

TNKK040003232011



Presented on : 29-07-2011
Registered on : 29-07-2011
Decided on : 27-03-2026
Duration : 14 years, 7 months, 29 days

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

Present : Tmt. K. Chithra, B.A.,B.L., (Hons)

I Additional District Munsif (FAC), Nagercoil

Friday, on the 27th day of March, 2026.

O.S. No. 364 of 2011

(CNR NO. TNKK04-000323-2011)

1. Omana Thankachy (Died)
2. Dersini Venugopal
3. Deepthi Suresh
4. Smrithi Giri
5. Sruthi Giri
(1st plaintiff died - amended as per
order in I.A.No.5/2025 dated 23.06.2025)

... Plaintiffs

-vs-

1. Jayarajan (Died)
2. Anis
3. Aswin Jehosh
4. Ashmi Grace (Minor)
rep. by her mother/next friend
prop. Addl.D2 Anis)

... Defendants

This Suit came up before me on 23.03.2026 for a final hearing in the presence of Mr.M.S.Moorthy, Advocate for the Plaintiffs and Mr.N.M.Sukumaran, Advocate for the Defendants, and upon hearing the plaintiffs side arguments, and defendants side arguments and upon perusing the available case records and having stood over for consideration till this day, this court delivered the following:

JUDGEMENT

1. This suit was filed for the relief of i.declaring the right and title of plaintiffs over the plaint 'A' schedule property, and ii.recovery of possession of the plaint 'A' schedule property to the plaintiffs from the illegal custody of the trespasser defendant, and iii.demarcating the 'B' schedule boundary by measuring the plaint 'A' schedule property in accordance with the sale deed No.73 dt.07.01.1970 registered in Kottaram sub registry and for putting up the said boundary by construction of compound wall of five feet height using granite stones, bricks, cement mortar, etc., at the cost of the plaintiffs, and iv.permanent prohibitory injunction restraining the defendant and his men from altering the physical features or putting up any sorts of construction or destroying any of its boundaries or from doing any act affecting the plaintiff's right and title over the plaint 'A' schedule property and from alienating or making any sorts of encumbrance in respect of the plaint 'A' schedule property, along with the costs of the suit.

2. The defendant has filed counter claim for the relief of i.declaring his title and possession over the counter claim property and ii.consequential Injunction restraining the plaintiffs, their men or agents from interfering or disturbing with the peaceful possession and enjoyment of the counter claimant/defendant in any manner whatsoever, and along with cost of the counter claim.

(The counter claimant filed a memo dt.21.08.2025 stating the valuation of counter claim exceeding this court pecuniary jurisdiction. Hence the counter claim was returned on 23.10.2025 to the counter claimant to file before proper pecuniary jurisdictional court.)

3. CRUX OF FACTS IN AMENDED PLAINT dt.04.08.2025:

3.1) The 1st plaintiff has 3 daughters, namely 1.Dersini Venugopal (2nd plaintiff), 2.Deepthi Suresh (3rd plaintiff), 3.Deepa Lakshmi (died). The 4th plaintiff Smrithi Giri and the 5th plaintiff (Sruthi Giri) are the daughters of the deceased Deepa Lakshmi. On 07.01.1970, the 1st plaintiff had purchased the plaint A schedule property having an extent of 15 cents in Resurvey No.528/5, Old survey No.6013 of Agasteeswaram village, by virtue of Sale deed and she had been in possession and enjoyment of plaint 'A' schedule property. Then on 24.06.1987, she executed gift deeds by gifting 4 cents at the southern portion to the deceased Deepa Lakshmi; 4 cents at the middle portion to the 2nd plaintiff; 4 cents on the north of the 2nd plaintiff, to the 3rd plaintiff; by retaining 2 ½ cents at the extreme northern portion by

the 1st plaintiff herself and leaving $\frac{1}{2}$ cents in north-south direction at the extreme eastern portion of the plaint A schedule to ease the access to all three divided portions. The said gifts were properly accepted and acted upon by all the donees, who had effected mutation in their favour.

3.2) In the sub-division of resurvey No.528/5 to the portions of 3 daughters, 1st plaintiff and of private pathway, the resurvey No.528/5 was split into resurvey No.528/5B2, C2, D2, E2, 528/5A2, 5F, 5G. But the said property has not yet been divided by metes and bounds and the same are still lying as single plot. The plaintiffs have been jointly possessing and enjoying the plaint 'A' schedule property even after the said gift deeds.

3.3) The plaint 'A' schedule of property is located near to the Sun set view point and it is prime tourist spot. The 1st plaintiff has put up a concrete roofed building on her portion of the plaint 'A' schedule property for using as holiday home for herself and family members. The plaintiffs have planted and nursed coconut trees and other trees. The plaint 'A' schedule property was bounded by compound walls on western, northern, southern boundaries. In the southern compound wall, a gate was to ingress and egress from the Kanyakumari to Kovalam road. No compound wall on eastern boundary, but survey stones demarcating eastern boundary was on northeast and southeastern corner. One Ramakrishna pillai was the owner of the property situated on the eastern side of the plaint 'A' schedule property and the defendant was the caretaker of it.

3.4) The plaintiffs or any of their family members during their visits to the said property used to open the locks in the southern gate of the plaint 'A' schedule property. They used for short stay and they used to do the cleaning, maintenance and repairs in the said property. In the year 2004, the defendant obstructed the entry of the plaintiffs 1 to 3 and the deceased Deepa Lakshmi. The plaintiffs along with DeepaLakhmi had lodged a complaint before the Superintendent of police, Nagercoil and the police had ousted the trespasser/defendant and removed the obstructions.

