

TNKK040004972016



Presented on : 19-12-2016
Registered on : 22-12-2016
Decided on : 06-07-2026
Duration : 9 years, 6 months, 18 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 6th day of July, 2026.

O.S. No. 252 of 2016

(CNR NO. TNKK04-000497-2016)

Tmt. Elesabath Mary

... Plaintiff

-VS-

1. Rajakani

2. Kavitha

3. Selvi

4. Suyambukani

... Defendants

This Suit came up before me on 15.06.2026 for a final hearing in the presence of Mr.K. Subhakaravel, Advocate for the Plaintiff and Mr.S. Muthukaruppa Pillai, Advocate for the 1st to 4th 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. Declaration for declaring the decree passed in O.S.No.471/2012 dated: 10.02.2015 of the Principal District Munsif, Nagercoil is null and void and unenforceable under law ii. the Sybolical paper delivery effected by the defendants on the basis of the decree in O.S.No.471/2012 is also null and void and unenforceable under law and will not bind the Plaintiff's right over the plaint schedule property. iii. A Permanent Injunction be granted restraining the defendants and their men, agent, servants or anybody claiming right under them from trespassing or otherwise interfering in the peaceful possession and enjoyment of by plaintiff over the plaint schedule property, along with the suit cost.

2. CRUX OF PLAINT FACTS:

2.1. The plaintiff is the absolute owner in possession and enjoyment of the plaint schedule property. The plaintiff has purchased the plaint schedule property from his vendors namely 1) MuthuswarayNadar 2) Jegan, 3) Tamil Selvi through a sale deed executed by their power holder namely S.PaulPandian on 19.06.2006 through the Kottaram Sub Registry as document No.2139/2006.

2.2. The plaintiff humbly submits that right from the date of purchasing the plaint schedule property, the plaintiff entered into possession of the property and started enjoying the same by effecting mutation in his name in all revenue records. Hence all revenue records like patta, tax ! p respect of the property are stand in the name of the plaintiff.

2.3. The plaintiff humbly submits that the plaint schedule property is the part and parcel of the total extent of 65 cents of property which originally belonged to one PadmanabhanNadar. The said PadmanabhanNadar had three sons namely 1)Subramanian Nadar, 2) MuthuswamyNadar and 3) ChiibambaramNadar. Hence after the death of the above said PadmanabhanNadar, his sons effected a registered partition on 10.02.1982 through the Kottaram Sub Registry as document No.240/1982.. The 2nd son of PadmanabhanNadar viz. MuthuswamyNadar had been allotted the above said 65 cents of property as item No.2 in B schedule in the above said partition.

2.4. The plaintiff humbly submits that at the time of writing the above said partition deed, the document writer had mentioned the resurvey number of the property mistakenly as 544/3 instead of mentioning it as 547/3. Actually the resurvey No.544/3 of Kanyakumari Village is a National High Way road which proceeds from North Kundal to Nagercoil. So the parties to the partition deed had no possibility to mention the resurvey. No.544/3 which belongs to the National Highway Road. Hence it is a mistake script in the partition deed inadvertently. Actually the Resurvey number for the property is 547/3

2.5. The plaintiff humbly submits that even though the wrong resurvey number mentioned in the partition deed the boundaries of the property are correctly mentioned and the original owner, Muthuswamy Nadar started enjoying the 65 cents of property right from the date of execution of the partition deed No.240/1982.

2.6. The plaintiff humbly submits that when the original owner Muthuswamy Nadar was in possession and enjoyment of the property in the year 2003 due to his business purpose he was residing in Chennai. Hence taking advantage of the absence of the original owner of the property and the mistake script in the partition deed No.240/1982 with regard to the survey number of the property, the mother of the defendants namely Thanganadachi trespassed into the property on 27.3.2003 and put up a thatched shed thereon and thereby encroached a portion of the property from the total extent of 65 cents of property. Besides the mother of the defendants , the said Thanganadachi had executed a settlement deed illegally infavour of the defendants in respect of the Northern portion of the 33 cents of property out of the total extent of 65 cents of property through Kottaram Sub Registry on 07.05.2003 as document No.1393/2003. Hence the original owner Muthuswamy had filed a suit against the mother of the defendants, Thanganadachi on the file of the Principal District Munsiff Court, Nagercoil in O.S.No. 163/2004 for declaration of title of the plaintiff over the plaint schedule property and for recovery of the property from the mother of the defendants after dismantling the thatched shed put up by her and for another declaration, declaring the illegal settlement deed executed by the mother of the defendants infavour of the defendants as Document No.1393/2003 is null and void and for an injunction restraining the defendant, her men or agent or anybody claiming right under her from disturbing the peaceful possession and enjoyment of the plaintiff over the plaint schedule property.

