

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

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

II Additional District Munsif, Nagercoil.  
Thursday, on the 20<sup>th</sup> day of November, 2025.  
**I.A. No. 2 of 2023 in O.S. No. 45 of 2023**

**CNR No.TNKK04-000087-2023**

J. Peter ... Petitioner /Plaintiff

-vs-

1. Esther

2. L. Sahaya George Stephen ... Respondents / Defendants

This petition came before this court on 08.11.2025 for a final hearing in the presence of Mr. A. Balamurugan, learned Counsel for the petitioner / Plaintiff and Mr. T.S. Rajesh, learned counsel for the 1<sup>st</sup> respondent and Mr. L. Rajathurai, learned counsel for the 2<sup>nd</sup> respondent 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 had filed under Order XXXIX Rule 1 & 2 and Section 151 of the Code of Civil Procedure, seeking to grant temporary injunction restraining the respondents /defendants, his men or agents or servants or anybody claiming under him from disturbing the petitioner / plaintiff peaceful possession and enjoyment over the petition schedule property in any manner and from causing

damages and any other encumbrances over the petition schedule property till the disposal of the suit.

2) Gist of Averments in the Petitioners Petition :

The Plaint Schedule Property and more having an extend of 10.1/2 cents comprised in R.S. No. 561/5A1 of Kanyakumari Village originally belonged to one Pushpakani and Chella Nadachi, the Legal representatives of one Pathankutty Nadar. The said property devolved upon the said Pathankutty Nadar as per oral partition among their family members.

3. The said Pushpakani and Chella Nadachi has executed a General Power Deed as per doc. No. 401/2005 dated 07.12.2005 of Kottaram Sub Registry in favour of one K. Selvakumar, S/o. Kumaresan with regard to the alleged property. The Power holder K. Selvakumar has alienated the entire 10.1/2 cents of land comprised in R.S. No. 561/5A1 of Kanyakumari Village having the Patta No. 3198 to one B. Anthony Appan, S/o. Parthalom as per Sale Deed No. 4075/2005 dated 12.12.2005 of Kottaram Sub Registry.

4. The petitioner/plaintiff has purchased the western 2 cents of land out of the alleged 10.1/2 cents of land from the said B. Anthony Appan, S/o.Parthalom as per Sale Deed No.3282/2021 dated 04.08.2021 of Kottaram Sub Registry and that is the Plaint Schedule Property. Thus the petitioner/plaintiff has obtained absolute and valid title over the Plaint Schedule

Property as per the said Sale Deed No. 3282/2021 and has effected mutation in the revenue records. The name of the petitioner / plaintiff is entered in the joint Patta No. 3198 pertaining to R.S.No.561/5A1 of Kanyakumari Village, Agastheeswaram Taluk, Kanyakumari District.

5. Having purchased the Plaint Schedule Property and having paid the revenue tax for the Plaint Schedule Property in his name, the petitioner/ plaintiff attempted to maintain the damaged compound wall on the south west of the Plaint Schedule Property. The Northern side of the property is the road. There are compound walls on the east and South of the Plaint Schedule Property. On the North Western side of the Plaint Schedule Property the 1<sup>st</sup> defendant has constructed a residential house and has constructed a compound wall upto the extent of her property. The 1<sup>st</sup> defendant has put up a gate on her alleged Eastern compound wall that opens into the Plaint Schedule Property. On enquiry the 1<sup>st</sup> defendant promised to close the gate as early as possible and pleaded time. The South Western property belongs to the 2<sup>nd</sup> defendant which lies as a vacant land. The Compound wall on the south Western side of the Plaint Schedule Property was dismantled.