3.5) The defendant is a native of Kanyakumari and residing in a walkable distance from the plaint schedule properties. He was a jail warden at Madurai and he had snatched away a number of immovable properties in Kanyakumari of which the owners are at distant places by way of trespass and creation and development of possessory rights and thereby ousting the real owners. The defendant is having a gang of henchmen in support of his such wicked activities. The 2nd plaintiff had stayed at the plaint 'A' schedule property for 4 days in the month of May 2011. Then on 14.06.2011, the 2nd plaintiff along with her husband stayed there for 2 days.

3.6) When on 29.06.2011, the 2nd plaintiff and her husband visited the plaint 'A' schedule property, the gate lock was found open. When they attempted to access the building, they got shock to see that the building lock was changed. The survey stones at the north-eastern and south-eastern corner have been removed. The defendant destroyed the survey stones in the eastern boundary of plaint 'A' schedule property.

3.7) It was known that the defendant had entered into an agreement with owner of the property on the eastern side of 'A' schedule property, to purchase it. He had done the above mischief with the malicious motive to snatch away the plaint 'A' schedule property owned by the plaintiffs 1 to 5. Immediately, the 2nd plaintiff complained to the Kanyakumari police station. In an enquiry at police station on 03.07.2011, the defendant stated that he was prospective purchaser in possession of the property on the eastern side of plaint 'A' schedule property and that it is essential for him to merge the plaint 'A' schedule property with it for his beneficial enjoyment; so he had taken the 'A' schedule property in his custody by replacing the lock of the gate and building and also by removing the survey stones at the eastern boundary.

3.8) In front of the police, the defendant had affirmed that he would not allow any plaintiffs or their men to enter into the plaint 'A' schedule property and that the plaintiffs should satisfy with the petty compensation that would be decided by him and should convey title in his favour. He further threatened that if any attempt to enter property was made, it would cause bloodshed. So, the police declined to interfere in the matter.

3.9) The highhanded act of the defendant has created cloud on the possession of the plaintiffs. The defendant is a trespasser. The Village authorities have unilaterally reduced the extent of the plaint A schedule property in basic tax remittance records even without any notice to the plaintiffs at the instance and influence of the defendant. It was complained to the Re-survey authorities and

Tahsildar. Those complaints were still pending and plaintiffs bonafidely believe that the authority would correct the said error shortly.

3.10) The plaintiffs being ladies belong to a reputed family are peace loving persons, who wished to avoid unpleasant situations have no alternative other than to approach this court. Thus, this suit was filed.

4. CRUX OF WRITTEN STATEMENT FILED BY 1ST DEFENDANT ON 09.01.2012:

4.1) All the allegations in the plaint are denied as false except those which are specifically admitted hereunder. This suit is not maintainable under law and facts. This suit is false, frivolous and vexatious. This suit is barred by limitation, suppression of material facts and adverse possession. The description of property is wrong and misleading. The correct resurvey number is 528/5A1 and not 528/5B2, C2, D2, E2 as alleged. The total extent of the property is 22.153 cents not 15 cents. The boundary and description of property is wrong and misleading. There is no property available on the ground as described as B schedule property.

4.2) The plaintiffs have no manner of right over the plaint schedule property and they lost their right by the prescription of title by the defendant by adverse possession as early as on 01.01.2003. The defendant is the absolute owner of the property comprised in old survey No.6015 correlated to resurvey No.528/5A1 having an extent of 22.153 cents and he has been in peaceful possession and enjoyment of it.

The mutation entries in the revenue records will not confer any right over 'A' schedule property to the plaintiffs. The 1st plaintiff never put up any concrete roofed building for using as holiday home for herself and family members and the plaintiffs have never planted and nursed any trees as alleged.

4.3) Originally the plaint schedule property and a larger extent comprised in old survey No.6015 correlated to resurvey No.528/5A1 of Agasteeswaram village having 22.153 cents, as per patta 11 aeres belonged to the plaintiffs.

4.4) On 01.01.1991, the defendant occupied the plaint schedule property and a larger extent having 22.153 cents comprised in old survey No.6015 correlated to resurvey No.528/5A1 of Agasteeswaram village as per patta 11 aeres by enclosing the same with compound walls on the north and south and mud bunds on the west and east and started enjoying the same by putting up on iron gate on the southern compound for access to the said property from Kanyakumari to Kovalam road and by planting seasonal crops like banana and tapioca and he has been in open, public, long, hostile, continuous, uninterrupted, exclusive possession and enjoyment of the same. The possession of the defendant is in continuity, in publicity and in extent with an intention to hold it as owner to the knowledge of the plaintiffs. Thus, he prescribed title by adverse possession as early as on 01.01.2003.

4.5) There are well defined boundaries on all the four sides of the property. The plaint schedule property and a larger extent having 22.153 cents have been

treated by the defendant as his own property and as such the same has been owned, held, possessed and enjoyed by the defendant as his own property. Thus, the plaintiff schedule property and a larger extent having 22.153 cents which was and is under the animus possidendi with animus domini of the defendant. The plaintiffs have given the false complaint against the defendant and after enquiry police found that the defendant is the absolute owner of the property and the plaintiffs have no manner of right over the property and warned them. As such no question of ousting the defendant and removing the obstructions as alleged would arise at all.

4.6) Except the fact that the defendant is the native of Kanyakumari and he is employed as a Jail Warden, all the remaining allegations in para 9 of the plaint are denied as false, mischievous and motivated. They are highly defamatory. The Plaintiffs 1 to 3, the deceased Deepa Lakshmi never enjoyed the plaintiff schedule property and the 2nd plaintiff never visited and stayed in the property on or after 01.01.1991. No occasion arose for that.

