

TNKK040001032020



Presented on : 14-03-2020
Registered on : 14-03-2020
Decided on : 28-04-2026

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

Present : Selvi. V. Sivaranjani, B.A., L.L.B.,
II Additional District Munsif, Nagercoil
Tuesday, on the 28th day of April, 2026.

O.S.No.46 of 2020

CNR No.TNKK04-000103-2020

1. Bala Prajapathi
 2. P. Pyan Krishna Raj
 3. P. Pyan Krishna Nama Mani
 4. P. Pyan Chella Vadivoo
 5. P. Pyan Namrish Chella
- ... Plaintiffs

-vs-

1. The District Collector,
Kanyakumari District.
 2. The Block Development Officer,
Agasteeswaram, Perumalpuram.
 3. The President, Swamythoppu Village Panchayat,
Swamythoppu Post.
 4. The Thashildhar, Agasteeswaram Taluk, Nagercoil.
 5. A. Shanthi Subbiah
 6. Shweta Subbiah
 7. Shivani Subbiah
- ... Defendants

This suit is coming on 30.03.2026 before me for final hearing, in the presence of Mr. C. Ashok Kumar, Advocate for the plaintiffs and Mr. C. Johnson, Government Pleader for the 1st, 2nd and 4th defendants and 3rd and 5th to 7th defendants, called absent, set exparte and upon hearing the both side arguments and perusing the material records and having stood over for consideration till this day, this court hereby delivers the following:

J U D G M E N T

This suit is filed by the plaintiffs for declaration that decree in O.S.No.378/2005 dated 21.10.2005 passed by the I Additional District Munsif at Nagercoil is null and void and for Permanent injunction restraining the defendants 1 to 4 to remove the existing retaining wall in Re.Sy.No.273/18 of North Thamaraikulam Village, which is "B" schedule property and for permanent injunction restraining the defendants 5 to 7 to execute the decree in OS.No.378/2005 dated 21.10.2005 passed by the I Additional District Munsif at Nagercoil and for Mandatory injunction that, the entries in the revenue records as Nilavaiyal Pathai is to be removed in respect of the plaint schedule property and for the cost of the suit..

2. The case of the plaint in nutshell:s-

The plaintiffs claim that the plaint 'A' and 'B' scheduled properties in Re. Sy. No. 273/17 having an extent of 58.50 ares and Re.Sy.No. 273/18 having

an extent of 47 ares belongs to the plaintiffs and others. The above said Re.Sy.No.273/17 is a Patta Land but not a Public Road and its patta number is 8448 wherein out of 13 persons the 1st plaintiffs name has been arrayed as S.I.No.5. and other plaintiffs' ancestor name have been arrayed as S.I.No.4. A suit in O.S.No.906/1953 before the first Additional District Munsiff at Nagercoil with regard to the plaint schedule properties reveals that it is patta land.

3. The plaintiffs contended that the defendants 1 to 3 being a public servant of the General Public thereby have a duty to obey the direction of the law and to protect their rights and interest without causing prejudice to them. the 5th to 7th defendants are the legal representative of one late Subbiah who through his power of attorney Kaliraman filed a suit as O.S.No.378/2005 before the First Additional District Munsiff at Nagercoil for mandatory injunction directing the defendants 1 to 3 to remove the wall in Re.Sy.No.273/17 of North Thamaraiikulam Village, which is the public pathway. The above said Subbiah before instituting the suit issued a letter to the first defendant for which the first defendant allegedly issued a reply notice on 28.12.2001 stating that the temple trustees constructed a retaining wall in the temple land, which the plaint 'B' schedule property, for preventing soil erosion around the temple land. The plaintiffs claimed that the above said facts very clearly disclose that the construction is not in the alleged public pathway and the construction was in the

temple land.