6. With the motive to enjoy the Plaint Schedule Property peacefully on 12.02.2023 the petitioner/plaintiff attempted to construct the damaged Compound wall on the South Western side of the Plaint Schedule Property. At that time the defendants 1 & 2 obstructed the petitioner/plaintiff and prevented

him from constructing the damaged Compound wall on the South Western side of the Plaintiff Schedule Property. They also threatened the petitioner/plaintiff that they would not permit him to construct a Compound wall on the Western boundary of the Plaintiff Schedule Property and will never permit him to enjoy the Plaintiff Schedule Property peacefully. Also the 1<sup>st</sup> defendant failed to remove the gate on her eastern wall which opens into the Plaintiff Schedule Property. Both the defendants are trying to claim pathway right in the Plaintiff Schedule Property, which is highly illegal. They can never claim any right over the Plaintiff Schedule Property. But the defendants are continuously disturbing the peaceful possession and enjoyment of the petitioner/plaintiff over the Plaintiff Schedule Property and is also preventing the petitioner/plaintiff from constructing the compound wall on the South West of the Plaintiff Schedule property.

7. Thus the petitioner/plaintiff is not able to enjoy the Plaintiff Schedule Property peacefully even though he has purchased it for a valuable consideration. All the efforts made by the petitioner/ plaintiff to settle the matter peacefully ended in vain. The petitioner/plaintiff has obtained valid, clear and perfect title over the Plaintiff Schedule Property and is the absolute owner of the Plaintiff Schedule Property. The Revenue records clearly show that the petitioner/plaintiff is in lawful possession and enjoyment over the Plaintiff Schedule Property. He has been regularly paying Land Tax in his name since the date of his purchase. The defendants are wantonly disturbing the peaceful

possession and enjoyment of the petitioner/plaintiff over the Plaint Schedule Property. The petitioner/plaintiff has a Prima facie case and the balance of convenience is in favor of the petitioner/plaintiff. Hence the defendants have to be restrained by an order of permanent injunction; failing which the petitioner/plaintiff would be put to irreparable loss and injuries. Also an order of mandatory injunction has to be necessarily passed against the 1<sup>st</sup> defendant directing her to remove the gate on the Eastern wall of her property that opens into the Plaint Schedule Property. Hence this court to grant an interim injunction otherwise the petitioner/plaintiff will be put to irreparable loss and hardships. Hence, this petition is to to allowed.

8. **The 1<sup>st</sup> Respondent has filed memo adopting their written statement as counter in the above Petition:**

All statements in the plaint, except those expressly admitted or addressed below, are denied. It is specifically denied that Pushpakani and Chellanadachi ever had rights or possession over 10.1/2 cents in Re.Sy.No.561/5A1 as heirs of Pathankutty Nadar. According to the oral partition in the family, Pathankutty Nadar received only 8.1/2 cents of property. His brothers namely, Pandaram Nadar, Tharmakkan Nadar, and Swamikannu Nadar each likewise received 8.1/2 cents in the same survey number. Pathankutty Nadar's 8.1/2 cents, which lie east of the defendants' property, were sold entirely to third parties. The defendants hold the property belonging to Isravel Nadar, which admittedly lies west of

Pathankutty Nadar's share. The suit property is neither part of nor derived from the estate of Pathankutty Nadar or his legal heirs. The alleged 2 cents in the plaint do not exist; the description, survey number, and boundaries are imaginary, rendering the property unidentifiable. The suit is therefore not maintainable.

9. The alleged execution of a power of attorney is denied. Pushpakani and Chellanadachi had no right over 10.1/2 cents and therefore could not validly execute any power of attorney for such land. Even assuming such execution, it is void. The alleged power of attorney holder, K. Selvakumar, had no authority to convey 10.1/2 cents to B. Anthony Appan because his principals had no title to that extent. Sale deed No.4075/2005 dated 12.12.2005 is void, as the vendors' possession was limited to only 8.1/2 cents. The deed does not relate to Re.Sy.No.561/5A1. Anthony Appan himself clearly acquired and possessed only 8½ cents, as evidenced by his subsequent sale deeds No.1112/2006 (3 cents sold to Raxy Deepa) and No.2702/2006 (2 cents sold to Selvi in both of which he expressly states that he purchased only 8.1/2 cents though his deed mentions 10½ cents. The plaintiff is therefore estopped from alleging that Anthony Appan acquired 10.1/2 cents. The western boundaries in these deeds consistently refer to Isravel Nadar's property. Plaintiff's sale deed No.3282/2021 dated 04.08.2021 is fabricated and collusively created with the intent to encroach upon the

defendants' property. The plaintiff has obtained no right, title, or possession. His sale deed is false and fictitious. Any fraudulent revenue entries in his favour confer no title.

