

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

Present: Thiru. R. Sundara Kamesh Marthandan, M.L.,

I Additional District Munsif, Nagercoil.

Friday, on the 7th day of March 2025

I.A. No. 2 of 2021 & I.A. No. 3 of 2021

in

O.S. No. 256 of 2021

CNR.No. TNKK04-000330-2021

S. Muthulingam

... Petitioner/Plaintiff

-VS-

1. Pitchakalaswamy Koil rep. by

It's president D. Iyyappan

2. Sivakumar

3. Thiruvaduthurai Aatheenam rep. by

it's Inspector.

... Respondents/ Defendants

This Petition came before this Court on 18.02.2025 for final hearing, Mr. K. Subhakaravel, Advocate for the Petitioner, Mr. Balaganesan, Advocate for the 1st Respondent, Mr. Sahayadhas, Advocate for the 2nd Respondent and Mr. Kumaran Nair, Advocate for the 3rd Respondent. Upon hearing both side Counsel and upon perusing the case records, having stood over for consideration, till this date, this Court hereby delivers the following:

COMMON ORDER

1. The Petitioner had filed I.A. No. 2 of 2021 under Order XXXIX Rule 1 and 2 and Section 151 Code of Civil Procedure seeking an order Ad-interim Injunction restraining the Respondents from making any construction or obstructing the access of the Plaintiff from Plaint 'A' schedule property to the Plaint 'B' schedule property and from making any further construction, by encroaching the Plaint 'B' schedule property on ground and aerially and from doing any act, prejudicing any right of the Plaintiff over the Plaint 'B' schedule property.

The Petitioner had filed I.A. No. 3 of 2021 seeking an order to appoint an Advocate Commissioner to note the following points.

1. To note the physical features of the Plaint 'A' and 'B' schedule property.
2. To measure the Plaint 'A' and 'B' schedule property and draw a sketch.
3. To take photograph of the Plaint schedule properties.
4. To note the iron gates, erected by the Plaintiff from 'A' schedule property, towards the Plaint 'B' schedule property.
5. To note the encroachments made by the Defendants on the 'B' schedule property on ground and aerially.
6. Such other points to be noted the time of the visit.

2. The Petitioner had stated that the Petitioner had filed the suit, seeking declaration that the Plaint 'B' schedule pathway, for ingress and egress to the Plaint 'A' schedule property and for Mandatory and Permanent Injunction. The Petitioner had stated to have entered, into the Lease Agreement, with the 3rd Defendant, in

respect of the Plaintiff 'A' schedule property and taken the Plaintiff 'A' schedule property namely 12 cents of land in Re. Sy. No.323/1 of Madusoothanapuram Village for a period of three years from October 12.08.2013, on the yearly lease amount of Rs.1800/- (Rupees One Thousand Only). The Plaintiff had established his furniture manufacturing unit in the name "Vijitha Wood Works Company" in the property.

3. The 3rd Defendant had provided a pathway, on the strip of property, situated on the Eastern Side of Plaintiff 'A' schedule property, in the very same Sy. No. 323/1 of Madusoothanapuram Village, having an extent of 2.5 cents. The said strip of property is described as Plaintiff 'B' schedule property. The 1st Respondent Temple and the House of the 2nd Respondent are situated on the Southern direction of Plaintiff 'B' schedule property. The 3rd Defendant had granted pathway right to the 1st and 2nd Defendants along with the Plaintiff, on the Plaintiff 'B' schedule property. The Plaintiff 'B' schedule property is a pathway provided for the purpose of free ingress and egress to the Plaintiff 'A' schedule property. The said pathway right has been mentioned in the Lease Deed dated 12.08.2013, entered into between the Petitioner and the 3rd Respondent.

4. Though the Lease Deed is for three years, for the period covering from 12.08.2013 to 12.08.2016, the 3rd Respondent has been collecting rent, from the Plaintiff, regularly by adopting the leasehold right of the Plaintiff. As such the duration of lease has been extended. The Plaintiff 'B' schedule pathway, starts from Chinnananthan Vilai and Koil Vilai Road, from North and runs towards South and ends with the 2nd Defendant's property. The Petitioner is using the said Plaintiff 'B'

schedule property, for transporting Timbers, to his manufacturing unit and to take out finished furniture product, from his furniture manufacturing unit.

