

IN THE COURT OF THE SUBORDINATE JUDGE, SATHYAMANGALAM.

**PRESENT: Tmt.K.S.Shabeena, M.L.,
Subordinate Judge, Sathyamangalam.**

Thursday, the 09th day of April 2026
(2056 Thiruvalluvarandu Visuvavasu varudam Panguni Thingal 26th day)

AS.No.10 of 2023
CNR No.TNED 050005262023

Jothi Appellant/Defendant

Vs

Sathiyavani Respondent/Plaintiff

On Appeal against the Decree of Judgment dated 22.04.2022 passed by the learned District Munsif, Sathyamangalam in O.S.No.25/2015.

Between

Sathiyavani Plaintiff

Vs

Jothi Defendant

This Civil appeal was came up for final hearing before me on 13.11.2025 in the presence of Thiru.K.R.Annamalai, Advocate for the Appellant/Defendant and Respondent/Plaintiff called set exparte and upon perusing the documents and hearing the arguments and having stood over till this day for consideration and this Court delivering the following:

JUDGMENT

This Appeal has been preferred by the plaintiff in O.S. No.25 of 2015, on the file of the District Munsif Court, Sathyamangalam, challenging the judgment and decree dated 22.04.2022, whereby the suit filed by the plaintiff for permanent injunction came to be decreed.

1. Gist of the Suit Before the Trial Court:

The respondent/plaintiff instituted the suit seeking a decree of permanent injunction restraining the appellant/defendant from interfering with her alleged peaceful possession and enjoyment of the suit property. The case of the plaintiff is that she purchased the suit property under a sale deed dated 16.09.1999 and has been in possession ever since. It is her further case that there exists a common wall between her property and that of the defendant, and that the defendant attempted to encroach upon her property and demolished a portion of her wall on 23.02.2015. The defendant resisted the suit contending that the plaintiff had purchased only a vacant site and not a house property, that there is no common wall as alleged, and that the plaintiff herself has encroached upon the defendant's property. The defendant further contended that the alleged 3 feet passage belongs to her and that the suit is devoid of merits. The trial Court, on appreciation of evidence, decreed the suit in favour of the plaintiff, holding that a common wall exists and that the plaintiff is entitled to protection of her possession.

2. Defence Plea

Despite service of summons, the defendants remained ex parte on 02.08.2023.

3. Grounds of Appeal

3.1. The decree and judgment pronounced by the trial court is against law, weight of evidence and probabilities of the case. The trial court had not perused the records carefully and decided the case on merits on the basis of facts of the case. In the suit filed by the plaintiff, the property described in the plaint is land and house. It was also averred that, the plaintiff has purchased the same under Ex.A1. But the description of property stated in Ex.A1 is vacant land. Hence ex-facie the plaintiff had no case at all. But the Trial court had simply ignored the discrepancies and passed the decree in favor of the plaintiff.

3.2. The Trial Court had simply ignored the admissions in the oral evidence given by the PW1, PW2 and PW3. The Trial Court had simply ignored the report and plan filed by the Commissioner and passed the decree. The Trial court had selected and screened relevant portions of the documentary evidence, oral evidence, facts of the case etc. which support the defendant's case. The Trial Court did not understand the case properly and gave findings in accordance with the prejudiced decision. In fact the Trial court had decided to decree the suit and then picked up the reasons to dictate decree and judgment. The trial court did not understand, facts of the case, the relieves claimed and the civil nature of the case in proper perspective and decreed the plaint erroneously.

4. Points for Determination

The following issues arise for determination in this appeal:

1.	Whether the finding of the trial Court that there exists a common wall between the properties of the parties is sustainable?
2.	Whether the plaintiff has established lawful possession of the suit property as on the date of suit so as to entitle her to the relief of permanent injunction?
3.	Whether the judgment and decree of the trial Court warrant interference?

5. Discussion Point Nos.1 and 2:

5.1. Point No.1:

Upon a re-appraisal of the entire records, pleadings, oral testimony, documentary evidence and the reasoning adopted by the trial Court, this Court proceeds to independently evaluate the findings recorded under Point Nos. 1 and 2, namely, the existence of a common wall and the entitlement of the plaintiff to the relief of permanent injunction.

5.2. The principal finding of the trial Court is that there exists a common wall between the properties of the plaintiff and the defendant, and that such finding is supported by the testimony of PW1 to PW3, particularly PW2, the vendor, and certain inferences drawn from the Commissioner's report.

5.3. On a careful scrutiny, this Court finds that the said conclusion of the trial Court is not borne out by reliable and consistent evidence. At the outset, the documentary foundation of the plaintiff's claim, namely Ex.A1, assumes significance. The trial Court has proceeded on the assumption that Ex.A1 supports the existence of a constructed property with a common wall. However, a perusal of Ex.A1 reveals that the property conveyed is described as a vacant site. There is no recital therein indicating the existence of a constructed house, nor any reference to a common wall or shared structural demarcation. The trial Court has not addressed this fundamental inconsistency between the documentary title and the pleaded case.

