

**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 17th day of July, 2025.

I.A. No. 2 of 2021 in O.S. No. 224 of 2021

CNR No.TNKK04-000291-2021

Sakthivel

... Petitioner /Plaintiff

-vs-

1. T. Manikandan

2. V.K. Mala

... Respondents / Defendants

This petition came before this court on 14.07.2025 for a final hearing in the presence of Mr. J. Parthasarathy, Advocate for the Petitioner / Plaintiff and and Mr. S. Nagarajan, Advocate for the Respondents / Defendants 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 section XXXIX Rule 1 and 2 of the Code of Civil Procedure, seeking to pass an ad-interim injunction against the respondents/defendants his men and agents restraining them from putting up any construction in the plaint 'B' schedule property until the final adjudication of the suit.

2. Gist of Averments in the Petitioner / plaintiff's Petition :

The petitioner is the plaintiff in the suit. The petitioner have filed this suit is for declaration and other reliefs. The plaintiff is the absolute owner of the plaint schedule property. He has acquired the plaint schedule property through a Partition entered in between the family members of the plaintiff as per the document No.1993 of 2011 duly registered at the Sub Registrar Office of Vadasery. Though as per the document the extent of land is 1.875 cents of land, the land available as per lie in possession and enjoyment is 1.482 cents. The original document is in the hands of one Selvam from Nesavar Colony which is mortgaged for a loan.

3) The plaint schedule property and other properties originally belonged to late. Enakulamuthu which he had purchased through a sale deed document No.1921/1969. The paintiff's father late. Enakulamuthu had thereafter had executed a sale over part of the property to one Vijaya Amma mother of the 2nd defendant comprising 3.75 cents but as per lie only 3.25 cents was in the possession of 2nd defendant's mother which she had thereafter executed a sale deed in favour of the defendants as per document No.1497/2019 dated 28.07.2019. The defendant's property lies north of the plaintiff's property.

4) The plaintiff in the plaint 'A' schedule property has constructed a house. The plaintiff for a bore well has also left the Plaint 'B' schedule property

vacant for the said purpose comprising 110 sq.ft. The plaintiff 'B' schedule property also includes an asbestos sheeted old toilet more than 30 years old. The defendants too had an old toilet adjoining the plaintiff's old toilet in the north which separates the properties of the plaintiff and defendants. The defendants at many times had tried to encroach upon the plaintiff's 'B' schedule property but the plaintiff and his family had thwarted it. The plaintiff and his family had gone to visit their relative at Asaripallam on 04.10.2021 and when they returned on 06.10.2020 the plaintiff had found the defendants, while they were out of station had illegally encroached on the property of the plaintiff by land now the defendants to tally their deficit in their property has illegally encroached upon the plaintiff 'B' schedule property by constructing a toilet in it. Furthermore, he has damaged the walls of the house in the north and has recorded wire for electricity to the toilet room.

5) The plaintiff immediately after this illegal act had given a complaint on 16.10.2020 itself before the police station at Vadasery and they after scrutinizing all the documents had advised the defendants to immediately remove the encroachments. The 2nd defendant agreed that he would remove the structures built into the encroached area and also made promise that he will repair damages on the wall he had caused while recording the wire on wall on the plaintiff's house. The days have passed but he did not keep his promise and he is creating a cloud over the plaintiff's title over the 'B' schedule property.

6) The plaintiff submits that he had already mutated his name in the revenue records had obtained patta over the plaint 'A' schedule property and it is filed as a document in the suit where it is clearly mentioned the length and breadth of the plaint 'A' schedule property. The defendants had illegally encroached and claiming title over the plaint 'B' schedule of property and the plaintiff seeks a declaration over the plaint 'B' schedule property and with consequential relief of recovery of possession of the plaint schedule of property. The plaintiff is also claiming a relief of mandatory injunction directing the defendants to remove the temporary toilet constructed in the plaint schedule of property the accessories to it and also remove the recorded wire on the wall of the house of the plaintiff's property and also to repair the damages caused to the wall and if the defendants fail to remove the constructions and other things the expenses for the removal of it may be recovered from the defendants. The plaintiff also claims relief of permanent injunction restraining the defendants from putting up any construction in the plaint 'D' schedule property that is absolutely belongs to the plaintiff and he being the title holder over it.

7) The plaintiff has a door in his house which has an access to the plaint 'B' schedule property and now on 24.10.2021 through labours trying to construct a wall of obstructing plaintiff's defendants have no title over the plaint 'B' schedule property and there attempt to construct a wall obstructing the door from the house for access to the plaint 'B' schedule of property is illegal and so

when the suit is filed for declaration and revoverly the plaintiff approached that the defendants through his men and agents would try to construct a structure that will cause multiplicity of suits and it would change the nature of the suit. So, it is necessary to stop any attempt to construct any structure in the plaint 'B' schedule of property until the suit is finally adjudicated. So, an interim injunction restraining the respondents from constructing any structure in the plaint 'B' schedule property be ordered in the interest of justice. The petitioner have a strong prima facie case with balance of convenience in petitioner favour and if interim injunction is not granted, petitioner will be put into irreparable loss and hardship which cannot be compensated at all. Hence, the petition is to be allowed.