4.7) As per G.O.No.2134 dt.08.07.2005, the defendant applied for permission for construction of residential building in the property having an extent of 22.153 cents in his possession and the President of the Kovalam village panchayat in his proceedings dated 18.07.2005 permitted the defendant to make construction in the property covering an extent of 20 cents and he issued approved plan. As per the permission granted by the President, Kovalam Village panchayat and as per the approved plan the defendant constructed a residential building and he effected

electricity and water connections. The government issued patta to the defendant in consideration of his title by adverse possession and the defendant has been paying revenue tax, house tax, electricity and water charges. He has been in exclusive possession and enjoyment of the property having an extent of 22.153 cents as absolute owner. He has planted coconut saplings and a Margosa in the said property.

4.8) The plaintiffs have given false complaint against the defendant before the Kanyakumari police station and after enquiry police found the complaints false and they closed them. The cause of action alleged in para 18 of the plaint is invented and introduced falsely and mischievously. The suit is liable to be dismissed with costs.

5. FACTS OF AMENDED COUNTER CLAIM DT.08.08.2025:

5.1) In the separate petition-affidavit seeking counter claim, the additional defendants 2 to 4 had deleted the fact stated in para 3.3; then the additional defendants 2 to 4 repeated the paras 3.1, 3.2, 3.4 to 3.7 and then stated the facts that follows. The counter claim property along with the building with electricity and water connections, land and trees thereon absolutely belong to the counter claimant/defendant and he has been in exclusive possession and enjoyment of the same as absolute owner. There are well defined boundaries on all the four sides of the counter claim property. He had planted 13 coconut saplings, a Margosa, one cherry plant, 5 drumstick, 2 cashew, 2 supports, one mango and 4 poovarasam saplings in the said property and he has been nurturing the same.

5.2) With an ulterior motive to knock off the counter claim property from the counter claimant/defendant, the plaintiffs have filed the false, frivolous and vexatious suit on 29.08.2011. Counter claimants 2 to 4 orally conveyed the counter claim property to the 3rd counter claimant and 3rd counter claimant has been in exclusive possession and enjoyment of the same as per oral family settlement as absolute owner.

5.3) Under these circumstances, the defendant is entitled to get a decree declaring his title and possession over the counter claim property with consequential Injunction restraining the plaintiffs, their men or agents from interfering or disturbing with the peaceful possession and enjoyment of the counter claimant/defendant in any manner whatsoever. The 3rd counter claimant valued the counter claim property at Rs.12,22,757/- and paid court fee of Rs.38,683/- under S.25(b) of TN court fees and Suit valuation Act.

(The counter claimant filed a memo dt.21.08.2025 stating the valuation of counter claim exceeding this court pecuniary jurisdiction. Hence the counter claim was returned on 23.10.2025 to the counter claimant to file before proper pecuniary jurisdictional court.)

6. CRUX OF REPLY STATEMENT DT.09.08.2019 TO THE COUNTER

CLAIM:

6.1) The plaintiffs stating the averments of plaint in repeated phrase. In addition to the facts of plaint, they stated the following facts.

6.2) All the allegations in the counter claim are denied as false except those which are specifically admitted hereunder. This counter claim is false, frivolous and vexatious. The written statement with counter claim of deceased first defendant adopted by additional defendants 2 to 4 as additional written statement herein is not maintainable either in law or on facts.

6.3) The plaint A, B schedule properties' descriptions are precise, accurate and true as they were prepared and appended therein in the plaint on the basis of registered sale deed No.73/1970 of the Kottaram Sub registry, Agasteeswaram taluk, Kanyakumari district. The reference of the resurvey number of 'A' schedule property as 528/5A1 is fraudulent, perverse and incorrect. The defendants falsely and cunningly dispute the extent of the property as having 21.153 cents instead of 15 cents only to twist and confuse the matter and thereby to fish in the troubled waters. The 'B' schedule is the boundary line in between the property of Ramakrishna pillai on the east and the 'A' schedule property.

6.4) The case of prescription of title by the defendant by adverse possession alleged herein is merely cooked up and imaginary and hence denied warranting strict

proof. As alleged, there is also no correlation between survey number 6015 and resurvey number 528/5A1. The extent of land admeasuring 22.153 cents allegedly mentioned herein is imaginary and false. The defendants realised the survey number of 'A' schedule which is really 6013 only from the plaint averments.

6.5) The allegation that the first defendant occupied 'A' schedule property on 01.01.1991 is highly false and imaginary put to strict proof. The allegation of construction of compound walls and installation of iron gate made are also untrue and false made without any basis. Plantation of seasonal crops like banana, tapioca in the property is also invented for the purpose of strengthening the false claim in counterclaim, hence unreliable. The allegation that the first defendant was in open, public, long, hostile, continuous, uninterrupted, exclusive possession and enjoyment of the same herein is merely exaggerated and false, unreliable for any purpose. The alleged date of completion of prescription of title by adverse possession as on 01.01.2003 itself is fabricated, imaginary and unfounded. The alleged beginning and ending dates of adverse possession are fraudulently created by these defendants in such a manner to remember it easily which are otherwise imaginary and unreliable.

6.6) The defendant should understand that the title of the plaintiff over 'A' schedule property being a dispute of civil right never would be decided by any police but they would only normally refer the matter to the civil court for adjudication. The first defendant who was jail warden immediately fabricated all the documents behind the back of these plaintiffs, with the connivance and conspiracy of government

officials, President of Kovalam village panchayath and on the strength of all these fraudulent documents obtained ex parte allegedly began to remit taxes as well as charges as against the laws of land only to validate his false claim of adverse possession but the same is of no avail as they are only rank trespassers liable to be evicted by this court forthwith.

6.7) The 'A' schedule property never was under the animus possidendi with animus domini of the first defendant as alleged. The 'A' schedule property along with the building with electricity and water connections, land and trees thereon as alleged doesn't absolutely or otherwise belongs to the defendants at any point of time. The defendants never owned this property with exclusive possession and enjoyment as alleged.