2.7. The plaintiff humbly submits that the plaintiff in O.S.No. 163/2004 had

entered into decree in his favour on 08.04.2004. Thereafter based on the decree the Plaintiff in O.S.No.163/2004 had filed a E.P. before the execution court in E.P.No.373/2004 and taken delivery of possession of the property from the mother of the defendants on 01.12.2004. Thus the original owner Muthuswamy had obtained the possession of the property through court and sold the property to the various persons and the plaintiff also one among them.

2.8. When the matters were being so. while the original owner Muthuswamy

Nadar was in his dead bead by concealing all materials facts, the defendants as plaintiffs have filed a suit against him on the file of the Principal District Munsiff Nagercoil in O.S.No.471/12 for declaration of their title on the basis of the settlement deed number 1393/2003 which has been already declared by the court as null and void in O.S.No.163/2004 and for recovery of possession of the property with mesne profit and for an injunction restraining the defendant from encumbering the plaint schedule property and obtained exparte decree on 10.02.2015.

2.9. The plaintiff humbly submits that the decree obtained by the defendant

in O.S.No.471/2012 is a Fraudulent decree because even before filing the suit in O.S.No.471/2012 the defendant in that case namely Muthuswamy Nadar has sold the property situated in R.S.No.547/3 to the various persons and the persons who have purchased the property taken possession of their respective portions of the property and started enjoying the same by constructing their dwelling houses. The plaintiff

also one among them and he has purchased the paint schedule property on 19.06.2006. As such on the date of filing of the suit in O.S.No.471/2012 the defendant Muthuswamy Nadar had no existing right over the property. Even though knowing fully, all the defendants in this case have made him and his legal heirs as defendants in O.S.No.471/2012 and obtained exparte decree behind the back of the real owners of the property. Since the defendants in O.S.No.471/2012 sold the property to others including the plaintiff, they have not contested the suit.

2.10. The plaintiff humbly submits since the defendants in O.S.No.471/2012 had no right and interest over the property on the date of filing the suit, they had no necessity to contest the suit. More over at the time of filing of the suit, the defendants in this case have got knowledge that the property has been sold to various persons and the purchasers namely Selva Daniel, Pathima, Kalaiselvi, Abdul Latheep, Kandaswamy, Sahaya Babitha including the plaintiff are in possession of the property. Hence although the defendants have got first hand knowledge that the purchasers of the property are in possession they have not been made as parties to the suit.

2.11. The plaintiff humbly submits that the defendants have conveniently concealed the fact that already a decree has been granted by the competent court of law in O.S.No.163/2004 by setting aside the settlement deed executed by the mother of the defendants as document No.1393/2003 and obtained an exparte decree in O.S.No.471/2012, on the basis of the above said settlement deed. Since the above said settlement deed once declared by the competent court, of law as null and void it

has lost its sanctity and legality and it has become non est. Hence on the basis of the settlement deed the defendant cannot claim any right over the property. Hence the decree passed in O.S.No.471/2002 is a decree obtained fraudulently and it cannot be executed against the plaintiff or other purchasers.

2.12. The plaintiff humbly submits that the defendant's mother Thanga Nadachi had conferred right over only about 33 cents of property to the defendants out of the total extent of 65 cents of property situated in Re.Sy.No.547/3 of Kanyakumari Village. But the defendants fraudulently obtained the decree for declaration of their title over the entire 65 cents of property. Hence the decree passed in O.S.No.471/2012 is a void decree obtained by the defendant by suppressing the material facts and truth before the court.

2.13. The plaintiff humbly submits that the Judgment and decree passed in O.S.No.471/2013 is not an elaborate discussed Judgment. The rights of the parties over the properties have not been discussed elaborately and without confirming the rights and title of the parties, the court has delivered Judgment in a Mechanical manner by a single stroke of a pen. More over the court has not used the proper yardstick for measuring the rights of the parties by analyzing the documents and evidence.

