submitted that the previous sale deeds of the respondent clearly described the eastern boundary as கிருஷ்ணசாமி கவுண்டர் பாக பூமிக்கும் மேற்கு, the respondent’s property is situated in a separate survey number situated in the east of petitioner property. The said N.Krishnasamy was the original

owner of R.S.No.369/7.

23. Petitioner submit that respondent have no manner of right, title possession or enjoyment of petitioner property described hereunder in the schedule. While so, the respondent encroached an extent of 600 square feet in the month of April 2022 in vacant site on the western side and put up an asbestos sheet shed and compound wall. Petitioner gave complaint to the police authority and they enquired the matter. The respondent undertake to measure the property with the help of a government surveyor and if it is found that there was an encroachment in my property, solve the dispute as per the survey measurement before the police officials.

24. Petitioner gave application to town inspector of survey, erode Municipal Corporation. Accordingly. The town sub inspector of survey measured the property and gave a plan on 10.10.2022. In the survey plan it was found that there is an encroachment of 600 square feet in petitioner's property. Petitioner orally demanded the respondent to remove the measurement of 600 square feet in petitioner's property several times. But the respondents evading the petitioners request with some malafide intention. Petitioner also issued a legal notice to the respondent to remove the encroachment within 15 days of the receipt of the notice through his advocate. The respondents received the notice and gave a reply contains false allegations.

25. Petitioner submit that the allegations contained in the reply notice are false. It is false to say that petitioner did not purchase the 1945 square feet. It is also not correct to say that he had no encroachment 600 square feet and put up asbestos sheet

shed and compound wall. It is also false to say that he did not know the complaint given by petitioner to the police and measured the property with the help of a surveyor. It is absolutely false that he had in purchased 1200 square feet in site No.50 situated R.S.No.369/7 from the vendor. It is also no correct to say that the respondent had not encroached the 600 square feet in petitioner property.

26. Petitioner submit that the portion encroached and occupied by the respondent is clearly described in the B Schedule. The property encroached by the respondent is 600 square feet of petitioner's properties shown as B Schedule hereunder. The occupation of the plaint B schedule properties by the respondent is an illegal occupation and the possession is illegal and unlawfull. The act of the respondents high handed one.

27. The respondent have no manner of right, title in the B schedule properties described hereunder in the schedule. The suit A schedule properties are absolutely belonged to petitioner by purchase under three sale deeds dated 11.08.2017 and 18.08.2017 for a valuable consideration. The B schedule properties are encroached portion by the respondent. Now the respondent making hectic attempts to altering the physical features more particularly by constructing permanent construction in the suit B schedule property. If the respondent succeeding in his attempt, petitioner alone put to irreparable loss and injury.

28. The respondent side argued that the respondent submit that on Kaliappan purchased a vacant house site situated in R.S.No.368/3 of Periyasemur village

bearing site No.50 of A block with an extent of 2400 square feet from one Duraisamy Gounder under a sale deed dated 17.02.1988 vide document No.47/1988 before SRO, Surampatti. It is an approved layout as per C.No.7899/85 CPNR.3LP/R(CN)NO.210/85 dated 05.12.1985. on 30.11.2006 the said kaliappan sold an extent of 1200 square feet on the eastern half of site No.50 within boundaries to one Mohammed Rafeek vide doc.No.3203/2006 before SRO, Surampatti. The said Mohammed Rafeek has submitted a plan for construction of the building in the said site No.50. He also had paid the property tax. He was in possession and enjoyment over the property till he sold the property to his defendant respondent.

29. On 06.07.2009 the said Mohammed Rafeek sold an extent of 1200 square feet on the eastern half of site No.50 within boundaries to the defendant vide doc.No.1858/2009 before SRO, surampatti. Subsequently the defendant constructed a RCC building and ACC sheet building in area of 300 square feet and another building in an extent of 700 square feet with a cement roof and he left the remaining area as a vacant site. The plaintiff has also raised a compound wall on the northern, eastern and southern side of the property. The defendant is in possession and enjoyment over the property purchased by him from the date of sale deed till date.

30. Subsequently on 31.01.2012 the defendant had executed a settlement deed in favour of his sister namely mythili in respect of the common half share in the above said property vide document No.221/2012 before SRO, Surampatti. The said mythili is in possession and enjoyment over the property along with this defendant. The said

mythili is also necessary party to the suit. She was not added as party to the proceedings. Therefore the suit is bad for non-joinder of necessary parties.

31. The property tax for the said property stands in the name of the defendant and his sister Mythili. They are paying the property tax for the house bearing Door No.23/43 from 2011 to till date. They also obtained an electric service connection S.C.No.04012005822. The defendant and the said mythili are in possession and enjoyment over the property with a knowledge of the plaintiff.

32. The plaintiff has alleged purchased the suit A schedule property situated in R.S.No.369/7 under 3 sale deeds dated 17.08.2017 and 18.08.2017 vide document Nos.1837/2017, 1832/2017 and 1834/2017 respectively. The description of property mentioned in the above sale deeds are not based upon any proper document. The description in suit A schedule property is incorrect.

33. The defendant is unaware that the plaintiff has measured the suit A schedule property with the help of government surveyor. The defendant did not receive any notice from the surveyor before taking measurements. But the plan enclosed by the plaintiff is not an authenticated one. The defendant did not make any encroachment in the plaintiff property as alleged. The plaintiff alone is making attempts to encroach upon the defendant property. The encroached portion as alleged by the plaintiff is the suit B schedule of property is totally denied as false. On 23.04.2024 the plaintiff issued a notice to the defendant containing false allegation. The defendant had issued a suitable reply notice dated 20.05.2024.

34. The plaintiff is highly influential in that locality. Hence he insisted the defendant to sell his property. But he refused. Therefore the plaintiff started giving all sorts of troubles and interfering the defendants peaceful possession and enjoyment over the property purchased by him.

35. In rival contentions of both sides, Petitioner side contented that the respondents by constructing any permanent structure in any nature within the plaintiff B schedule properties on the score of ground whether the petitioner has right of ownership in respect of B Schedule property or not? whether the petitioner is under the possession and enjoyment of the B Schedule property or not? Whether the defendant/respondent purchased the extent of 1200 Sq feet in site no.50 in RS.No.368/1P and 368/2, 3 under the registered sale deed 06.07.2009 or not? whether the defendant/respondent sale deeds shows eastern boundary கிருஷ்ணசாமி கவுண்டர் பாக பூமிக்கும் மேற்கு, and whether respondent property situated in the separate survey number in the east of the petitioner's property not? Whether the respondent has no right of the title, possession or enjoyment of the B Schedule property or not? Whether the respondents encroached the 600 Sq feet on the western side of the petitioner mentioned property or not? Whether the respondent encroached B schedule property within extent of 600 Sq feet in the B schedule property or not? So therefore, above issues, were revealed only through course of trial proceedings in respect of the crux of the matter. Further suit is also ripen for trial. So the encroachments and

permanent structures were all ascertained through adducing sufficient oral and documentary evidence in trial proceedings. Given above aspect of the reasons, this petition stands dismissed and no costs.

Dictated to the Steno-typist and typed by him directly in the computer, corrected and pronounced by me in open court, on this the 8th day of July 2025.

I Additional Subordinate Judge,
Erode.

Petitioner and Respondent side Witness and Documents:

-Nil-

I Additional Subordinate Judge,
Erode.

Draft/Fair Order
I.A.No.01/2024 in
OS.266/2024
Dated: 08.07.2025
I ASJC, Erode.