6.8) There is no cause of action for the so called counter claimants as alleged. The dates mentioned herein are imaginary, fabricated and false. The counter claim is not property valued. The schedule of counter-claim property are faulty and mischievous only being the copied version of plaint schedule descriptions and it is unreliable. The deceased counter claimant produced the documents pertaining to the period from 2005 to 2011 are all per se concocted by him to shape false claim of adverse possession. Thus, they prayed to dismiss the counter claim.

7. CRUX OF ADDITIONAL WRITTEN STATEMENT FILED BY DEFENDANTS 2 TO 4 DT.08.08.2025:

As per the commissioner report and plan, the property in possession of the defendants is comprised in old survey No. 6013 correlated to Resurvey No.528/5B2, 5C2, 5E2, 5F and 5G of Kovalam village having an extent of 22.526 cents within BSTK points. The amendment is made in the counter claim.

8. CRUX OF ADDITIONAL REPLY STATEMENT FILED BY PLAINTIFF 2 FOR HERSELF AND FOR OTHER PLAINTIFFS, DT.18.08.2025:

8.1) All the averments in the amended counter claim, except those are hereinafter specifically admitted or otherwise dealt with are, hereby deemed to be denied as not correct and devoid of merits. The defendants described their property in old survey No.6015, resurvey No.528/5A1. But the present amendment shifts to old survey No.6013, new survey No.528/5B2, 5CX2, 5D2, 5E2, 5F, 5G, the very numbers appertaining to the plaintiff's property. The amendment in counter claim is a calculated and engineered to escape the binding effect of their own deliberate and categorical admissions in original counter claim. The amended counter claim is contradiction to their earlier claim.

8.2) The alleged amendment comes after an inordinate delay of more than 14 years, after the filing of commissioner report and plan, which exposed the falsity of the original counter claim. No due diligence were pleaded. This amendment deprives

the plaintiffs of the benefits flowing from their earlier admissions and it will necessitate re-opening of issues, recalling of evidence, derailment of the trial, thereby cause grave prejudice. This amendment alters the very identity of suit property, substitutes new survey number, changes the property schedule, revises court fee computation, inserts new plea of ownership. It amount to entire new counter claim and it is impermissible.

8.3) The plaintiffs have strong reason to believe that the amendment is driven by collusion between the defendants and the advocate commissioner, in disregard of the surveyor's findings, to fabricate support for a dishonest and instantly concocted claim. The plaintiffs have placed objections to the advocate commissioner's self-created report which is alleged to be gravely contradicting the survey plan. The additional written statement of the defendant can be fortified by expressly linking that earlier objection to the present amendment, to show that both are part of the same manufactured attempt to alter the factual matrix.

8.4) In the light of the above, the plaintiffs submit that the amended counter-claim is devoid of bonafides, is contrary to law, is highly prejudicial, and deserves to be struck out or ignored. The court is respectfully urged to decline to act upon the amended pleadings, to confine the defendants to their original counter-claim, and to proceed with the trial on that basis alone. This counter-claim is liable to be dismissed.

9. ISSUES:

Based on the pleadings and the documents, this court has framed the following issues on 17.07.2019.

1. வாதிகளுக்கு பிராது 'A' தபசில் சொத்தை பொறுத்து உரிமை மூலம் உள்ளதா?
2. பிரதிவாதிகள் பிராது 'A' தபசில் சொத்தில் ஆக்கிரமிப்பாளராக உள்ளார்களா?
3. எதிர்கோரிக்கை தபசில் சொத்தினைப் பொறுத்து பிரதிவாதிகளுக்கு உரிமைமூலம் உள்ளதா?
4. எதிர்கோரிக்கை தபசில் சொத்தானது பிரதிவாதிகளின் அனுபவத்திலும், உடமையிலும் உள்ளதா?
5. வாதிகளுக்கு பிராத்தில் கோரியபடி பிராது 'A' தபசில் சொத்தினை பொறுத்து விளம்புகை பரிகாரம் கிடைக்கக் கூடியதா?
6. வாதிகளுக்கு பிராத்தில் கோரிய படி பிராது 'B' தபசில் சொத்தினைப் பொறுத்து சுவாதினப் பரிகாரம் கிடைக்கக் கூடியதா?
7. வாதிகளுக்கு பிராத்தில் கோரிய படி 'எல்லை நிர்ணயம்' பரிகாரம் கிடைக்கக் கூடியதா?
8. வாதிகளுக்கு பிராத்தில் கோரிய படி தடையாணை பரிகாரம் கிடைக்கக் கூடியதா?

9. எதிர்கோரிக்கையில் கோரிய படி, பிரதிவாதிகளுக்கு எதிர்கோரிக்கை தபசில் சொத்தினைப் பொறுத்து விளம்புகை, அதன் தொடர்ச்சியான நிரந்தர உறுத்துக்கட்டளைப் பரிகாரம் கிடைக்கக் கூடியதா?

10. உபய வாதிகளுக்கு கிடைக்கக் கூடிய இதர பரிகாரம் யாது மற்றும் செலவு தொகைப் பற்றிய உத்தரவு என்ன?

(The counter claimant filed a memo dt.21.08.2025 stating the valuation of counter claim exceeding this court pecuniary jurisdiction. Hence the counter claim was returned on 23.10.2025 to the counter claimant to file before proper pecuniary jurisdictional court and this court left the counter claim issues 3, 4 and 9 unanswered without adjudication.)