2.14. The plaintiff humbly submits that the Judgment and decree passed in O.S.No.471/2012 is deserved to be set aside because there is no relief sought for in the suit to set aside the decree passed in O.S.No.163/2004. Hence the decree passed in O.S.No.163/2004 exist till now.

2.15. The plaintiff humbly submits that after obtaining exparte decree in O.S.No.471/2012, the defendants have filed an execution proceedings in E.P.No.27/2015 and got an exparte order on 28.03.2016 and fabricated documents as if they have taken delivery of the plaint schedule property. Actually the persons who have purchased the property including the plaintiff have been enjoying the their respective property. Hence if the court Amin actually taken delivery of the property he would have given notices to the purchasers who are in actual possession of the property. Since there is no decree for evicting the owners of the property, the court, amin could not evict them and instead of taking delivery of property he has made some task work and filed the report as if he has taken the delivery of the plaint schedule property in O.S.No.471/2012.

2.16. The plaintiff humbly submits that if actually the court amin visited the property, he could have been stated the buildings and a small scale industry available in a portion of the entire area of 65 cents. But the amin miserably failed to mentioned about the real physical features of the property. Hence the delivery report filed by the amin is fabricated by him without visiting the property.

2.17. It is submitted that the delivery report filed by the amin carries signature of the two witnesses for effecting delivery. The persons who are stand as witnesses in the delivery report are the resident of Vadasery which is situated about thirty Kilometers from the scheduled property. Moreover the witness who had signed for O.S.No.252 of 2016

beating drum is residing in the Therivilai hamlet wherein the 4th defendant resides. Hence the witnesses are hired persons and put their signatures on the false amin report prepared by the court amin. Hence the report of the amin is liable to be ignored.

2.18. It is submitted that the defendants cannot get any benefit by the decree given in O.S.No.471/2012 until the decree given in O.S.No. 163/2012 is exist.

2.19. The plaintiff humbly submits that when the matters being so on 13.05.2016 the defendant have come to the plaint schedule property with deadly weapons on their hands and used filthy language against the persons who are in possession of the property and intimidated them by showing the weapons and thereby attempted their level best to evict the plaintiff and others from the plaint schedule property and adjacent properties. The attempt of the defendants have been routed by the plaintiff and neighbours. Having failed in the attempt of taking possession, the defendants have lodged a complaint with the Sub Inspector of Police, Kanyakumari and influenced the police to register the case against some of the persons who have purchased the property as Crime No.222/2016. The police also have registered a case without analyzing the real facts. Moreover the same police have registered another case as Crime No.223/2016 against the defendants for the atrocities made by them against the plaintiff and other.

2.20. The plaintiff humbly submits that the plaintiff and other persons who have purchased the properties from the total extent of 65 cents, have come to know the existence of decree and false delivery report in O.S.No.471/2012 only on

13.05.2016 when the defendants have come to the property with deadly weapons. So the defendants are highly influential persons and they may resort any act at any time. The defendants are having men and money power to do any act, against the law and equity. Hence the defendants to be restrained by an order of injunction otherwise the plaintiff will be put into hardship.

2.21. The plaintiff humbly submits that since the defendants obtained the fraudulent and illegal decree behind the back of the real owner/plaintiff by cancelling all materials fact and documents, in O.S.No.471/2012, the decree is liable to be declared as null and void and unenforceable under law and will not bind the plaintiff and the plaintiff schedule property. Besides the delivery said have been effected in as No.471/2012 is also a mere paper delivery and the report filed by the Amin consequently also to be set aside otherwise the plaintiff will be put into irreparable loss and hardship and that will not be compensated by the tune of money. Hence the suit is necessitated.