8) **Gist of Averments in the Respondents/defendants Counter:**

The Respondents have filed a counter stating that all the averments stated in the plaint are denied as false except those that are specifically admitted hereunder. The respondents never constructed any illegal encroachment in the plaint schedule property. The respondents never made any promise to the plaintiff as mentioned in the plaint. Para 5 and 6 are fully denied the fact is, the respondents purchased his property from one late. Enakulamuthu, who is the plaintiff's father. The respondents had noticed several times that his property's area is lesser than that of the actual area stated in the document. Hence, the

respondents decided to check and verify the area of his property which is the adjacent property of the plaint schedule property. While the respondents arranged a surveyor at that time it was found that 0.25 cent was encroached by this plaintiff. So, the respondents informed the plaintiff about the area variation from that time the plaintiff decided to evade and being a mastermind the plaintiff had approached this court with ill intention. The plaintiff has no prima facie case or balance of convenience in his favour. Hence to accept the counter and dismissed the petition.

9. In order to prove the respective cases, on the side of the petitioner Exhibits P1 and C1 were marked.

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

11) Point:

Heard both sides. Records perused. The petitioner / plaintiff has filed the suit for the relief of declaration and recovery of possession over the plaint 'B' schedule property and for mandatory injunction directing the defendants to remove all the constructions put forth in the plaint 'B' schedule property and for permanent injunction restraining the defendants from putting up any construction in the plaint 'B' schedule property.

12) The petitioner / plaintiff had stated that the plaint schedule property belongs to them to a partition deed bearing Doc.No.1240 of 2011 among family members comprising 1.875 cents but, as per lie 1.482 cents. Originally, the plaint schedule property and other properties belonged to plaintiff's father who executed a part to 2nd defendant's mother comprising the 3.75 cents but, as per lie only 3.25 cents. Subsequently, 2nd defendant's mother executed a sale deed in favour of defendant bearing Doc.No.1497 of 2019. The defendant's property lies north of the plaintiff's property.

13) The plaintiff further stated that constructed a house in in plaint 'A' schedule property and left plaint 'B' schedule property comprising 110 square feet includes an asbestos sheeted old toilet and vacant land for bore well. The plaint 'A' and 'B' schedule properties comprises in Sy.No.A13/191. The defendants too had an old toilet adjoining the plaintiffs old toilet in the north which separates the properties of the plaintiff and defendants. The plaintiff had found the defendants, while they were out of station between 04.10.2021 and 06.10.2020 had illegally encroached on the plaint 'B' schedule property of the plaintiff to tally their deficit in their property by constructing a toilet in it. Furthermore, he has damaged the walls of the house in the north and has recorded wire for electricity to the toilet room.

14) Furthermore, the Petitioner / Plaintiff immediately after this illegal act had given a complaint on 06.10.2020 itself before the police station at

Vadasery and they after scrutinizing all the documents had advised the defendants to immediately remove the encroachments. The 2nd defendant agreed that he would remove the structures built in the encroached area and also made promise that he will repair damages on the wall he had caused while recording the wire on wall on the plaintiff's house. The days have passed but he did not keep his promise and he is creating a cloud over the plaintiff's title over the 'B' schedule property.

15) The Petitioner / Plaintiff further submits that he had already mutated his name in the revenue records had obtained patta over the plaint 'A' schedule property and it is filed as a document in the suit where it is clearly mentioned the length and breadth of the plaint 'A' schedule property. The respondents purchased his property from one late Enakulamuthu, who is the plaintiff's father. The respondents had noticed several times that his property's area is lesser than that of the actual area stated in the document. Hence, the respondents decided to check and verify the area of the property which is the adjacent property of the plaint schedule property. While the respondents arranged a surveyor at that time it was found that 0.25 cent was encroached by this plaintiff. So, the respondents informed the plaintiff about the area variation from that time the plaintiff decided to evade and being a mastermind the plaintiff had approached this court with ill intention.

16) On perusal of Ext.P1 Patta for Survey No. A13/191, it could be seen that the petitioner is in possession of the plaint schedule properties, which itself is not sufficient to prove the title or possession of the petitioner and from Ext.C1 point No.2 the encroachment made by the defendant cannot be ascertained without taking into account all other title deeds. Hence, the Petitioner / Plaintiff is miserably failed to establish the prime facie case. further, the balance of convenience is also not heavily in favour of the Petitioner / Plaintiff. As such there seems no irreparable injury, that may be caused to the petitioner, if the interim order is refused. On considering the above, as well as facts and circumstances of this case, this court is of the considered view that granting interim injunction at this stage would be premature; it necessitates a full trial for a conclusive determination. Hence, this court is not inclined to grant a relief of ad-interim injunction in favour of the petitioner / plaintiff.

As a result, this petition is dismissed. No costs.

It is clarified that this order shall not prejudice the rights of either party in the main suit, O.S.No. 224/2021 shall be decided on its own merits based on the evidence adduced during the trial.

Dictated to the Steno-Typist, and typed by her directly in the Computer, corrected and pronounced by me, in open court this, the 17th day of July 2025.

II Additional District Munsif,
Nagercoil.

Petitioner's side witness :- - Nil -

Petitioner's side Documents:-

Ex.P1	...	Patta for plaint schedule properties
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Court Document:

Ex.C1	...	Commissioner's Report
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Respondents side witness: - Nil -

Respondents side Documents: - Nil -

II Additional District Munsif,
Nagercoil.

Draft/Fair Order
I.A.No. 2/2021 in
O.S.No.224/2021
Date: 17.07.2025.
II ADM Court, Nagercoil.