

**IN THE COURT OF THE II ADDITIONAL DISTRICT MUNSIF,
NAGERCOIL.**

Present : Selvi. V. Sivaranjani, B.A., L.L.B.,

II Additional District Munsif, Nagercoil.
Monday, on the 18th day of August, 2025.
I.A. No. 3 of 2025 in O.S. No. 1 of 2025

CNR No.TNKK04-000002-2025

P. Sujithra

... Petitioner / Plaintiff

-vs-

P. Ragunathan

... Respondent / Defendant

This petition came before this court on 13.08.2025 for a final hearing in the presence of Mr. M.S. Moorthy, Advocate for the Petitioner / Plaintiff and Mr. C. Ashok Kumar, Advocate for the Respondent / Defendant and upon hearing both sides, perusing the case records, and having stood over for consideration till this day, this court hereby delivers the following:

ORDER

The petitioner has filed the above petition under Order XXVI Rule 9 and Section 151 of Code of Civil Procedure, seeking to appoint an Advocate Commissioner to make a local visit the plaint schedule properties and to note down the points given below and submit his report.

Points to be noted by the Advocate-Commissioner:

1. To note the physical features and lie of the plaint 'A' and 'B' schedule properties.

2. To note the plaint schedule properties as per documents of the plaintiff and defendant.
3. To note the measure the width and length of plaint ' B' schedule pathway as per lie and per the documents of the plaintiff and defendant.
- 4) To note the southern iron gate put up by the defendant in the plaint 'B' schedule property.
- 5) To note that the plaintiff is having a eastern gate on the plaint 'B' schedule property.
- 6) To note the EB line and cable line drawn through within the 'B' schedule pathway.
- 7) To note the Panchayat water connection pipe within the plaint 'A' schedule property through the plaint 'B; schedule property.
- 8) Such other point or points to be noted at the time of the visit of the commissioner in the spot.
- 2) Gist of Averments in the Petitioner / Plaintiff Petition :

The petitioner is the plaintiff in this suit and petitioner herein. The Petitioner has filed the suit for declaration, permanent injunction, mandatory injunction and other reliefs. The petitioner is the owner, having valid title, possession and enjoyment of the plaint 'A' schedule property. The patta, chitta, Adangal, tax building tax, EB Bill, Water tax and other records stands in the name of petitioner. The plaint 'B' schedule property is a 12 sq. links width and 150 sq. links length of common pathway to petitioner and defendant.

3. The plaint schedule 'A' and 'B' properties, defendant's properties and more area situated in R.S.No.62/17 of Agasteeswaram Village, Agasteeswaram Taluk, Kanyakumari District were originally belonged to one Lizzy Anna Deepam, D/o. Devaiyee Nadachi of Puthalam. She sold her properties to several person including the vendors and predecessor in interest of petitioner and defendant. The petitioner vendor one Radhakrishnan purchased 15 cents of vacant land including pathway admeasuring 1.200 cents (at the width of 12 sq. links and length of 150 sq.links) from the said Lizzy Anna Deepam by virtue of a Registered Sale deed No.1491/1991 dated 27.06.1991. He was in possession and enjoyment of the said property from the date of sale and put up construction of House building therein. The copy of sale deed of Radhakrishnan produced herewith.

4. Subsequently, on 03.08.2006 the said Radhakrishnan sold 13.800 cents Land with House buildings and other construction out of 15 cents to petitioner and remaining 1.200 cents was allotted as common pathway to petitioner by virtue of Registered sale deed No.2816/2016 dated 03.08.2006. The said 13.800 cent Land with buildings are schedule as plaint 'A' schedule property and 12 sq. links width and 150 sq.links length area pathway measuring 1.200 cents is schedule as plaint 'B' schedule in this plaint which are part and parcel of above said 15 cents. The copy of sale deed of petitioner is produced herewith.