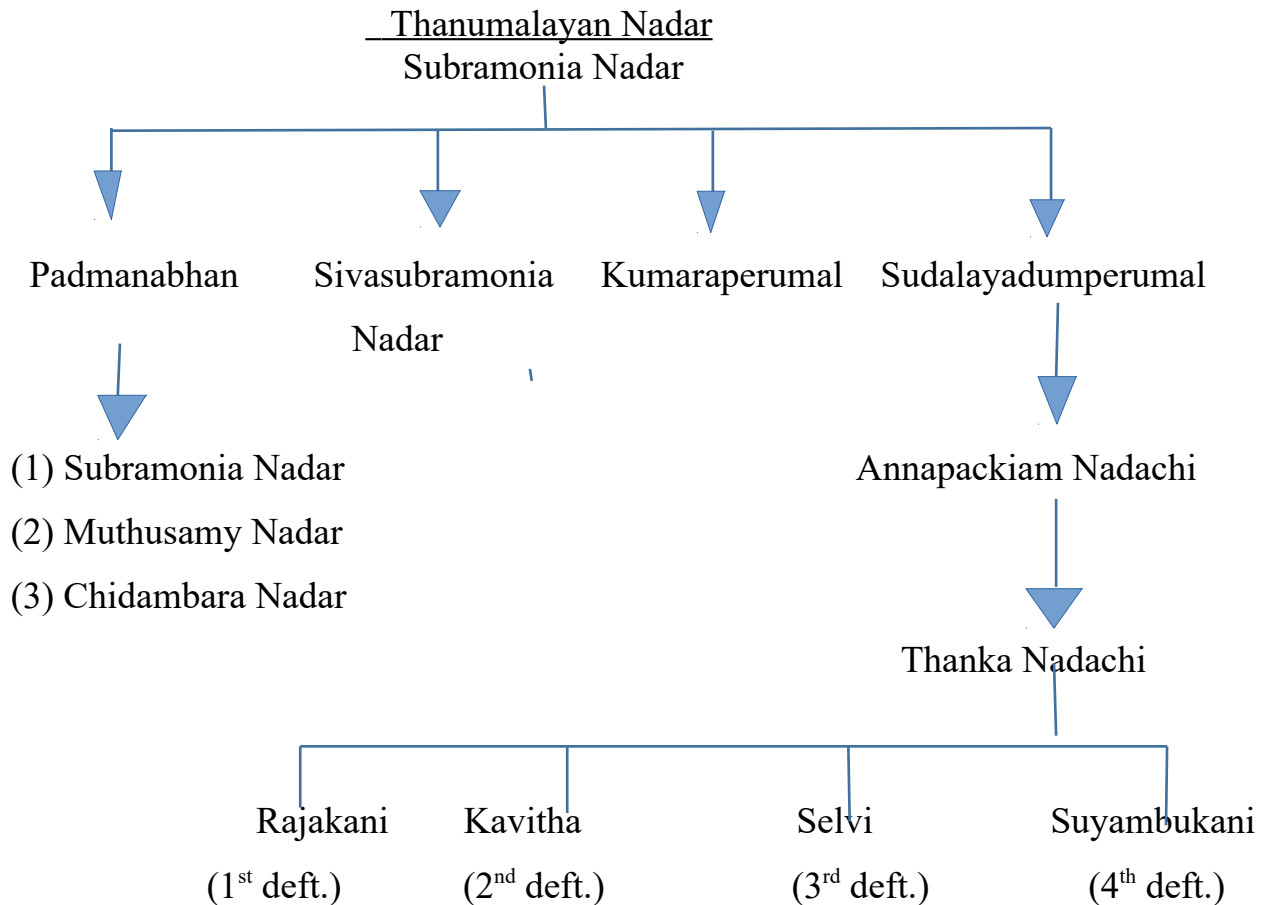
3. CRUX OF WRITTEN STATEMENT OF THE 1ST to 4th DEFENDANT AS FOLLOWS:

3.1. Except those averments that are specifically admitted herein or otherwise dealt with, rest of the averments in the plaint are hereby denied.

3.2. Paragraph one of the the denied. Plaintiff is in wrongful possession of plaintiff schedule property, after trespassing into the plaintiff schedule after it was delivered to defendants in pursuant to a decree obtained by them as plaintiff in O.S.471/2012 on the file of the Principal District Munsiff Court, Nagercoil, filed

against one Muthusamy son of Padmanabhan. Plaintiffs vendors had no title or possession over plaint schedule and the sale deed dated 19.06.2006 vide document No.2139/2006 is a fabricated document mentioning a different R.S.No.544/3 when as actual R.S.No. ios 547/3 having an extent of 65 cents less 2 cents left for common pathway.

3.3. The entire extent 65 cents in R.S.No.547/3 and other properties were owned by one Thanumalayan Nadar. The following is the geneology of Thanumalayan Nadar.