5.4. The appellate scrutiny further reveals that the oral evidence of PW2, upon which the trial Court has heavily relied, is inherently inconsistent and self-contradictory. PW2, at one stage, has categorically stated that only a vacant site was conveyed to the plaintiff. At another stage, he has spoken about a house property being conveyed to the defendant and a 3 feet passage existing between the properties. Subsequently, he has attempted to support the plaintiff's version of a common wall, and thereafter, he has disowned portions of his earlier affidavit.

5.5. The trial Court has not undertaken the required exercise of assessing the evidentiary value of PW2's testimony in its entirety. Instead, it has adopted a selective approach, extracting only those portions favourable to the plaintiff. In law, such selective reliance upon a hostile and vacillating witness, in the absence of

independent corroboration, is impermissible. The appellate Court finds that PW2's evidence does not inspire confidence and cannot form the sole or substantial basis for recording a finding on the existence of a common wall.

5.6. The evidence of PW3 is also found to be of limited probative value. PW3 has admitted that he has no knowledge regarding survey particulars, measurements, or title documents. His deposition is based on general acquaintance rather than any technical or documentary understanding of the property. The trial Court has erroneously treated such evidence as corroborative, whereas in reality it is only incidental and insufficient to establish a structural or legal boundary such as a common wall.

5.7. The Commissioner's report and plan (Ex.C1 and Ex.C2), though referred to by the trial Court, have not been properly evaluated in their evidentiary context. The Commissioner has recorded physical features and indicated certain encroachments. The trial Court has rejected or diluted these findings on the ground that they are beyond the scope of the suit. The appellate Court finds this reasoning unsustainable. In a suit relating to possession and boundary dispute, the Commissioner's report constitutes a vital piece of evidence to ascertain physical possession and demarcation. The trial Court has failed to give due evidentiary weight to this material document.

5.8. Importantly, there is no independent documentary evidence establishing the existence of a common wall. Ex.A1 is silent on this aspect. No plan, survey sketch, or

contemporaneous document has been produced to substantiate such a structural boundary. In the absence of such foundational evidence, the finding of a common wall rests merely on oral assertions, which, as discussed, are inconsistent and unreliable.

5.9. Therefore, on an independent evaluation, this Court holds that the finding of the trial Court on Point No.1 is based on selective appreciation of evidence and cannot be sustained. The existence of a common wall between the properties of the parties has not been proved in accordance with law.

6. Point No.2:

6.1. The relief of permanent injunction is equitable in nature, but its grant is strictly conditioned upon the plaintiff establishing lawful possession as on the date of suit. The appellate Court finds that the trial Court has proceeded on an assumption of possession rather than on strict proof of the same.

6.2. The plaintiff's possession is sought to be established through Ex.A2 to Ex.A5, comprising tax receipts, electricity bills, police complaint, and encumbrance certificate. While these documents may indicate some degree of occupation, they are not determinative of legal possession over a disputed portion of property, particularly when boundaries and extent are not clearly established.

6.3. The appellate Court further notes that PW1's own admissions materially weaken the claim of settled possession. She has admitted uncertainty regarding boundaries,

absence of boundary stones, and has also acknowledged the findings of the Commissioner regarding encroachment. These admissions are not adequately dealt with by the trial Court, which has proceeded as if possession is undisputed.

6.4. The evidence of PW2 and PW3, for reasons already recorded, cannot be relied upon as conclusive proof of possession. PW2's testimony is contradictory and unreliable, while PW3's evidence is general and lacks technical foundation. Thus, the oral evidence does not establish exclusive and lawful possession over the disputed portion.

6.5. The Commissioner's report, instead of strengthening the plaintiff's case, introduces material doubt regarding the extent of possession. The report indicates physical irregularities and encroachment, which are consistent with the defence version. The trial Court has erroneously brushed aside this aspect without proper reasoning.

6.6. Another significant aspect overlooked by the trial Court is that where serious disputes arise regarding identity, boundaries, and extent of property, a suit for bare injunction, without seeking declaration of title, becomes inherently weak unless possession is clearly proved. In the present case, such clarity is absent.

6.7. The trial Court has also placed undue emphasis on the absence of documentary evidence from the defendant. However, it is a settled principle that the plaintiff must succeed on the strength of her own case and not on the weakness of the defence. The

trial Court's approach in shifting the burden onto the defendant is legally unsustainable.

6.8. On a cumulative assessment, the appellate Court finds that the plaintiff has failed to establish continuous, lawful, and identifiable possession over the suit property as on the date of suit. Consequently, the foundational requirement for granting permanent injunction is not satisfied.