4. The plaintiff further contended that the defendants 1 to 3 had not appeared before the court and did not contest the suit and also not protected the right and interest of plaintiffs and others thereby led to an ex-parte decree against the defendants 1 to 3. In fact, the defendants 1 to 3 should have appeared before the Court and denied the demand of the above said Subbiah and should have stated that the above said Subbiah had filed a suit for mandatory injunction beyond three years, after the denial of the 1st defendant through a reply notice on 28.12.2001 and therefore the suit is time barred, that mere suit for injunction is not maintainable without suit for declaration, the wall is within the alleged temple land, that the plaintiffs in this suit and others are necessary and proper parties, because the plaint allegations stated that plaintiffs and others constructed the retaining wall. If really the defendants 1 to 3 placed the above true facts before the court, the court would not have decreed the suit on the ground of non-joinder of proper and necessary parties.

5. The plaintiff also contended 1st defendant ought to have given notice thereby calling for the explanation about the above said Subbiah's allegation in his suit to be plaintiffs and others. The defendants 1 to 3 colluded with the above said Subbiah and allowed to get a decree in O.S.No.378/2005 fraudulently. The alleged decree affected the plaintiff's valuable interest and

rights over the Re.Sy.No.273/17 of North Thamaraiikulam Village. Now, plaintiffs came to know the above said fraud in court on 30.01.2020 when the 2nd defendant attempted to remove the alleged wall and subsequently issued a showcause dated 31.01.2010. The plaintiffs have sent the apt reply to the 2nd defendant and others by stating that the plaint schedule property is private land and the same has been used on the permission of the plaintiffs and others. Further, the defendants in O.S.No.378/2005 colluded with the above said Subbiah and petitioner in CRP.MD) No.165/2009 got the order affecting plaintiff's rights and interest over the plaint schedule property.

6. The plaintiffs alleged that now the 4th defendant without measuring the Re.Sy.No.273/17 and 18 of North Thamaraiikulam Village and adjoining lands in collusion with the defendants 5 to 7 has come to the conclusion that plaintiffs have encroached the alleged Nilavaiyalpathai which is against the earlier contention of the defendants 1 to 4 thereby estopped. In fact, if there is any classification in the revenue records that the above said Re.Sy.No.273/17 of North Thamaraiikulam Village is a Nilaviyal Pathai it is a wrong classification and which does not affect the title and possession of the plaintiffs and the same is without notice and knowledge of the plaintiffs. The plaintiffs never encroached on the alleged Nilaviyal Pathai. The alleged wall is in Re.Sy.No.273/18 of North Thamaraiikulam Village, which is the plaint 'B'

schedule property and not in Re.Sy.No.273/17 of North Thamaraikulam Village, which is the plaint 'B' schedule property. The plaintiffs are necessary and proper parties in O.S.No.378/2005 and the plaintiffs have been not arrayed as parties purposely to get decree in collusion with the defendant 1 to 3.

7. The plaintiffs asserted to have issued notice to the 1st defendant on 09.03.2020 and hereby called upon the 1st defendant to take appropriate immediate steps to file a petition to set aside the decree passed in O.S. No.378/2005 dated 21.10.2005 and also to wrong entries of alleged Nilaviyal Pathai. Also, claimed that the decree O.S.No.378/2005 dated 21.10.2005 passed by the I Additional District Munsif at Nagercoil is null and void and which does not bind the plaintiffs. The plaintiffs are not the party to O.S.No.378 of 2005 dated 21.10.2005 passed by the I Additional District Munsif at Nagercoil and the decree had been obtained behind the back of the plaintiffs and the plaintiffs have no notice of the same. There is a huge fraud between the defendants and thereby the defendants have committed fraud in court and allowed the 5th defendant to get the decree in favour of him. Besides, there is huge fraud in the proceedings of CRP.MD) No.165/2009 before the Hon'ble High Court of Madras at Madurai Bench.

