

TNKK040000562017



Presented on : 08-02-2017
Registered on : 08-02-2017
Decided on : 15-06-2026
Duration : 9 years, 4 months, 7 days

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

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

I Additional District Munsif, Nagercoil

Monday, on the 15th day of June, 2026.

O.S. No. 34 of 2017

(CNR NO. TNKK04-000056-2017)

Lily Mary

... Plaintiff

-VS-

1. Arockia Samy

2. Keisha

... Defendants

This Suit came up before me on 09.06.2026 for a final hearing in the presence of Mr.M. Timitilal Advocate for the Plaintiff and Mr.A.Raveendran, Advocate for the 1st and 2nd 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) Permanent injunction restraining the defendants or their men, agent, anybody else claiming under them for proceeding the construction work within the southern vacant portion of the plaint schedule property; ii) mandatory injunction directing the defendants to demolish the illegal construction made in the southern vacant portion of the plaint schedule property about 8.16sq.m (10.2m x 0.80m) along with the suit cost.

2. CRUX OF FACTS STATED IN PLAINT:

2.1) The plaintiff is the absolute owner in possession and enjoyment of the plaint schedule property, which was purchased from Girahori on 10.04.1985. At the time of purchase, there was a thatched house existed in it and the plaintiff constructed a terrace house after obtaining required building plan approval from the Kanyakumari Township on 05.07.1987. She left 80cm wide space along the southern wall of her house building for doing maintenance work. The said 80 cm wide space was distinctly mentioned in the approval plan. She is paying house tax and electricity bill without fail.

2.2) The defendants purchased adjacent land, abutting on the southern boundary of the plaint schedule property. On 24.01.2017 the defendants started their house construction after demolishing the old thatched house in it. They trespassed into the southern vacant portion of plaint schedule property by digging it. They encroached 10.2m x 0.80m portion of plaintiff. The plaintiff approached the

Kanyakumari police to stop the illegal work on 24.01.2017 and in that inquiry, the defendants agreed to measure the plaint schedule property as per the site plan approved by the Kanyakumari township and not to disturb the area ie.112.70sq.m (85.56 + 27.14) ie. plaint schedule property. On the said terms, the plaintiff's complaint was closed. But the defendants failed to comply their terms.

2.3) On 02.02.2017, the defendants started their construction work with more working force in violation of the agreed terms. Immediately, the plaintiff informed to the concerned police station. The defendants failed to appear for inquiry for long time. On 06.02.2017 the defendants in their inquiry, asked not to interfere in the civil matter. So the police advised the plaintiff to approach the civil court. The plaint schedule property and the other property lying on its both sides in survey no.654/17 is the poramboke land ie.Barather theppakulam poramboke. The persons residing and enjoying the poramboke area are Christians and they are the members of the Kanyakumari Parish. Generally, if any dispute arises, the council intervene and settle the matter amicably. The plaintiff married a muslim and they are not the members of the Kanyakumari Parish. So, the justice was denied to the plaintiff. Thus, this suit was filed.

3. CRUX OF WRITTEN STATEMENT FILED BY 1ST DEFENDANT AND 2ND DEFENDANT:

3.1) All the averments stated in the plaint except those that are hereinafter specifically admitted or otherwise dealt with shall be deemed to have been denied. The defendants did not know about the approval plan of Kanyakumari township and, whether she is paying house tax or EB bill. The defendant purchased a land with a house bearing door No.10/104C of Kanyakumari town panchayat. It has electrified and having a water connection. The defendant's house wall was constructed on the very same wall, which existed before the demolition of the earlier thatched mud wall house. It was purchased from her previous owner without leaving any space and the plaintiff has constructed a house. She has dismantled the old house and started the new construction on the very same place of the wall in the old house. The old house's southern wall was more or less attached with this defendant house's northern wall at the time of construction of the plaintiff. The defendants' previous owner raised objection for not leaving some space for air, passage and for maintenance of the wall. She encroached the southern lane left for air passage. She could not put any window on the southern wall and she was unable to plaster her southern wall because of her encroachment.