5. The Petitioner had erected an iron gate towards the Petition 'B' schedule pathway, on the eastern side of Petition 'A' schedule property. The Petitioner had also erected a small gate, facing Petition 'B' Schedule Property, for facilitating his workers, to have a free access. The Petitioner is the secretary of Mutharaman Temple Trust of Chinnanathan Vilai and also doing his furniture business. There are some dispute among the group of people attached to the 1st Defendant Temple and the Petitioner. In view of the same, the 2nd Defendant had build a wall by obstructing the Petitioner's access from Petition 'A' schedule property to Petition 'B' schedule property. When the Petitioner approached the 3rd Respondent, the 3rd Respondent showed deaf years. Since 24.11.2021, the 1st and 2nd Respondents were continuing the construction activities. The Petitioner's resistance could not forebear their activities. The 1st Respondent lodged a false complaint before the police. The police have registered a case, against the Petitioner. The Respondents are constructing pillars and arches by encroaching the Petition 'B' schedule property. Both on ground and aerial. Such construction activity, has to be restrained, failing which, the Petitioner will be put to irreparable loss and hardship. Hence granting Interim Injunction is highly essential. Mandatory Injunction should also be granted against the Respondents to remove the construction already done. Hence the Petitioner had filed the above Petitions seeking Ad-Interim Injunction and also order seeking appointment of Advocate Commissioner.

6. The Respondents 1, 2 and 3 have filed separate counters in both I.A. No. 2 of 2021 and I.A. No. 3 of 2021. In both I.A. No. 2 of 2021 and I.A. No. 3 of 2021 the Respondents 1 and 2 have stated in their counter that the Petitioner has to prove the Lease Agreement between the Petitioner and the 3rd Defendant and about his furniture business. The Petitioner has to prove his possession in Petition 'A' schedule property. The description of Petition 'A' schedule property is wrong and misleading. The Petitioner had suppressed the road frontage available on the Northern side of the Petition 'A' schedule property. The Petition 'A' schedule property has full road frontage on the North. The Petitioner claimed that the 3rd Defendant had provided pathway on the eastern side of Petition 'A' schedule property in the very same survey number measuring 2.5 cents is denied as false. No such pathway is available for the Petitioner on the eastern side of Petition 'A' schedule property.

7. The said 2.5 cents of property, situated on the eastern side of Petition 'A' schedule property, has been leased out, to the 2nd Respondent, exclusively and also for the joint use of the 1st Respondent. The 3rd Respondent had executed a Lease Deed to that effect. The 2nd Respondent along with his brothers is having 2.60 hectares of Coconut Grove along with the residential house in Re. Sy. No. 324/6, on the South of the alleged Petition 'A' & 'B' schedule properties. Apart from that, the 1st Respondent's Temple was established, by the ancestors of the 2nd Respondent, about 700 years back, in their patta land in Re. Sy. No. 324/6.

8. The 2nd Respondent's father had executed Gift Deed dated 05.12.1986 bearing Doc. No. 2212 of 1986 in favour of the 1st Respondent. The villagers are

administering the temple, along with the 2nd Respondent's family. The 1st Respondent temple, along with 2nd Respondent's family are using the land measuring 2.5 cents in Re. Sy. No. 323/1, as their only pathway, for their free ingress and egress, to reach the temple and 2nd Respondent's house and properties from the Public Road on North. The 2nd Respondent had took lease of the same, for ground rent, from the 3rd Respondent. The Petition 'B' schedule property, is in, no way connected with Petition 'A' schedule property, which has 70 feet width frontage on the North. The Petitioner has no moral or legal right, to claim pathway right, over Petition 'B' schedule property.

9. Since the 3rd Respondent has allotted Petition 'B' schedule property to the 2nd and 1st Respondents as pathway, they are in possession and enjoyment of the same, in terms of the Lease Agreement, executed by the 3rd Respondent. The Petitioner has to establish and prove the alleged release in respect of Petition 'B' schedule property in his favour. Since the Petitioner, with his money and muscle power, tried to open a gate on the eastern side of 'A' schedule property, facing the 2nd Respondent's property, the Respondents obstructed the same, by constructing a separate compound wall, on the western side of 2.5 cents, leased out to them, by the 3rd Respondent.