8. The plaintiffs have apprehended that the defendants 1 to 4 may remove the existing retaining wall in Re.Sy.No.273/18 of North Thamaraikulam

Village, which is the plaint 'B' schedule property, on the strength of the void decree in O.S.No.378/2005 dated 21.10.2005 as if it exists in Re.Sy.No.273/17 of North Thamaraiikulam Village. The plaintiffs further apprehended that in order to satisfy the order in CRP. MD) No.165/2009 before the Hon'ble High Court of Madras at Madurai Bench dated 17.02.2020 defendants 1 to 4 may remove the existing retaining wall in Re.Sy.No.273/18 of North Thamaraiikulam Village. If the defendants 1 to 4 remove the existing retaining wall in Re.Sy.No.273/18 of North Thamaraiikulam Village it will affect the valuable rights of the plaintiffs. Hence this suit is necessitated.

9. **The case of the written statement of 4th defendant's adopted by 1st and 2nd defendants averments in brief:-**

The defendants denied that the plaint 'A' schedule property is not the absolute property of the plaintiffs and averred that there is a Nilavial Pathai in the 'A' schedule property, which is clearly shown in the revenue records. Hence the plaintiffs are not the absolute owners of the plaint 'A' schedule property as alleged in the plaint. For the above said reason, though the plaintiffs are the patta holders of the 'A' schedule property, they cannot claim absolute right and title over the same. The plaintiffs have to prove that they are the absolute owners of the 'B' schedule property and have right and title over the same. The defendants 1, 2 and 4 are not parties to the suit O.S.No.906/1953 and the decree

passed in the suit is a compromise decree which was made by the parties themselves. Hence, the decree and judgment in the suit O.S.No.906/1953 will not bind these defendants.

10. The defendants insisted that the reply dated 28.01.2004 to the letter issued by said Subbiah, was sent by the 1st defendant inadvertently, which is against the documents and material facts. Hence, the reply will not conceal material facts and documentary evidence. The defendants 1, 2 and 4 are the representatives of the people in Thamaraikulam Village, who are appointed by the Government of Tamil Nadu. They were engaged in the public work during the time of ex parte decree passed by the court in O.S.No.378/2005. Because of that, the defendants 1, 2 and 4 could not appear before the court and they were set ex parte in O.S.No.378/2005. Hence, it is proved that the non-appearance of the defendants 1, 2 and 4 before the court was neither willful nor wanton, but due to the above said bonafide reason only. In order to protect the pathway right and claim of the public over the plaint 'A' schedule property, the defendants 1, 2 and 4 have approached the Hon'ble High Court and got order in favour of the public in C.R.P.No.165/2009.

11. The 1st defendant is the prime administrative officer of Kanyakumari District. The other defendants 2 and 4 are working under him and they are appointed by the Government for serving the public. The defendants

are jointly enforcing the rule and law enacted by the legislature and parliament. Hence, the duty of the defendants 1, 2 and 4 is to act for the benefit of the public. The defendants have approached before the Hon'ble High Court and got favourable order for the public in C.R.P.No.165/2009, even then adverse order passed against them in EP.No.122/2006. It clearly proves that these defendants are obedient to law and rules and are acting for the benefit of the public. The plaintiffs are not law abiding citizens and they are obstructing the public to use the plaint 'A' schedule property against the order of the Hon'ble High Court in C.R.P.No.165/2009. From the above facts, it is clear that the plaintiffs have committed criminal act against the interest of the public.

12. The defendants 1, 2 and 4 contended that if the plaintiffs had any grievance in respect of the plaint schedule properties, they ought to have implead themselves as parties in O.S.No.378 of 2005 itself and contested the same by raising their allegations. If not so, raising mere allegations against these defendants in the suit will not substantiate the alleged claim of the plaintiffs over the plaint schedule properties. All the allegations raised against these defendants in this para and its sub paras are myth and there is no iota of truth in it.