3.2) The defendants purchased their land with house from one Maria Joselin. They never dig out more than their area. On 24.01.2017, the defendants destructed the old house and they started construction where in the destructed old house was situated. No cause of action arose in this suit. In the police station, they inquired the matter and found the complaint was mistake of fact and they closed the complaint. It

is not correct to state that the defendants agreed amicably to settle the matter. They did not commit any wrong and no question of settlement to arrive.

3.3) It is admitted that both the plaintiff and defendants' properties were belonged to Kanyakumari Parish and it is Theppakulam poramboke. It is not correct to state that the defendants procrastinated their appearance for enquiry in police station for the second time and it is incorrect that the justice was denied to the plaintiff by the Parish council. The police dropped their action. the Parish council visited the property and measured properties; came to understand that there is no encroachment or no hindrance to the plaintiff by the construction of the defendants. So, they did not take any action on the false petition of the plaintiff. Thus, they prayed to dismiss the suit with compensatory cost.

4. ISSUES:

4.1) Based on the pleadings and the documents, this court has framed following issues on 07.06.2019

1. வழக்கு தாக்கல் செய்த நாளில் வாதி பிராது தபசில் சொத்தில் வாதி பிராது தபசில் சொத்தில் அனுபவமும், உடைமையும் கொண்டுள்ளாரா?
2. வாதியின் பிராது தபசில் சொத்தை ஆக்கிரமித்து பிரதிவாதிகள் சட்ட விரோதமான கட்டுமானத்தை ஏற்படுத்தியுள்ளார்களா?
3. வாதிக்கு பிராது தபசில் சொத்தை பொறுத்து பிராதில் கோரியபடி "A பரிகாரமான நிரந்தர உறுத்துக்கட்டளை பரிகாரம் கிடைக்கத்தக்கதா?
4. வாதிக்கு பிராது தபசில் சொத்தை பொறுத்து பிராதில் கோரியபடி "B" பரிகாரமான செயலுறுத்துக் கட்டளை பரிகாரம் கிடைக்கத்தக்கதா?

5. வாதிக்கு கிடைக்க கூடிய இதரப் பரிகாரம் யாது மற்றும் செலவுத் தொகைப் பற்றிய உத்தரவு என்ன?

5. EVIDENCE:

5.1) On the side of plaintiff, the plaintiff was examined as PW1, Ex.A1 to Ex.A6 were marked. On endorsement of the learned counsel for plaintiff, the plaintiff side evidence was closed on 03.04.2025.

5.2) Even after sufficient time was granted and conditional order was passed, the defendants not let any evidence till 23.01.2026, hence suomotto the defendants side evidence was closed on 23.01.2026. Upon allowing the petitions in I.A. No.6/2026, 7/2026 dated 17.04.2026, The 2nd defendant was examined as DW1 on the defendant side. Ex.B1 to Ex.B6 were marked. On perusal of record, the Advocate commissioner was appointed vide order in I.A.No.87/2017 and he filed Advocate commissioner report and plan. Both parties cross-examined the witnesses regarding the advocate commissioner report and plan. So, marking of those documents as Ex.C1 and Ex.C2, is vital to proceed with and there is no injustice caused to both parties by doing so.

6. ARGUMENTS:

6.1) The learned counsel for the plaintiff argued that the plaintiff has purchased the plaint schedule property from one Girahori on 10.04.1985 and she constructed her house by leaving 10.2m x 0.80m (8.16sq.m) of land in southern space for air, light and maintenance purpose. The left out space was shown in the Building

approval plan/Ex.A2 dated 05.07.1987. The defendants constructed her house on 24.01.2017 by encroaching the southern space of plaintiff. Repeated complaint with police did not yield result. The defendant has not obeyed the compromise arrived at police enquiry to measure the plaint schedule property as per approval plan and not to disturb the area ie.112.70sq.m (85.56 + 27.14). The defendant's encroachment of plaint schedule property was proved through advocate commissioner's report and plan for which the defendants were not co-operative. Both the lands of plaintiff and defendant were situated in Barathar theppakulam poramboke land and it is maintained by the Kanyakumari Parish. The rights were conveyed through the unregistered transfer agreement only. Both plaintiff and defendants got their right through such execution of deed for transfer of rights.