10. The Petitioners claim of dispute, between the Petitioner and the group of people, attached with the 1st Respondent do not arise. The Petitioner with ill motive to obstruct the free access of 1st and 2nd Respondents in the Petition 'B' schedule property, had erected the gate facing the Petition 'B' schedule property. The construction made by the 1st Respondent, is only for the purpose of protecting their

leasehold right, granted by the 3rd Respondent, in favour of them. The 1st Respondent's complaint is true. The 1st and 2nd Respondents are constructing pillars and arches, in the 'B' schedule property, with dew permission from the 3rd Respondent, who is the absolute owner of the property.

11. The Petitioner is not entitled for any relief, in respect of Plaint 'B' schedule property. The 3rd Respondent has not assigned any right, access in respect to 'B' schedule property, for having free access to the Plaint 'A' schedule property. The president and it's members are law abiding citizens. The Petitioner's claim that he has Prima Facie case is not correct. The Petitioner has manipulated documents, in his favour, in order to deceive this Court and committed forgery. The Petitioner has not come before this Court, with clean hands and he is not entitled for the Petition relief. Hence the 1st & 2nd Respondents prayed for dismissal of the above Petitions.

12. The 3rd Respondent had filed counter stating that the Petitioner has not properly arrayed the 3rd Respondent. The Aadheenakarhar of the 3rd Respondent, has the authority to sue on behalf of the 3rd Respondent and in case of litigation against the 3rd Respondent, it has to be sued, by describing it's Aadheenakarhar as it's representative. The Aadheenakarhar is necessary party, for the suit disposal as well as for the other interlocutory applications. The none mentioning of the Aadheenakarhar as party, is fatal to the suit and to the above applications.

13. By Rental Agreement dated 12.08.2013, the 3rd Respondent had let out 12 cents of land to the Petitioner for a period of three years. The said Petition 'A' schedule property and the Petition 'B' schedule property are separate property. Over

Petition 'B' Schedule Property, the Petitioner has no right at all. The Rental Agreement, is not to do timber business. The Right over the Petition 'B' schedule property has been given to the 1st and 2nd Respondents along with the Petitioner is false. The 3rd Respondent has no such right to grant. In the rental agreement dated 12.08.2013, there is no such provision has been made therein and if any such interpolation is found in the rental agreement furnished by the Petitioner, the same is fraudulent entry made to deceive this Court and the parties to the suit. The 3rd Respondent has granted pathway to the 1st and 2nd Respondents for utilizing for their access the lease in favour of the Petitioner over the Petition 'A' schedule properties for three years. Thereafter the same was not renewed. There is no such big iron gate towards the 'B' schedule property. The iron gate erected towards the 'B' schedule property is an unauthorized and illegal one. In order to admire the deity of the nearby temple, the 3rd Respondent authorities are permitted the 1st and 2nd respondents to put up an arch within the aforesaid pathway.

14. The 1st and 2nd Respondents have executed their works with the help of religious people. The 3rd Respondent had learnt that some miscreants have damaged it some of the constructions. There are resulted in lodging Police ComPlaints. The Petitioner do not have prima facie case, balance of convenience in his favour as he had come before this Court by fabricating documents. He is not entitled for any relief. The Petitioner committed forgery. The Petition is not entitled for appointment of commissioner. Hence the 3rd Respondent had prayed for dismissal of the above Petition

15. The Point for consideration is Whether the above Petitions have to be allowed or not?

16. The admitted facts in this Case is that the 3rd Respondent is the owner of the Petition 'B' Schedule Property. The Petitioner and Respondents 1 & 2 make rival claim over the same, as if the 3rd Respondent had granted leasehold right over the Petition 'B' Schedule Property, in their favour. The Respondents 1 & 2 have denied the Petitioner's claim of leasehold right over the Petition 'B' Schedule Property. The 3rd Respondent had also contented that the 3rd Respondent had not granted leasehold right over Petition 'B' Schedule Property, in favour of the Petitioner. The 3rd Respondent had contended that the 3rd Respondent has to sue or be sued by mentioning it's Aathinakarthar as it's Representative and claimed that the suit has to fail on this Score.