13. The defendants 1, 2 and 4 never colluded with the said Subbiah and allowed him to get decree in O.S.No.378/2005 fraudulently as alleged by the

plaintiffs. The decree and order in C.R.P.No.165/2009 will not affect the right and interest of the plaintiffs as the Nilavial Pathai is there in Re.Sy.No.273/17 of North Thamaraiikulam Village. No such fraudulent act has been committed by these defendants as alleged by the plaintiffs. As per order in C.R.P.No.165/2009, these defendants took steps to remove the illegal wall constructed over the Nilavial pathai in Re.Sy.No.273/17 of North Thamaraiikulam Village. The schedule property is not absolute property of the plaintiffs, as the possessory right is vested with the public. Hence, the plaintiffs cannot claim absolute right over the plaint schedule properties. The plaintiffs, who are the encroachers, have constructed a retaining wall restraining the public to use the Nilavial pathai in Re.Sy.No.273/17 of Thamaraiikulam Village.

14. The 4th defendant who measured the suit survey, has found that the Re.Sy.No.273/17 is classified as Nilavial Pathai allotted to the public as pathway and the same is encroached by the plaintiffs. The plaintiffs and their predecessors in title are well aware the classification of the plaint schedule property as Nilavial Pathai very long ago. The alleged retaining wall has been constructed in Re.Sy.No.273/17 by encroaching the Nilavial Pathai and Re.Sy.No.273/18. Since the retaining wall is constructed in the Nilavial Pathai in Re.Sy.No.273/17 of Thamaraiikulam Village, the plaintiffs are not entitled to claim absolute right over the same as their absolute property. They have taken

steps only to remove the encroachment made in the Nlavial pathai in Re.Sy.No.273/17 as per the order of the Hon'ble High Court in C.R.P.No.165/2009 and the same is being prevented by the plaintiffs against the interest of the public for their illegal gain. Hence, the suit is to be dismissed.

15. On the basis of the averments of the Plaint and Written statement, and upon hearing both sides, this court framed the following issues:-

1. Whether the Plaintiff is entitled for Suit Prayer 'A' Declaration as prayed for?
2. Whether the Plaintiff is entitled for Suit prayer 'B' Permanent Injunction as prayed for?
3. Whether the Plaintiff is entitled for Suit Prayer 'C' Permanent injunction as prayed for?
4. Whether the Plaintiff is entitled for suit prayer 'D' Mandatory injunction as prayed for?
5. To what other reliefs the parties are entitled to? What Order as to cost?

16. On the side of the Plaintiffs, 2nd Plaintiff was examined as PW1 and through him Ext. A1 and A12 were marked and Thiru. Bala Janathipathy was examined as PW2. On the side of the defendants, Thiru. Marugan was examined as DW1 through him Ext.B2 and B3 were marked and Ex.B1 was

marked while cross examination of PW2 and Ex.B4 was marked while cross examination of DW1.

17. Citations given by the Plaintiff's Counsel:

CDJ 2010 SC 028, CDJ 2011 MHC 363, CDJ 2018 SC 1082, CDJ 2019 MHC 5766

Citations given by the 1st, 2nd and 4th Defendants Counsel:

(i) C. Palanisamy vs. The Revenue Divisional Officer on 18 September, 2025 of the Hon'ble High Court of Judicature at Madras.

(ii) Judgment in SA.1241 & 1242 of 2000 of the Hon'ble High Court of Judicature at Madras

The above Citations given by learned both side counsels perused and observed that they were not squarely applies to the present case.

18. Answer to Issue No.1 to 4:

18.1. The issues 1 to 4 are taken up together as they are interrelated and arise out of the same set of facts.

18.2. In the present suit, the case of the plaintiffs is that the plaint "A" and "B" schedule properties in Re.Sy.No.273/17 and 273/18 of North Thamarai Kulam Village belong to the plaintiffs and others, that the construction of the retaining wall is within their patta land and not on any public pathway. The plaintiff have further alleged that the defendant, in collusion with the said

Subbaiah, had obtained a fraudulent ex parte decree in O.S No.378/2005 with the intention of affecting the plaintiff's' right over the suit properties.

18.3. At the outset, it is a settled principle of law that the initial burden lies upon the plaintiffs to establish their case.