7. REASON FOR DETERMINATION:

ISSUE NO.1. வழக்கு தாக்கல் செய்த நாளில் வாதி பிராது தபசில் சொத்தில் வாதி பிராது தபசில் சொத்தில் அனுபவமும், உடைமையும் கொண்டுள்ளாரா?

ISSUE NO.2. வாதியின் பிராது தபசில் சொத்தை ஆக்கிரமித்து பிரதிவாதிகள் சட்ட விரோதமான கட்டுமானத்தை ஏற்படுத்தியுள்ளார்களா?

ISSUE NO.3. வாதிக்கு பிராது தபசில் சொத்தை பொறுத்து பிராதில் கோரியபடி "A" பரிகாரமான நிரந்தர உறுத்துக்கட்டளை பரிகாரம் கிடைக்கத்தக்கதா?

ISSUE NO.4. வாதிக்கு பிராது தபசில் சொத்தை பொறுத்து பிராதில் கோரியபடி "B" பரிகாரமான செயலுறுத்துக் கட்டளை பரிகாரம் கிடைக்கத்தக்கதா?

7.1) The discussions with respect to fact-in-issue of issues No.1 to 4 were interlinked with each other, they are taken together for consideration.

7.2) The plaint schedule property is 112.70sq.m area of house land with RCC terrace house bearing door No.10/104C-1 constrained in Resurvey No.654/17 of Agasteeswaram taluk, Kanyakumari district. The plaintiff averred that On 24.01.2017 the defendants started their house construction after demolishing the old thatched house in it. They trespassed into the southern vacant portion of plaint schedule property by digging it. They encroached $10.2\text{m} \times 0.80\text{m} = 8.16\text{sq.m}$ portion of plaintiff

7.3) The plaintiff relied on four boundaries of Ex.A1/Sale deed, Ex.A2/approval plan and the Ex.C1, C2/Advocate commissioner report and plan for the fact of extent of plaint schedule property.

7.4) It is admitted by the plaintiff that the **Ex.A1/Sale deed** did not state the extent of the plaint schedule property. On perusal of **Ex.A1/sale deed dt.10.04.1985**, the plaint schedule property was situated to the north of K.Reethal Agasteen's house, to the east of Barathar theppakulam, to the south of Rayappan and Alphonse's house plots and to the west of Therku Aasaarimaar oor Amman land. The southern boundary was shown as K.Reethal Agasteen's house.

7.5) Further, in **Ex.A2/approval plan** No.41/1987 dated 05.10.1987, the site area was 85.56sq.m; the property area was 58.42sq.m; the property carpet area was 45.44sq.m.; the vacant area was 27.14sq.m. The plaintiff claimed the plaint schedule property was the total of site area and the vacant area i.e. $85.56\text{ sq.m} + 27.14\text{sq.m} = 112.70\text{sq.m}$. The vacant area was shown in Ex.A2/approval plan in the northern, eastern and southern side of the house built-up area.

7.6) The counsel for defendant alleged that the plaintiff being a social worker, influenced the government officials to issue approval plan unlawfully to the poramboke land. While considering this objection, the Ex.A2 was issued on 05.10.1987 and the presumption of genuineness under section 92 of Bharathiya Sakshiya Adhinayam cannot be ignored. The defendant did not take any step to challenge the Ex.A2 through proper legal proceedings. Mere allegation is found baseless and the objection is rejected.

7.7) In the **Ex.C1 and Ex.C2/Advocate commissioner report and plan**, the advocate commissioner in aid of licensed Surveyor, has derived the plaint schedule property's extent to 2 cents 630 sq.links. It is equivalent to 106.43sq.m which is 6.27sq.m less than the 112.70sq.m as stated in Ex.A2/approval plan. In commissioner report, the commissioner stated that the counsel for defendant not appeared for commission. The defendant did not file any objection to the commissioner report and plan. In the cross-examination of PW1, the learned counsel for defendant suggested the plaintiff did not take steps to measure the property through advocate commissioner. This suggestion shows that the defendant did not follow up the case properly.

7.8) On perusal of case records, it is found that the defendant has not filed written statement within 90 days and they were set exparte on 17.07.2017. Through petition in I.A. No.560/2017, the exparte order was set aside on 27.03.2019. The defendant has not let defendant side evidence from 17.04.2025 to 10.11.2025. It is found that the defendant had not actively participated in the trial proceedings.