The entire properties owned and possessed by Late Thanumalayan Nadar was divided in between his 4 sons namely Padmanabhan, Sivasubramania Nadar,

Kumaraperumal Nadar and Sudalayadumperumal about 100 years back. Defendants' grand father namely Sudalayadumperumal son of Thanumalayan Nadar was allotted 55 cents in R.S.No.547/3 of Kanyakumari Village. After his death defendants' mother Thanka Nadachi inherited the entire extent as a sole daughter of Thanumalayan Nadar and she was in enjoyment and possession. On 07.05.2003 vide document No. 1393/2003 she executed a registered Settlement deed in favour of these defendants and in pursuance to that defendants effected mutation in their name and were in enjoyment and possession by paying tax etc.

3.4. Paragraph 3 of the plaint is hereby denied. During the partition of properties left behind by Thanumalayan, entire extent 65 cents in R.S.No.547/3 was allotted to the grand father of these defendants namely Sudalayadumperumal Nadar and therefore Padmanabhan Nadar another son of Thanumalayan had who of title or possession of over R.S.No.547/3 and as such the partition deed purported to have been effected by the sons of Padmanabhan Nadar vide document No.240/1982 is a fabricated and the partition refers to R.S. No.544/3 and the plaint R.S.No.547/3 is not mentioned. Now at this length of time neither plaintiff nor his vendor cannot contend that a mistaken Resurvey number has been stated in the partition deed. If so they have not taken any steps to correct the alleged wrong description till this date.

3.5. Paragraph 5 is denied. Along with her husband ThangaNadachi lived in the thatched house put up her house till her death and after the death of her husband she was living with her children namely defendants in the thatched house in R.S.No.547/3 and the averment that only on 27.03.2003 she trespassed and erected a

thatched shed is denied. When these defendants' mother Thanga Nadar was on pilgrimage taking advantage of her absence, the said Muthusami Nadar has filed a suit as O.S.No.163/2004 on the file of Principal District Munsiff, Nagercoil and managed to get an exparte decree against Thanga Nadachi alone, without arraying these defendants as parties, knowing fully well as per the encumbrance certificate, the settlement executed by Thanga Nadachi appears in the encumbrance certificate. The fraudulent decree obtained in O.S.No. 163/2004 is non-est in law.

3.7. Regarding paragraph 7 these defendants were evicted on the basis of a fraudulent decree obtained against their back.

3.8. Only after coming to know about the fraudulent decree O.S.No. 163/2004, after delivery proceedings these defendants filed O.S.No.471/2012 on the file of the Principal District Munsiff, Nagercoil against the said Muthusami Nadar for cancellation of fraudulent decree in O.S.No. 163/2004 and for recovery from Muthusami Nadar knowing fully well that he may not succeed Muthusami Nadar did not appear before the court and lay a interest and hence an exparte decree was granted in favour of these defendants allowing all their prayers.

3.9. Paragraph 9 is denied. The sales said to have been effected by Muthusami Nadar is a pendente lite transfers and transferors are bound by the decree passed in O.S.No.471/2012.

3.10. Paragraph 10 is denied. During the execution proceeding in O.S.No.471/2012 the entire extent in R.S.No.547/3 was lying vacant except the

thatched house and the alleged vendees had no possession over any inch of land delivered in favour of these defendants.

3.11. Paragraph 11 is denied.

3.12. Paragraph 12 is denied.

3.13. Paragraph 13 is denied. An exparte decree is as good as a contested decree and the said decree against the plaintiffs vendor namely Muthusami Nadar operates as resjudicata not only against him but also against vendees.

3.14. Paragraph 14 is denied.

3.15. These defendants rightly executed the decree in O.S.No.471/2012 and got delivery of property and the documents of court are not fabricated.

3.16. Paragraph 16 is denied. All the buildings now stands are all constructed recently after forcefully dispossessing these defendants.

3.17. Paragraph 17 is denied.

3.18. Paragraph 18 is denied.

3.19. Paragraph 19 is an imagination when these defendants are ladies, have no such muscle strength as alleged. When this defendants were peacefully enjoying the property delivery to then by court, plaintiffs hire links engaged rowdyism and molested the defendants and a regular a complaint was lodged before the police.