10. ARGUMENTS:

10.1) The learned counsel for plaintiffs argued that originally the suit property and more constrained in old survey No.6013, were belonged to one Kesavan, from whom the 1st plaintiff had purchased plaint 'A' schedule property in old survey no.6013/2 with extent of 15 cents by virtue of Ex.A1/Sale deed dt.07.01.1970. Then on 24.06.1987, the 1st plaintiff gifted her 3 daughters with each 4 cents of land, by keeping 2 ½ cents for herself and ½ cent to pathway access to all the divided properties. The gifts were accepted by all three children, by mutating the revenue records and by paying revenue and other taxes. The eastern portion of plaint 'A'

schedule property was purchased by one Ramakrishna pillai and his property was in old survey No.6013/3. Patta, chitta and other records were in name of 1st plaintiff and her daughters for the plaint schedule property. The measurements, description and four boundaries of the schedule of properties are vital to this case. The 'B' schedule property is eastern boundary of plaint 'A' schedule and a separate piece of land.

10.2) The 1st defendant was jail warden, native of Kanyakumari district and caretaker of Ramakrishnapillai's property. The plaintiffs were residential of Keralam state. The 1st defendant had purchased eastern portion of plaint 'A' schedule property and encroached the plaintiff's property, now claiming adverse possession. But he did not admit the plaintiff's title of plaint 'A' schedule property and he did not plead the true ownership of 22.526 cents for which he claiming title through adverse possession. The additional 2 to 5 defendants did not file written statement separately. The defendants did not provide schedule of property for the counter claim property. Originally, the defendants claim ownership over old survey No.6015, resurvey No.528/1A1, which was not the plaint schedule property. Thus, the counter claim is not maintainable. The plaintiff sued for 15 cents, whereas the defendant claimed 22.526 cents in counter, which is more than the suit property and it is not maintainable. The defendants took inconsistent plea. Ex.B1 to Ex.B3-approval plan, order, payment receipt were obtained illegally as there was no such President in the said date 14.07.2005. Even if it is taken as true, it was for Resurvey No.528/1A1

only, not relevant to the suit properties. The president of town panchayat has no authority to issue G.O as pleaded by defendant.

10.3) The defendants in the written statement, merely denied the facts of the plaint and not in specific as necessitated under Order 8 Rule 5 CPC. The plaintiffs have proved their title without ambiguity through Ex.A1, A9, Ex.A10. It is admitted that the plaint schedule properties were in possession of defendants, for which recovery of possession was sought for. Defendants have no possession till 2011 and they admitted their encroachment, by claiming adverse possessory right. Advocate commissioner report and plan is erroneous and he was examined as PW2. Thereby, elucidated the contradictions and discrepancies in the Commissioner Report and Plan, which have to be discarded. The 2nd defendant was minor at the time of suit institution. His mother had not entered witness box who have full knowledge to the relevant period. So, it is fatal to the defendant's case. Ex.B1 to Ex.B3 were fraudulent documents.

10.4) Adverse possession cannot be sought for vacant land. Ex.B4 to Ex.B31 were not relevant to the suit property or counter-claim property, as the defendant did not state the door no, EB service connection number, water tax no., etc. Those documents were issued for the land in Kovalam village and not for the Agasteeswaram village, to which the suit property was constrained. Regarding court fee and pecuniary jurisdiction, the defendants had raised this plea after 15 years and it

has no valid reason or ground to consider. Thus, the plaintiffs have proved their case and they are entitled to the reliefs sought for.

10.5) The learned counsel for **defendant** argued that the 1st defendant had been in possession, enjoyment of 22.526 cents of land constrained in old survey no.6013, resurvey no.528/5B2, 5C2, 5D2, 5D2, 5E2, 5F and 5G of Agasteeswaram village. The defendants amended the description of counter-claim schedule of property and not the pleadings in written statement as well as counter-claim. The 1st defendant constructed compound wall on all four sides, for the 22.526 cents of land and he planted banana, tapioca, etc. The records for EB service connection, water service, patta were in name of 1st defendant for 22.526 cents. On 18.07.2005, the 1st defendant got approval plan to construct building in the said 22.526 cents and constructed a building of 494sq.ft. Patta was issued on the basis of adverse possession. On 22.05.2012, the 1st defendant died and other defendants orally settled the 22.526 cents to the 2nd defendant. The returned counter-claim, was taken on file as O.S. No.57/2026 in the Hon'ble District Court, Kanyakumari and it is pending. Ex.C1 and Ex.C2 were submitted for 22.526 cents and the advocate commissioner reported the non-availability of 15 cents of plaint schedule property in earth. The valuation of plaint schedule property is higher than this court's jurisdiction and thus the suit is liable to be either return or dismiss.

11. REASON FOR DETERMINATION:

ISSUE NO.3: எதிர்கோரிக்கை தபசில் சொத்தினைப் பொறுத்து பிரதிவாதிகளுக்கு உரிமைமூலம் உள்ளதா?

ISSUE NO.4: எதிர்கோரிக்கை தபசில் சொத்தானது பிரதிவாதிகளின் அனுபவத்திலும், உடமையிலும் உள்ளதா?

ISSUE NO.9: எதிர்கோரிக்கையில் கோரிய படி, பிரதிவாதிகளுக்கு எதிர்கோரிக்கை தபசில் சொத்தினைப் பொறுத்து விளம்புகை, அதன் தொடர்ச்சியான நிரந்தர உறுத்துக்கட்டளைப் பரிகாரம் கிடைக்க கூடியதா?

11.1) The counter claimant filed a memo dt.21.08.2025 stating the valuation of counter claim exceeding this court pecuniary jurisdiction. Hence the counter claim was returned on 23.10.2025 to the counter claimant to file before proper pecuniary jurisdictional court and this court left the counter claim issues 3, 4 and 9 unanswered without discussion as well as adjudication.

ISSUE NO.1:வாதிகளுக்கு பிராது 'A' தபசில் சொத்தை பொறுத்து உரிமை மூலம் உள்ளதா?