7.9) The defendants claimed that they are entitled to 1.125 cents land, adjacent to the plaint schedule property. When the advocate commissioner measured the plaint schedule property with aid of licensed surveyor, the defendants did not take steps to measure their land to disprove the plaintiff's case. The defendant argued that in **Ex.B1/photo**, the southern wall of plaint schedule property has some white plaster with invert 'VV' shape indicating, the adjoining of defendants' predecessor's house without any space. The plaintiff admitted the presence of alleged inverted 'VV' shape. The presence of track of old buildings' doesnot imply that both plaintiff and defendants' house were adjacent to each other without any space. The period of existence of adjacent building couldnot be taken to the contemporary of defendant's immediate predecessor-in-possession. Hence the defendants' contention does not hold valid enough to dismiss the plaintiff's case, which was established through Ex.A2, Ex.C1 and Ex.C2.

7.10) The other documents of Ex.A3/property tax receipts, Ex.A4/EB receipt, Ex.A5/police complaint did not strengthen the plaintiff's case in any other way. In the same manner, the defendants' other documents such as Ex.B2 to B4 depicted the defendants' purchase area as 1 ¼ cents. But they did not take steps to assure the existence of defendants' construction exactly within the extent of 1 ¼ cents of land. Ex.B5 and Ex.B6 do not help to disprove the plaintiff's case. Hence this court held that the plaintiff has been in possession and enjoyment of plaint schedule property and the defendant has encroached the plaint schedule property about 8.16sq.m in the southern boundary of it, thus the plaintiff is entitled to the plaint A and B relief as she

prayed for. Therefore, the issue no.1 to 4 were answered positively in favour of the plaintiff.

ISSUE NO.5. வாதிக்கு கிடைக்க கூடிய இதரப் பரிகாரம் யாது மற்றும் செலவுத் தொகைப் பற்றிய உத்தரவு என்ன?

7.11) This court has held that the plaintiff is not entitled to any other relief and the defendant is directed to pay the suit cost to the plaintiff.

8. In fine this suit is decreed and the plaintiff is entitled to the relief of

i) Permanent injunction restraining the defendants or their men, agent, anybody else claiming under them for proceeding the construction work within the southern vacant portion of the plaint schedule property;

ii) mandatory injunction directing the defendants to demolish the illegal construction made in the southern vacant portion of the plaint schedule property about 8.16sq.m (10.2m x 0.80m) along with suit cost.

(Sd/-K. Chithra)

I Additional District Munsif
Nagercoil.

Appendix:

1) Plaintiff side witnesses:

PW1 - Lily Mary

2) Plaintiff side documents:

Ex.A1	10.04.1985	Original Sale deed in favour of the Plaintiff
Ex.A2	05.07.1987	Original House Plan approval in favour of the Plaintiff
Ex.A3	-	Original House Tax Receipt in favour of the Plaintiff (9 Nos).

Ex.A4	-	Original Electric Bills in favour of the Plaintiff (2 Nos)
Ex.A5	24.01.2017	Hand copy of Complaint submitted by the Plaintiff before the superintendent of Police Kanyakumari
Ex.A6	-	Xerox Copy of Aadhaar card of the Plaintiff

3) Defendants side witnesses:

DW1 - J. Keisha

4) Defendants side documents:-

Ex.B1	-	Original Photograph showing the nature of the property – Image 3
Ex.B2	26.10.2016	Certified copy of Document regarding the property purchased by the defendant
Ex.B3	31.07.2013	Original Sale deed document regarding the purchase from Sahaya Jocelin Jaya
Ex.B4	12.06.2005	Original The sale deed through which the property currently occupied by the defendant was purchased from Edward Das
Ex.B5	07.08.2024	Original computerized receipt of Property tax receipt in the defendant's name
Ex.B6	07.08.2024	Original computerized receipt of Water charge receipt in the defendant's name

5) Court documents:-

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

(Sd/-K. Chithra)

I Additional District Munsif
Nagercoil.

I ADM Court
Draft/Fair Judgment
O.S.34 of 2017
Dated:15.06.2026.