5. The 'B' schedule pathway has been provided and allotted by the vendors and predecessors to their purchaser and successors to access their respective properties. The said 'B' schedule pathway has been allotted as common pathway to petitioner and defendant. It is clearly recited in the sale deed of petitioner and defendant. It is clearly recited in the sale deed of petitioner and defendant and their predecessors interest. The defendant's sale deed No.382 of 2011 dated 28.01.2011 is produced herewith which reveals the plaintiff 'B' schedule pathway its rights and inheritance. The defendant's property is situated on the northern side of petitioner plaintiff 'A' schedule property and 'B' schedule pathway. The petitioner and defendant and their predecessors in interest are using and enjoying the properties to access their respective properties as a matter of right. This right is a matter of right and inheritance by the valid documents. The petitioner have provided a gate on the eastern compound wall from petitioner's 'A' schedule property facing east on the pathway to access main road through the 'B' schedule pathway. The Panchayat pipe line, Cable TV line, Rain water drain pipe, E.B line of petitioner and defendant are drawn through the 'B' schedule pathway. The petitioner and petitioner predecessors in interest have been peacefully and openly using and enjoying the plaintiff 'B' schedule property as of right for more than 35 years without any hindrance. The defendant and his predecessors are well aware of

the right of way and other enjoyment to petitioner through the plaint 'B' schedule property.

6. The petitioner and petitioner's husband are employee and working in Coimbatore and out children also studying there in Coimbatore. The petitioner used to visit the plaint schedule property once in a month or functions or other festivals. The petitioner have leased out the portion of the building to the tenant as care taker of the property. Taking advantage of our temporary absent, in the month of September 2024 the defendant and his men were made an attempt to install an Iron gate in front of the pathway on the south but it was thwarted by the timely intervention of petitioner relative and caretaker. But again on 28.10.2024 he designed to executive his illegal act of obstructing the pathway and put up gate in front of the 'B' schedule pathway with the intention to encroach and merge the plaint 'B' schedule property along with his property available on the north. The voice of the care taker and relative are went on vain. So, immediately petitioner lodged an online complaint before the Tamil Nadu Police portal on 29.10.2024. The matter was referred to South Thamaraiikulam Police and they enquired into the matter on issuing receipt No.488 of 2024. During enquiry the defendant raised the contention that the plaint 'B' schedule property is exclusively belongs to him and he has every right to close the pathway or put up gate so petitioner have no manner of right to question the same. While police enquiry the defendant threatened petitioner and police by

claimed to be an advocate. So police has not initiated and proper steps against the defendant and directed the parties to approach the civil court to seek their remedy and maintain status quo till then. The police has not taken any steps to remove the portion of the gate put up by the defendant on 28.10.2024 but the rest of the portion gate has installed later and the defendant using filthy language to the tenant and caretaker to using the pathway. All the efforts taken by petitioner went on vain.

7. The plaint schedule properties and defendant's properties were originally situated in Re.Sy.No.62/17 in Agasteeswaram Village and subsequently mutation has been effected in the Revenue Records. As such now petitioner property is situated in Re.Sy.No.62/17C, defendant's property is situated in Re.Sy.No.62/17B and 62/17E and 'B' schedule pathway is situated in Re.Sy.No.62/17D. The copy of patta and Re-survey Plan produced herewith. The 'B' schedule property is located in separate survey No.62/17D admeasuring 12 sq. links width and 150 sq.links length (ie.1200 cents) but not classified as pathway due to non surrender of pathway to the Government or Panchayat. The 'B' schedule pathway is a private common pathway to the plaintiff and defendant and no one has an independent right over the same except to right to usage and enjoying. No one has a manner of right to put to construction, or obstruction or encroach or put up any gate to prevent another to ingress and egress through the pathway.

8. The petitioner and our predecessors in interest have been peacefully and openly enjoying and using the plaint 'B' schedule property as pathway as a matter of right without any hindrance from the predecessors of the defendant or anyone else. The petitioner and our predecessors in interest had also prescribed right of way through the plaint 'B' schedule property by way of grand. The defendant is well aware of the right of way to petitioner through the plaint 'B' schedule property.

9. The petitioner was entitle to a right of way from 'B' schedule pathway to public road at all times and for all purposes. The defendant have no manner of right to prevent or obstruct the pathway. The defendant and their family members are powerful persons in that locality and having political, money and muscle power and they may do any sorts of illegal acts and put up obstruction and construction over the pathway at any point of time pathway. The police is also not ready to involve in this civil matter.