ISSUE NO.2: பிரதிவாதிகள் பிராது 'A' தபசில் சொத்தில் ஆக்கிரமிப்பாளராக உள்ளார்களா?

ISSUE NO.5: வாதிகளுக்கு பிராத்தில் கோரியபடி பிராது 'A' தபசில் சொத்தினை பொறுத்து விளம்புகை பரிகாரம் கிடைக்க கூடியதா?

ISSUE NO.6: வாதிகளுக்கு பிராத்தில் கோரிய படி பிராது 'B' தபசில் சொத்தினைப் பொறுத்து சுவாதினைப் பரிகாரம் கிடைக்கக் கூடியதா?

11.2) The plaintiffs have pleaded the title declaration and consequential recovery of possession of plaint 'A' schedule property in plaint 'A' relief. Based on the pleadings and the reliefs sought for, the issue no.6 is re-framed as வாதிகளுக்கு பிராதில் கோரிய படி பிராது 'A' தபசில் சொத்தினைப் பொறுத்து சுவாதினப் பரிகாரம் கிடைக்கக் கூடியதா?

11.3) With respect to the fact-in-issues and its discussions to the Issue No.1, 2, 5, 6 were interlinked to each other, they were taken together for consideration.

11.4) The plaint 'A' schedule property is 15 cents of land with a small building therein, constrained in old survey No.6013, resurvey no.528/5B2, C2, D2, E2, 5A2, 5F, 5G of Agasteeswaram village, Kanyakumari district. The plaint 'B' schedule property is Boundary line in between the property of Ramakrishnapillai and plaintiffs' A schedule property.

11.5) The 1st defendant admitted in 24th of his written statement that originally the plaint schedule property and larger extent comprised in old survey No.6015 correlated to resurvey No.528/5A1 of Agasteeswaram village, having 22.153 cents, as per patta 11 ares belonged to the plaintiffs. But the plaintiffs pleaded that the 1st plaintiff had purchased 15 cents of land from one Kesavan in the year 1970 by virtue of Ex.A1/Sale deed, further the 1st plaintiff had gifted her 3 daughters with 4 cents each through Settlement deeds/Ex.A9 to Ex.A11. The plaintiffs pleaded in plaint,

proof affidavit, PW1's chief examination and the cross-examination of DW1, that they were residing at *TC.27/309, Gowrivilas, ARA-88, Athani road, Vanchiyoor, Thiruvananthapuram, Keralam state*. But on careful reading of Ex.A1, Ex.A9-Ex.A11, the residential address of the plaintiffs 1 to 4 were described as *Krishna vilasam Bungalow, Vendalikodu, Parvathipuram, Vadasery, Nagercoil*. The plaintiffs did not aver any valid explanation for such discrepancy. Further, they did not produce any address proof for their residential address.

11.6) It is true that the defendant neither admitted nor denied the Ex.A1, Ex.A9- Ex.A11. But this is the case seeking title declaratory relief. The plaintiffs have to prove their own case of title and can't be benefited from the weakness of defendants' case.

11.7) The plaintiffs averred that they enjoyed, possessed over the plaint schedule properties since 1970 till 2011 on which the 1st defendant encroached it. In Ex.A1/Sale deed dt.07.01.1970, the *kara tax number was described as 6479 and The old survey number of plaint schedule property was described as 6013*. But the plaintiffs described it in the plaint as 6015 and amended later vide order in I.A. No.4/2019 dt.19.11.2019. The ground of typing mistake to the error 6015 is found untenable. Then the resurvey number also amended vide order in I.A. No.6/2025 dt. 31.07.2025 based on Advocate commissioner report and plan. These facts clearly show that the plaintiffs were not aware of the details of the alleged suit property.

11.8) *Ex.A2/patta no.192* was issued in name of 1st plaintiff for 528/5 with extent of 0.33.0 ares/*0.06.0ares, which was equivalent to 14.826 cents.* On careful perusing the Ex.A2, it was issued for some other survey number in name of Kutty nadar and all the details were strike out and re-written with the details of 1st plaintiff. The over-writing were signed shortly in the right end of every material details. The date of over-writing was not mentioned. The said 528/5 constrained whole 0.33.0 ares, equivalent to 81.54 cents and Ex.A2 was issued to 528/5 in whole not with subdivision number. Hence the issuance of Ex.A2/patta is wholly unreliable.

11.9) *Ex.A3 and Ex.A7/Kara receipts; Ex.A4/Adanagal and Ex.A5/Chitta* were issued for Resurvey No.528/5B2 in the 1st plaintiff's name for extent 1.23 cents; for Resurvey No.528/5C2 in the 2nd plaintiff's name for extent 2.47 cents; for Resurvey no.528/5D2 in the 3rd plaintiff's name for extent 2.47 cents; for Resurvey No.528/5E2 in the 4th plaintiff's name for extent 2.47 cents. The total cents would be 8.64 cents only and not 15 cents as alleged by the plaintiffs. The plaintiffs did not plead any explanation for such lower extent of land than their claim of 15 cents.

11.10) *Ex.A3 and Ex.A7/Kara receipts* were issued on various dates such as 01.10.1997, 20.12.2010, 18.07.2016 and some of the kara receipts were issued without dates. *Ex.A4/Adanagal and Ex.A5/Chitta* were without any date of issuance. No documents produced for the period from 1970 to 1991 as well as 1991 to 1996. In Kara receipts, the patta No.4467, 4468 were mentioned, yet the plaintiffs did not produce the said patta. Especially, the plaintiffs did not produce any document

such as patta, Extract of Land Settlement register to prove their alleged fact of mutation and enjoyment of plaint schedule properties in their names, by paying revenue taxes. The defendants had produced Ex.B4/**Patta No.192** of Agasteeswaram village for extent of 11 ares and it stands in name of 10 persons including 1st defendant. It did not include the name of any plaintiffs. Total contradiction between Ex.A2/patta and Ex.B4/patta, both were numbered 192. Thus, the reliability of Ex.A3 to Ex.A5, Ex.A7 were found suspicious.