17. In such circumstances, as the 3rd Respondent is Aatheenam, it's properties have to be dealt with under written agreements. The Petitioner had pleaded that the 3rd Respondent had granted lease of the Petition 'A' Schedule Property for three years along with pathway right over Petition 'B' Schedule Property. However the Petitioner had not exhibited the said lease deed in the above Interlocutory Applications. Such being the case, when the Petitioner had failed to produce the lease deed, stated to have been executed by the 3rd Respondent and when the 3rd Respondent had contended that, it, had not granted leasehold right over Petition 'B' Schedule Property to the Petitioner and in Ex. R1 Lease Deed dated 12.08.2013, executed by the 3rd Respondent in favour of the Petitioner, there is no mention about Petition 'B'

Schedule Property, this Court is of the considered view that the Petitioner has not made out Prima Facie Case.

18. The Petitioner had stated that he had put up two gates facing the Petition 'B' Schedule property. The Respondents have stated that since the Petitioner was not granted any lease hold right over the Petition 'B' Schedule Property, they have put up wall on the Western side of Petition 'B' Schedule property, in order to Prevent the Petitioner from entering into Petition 'B' Schedule property. Even in the suit, the Petitioner had sought for Mandatory Injunction to remove the Construction put up in Petition 'B' Schedule Property. That apart the Respondents have contended that to the Property leased out to the Petitioner namely Petition 'A' Schedule property, there is Road Frontage on the Northern Side. However on Perusal of Ex. R1 lease deed executed by 3rd Respondent in favour of the Petitioner, the Four Boundaries have been mentioned as North, East and West by Aatheenam Land, South by Patta Land. The Respondents claim that the Northern Boundary of the Petition 'A' Schedule Property is a Road is not corroborated by Ex. R1.

19. In the Petition, the Petitioner had described the eastern boundary of Petition 'A' Schedule property as Petition 'B' Schedule property belonging to the 3rd Respondent. As such, the Petition 'A' Schedule property description is in consonance with Ex. R1, lease deed. Since the 3rd Respondent, being the lessor should have provided access for the property, leased out by it, to the Petitioner. However Ex. R1 Lease Deed, do not reflect so. The Petitioner having stated to have taken the Petition 'A' Schedule property for lease had not explained, how he executed Ex. R1 Lease

Deed, wherein there is no mention about access to the property leased out to the Petitioner.

20. During the Course of Argument, the learned counsel for the 3rd Respondent had submitted that the Petitioner had interpolated in the duplicate copy of Ex. R1, available, with the Petitioner, by writing a Recital, as if the Petitioner was granted leasehold right over Petition 'B' Schedule property for having access to Petition 'A' Schedule property. However the said duplicate copy of Ex. R1 is not exhibited before this Court. The Petitioner had claimed to have carrying on business of Furniture Manufacturing Unit, hence the Petitioner would be having certificates, license, receipts, issued by statutory authorities, in connection with his business. However they were not exhibited in the above Interlocutory Applications. If those documents are produced, the access, to Petition 'A' Schedule property could have been ascertained, while adjudicating the above Interlocutory Applications. Since those documents were not produced and that the Respondents claim of access to Petition 'A' Schedule property, directly from the road, situated on it's Northern Side, have to be adjudicated only in the main suit, in so far as the above Petition is concerned, this Court is of the considered view that the Balance of Convenience is not in favour of the Petitioner.

21. Ex. R4 CSR Receipt dated 06.09.2020 bearing No. 560 of 2020 has been given by Suchindrum Police, to the 2nd Respondent. In Ex. R4, the substance of Complaint, is mentioned as if the Petitioner by putting Timbers in Petition 'B' Schedule Property and blocking the same. Ex. R5 is the Kist Receipt in the name of

one Sankarasamy. The Respondents have exhibited the Peace Committee Proceeding of the Revenue Divisional Officer, Nagercoil dated 19.03.2022 as Ex. R7. Thought it is settled law that Proceedings of Revenue Department, do not have binding effect on the Civil Court, since Ex. R7 is stated to be the minutes arrived in the Peace Committee Meeting, wherein the Petitioner had agreed not to enter into the Petition 'B' Schedule Property, until the disposal of the above suit, the same could be into consideration for the limited purpose that denying interim injunction to the Petitioner, will not cause irreparable injury to the Petitioner, that too when, the Petitioner had got Ex. R1 Lease Deed executed, without mentioning anything about the access to Petition 'A' Schedule property. In view of the discussions made above, this Court is of the Considered view that the Petitioner is not entitled for Interim Injunction.