10. Under such circumstances the real physical feature of the plaint schedule properties should be brought to the knowledge of this court through an advocate commissioner. Hence, it becomes highly essential to appoint an advocate/commissioner to visit the plaint schedule properties, to locate the plaint schedule properties, to note the physical features and lie of the plaint schedule properties and to prepare a plan and submit before this court enabling the court to elucidate the fact of the case, otherwise, petitioner will be put to irreparable

loss and injuries which cannot be compensated in any manner later. Hence, this petition is to be allowed.

11) The Respondent has filed memo adopting their written statement as counter in the above Petition:

The averment that the plaintiff is the owner, having valid title, possession and enjoyment of the plaint 'A' schedule property has to be proved by the plaintiff. The averment that the patta, chitta, Adangal, tax, building tax, EB Bill, Water tax and other records stands in the name of the plaintiff in respect of the plaint 'A' schedule property is to be proved by the plaintiff. The averment that the plaint 'B' schedule property is a 12 sq.links width and 150 sq.links length of common pathway to the plaintiff and defendant is not fully correct. The plaintiff did not use the plaint schedule property but just before filing of this suit she fabricated some evidence and filed this suit.

12. The averment that the plaint schedule 'A' & 'B' properties, defendant's properties and more area situated in R.S.No. 62/17 of Agasteeswaram Village, Agasteeswaram Taluk, Kanyakumari District were originally belonged to one Lizzy Anna Deepam D/o. Devaiyee Nadachi of Puthalam is not disputed. The averment that Lizzy Anna Deepam sold her properties to several person including the vendors XLand predecessor in interest of the plaintiff and defendant are not disputed. The averment that the plaintiff's vendor one

Mr.Radhakrishnan purchased 15 cents of vacant land including pathway admeasuring 1.200 cents (at the width of 12 sq.links and length of 150 sq.links) from the said Lizzy Anna Deepam by virtue of a Registered Sale deed No. 1491/1991 dated 27.06.1991 is absolutely false. The averment that Mr.Radhakrishnan was in possession and enjoyment of the said property from the date of sale and put up construction of House building therein are fully correct.

13. The averment that, subsequently on sold 13.800 cents Land with House buildings and other construction out of 15 cents to the plaintiff and remaining 1.200 cents was allotted as common pathway to the plaintiff by virtue of Registered sale deed No.2816/2006 dated 03.08.2006 are not fully correct. The averment that the said 13.800 cents Land with buildings are schedule as plaint 'A' Schedule property and 12 sq.links width and 150 sq.links length area pathway measuring 1.200 cents is schedule as plaint 'B' schedule in this plaint which are part and parcel of above said 15 cents are not fully correct and the same require strict proof.

14. The averment that the 'B' schedule pathway has been provided and allotted by the vendors and predecessors to their purchaser and successors to access their respective properties are not fully correct. The plaintiff did not use the plaint 'B' schedule property because she has a main road access from Kanyakumari to Nagercoil Road. The averment that the said 'B' schedule

pathway has been allotted as common pathway to the plaintiff and defendant are not correct. The defendant alone has been using the plaintiff 'B' schedule property. The averment that the sale deed of the plaintiff and defendant and their predecessors in interest very clearly reveal the common use of the pathway is not correct and not acted upon. The averment that the defendant's sale deed No. 382/2011 dated 28.01.2011 is produced herewith which reveals the plaintiff 'B' schedule pathway, its rights and inheritance are correct but the plaintiff did not use the plaintiff 'B' schedule property. The averment that defendant's property is situated on the northern side of the plaintiff's plaintiff 'A' schedule property and 'B' schedule pathway are not disputed. The averment that the plaintiff and defendant and their predecessors in interest are using and enjoying the B schedule properties to access their respective 'A' schedule properties as a matter of right is not correct. The plaintiff never used the plaintiff 'B' schedule property because she has a main road access from Kanyakumari to Nagercoil Road. The averment that the pathway right is a matter of grand and inheritance by the valid documents has to be proved by the plaintiff. The plaintiff has to elect not to use the plaintiff B schedule property. The averment that the plaintiff provided a gate on the eastern compound wall from her 'A' schedule property facing east on the pathway to access main road through the 'B' schedule pathway is false and denied. As stated above very recently the plaintiff has put up a gate facing the plaintiff 'B' schedule property and earlier no gate was available facing the plaintiff