7. Conclusion on Points 1 and 2:

In light of the above evaluation, this Court holds that:

- The finding of the trial Court regarding the existence of a common wall is not supported by reliable or cogent evidence and is liable to be set aside.
- The plaintiff has failed to establish lawful possession of the suit property as required in law, and therefore is not entitled to the relief of permanent injunction.

Accordingly, both Point Nos.1 and 2 are answered in favour of the appellant.

8. Point No.3:

8.1. Upon consideration of the entire materials on record and the findings rendered under Point Nos.1 and 2, this Court proceeds to evaluate whether the judgment and decree of the trial Court suffer from such legal infirmities as to warrant appellate interference.

8.2. It is a settled principle that an appellate Court does not lightly interfere with findings of fact recorded by a trial Court. However, where such findings are shown to be the result of misappreciation of evidence, non-consideration of material documents, selective reliance on testimony, or conclusions which are perverse in nature, interference not only becomes permissible but also necessary to prevent miscarriage of justice.

8.3. In the present case, the foundational premise upon which the trial Court has decreed the suit is twofold: firstly, that there exists a common wall between the properties of the parties; and secondly, that the plaintiff is in lawful and settled possession of the suit property warranting protection by way of permanent injunction. Both these findings, as already examined, are not supported by consistent, credible, and legally admissible evidence.

8.4. A careful reading of the impugned judgment reveals that the trial Court has proceeded on a selective appreciation of oral testimony, particularly that of PW2, whose evidence is admittedly inconsistent and self-contradictory. The trial Court has extracted isolated portions of his deposition to support the plaintiff's case, while failing to evaluate the evidentiary worth of his entire testimony. Such selective reliance, without reconciling contradictions, results in a distorted appreciation of evidence.

8.5. Equally, the trial Court has failed to properly consider the admissions made by PW1 in cross-examination. These admissions go to the root of the plaintiff's claim regarding boundaries, extent of possession, and alleged encroachment. The omission to deal with such material admissions constitutes a serious infirmity in the reasoning process of the trial Court.

8.6. The trial Court has also not accorded due evidentiary weight to the Commissioner's report and plan, which are crucial in a case involving disputed boundaries and alleged encroachment. The rejection of such evidence on the premise that it travels beyond the scope of the suit is legally unsustainable, particularly when the very dispute relates to physical possession and identification of property. The failure to properly evaluate Ex.C1 and Ex.C2 has materially affected the findings recorded by the trial Court.

8.7. Further, the trial Court has proceeded on the erroneous assumption that weakness in the defendant's case can fill gaps in the plaintiff's evidence. The judgment reflects a shift in the burden of proof, wherein the defendant's failure to produce certain documents has been treated as strengthening the plaintiff's claim. Such an approach is contrary to the settled principles of civil jurisprudence, which mandate that the plaintiff must succeed on the strength of her own case and not on the weakness of the defence.

8.8. The impugned judgment also suffers from non-consideration of material discrepancies between Ex.A1 and the pleadings of the plaintiff. While Ex.A1 describes the property as a vacant site, the plaintiff has projected it as a constructed property with a common wall. The trial Court has failed to address this fundamental contradiction, which goes to the very root of the plaintiff's entitlement.

8.9. When the entire evidence is viewed in its proper perspective, it becomes evident that the trial Court has not undertaken a balanced or holistic appreciation of the materials on record. Instead, it has proceeded on assumptions and selective inferences, resulting in conclusions that are not supported by the weight of evidence.

9. Conclusion on Point 3:

9.1. In view of the foregoing discussion, this Court is of the considered opinion that the judgment and decree of the trial Court suffer from serious legal infirmities, including improper appreciation of evidence, non-consideration of material admissions, misapplication of burden of proof, and erroneous factual conclusions. These defects go to the root of the matter and vitiate the findings recorded by the trial Court. Accordingly, Point No.3 is answered in the affirmative, holding that the judgment and decree of the trial Court do warrant interference by this appellate Court.

9.2. In the light of the findings rendered on Point Nos.1 to 3, this Court holds that the appellant has made out a clear case for interference with the judgment and decree of the trial Court.

10. Result:

1. In the result this Appeal Suit is allowed.
2. The judgment and decree dated 22.04.2022 passed in O.S.No.25 of 2015 on the file of the District Munsif Court, Sathyamangalam, are hereby set aside.
3. Consequently, the suit filed by the respondent/plaintiff stands dismissed.
4. In the circumstances of the case, there shall be no order as to costs.

Dictated by me to the Steno typist, typed by her in the Computer directly, corrected and pronounced by me in open court on this the 09th day of April 2026.

Subordinate Judge,
Sathyamangalam.

Appellant side witnesses and documents: NIL
Respondent's side Witnesses and documents: NIL

Subordinate Judge,
Sathyamangalam.