22. With regard to issuance of Commission, as discussed above, in Ex. R1, there is no mention about access to Petition 'A' Schedule property and it's Northern, Eastern and Western boundaries is mentioned as Aatheenam Land and Southern boundary is mentioned as Patta Land. In Ex. R3(R7), No Objection Certificate dated 15.11.2021, stated to have been issued by the Southern Regional Manager of the 3rd Respondent, the 2nd Respondent was permitted to put up Arch over the Petition 'B' Schedule Property. Whether the said Regional Manager has power to issue such certificate or not has to be adjudicated, in the main suit only. Ex. R2 are receipts dated 12.09.2020 & 05.01.2021, issued by the 3rd Respondent to the 2nd Respondent, for receipt of Rent.

23. From Ex. R3(R7), it Prima Facie appears, that the Petition 'B' Schedule

Property is being used as Pathway. The Petitioner had claimed to have been carrying on Furniture Manufacturing Unit, in the Petition 'A' Schedule Property. As such, this Court could hold that in both Petition 'A' Schedule Property & Petition 'B' Schedule Property, Agriculture is not being done. In view of the Rival Claim made over the Petition 'B' Schedule Property and in view of the fact that in Ex. R1 Lease Deed, there is no mention about access to Petition 'A' Schedule Property and it prima facie appears that Petition 'A' Schedule Property is a land locked property and that the Petitioner had claimed to have placed two gates facing Petition 'B' Schedule Property and the Respondents have claimed to have constructed Wall on the Western Side of Petition 'A' Schedule Property, this Court is of the considered view that issuing Commission for ascertaining the Points mentioned by the Petitioner is necessary for adjudicating the main dispute in the Original Suit and that the Petitioner is entitled for issuance of Commission.

In the result, I.A. No. 2 of 2021 is dismissed. No Cost.

In the result, I.A. No. 3 of 2021 is allowed, and Advocate Mr.C.Sugantharajan (Enr. No. 565/1990) (Mobile No. 9443486314), is appointed as an Advocate Commissioner to note the Point Listed in the Petition, after giving due notice to both parties and file Report along with Plan, at the earliest. His remuneration is fixed at Rs.8,000/-(Rupees Eight Thousand Only), which sum, the Petitioner shall directly pay to the Advocate Commissioner and file Proof for Payment of the same. For filing proof as to payment of Commissioner's remuneration. Call on 17.03.2025.

Dictated to the Steno-Typist, transcribed and typed by her, corrected and pronounced by me, in Open Court this, the 7th day of March 2025.

I Additional District Munsif,
Nagercoil.

Petitioners' side witnesses and documents : Nil.

Respondent's side witnesses : Nil.

Respondent's side documents :

Ex.R1	12.08.2013	Lease Deed executed by the Petitioner infavour of the Ambalavana Desika Paramarchaya Swamikal.
Ex.R2	-----	Rent payment receipts 2 in Nos. in the name of the 2 nd Respondent.
Ex.R3	15.11.2021	No objection certificate from Thiruvavudurai Atheenam, Tirunelveli.
Ex.R4	06.09.2020	Complaint receipt issued by Sucheendrum Police Station.
Ex.R5	11.08.2021	Kist receipt in the name of Sangaraswami for fasali 1431.
Ex.R6	19.03.2022	Peace Committe Proceedings of RDO Nagercoil
Ex.R7	15.11.2021	No objection certificate from Thiruvavudurai Atheenam, Tirunelveli.

I Additional District Munsif,
Nagercoil.

I ADM, Nagercoil
Draft/Fair Common Order
I.A.No. 2/2021 &
I.A. No. 3/2021in
O.S.No.256/2021.
Date: 07.03.2025.