18.4. Firstly, Upon perusal, it is seen that my the plaintiffs have generally pleaded that the plaint 'A' and 'B' schedule properties in Re.Sy.No.273/17 and 273/18 belongs to the plaintiffs and others, but there is no specific or clear pleading regarding such "others" thereby failed to plead as to who are all the co-owners of the plaint schedule properties. On perusal of Ex.A9 Patta for Re.Sy.No.273/17 and Ex.A10 Patta for Re.Sy.No.273/18, it shows that the name of the 1st plaintiff appears at Serial No.5 along with 12 and 18 other persons in each pattas respectively. However, no documentary evidence has been produced to establish the relationship between those co-patta holders and the present plaintiffs and to prove that the person mentioned at Serial No.4 is the ancestor of the other plaintiffs. More importantly, it is pertinent to know that the names of the plaintiffs 2 to 4 are not mentioned in Ex.A9 and Ex.A 10 Joint Pattas.

18.5. As such , despite relying on the above said Ex.A9 and Ex.A 10 Joint Pattas, the plaintiffs have failed to implead the other co-patta holders. In a suit claiming title over the plaint schedule properties, all co-owners are

necessary parties to the suit. On the other hand, the plaintiffs impleaded parties who are not necessary for deciding the question of title.

18.6. Secondly, with respect to the identification of the suit properties, the plaintiffs have not furnished required descriptions such as boundaries of the plaint schedule properties, nature of properties available in said survey numbers or even boundaries with respect to the alleged retaining wall.

18.7. Thirdly, in order to establish that the suit properties are Patta lands, the plaintiffs rely upon EX.A4 - Judgment in O.S.No. 906/1953 and Ex.A5 - Final decree in O.S.No. 906/1953. Upon perusal of Ex.A4 and Ex.A5, it shows that the suit is for partition decided on compromise between the parties. However, these documents having mentioned no boundaries and the resurvey numbers instead only referred to an old survey number 3207-ABC and no whisper about on the basis of which document the judgment passed. No correlation certificate has been produced to link the survey number of the schedule properties and the above said old survey number. PW1, 2nd plaintiff has also admitted these deficiencies in this evidence. Therefore, the plaintiffs failed to prove that the suit properties are Patta land.

18.8. Fourthly, to support their claim that the alleged retaining wall was constructed within the temple land that is plaint 'B' schedule property and not on a public pathway, the plaintiff is relying on reply notice dated 28.12.2001 stated

“the temple trustees constructed a retaining wall in the temple land, which the plaint ‘B’ schedule property, for preventing soil erosion around the temple land”, allegedly issued by the 1st defendant in an earlier suit O.S No. 378/2005 for a letter issued by the plaintiff Subbiah before instituting that suit. However, the plaintiff failed to adduce the said above reply letter dated 28.12.2001 to prove the same.

18.9. Crucially, the plaintiffs have not produced any title deeds, tax receipt or other revenue records to prove their ownership or possession of the suit properties. Though the plaintiffs have relied upon Ex.A9 and Ex.A10 joint Pattas, it is well settled that a joint Patta by itself is not a conclusive proof of title, particularly when it stands in the name of several persons and when the relationship between the plaintiffs with the other co- patta holders are not established and while the other co- patta holders are not a party to this suit. The plaintiffs have also not taken steps to appoint an advocate commissioner to establish that the retaining wall is situated in Re.Sy.No. 273/18, which is the plaint 'B' scheduled property. Therefore, the plaintiffs failed to establish their title over the plaint schedule property as well as the exact location and nature of the retaining wall.

18.10. On the contrary, Ex.A1 survey plan relating to Re.Sy.No. 273/17 clearly indicates the existence of a Nilaviyal pathway. Further PW1 in his cross-

examination has admitted that he has no objection to the removal of any illegal encroachment in Re.Sy.No.273/17.

18.11. With regard to the relief of declaration that the decree in OS.No.378/2005 is Null and void, the plaintiffs have alleged fraud and collusion between the defendants and the said Subbaiah. However, the plaintiff has not established fraud or collusion by any cogent evidence. Mere non-appearance of defendants 1 to 3 in the earlier suit and the passing of an ex parte decree by a competent court would not by itself, establish fraud.