10. The statements in these paragraphs are false and artificially created to support the suit. Anthony Appan had already sold his entire holding long before executing the deed under which plaintiff claims. The narrative regarding gates, pathway claims, and obstruction of compound wall construction is wholly false.

11. The correct facts are as follows: Subramanian Nadar owned 34 cents in old Survey No.1048 (total extent 1 acre 64 cents). His four sons namely, Pandaram Nadar, Dharmakkannu, Swamikannu and Pathankutty divided these 34 cents orally and took 8.1/2 cents each. The westernmost plot went to Pandaram; the easternmost to Pathankutty; the middle plots to Dharmakkannu and Swamikannu. In 1956, these middle plots (17 cents) were jointly sold to Isravel Nadar under Sale Deed No.4064/1956. After his death, his son Deva Athisayam inherited the 17 cents, built compound walls, and installed a borewell. East of this compound wall lies Pathankutty's 8.1/2 cents. Deva Athisayam later subdivided his land into three plots, creating a 10-foot-wide north-south pathway on the east. He sold 5 cents on the northwest to the 1<sup>st</sup>

defendant under Sale Deed No.215/2013, then an additional 1 cent south of it under Sale Deed No.1545/2022, giving her 6 cents total along with pathway rights. In 2015, portions of land were gifted to the Government under Gift Deed No.907/2015 to form a road. In 2022, the southern 9 cent plot was sold with pathway rights. The borewell lies within the pathway. The 1st defendant built her house in 2013 and has used the borewell and pathway with permission. Her electricity meter was fixed on the eastern compound wall. All sale deeds executed by Anthony Appan show Isravel's land as the western boundary. The plaintiff therefore has no claim over the defendants' land or the pathway.

12. The plaintiff has no right or possession over any part of the defendants' properties. Anthony Appan had no authority to convey these lands to the plaintiff. The plaintiff's sale deed confers no rights and is collusive. The valuation and court fee are incorrect. As the suit concerns immovable property, fee must be based on market value. The suit is liable to be dismissed on this ground. The plaintiff is not entitled to any relief. The suit lacks merit and even a suit for bare injunction is not maintainable because the plaintiff has no rights under his bogus sale deed. The suit property is unidentifiable.

13. Plaintiff's vendor had already disposed of his entire holding before the plaintiff's deed. He had no remaining property to sell, making the plaintiff's

claim invalid. As the plaintiff claims rights over portions already sold to Selvi, Remy Deepa, Martin, Pepsilin, and subsequent transferees John Peter and Sahaya Febila, these persons are necessary parties to the suit. The suit, as framed, is not maintainable and should be dismissed.

14. The plaintiff has filed this suit to fraudulently misappropriate the defendants' property. The suit is not maintainable as the plaintiff neither has title nor possession. The property actually belongs to the defendants and has been within compound walls since 1992. The plaintiff is attempting to trespass under the guise of Anthony Appan's deeds. The suit is baseless and should be dismissed with heavy costs. The petition is liable to be dismissed with cost.

15) **The 2<sup>nd</sup> Respondent has filed memo adopting their written statement as counter in the above Petition:**