11.11) The advocate commissioner was appointed on the application of plaintiffs in I.A. No.3/2019. It was filed on 09.08.2019 ie. 8 later from the suit institution. The plaintiffs sought the commission on the ground of defendant's questioning of property identification and description. The defendant had filed written statement along with counter claim on 09.01.2012 itself by denying the description of suit property. The plaintiffs had filed the petition in I.A. No.3/2019 after 8 years. The plaintiffs haven't shown any promptness in conducting this case, as they did not commence trial till 10.11.2025 from 17.06.2019.

11.12) The plaintiffs sought commission to note down the physical features of plaint schedule and the counter-claim properties. The advocate commissioner had visited the property on 04.09.2021 and on 20.11.2021; then filed his Report and plan on 21.03.2025, by stating that no revenue records were available with the Taluk surveyor for the old survey number 6013, so he measured the land as per the resurvey

numbers. He identified the plaint 'A' schedule property as BRQPONLKCGFEB with 8.668 cents and the counter claim property as BSTK with 22.526 cents.

11.13) The plaintiffs alleged that they constructed compound wall on north, west and southern side of the suit property, by leaving the eastern side with two boundary stone on north eastern and south-eastern edge. There was no reason averred for such left over at the eastern side from which the defendant had encroached the suit property and took adverse possession. Generally, the construction of compound wall at all 4 sides are the norm. Deviation if any shall accompany with prudent reason. Non-reasoning will lead to adverse inference and made the statement as unbelievable.

11.14) The defendants claimed the construction of building with the approval and plan(Ex.B1 to Ex.B3). The plaintiffs denied those documents as bogus as there was no such president in the office. While searching through internet, the tenure of Agasteeswaram town panchayat was from 2001 to 2006. So, the fact of bogus Ex.B1 to Ex.B3 dt. 14.07.2005 were found untenable without production of any such order to suspend the presidentship on such date. It is true that the Ex.B1 to Ex.B3 were related to Resurvey No.528/5A1 and not to the suit property. But the plaintiffs did not produce any such document to the fact of existence of small building at the suit property alleged built to spend time during vacation from Keralam. The plaintiffs did not state any detail of door number, EB service connection, property tax number etc to the said small building and they did not produce any document to prove that it was

built by the plaintiffs. Therefore, the plaintiffs failed to prove the description of suit property.

11.15) The plaintiff objected the commissioner report that the taluk surveyor should have brought the records for old survey No.6013 for measuring the lands. But the plaintiffs did not take any steps to prove the fact of existence of such old survey number 6013 by producing any relevant revenue documents. The plaintiffs have not produced correlation certificate for the old survey No.6013 to resurvey No.528/5B2, C2, D2, E2, 5A2, 5F, 5G, either during the inspection or during the trial.

11.16) The plaintiffs objected that the commissioner has failed to measure and curved out plaint schedule -15 cents of land. While considering the said objection, the advocate commissioner had reported that there were no such 15 cents of land as well as no such old survey number 6015. The plaintiffs did not identify their 15 cents in earth during the visit of Advocate commissioner. The defendant claimed counter to the plaintiff's suit property only. The advocate commissioner curved out 8.668cents as suit property and 22.526 cents as counter claim property. If the plaintiffs' possession, enjoyment of suit property with 15 cents from 1970 to 2011 were true, they would show the said 15 cents to the advocate commissioner. Hence the objections raised to the advocate commissioner plan and report were found baseless. The examination of Advocate commissioner as PW2 revealed some discrepancies in commissioner report, but the plan is very clear. The commissioner had pointed alphabetical letters A to T to mark the physical features existed in the

resurvey No.528/5 and it led to his confusion in using the letters in some places. Thus, the contradictions happened.

11.17) The plaintiffs examined the Advocate commissioner as PW2 to prove their objection to the advocate commissioner report and plan. They did not question the commissioner regarding the reason for such 4 years to file commissioner report and plan. Without raising such question, the plaintiffs pointed out the minor mistakes in the advocate commissioner report and plan. There is no point in disbelieving the commissioner report and plan. In this case of title declaration, recovery of possession, whereas the plaintiffs admitted the defendants' possession over the suit property, there was no necessity to rely upon the advocate commissioner and plan. The filing of petition seeking commission to identify the suit property itself shows the plaintiffs' ignorance of details of the suit property to which they claimed title.

11.18) Mere registration of executed sale deed or settlement deed would not confer title to the vendee or donee. Under S.54 of Transfer of property act, the delivery of conveyed property is mandatory. If Ex.A1 delivered the possession to the 1st plaintiff, then through the Ex.A9 to ExA11 possession passed to 1st plaintiff's 3 daughters, they would have known precise location and other details of suit property. In Ex.A9 to Ex.A11, the old survey number was described as 6013/2 whereas the plaintiffs mentioned the old survey number firstly as 6015, later as 6013 not as 6013/2.

11.19) Then the plaintiffs pointed that the defendants' date of adverse possession on 01.01.1991 to 01.01.2003 was fixed to remember date easily and not real date of adverse possession. The defendants' wrong mentioning of date does not prove the plaintiffs' alleged title over the property.