'B' schedule property. The averment that the Panchayat pipe line, Cable TV line, Rain water drain pipe, EB Line of the plaintiff and defendant are drawn through the 'B' schedule pathway is not fully correct. The plaintiff very recently has putup the drainage water pipe in the 'B' Schedule property on the strong protest made by the defendant. But the Panchayat pipe line, Cable TV line, Rain water drain pipe have not been putup over the plaint 'B' schedule property and the same are being putup through the main road and main gate side by the plaintiff. Further, the plaintiff is drawing EB line from the Electric post available in main road and the EB line has not been drawn from the plaint B schedule property. The averment that the plaintiff and her predecessors in interest have been peacefully and openly using and enjoying the plaint 'B' schedule property as a right for more than 35 years without any hindrance are false and denied. Neither plaintiff nor her predecessors in interest used the plaint 'B' schedule property as pathway. The averment that defendant and his predecessors are well aware of the right of way and other enjoyment to the plaintiff through the plaint 'B' schedule property is false and denied. The defendant very empathetically denied that the defendant and his predecessors in interest well aware of usage of the plaint 'B' schedule property by the plaintiff and her predecessors in interest.

15. The averment that the plaintiff and her husband are employee and working in Coimbatore and their children also studying there in Coimbatore are to be proved by the plaintiff. The averment that the plaintiff used to visit the

plaint schedule property once in a month or functions or other festivals are to be proved by the plaintiff. The averment that the plaintiff has leased out the portion of the building to the tenant as care taker of the property to be proved by the plaintiff. The averment that taking advantage of the plaintiff's temporary absent, in the month of September 2024 the defendant and his men were made an attempt to install an Iron gate in front of the pathway on the south but it was thwarted by the timely intervention of the plaintiff's relative and care taker are false and denied. The averment that the defendant again on 28.10.2024 designed to executive his illegal act of obstructing the pathway and put up gate in front of the 'B' schedule pathway with the intention to encroach and merge the plaint 'B' schedule property along with his property available on the north are false and denied. The gate was erected even before of the purchase of this defendant and subsequently the gate became eroded and due to corrosion, the gate became damaged and as a result of the damage of the gate the miscreants and antisocial elements in the locality has been using the pathway as a place of drinking alcohol, drugs, dumping waste bottles, garbage and also used the pathway as open toilet. This caused much inconvenience to the defendant, his men, women and his tenants in his property and therefore the defendant repaired the damaged gate and installed the same in the existing place and subsequently the plaintiff with a malafide intention erected a gate, facing on the plaint 'B' schedule property and also discharging drainage water by newly installed drainage pipe

over the plaint schedule 'B' property. The averment that the voice of the care taker and relative of the plaintiff are went on vain, so immediately the plaintiff lodged an online complaint before the Tamil Nadu Police portal on 29.10.2024 are false and denied. The plaintiff has given a false complaint and this defendant has given befitting reply to the complaint given by the plaintiff. The police on enquiry found the true fact and did not take any action. The police complaint was referred to South Thamaraiikulam Police and they enquired into the matter on issuing receipt No. 488/2024 are not disputed. The plaintiff obtained some statement from the defendant without his will and the statement was given as directed by the police by the influence of the plaintiff. The averment that the defendant raised the contention that the during enquiry the plaint 'B' schedule property is exclusively belongs to him and he has every right to close the pathway or put up gate so plaintiff has no manner of right to question the same are not fully correct. The defendant very categorically informed the police about the usage of the pathway by the defendant and non-usage of the pathway by the plaintiff and also informed the police about the illegal activities referred to above by the antisocial elements. It is absolutely false that while police enquiry the defendant threatened the plaintiff and police by claimed to be an advocate. The averment that due to threat of the defendant the police has not initiated and proper steps against the defendant are cock and bull story and the same has been invented by the plaintiff for the purpose of creating cause of action to file the