Plaintiff has filed this suit for permanent and mandatory injunction. This suit is not maintainable in law and fact. The document in favour of the plaintiff is void under the principles of "Nemo dat quod non habet". The vender of the plaintiff has no subsisting right to execute such a document. The plaintiff will not get a right on the basis of the said document. It is submitted as per sale deed dated. 24.12.1956 Isravel has purchased 17 cents of land from Dharmakan & Swamy Kannu Nadar. That said 17 cents & remaining area belongs to 4 persons

and each one got 8.1/2 cents. The area purchased by Isravel is the middle 17 cents (8.5+8.5). After the demise of Isravel his only son Deva Athisayam inherited the property and at first he sold 5 cents to Esther. The said Deva Athiyasam gave some area to form the road. After alienating 5 cents to Esther to have access to the remaining are on the eastern side Deva Athisayam formed a 10' width pathway. He sold 8.1/2 cents to one Pathan Kutty. However, while creating a power of attorney in favour of Selva Kumar more area is mentioned and on the basis more area than what they possessed is transferred to this plaintiff. There is no 2 cents property as claimed by this plaintiff. This defendant has filed a separate plan to show the lie of the property and the same may be treated as part of this written statement.

16. It is further submitted that leaving the 10 feet pathway compound wall is constructed and E.B. meter box is installed and in some areas fencing is also available. The claim of 2 cents by this plaintiff is a non-existing one. It is true that 1» defendant constructed a house. The further allegations regarding the attempt to maintain the compound wall are the imagination of the plaintiff. As a matter of by using the fraudulently obtained sale deed this plaintiff made an attempt to encroach the 10 width pathway area. It is submitted that Antonyappan alleged predecessor in interest of plaintiff claimed a right in this area and lodged a police complaint before the land grabbing police as per receipt No.369/2014 and the matter is enquired and it is decided to measure his property

with the help of Taluk Surveyor and parties have to act as per the said measurement. In pursuance to the said title in August 2014 the property is measured with the help of Talk Surveyor and it is concluded as there is no 2 cents of property as claimed by Antonyappan. Thereafter this plaintiff got a fraudulent document even though there is no 2 cents and attempted to disturb the possession of the defendants and with that object this suit is filed.

17. Plaintiff is not having any title or possession over the suit property and the schedule property is a non-existing and imaginary one. This plaintiff is not having any cause of action to file this suit. The dates mentioned in the para are imaginary, fictitious and illusory. This suit is liable to be dismissed on the simple ground of want to cause of action. The suit is not property valued. The court fee paid is not correct. This mere suit for injunction is not maintainable. Thus this suit is bad under the principles of Specific Relief Act. This suit is bad for non-joinder of necessary parties. The plaintiff's vendor Antonyappan and Deva Athiyasam vendor of this defendant are necessary parties. This suit without impleading them as party array is completely wrong. This suit is ill-conceived, motivated and devoid of any truth. The petition is liable to be dismissed with cost.

18. In order to prove the respective cases, on the side of the 2<sup>nd</sup> Respondent Exhibits R1 to R9 marked.

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

20. Point:

Heard both petitioner and 2<sup>nd</sup> respondent sides. An enquiry of 2<sup>nd</sup> respondent is adopted by the 1<sup>st</sup> respondent. Records perused. The petitioner is the plaintiff in the suit filed for Mandatory injunction and Permanent injunction. The plaintiff asserts title over the alleged western 2 cents in R.S. No. 561/5A1 based on the of the Sale Deed dated 04.08.2021 and relies on patta , tax receipts, and mutation in revenue records to claim lawful possession and interference by the defendants whereas the defendants have raised substantial, serious, and significant cloud over both the title and identity of the alleged property. Ex.R1, the written statement, clearly sets out the respondents contention that the plaintiff's sale deed is void under the principle of *nemo dat quod non habet*, as the plaintiff's vendor had no subsisting right to convey the alleged 2 cents. More importantly, the documentary evidence produced by the respondents strongly supports their contention that the land now claimed by the plaintiff does not exist as a separate 2 cent plot and in fact forms part of a long-established pathway. Ex.R2, the sale deed in favour of the 2<sup>nd</sup> respondent, specifically includes a right to use the pathway, confirming the existence and recognition of such pathway in earlier transactions. Ex.R3 is the online patta and Ex.R4 is the tax receipt in the name of the 2<sup>nd</sup> respondent for Re-Survey