11.20) The plaintiffs' commentary over the defendants' claim of 22.526 cents more than the suit property 15 cents, without admitting the title of plaintiff as well as remaining 7 cents. Further they claimed in plaint that the eastern portion of suit property was the property of Ramakrishna pillai property and the 1st defendant was caretaker of Ramakrishna pillai. Later in deposition or in reply statement, they claimed that eastern portion was purchased by the defendants. For these contra allegations, the plaintiffs did not produce any documentary or oral evidence. All over the pleadings of the plaintiffs, they commented the defendants' case in varied dimensions to disprove the case of the defendants. They repeatedly criticised each and every plea of defendants as worthless, bogus, genuineless, etc., and they found fault in each act of defendants as well as advocate commissioner. They failed to recognise that it won't help them to prove their case. The plaintiffs did not substantiate their case as well as their allegation against the defendants.

11.21) Upon the above discussions, this court held that the plaintiffs failed to prove their title, right, enjoyment over the suit property. Thus, the issue No.1, 2, 5, 6 were answered negatively against the plaintiffs.

ISSUE NO.7. வாதிகளுக்கு பிராதில் கோரிய படி 'எல்லை நிர்ணயம்' பரிகாரம் கிடைக்க
கூடியதா?

11.22) As the plaintiffs have failed to prove their title over the suit property, this court held that the plaintiffs are not entitled to the relief of demarcation and this issue No.7 is answered negatively.

ISSUE NO.8. வாதிகளுக்கு பிராதில் கோரிய படி தடையாணை பரிகாரம் கிடைக்க
கூடியதா?

11.23) As the plaintiffs have failed to prove their title over the suit property, this court held that the plaintiffs are not entitled to the relief of permanent injunction and this issue no.8 is answered negatively.

ISSUE NO.10. உபய வாதிகளுக்கு கிடைக்க கூடிய இதர பரிகாரம் யாது மற்றும்
செலவு தொகைப் பற்றிய உத்தரவு என்ன?

11.24) The plaintiffs are directed to pay the suit cost to the defendants.
Thus, this issue is answered accordingly.

12. In fine, it is dismissed. Plaintiffs are directed to pay cost to defendants.

Dictated to Steno-Typist and typed by her directly in the Computer and corrected and pronounced by me in the Open Court on this the 27th day of March 2026.

Sd/-(K. Chithra)

I Additional District Munsif (FAC)
Nagercoil.

Appendix:

1) Plaintiff side witnesses:

PW1 - Dersini Venugopal

PW2 - Jebarlin

2) Plaintiff side documents:

Ex.A1	07.01.1970	Original sale deed executed by Kesavan in favour of Omana Thankachi.
Ex.A2	-	Original patta in Re.Sy.No.528/5
Ex.A3	20.12.2010	Original Kara receipt (Nos 12)
Ex.A4	-	Original Adangal (Nos 4)
Ex.A5	-	Original Chitta (Nos.4)
Ex.A6	05.12.2020	Original Encumbrance Certificate
Ex.A7	18.07.1996	Original Land tax receipts (Nos.4)
Ex.A8	-	Original Encumbrance Certificate
Ex.A9	24.06.1987	Certified copy of Gift deed No.1130/1987
Ex.A10	24.06.1987	Certified copy of Gift deed No.1131/1987
Ex.A11	24.06.1987	Certified copy of Gift deed No.1129/1987

3) Defendants side witnesses:

DW1 - Aswin Jeghosh

4) Defendants side documents:-

Ex.B1	18.07.2005	Attested copy of Proceeding of the president, Kovalam village panchayat permitting the 1 st defendant for constructing residential building.
Ex.B2	18.07.2005	Attested copy of Approved plan for constructing residential building in the defendants property.
Ex.B3	18.07.2005	Attested copy of Miscellaneous receipt issued by the president, Kovalam village panchayat

Ex.B4	-	Attested copy of patta
Ex.B5	09.03.2005	Attested copy of Revenue tax receipt
Ex.B6	11.08.2011	Attested copy of Revenue tax receipt
Ex.B7	13.10.2005	Attested copy of House tax receipt
Ex.B8	06.02.2007	Attested copy of House tax receipt
Ex.B9	27.08.2008	Attested copy of House tax receipt
Ex.B10	02.11.2009	Attested copy of House tax receipt
Ex.B11	30.03.2011	Attested copy of House tax receipt
Ex.B12	01.11.2008	Attested copy of water tax receipt
Ex.B13	09.09.2009	Attested copy of water tax receipt
Ex.B14	02.11.2009	Attested copy of water tax receipt
Ex.B15	09.02.2010	Attested copy of water tax receipt
Ex.B16	02.09.2010	Attested copy of water tax receipt
Ex.B17	03.11.2010	Attested copy of water tax receipt
Ex.B18	08.02.2011	Attested copy of water tax receipt
Ex.B19	19.04.2011	Attested copy of water tax receipt
Ex.B20	09.09.2009	Attested copy of Electricity receipt
Ex.B21	03.11.2009	Attested copy of Electricity receipt
Ex.B22	12.01.2010	Attested copy of Electricity receipt
Ex.B23	08.03.2010	Attested copy of Electricity receipt
Ex.B24	13.05.2010	Attested copy of Electricity receipt
Ex.B25	13.07.2010	Attested copy of Electricity receipt
Ex.B26	08.09.2010	Attested copy of Electricity receipt
Ex.B27	12.11.2010	Attested copy of Electricity receipt
Ex.B28	13.01.2011	Attested copy of Electricity receipt
Ex.B29	19.04.2011	Attested copy of Electricity receipt
Ex.B30	21.06.2011	Attested copy of Electricity receipt
Ex.B31	12.08.2011	Attested copy of Electricity receipt

5) Court Documents:-

Ex.C1	-	Commissioner Report
Ex.C2	-	Commissioner plan

Sd/-(K. Chithra)
I Additional District Munsif (FAC)
Nagercoil.

I ADM Court
Draft/Fair Judgment
O.S.364 of 2011
Dated: 27.03.2026.