suit. The averment that the police directed the parties to approach the civil court to seek their remedy and maintain status quo till then are false and denied. The averment that the police has not taken any steps to remove the portion of the gate put up by the defendant on 28.10.2024 but the rest of the portion gate has installed later and the defendant using filthy language caretaker to using the pathway are false and denied. The plaintiff with the malafide intention wanted to remove the gate existing more than 15 years and for that the plaintiff has no right and further the plaintiff has not used the pathway for more than 15 years and now with the sinister intention to interfere in the pathway.

16. The averment that the plaint schedule properties and defendant's properties were originally situated in Re.Sy.No. 62/17 in Agasteeswaram Village and subsequently mutation has been effected in the Revenue Records are not disputed. The averment that the plaintiff's property is situated in Re.Sy.No. 62/17C, defendant's property is situated in Re.Sy.No. 62/17B & 62/17E and 'B' schedule pathway is situated in Re.Sy.No. 62/17D are not disputed. The plaintiff has no necessity to use the plaint 'B' schedule property because as stated above the main road approach and main gate is there and also there are two gates facing the main road. Now with the sinister intention the plaintiff has closed one gate and the new opening facing on the plaint 'B' schedule property has been formed. The averment that the 'B' schedule property is located in separate survey No. 62/17D admeasuring 12 sq. links width and 150 sq.links length (ie.

1.200 cents) but not classified as pathway due to non-surrender of pathway to the Government or Panchayat is not disputed. The averment that the plaint 'B' schedule pathway is a private common pathway to the plaintiff and defendant and no one has an independent right over the same except to right to usage and enjoying are false and denied. The plaintiff, for the last more than 15 years, has not been used the plaint 'B' schedule pathway and the plaint 'B' schedule property is in exclusive usage of the defendant. The plaintiff has no manner of right to put to construction, or obstruction or encroach or put up any gate to prevent another to ingress and egress through the pathway.

17. The averment that the plaintiff and their predecessors in interest have been peacefully and openly enjoying and using the plaint 'B' schedule property as pathway as a matter of right without any hindrance from the predecessors of the defendant or anyone else are false and denied. The averment that the plaintiff and their predecessors in interest had also prescribed right of way through the plaint 'B' schedule property by way of grand is false and denied. The averment that the defendant is well aware of the right of way to the plaintiff through the plaint 'B' schedule property is denied. As stated above the plaintiff and her predecessors in interest did not use the plaint 'B' schedule property and even if any right over the plaint 'B' schedule property is vanished and extinguished by non- use of the plaint 'B' schedule property. The plaintiff's right way is time barred and the suit is time barred.

18. The averment that the plaintiff is entitled to 'B' schedule pathway to public road at all times and for all to a right of way from purposes is denied. The averment that the defendant has no manner of right to prevent or obstruct the pathway is not correct. The plaintiff has not used plaint 'B' schedule for more than 15 years and the defendant has purchased his property on 28.01.2011 and registered on 31.01.2011 as per sale deed No. 382/2011 of Kottaram Sub-Registrar Office, since then the date of sale deed the defendant has been using the plaint 'B' schedule property exclusively and from 28.01.2011 onwards the plaintiff has not been used the plaint 'B' schedule property as pathway. The averment that defendant and their family members are powerful persons in that locality and having political, money and muscle power and they may do any sorts of illegal acts and put up obstruction and construction over the pathway at any point of time pathway are false and denied. As stated above the gate on the plaint 'B' schedule property is existing more than 15 years and which does not cause any hindrance but it is the protection to the plaint 'B' schedule property.