No. 561/5A2 further corroborate his possession and enjoyment of the property adjoining the pathway. Ex.R5, the online resurvey plan, prima facie indicates the physical features on the ground and supports the respondents case regarding the existence of pathway access. More critically, Ex.R6, Ex.R7, and Ex.R8 all executed by the plaintiff's predecessor-in-title, B. Anthony Appan uniformly state that although earlier deeds mentioned 10.1/2 cents, the actual extent available on ground is only 8.1/2 cents, as pathways have been formed on the east and north of the property, and that each transferee was granted a right of pathway. These recitals, from the plaintiff's own vendor, undermine the plaintiff's present claim that a full 10.1/2 cents existed and that 2 cents were validly carved out for him. Ex.R9 is the sale deed in favour of Martin dated 13.10.2014 though alleged by the respondents to be fraudulent, which is subject to a matter of trial, again contains a recital that the original 10.1/2 cents has been reduced to 8.1/2 cents on the ground, excluding the 2 cents claimed by the executor as his own, thereby highlighting the long-standing dispute and uncertainty regarding the availability of the alleged 2 cents. Taken cumulatively, these documents strongly indicate that the plaintiff's 2 cents property is at best doubtful and at worst non-existent, and that the area claimed is in fact part of a common pathway recognized in multiple registered documents.

21. In such circumstances, this court finds that the plaintiff has failed to establish a prima facie case. Furthermore, the balance of convenience clearly

tilts in favour of the respondents, as granting an injunction to rebuild a compound wall would disturb the existing status quo and may obstruct a long-recognized pathway used for access to adjoining properties. The plaintiff's alleged hardship is compensable and reversible, whereas blocking the pathway would cause serious and irreparable inconvenience to the respondents. The consistent recital of lesser extent and the presence of pathways in multiple registered documents over many years raises a substantial and genuine dispute as to whether the plaintiff's alleged 2 cents exists at all. The competing claims concerning the exact extent, the existence of the 2 cents, and the presence of a pathway cannot be decided conclusively at this stage without a full-fledged trial, examination of witnesses, and proper measurement through competent survey authorities. Any finding on these issues at this interlocutory stage would amount to a pre-trial adjudication of disputed title and would effectively result in a pre-trial decree, which the law does not permit under Order XXXIX CPC. In light of the significant doubt surrounding the plaintiff's title, the consistent documentary evidence supporting the respondents version, the existence of a pathway recognized in multiple earlier deeds, and the need to preserve the existing status quo, this court is not inclined to grant the interim temporary injunction sought by the plaintiff.

**As a result,** this petition is dismissed. No cost.

Dictated to the steno-typist, typed by her in the Computer directly, printed, corrected and pronounced by me in open court this the 20<sup>th</sup> day of November, 2025.

II Additional District Munsif  
Nagercoil

Petitioner's side witness :- - Nil -

Petitioner's side Documents:- - Nil -

Respondents side witness: - Nil -

2<sup>nd</sup> Respondent's side Documents:

Ex.R1	...	Plan attached with written Statement filed by 2 <sup>nd</sup> defendant
Ex.R2	11.03.2022	Original Sale deed executed by Deva Athisayam in favour of 2 <sup>nd</sup> respondent
Ex.R3	25.07.2022	Patta in the name of 2 <sup>nd</sup> respondent (Patta No.10385)
Ex.R4	03.08.2022	Land Tax receipt in the name of 2 <sup>nd</sup> respondent
Ex.R5	23.02.2023	Resurvey Plan (Sub-divided)
Ex.R6	31.03.2006	Copy of Sale deed executed by Anthonyappan in favour of Rexi Deepa
Ex.R7	27.07.2006	Copy of Sale deed executed by Anthonyapan in favour of Selvi
Ex.R8	21.12.2011	Copy of Sale deed executed by Selvi in favour of John Peter
Ex.R9	13.10.2014	Copy of Sale deed executed by Anthonyapan in favour of Martin

II Additional District Munsif,  
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*II ADM, Nagercoil.  
Draft/Fair Order  
I.A.No.2/2023 in  
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Date: 20.11.2025.*