18.12. In addition to that, Ex.A7 order in CRP (PD) (MD) No.165 of 2009 proves that the defendants have approached the Hon'ble High Court even at the delayed stage and got an order for the public in C.R.P. No.165/2009 shows their reliability. As such, the defendants ought to act upon the direction of the above said order .

18.13. In view of the above findings, this court holds that the plaintiffs have failed to establish their title and possession over the plaint schedule properties, proper identification of the properties and the location of the retained wall and the alleged fraud in obtaining the decree in OS.No. 378/2005.

18.14. Further, it is pertinent to note that the plaintiffs, while seeking to challenge the decree in OS.No. 378/2005 and consequential reliefs, have not sought a proper and comprehensive declaration of their title over the plaint

schedule properties. In the absence of a clear prayer for declaration of title, especially when their title itself is in dispute and not conclusively established, the relief of injunction and declaration regarding the earlier decree cannot be effectively granted. The plaintiffs ought to have sought a substantive declaration of their title to the suit properties and established the same by cogent evidence. The suit is also bad for various reasons such as for non joinder of necessary parties and for want of proper identification of the properties.

18.15. In the light of above facts, findings and circumstances of the case, this court holds that the plaintiffs utter failed to discharge the burden cast upon them, thereby not entitled to any of the reliefs sought.

Accordingly, issue No. 1 to 4 are answered against the plaintiffs.

19. Answer to Issue No.5

Since it is already decided that the plaintiffs are not entitled to the reliefs sought for, this court after considering the facts and circumstances of the case, holds that both the parties are not entitled to any other reliefs.

In the result, the suit is dismissed. No cost.

The Judgment is directly dictated to steno-typist typed in computer, and after making necessary corrections, and pronounced by me in the open court, this the 28th day of April 2026.

II Additional District Munsif,
Nagercoil.

Plaintiffs side witnesses :-

PW1. Thiru. P. Pyan Krishna Raj (2nd Plaintiff)

PW2. Thiru. Bala Janathipathy

Plaintiffs side Documents :-

Ex.A1	18.02.2025	Copy of Survey Plan for Re.Sy.No. 273
Ex.A2	21.06.2005	Copy of the Plaint in O.S.No.378 of 2005
Ex.A3	21.10.2005	Copy of Judgment in O.S.No.378 of 2005
Ex.A4	22.07.1960	Copy of Judgment in O.S.No.906 of 1953
Ex.A5	13.12.1957	Copy of Final decree in O.S.No.906 of 1953
Ex.A6	21.10.2005	Copy of decree in O.S.No.378 of 2005
Ex.A7	12.10.2018	Copy of order in CRP (PD) (MD) No.165 of 2009
Ex.A8	14.02.2020	Copy of Reply letter given by the 2 nd to 5 th plaintiffs to 2 nd defendant
Ex.A9	10.03.2020	Copy of Joint Patta (Patta No.8448)
Ex.A10	10.03.2020	Copy of Joint Patta (Patta No.6684)
Ex.A11	09.03.2020	Copy of suit notice with Postal receipts
Ex.A12	...	Postal Acknowledgment for Ex.A11 (2 Nos.)

Defendants side witnesses:-

DW1. Murugan (4th defendant)

Defendants side document:-

Ex.B1	10.02.2020	Letter given by Bala Janathipathy (PW2) to Block Development Officer
Ex.B2	...	Correlation Certificate for Re.Sy.No.273/17 and 273/18
Ex.B3	...	Copy of the Rough Plan depicting the portion of New Survey No. 273/17 allegedly encroached upon by the plaintiffs.

Ex.B4	”	Copy of the S.L.R. (Survey Land Register) extract for New Survey No. 273/17 of Thamarikulam (North Thamarikulam) Village.
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II Additional District Munsif,
Nagercoil.

II ADM
Draft/Fair Judgment
in O.S.No.46/2020
Dt.28.04.2026