19. The averment that the plaintiff's right of way through the plaint 'B' schedule property has to be declared is denied. The plaintiff is not using the plaint 'B' schedule property as pathway and therefore the plaintiff is not entitled to declaration as prayed for in the plaint. The averment that the defendant or his men or his agent or anybody claiming under him have to be restrained by an order of permanent injunction restraining them from interfering or disturbing the

plaintiff's right of way through the plaint 'B' schedule pathway for her use for all purpose and all times and also restrain them from putting up any sort of constructions obstructing or preventing the plaintiff use of the plaint 'B' schedule property in any manner is false and denied. As stated above gate is already existing in the plaint 'B' schedule property entrance and the defendant alone exclusively using as pathway since there is no access other than this B' Schedule property and the plaintiff did not use the plaint 'B' schedule property as pathway as she is using the plaint 'A' schedule property from the main road running from Kanyakumari to Nagercoil and therefore the plaintiff is not entitled to permanent injunction. The averment that the plaintiff is entitled for mandatory injunction directing the defendant to remove the gate on the south of the pathway or obstruction within the portion of plaint 'B' Schedule property is denied. The relief of mandatory injunction is time barred. The gate is existing for the last more than 15 years and therefore the relief of mandatory injunction is time barred.

20. The averment that the plaintiff has put up portion of the gate on the south of the 'B' schedule pathway and made obstruction in the pathway which leads to hindrance and difficult for easy access, to the property is false and denied. The plaintiff is not using the plaint 'B' schedule property as pathway and therefore the question of hindrance does not arise to the plaintiff. The averment that the gate to be removed are false and denied. The plaintiff is suffered the

principles of acquiescence. Neither plaintiff nor her predecessors in interest did not object the gate and therefore the plaintiff is not entitled to any relief as prayed for in the suit. The gate is only protection from the miscreants and antisocial elements as stated above and therefore the gate need not be removed and the gate has not caused any obstruction to use the plaint 'B' schedule property.

21. The plaintiff has not approached this court in clean hands and she has suppressed the true facts and filed this suit as if the gate was erected only on 28.10.2024 and the balance of convenience and prima facie case not in favour of the plaintiff. The existence of gate on the plaint 'B' schedule property shall not cause any irreparable loss and injury to the plaintiff. Therefore, the plaintiff is not entitled for Declaration, permanent injunction and mandatory injunction.

22. There is no cause of action to file the suit. The cause of action is fake one and there is no merit in the suit and the suit is time barred and the suit is liable to be dismissed with cost.

23) The point for consideration is whether the above petition has to be allowed or not?

24) Point:

Heard both sides. Records perused. The petitioner is the plaintiff in the suit filed for declaration, permanent injunction and Mandatory injunction and other reliefs. The plaint 'B' schedule property is a alleged common pathway,

attempted by the respondent/defendant by installing an iron gate in front of the plaint 'B' scheduled pathway allegedly with intention to encroach and merge the plaint 'B' schedule property along with the respondent/defendant's property available on the north. Also, it has been submitted by the petitioner that the respondent/defendant raised serious contention that the plaint 'B' schedule property exclusively belonged to him. Considering the above facts this court is of the considered view that in order to arrive at a proper and effective adjudication of the suit it is crucial to appointed an advocate commissioner to visit the plaint schedule properties, to locate the plaint schedule properties, to note the physical features and lie of the plaint schedule properties. In the light of above facts, this court is inclined to allow this petition.

As a result, this petition is allowed, Advocate Miss. L. Priyadharshini M.S.No.8276/2024 is appointed as an Advocate Commissioner in this petition and her remuneration is fixed as Rs.8,000/- (Rupees Eight Thousand only), the same shall be paid by the petitioners on or before 02.09.2025. The Advocate Commissioner is directed to visit the suit properties after due notice to both sides and to note down all the necessary features as may be required by both the parties and submit the detailed report and plan within two months. The Commissioner shall take assistance of Taluk Surveyor. Call on 02.09.2025

Dictated to the Steno-Typist, and typed by her directly in the Computer, corrected and pronounced by me, in open court this, the 18th day of August 2025.

II Additional District Munsif,
Nagercoil.

Petitioner side witnesses and documents : Nil.

Respondents side witnesses and documents : Nil.

II Additional District Munsif
Nagercoil.

Draft/Fair Order
I.A.No.3/2025 in
O.S.No.1/2025
Date: 18.08.2025.
II ADM Court, Nagercoil.