3.20. Paragraph 20 is denied. These defendants are daily wage earners.

3.21. Paragraph 21 is denied.

3.22. Plaintiff has no cause of action to lay this suit. If at all they are agitate by the decree in O.S.No.471/2012, either they have to set aside the exparte decree or agitate their claim by filing petition as envisaged under Section 47 C.P.C. No separate suit is maintainable under law.

3.23. Proper court fee has not been paid.

3.24. Reliefs claimed in the plaint are unsustainable under law and to accept this written statement and dismiss the suit with compensatory costs.

4. ISSUES:

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

- i. Whether the plaintiff is entitled to the suit 'A' relief of declaration, as prayed for ?
- ii. Whether the Plaintiff is entitled to the suit 'B' relief of declaration as prayed for?
- iii. Whether the Plaintiff is entitled to suit 'C' relief of Permanent injunction, as prayed for?
- iv. To what other reliefs and cost the parties are entitled to?

5. EVIDENCE:

5.1) On the plaintiff side, the plaintiff was examined as PW1, Ex.A1 to Ex.A20 were marked. Murugan (Zonal Deputy Tahsildar) was examined PW2, Ex.A21 to Ex.28. On endorsement of the learned plaintiff counsel, the plaintiff side evidence was closed on 15.10.2025. On the defendant side, the 3rd defendant was

examined as DW1, Ex.B1 to Ex.B10 were marked. On endorsement of the learned 3rd defendant counsel, the 3rd defendant side evidence was closed on 28.04.2026.

6. ARGUMENTS:

6.1. The learned counsel for the plaintiff argued that originally the suit property and more of extent 65 cents belonged to one Padmanabhan nadar, who had 3 sons namely, 1.Subramaniam, Muthuswamy and Chithambaram. After the death of Padmanabhan nadar, his 3 sons partitioned his properties through partition deed no.240/1982 dt.10.02.1982. In which, the 2nd son Muthuswamy was allotted with the said 65 cents as 2nd item in B schedule of properties. The writer mistakenly stated resurvey no.544/3 instead of resurvey no.547/3. The resurvey no.544/3 was national highway and there was no possibility to mention the resurvey number of highway. It was an inadvertent mistake. by taking advantage of the said error and the absence of Muthuswamy due to his occupation in Chennai, the mother of defendants encroached 33 cents by putting thatched house and she executed a Settlement deed no.1393/2003 dt.07.05.2003 in favour of her 4 daughters/defendants 1 to4. Muthuswamy sued her in OS no.163/2004 for title declaration and for declaring the settlement deed as null and void. It was decreed exparte on 08.04.2003. Muthuswamy filed EP no.373/2004 for delivery of possession and it was executed on 01.12.2004. He obtained possession through court and sold the said 65 cents to various persons. The plaintiff herein had purchased 8 cents 052 sq.links of land from him vide sale deed No.2139/2006 dated. 19.06.2006.

6.2. Behind the back of this plaintiff and other vendors from Muthuswamy, the defendants 1 to 4 obtained exparte decree in OS no.471/2012 for title declaration and recovery of possession for 65 cents of land, which is more than their execution of settlement deed. The defendants 1 to 4 got mechanical delivery by a stroke of a pen. The amin failed to note the real physical features of the suit property with residential building and a small scale industry. Two witnesses in delivery report of Amin were resident of Vadasery which is 30 kms away from the suit property. The witness who had signed for beating drum, is resident of Therivalai, wherein the 4th defendant resides. The delivery report of Amin is the outcome of tablework.

6.3. One of the vendors of Muthuswamy preferred civil Revision petition before the Hon'ble Madras High court. It was disposed of by granting liberty to file appeal before proper forum. Through the order and judgment of Appellate suit, the OS no.471/2012 was remanded back to trial court. Hence the 1st relief sought for in this suit became infructuous. The plaintiff has proved the possession and enjoyment of suit property over the suit properties through EX.A1 to Ex.A7, Ex.A12 to Ex.A25. The PW2/Zonal Deputy Tahsildar deposed the existence of the plaintiff's and others house at suit property. Thus, the plaintiff proved his case and prayed for the decree.

6.4. The learned counsel for defendants argued that originally 65 cents of land belonged to one Thanumalayan perumal, who had 4 sons namely Padmanabhan, Sivasubramani, Kumara perumal and Sudalayadum perumal. In Oral partition, the said 65 cents were allotted to Sudalayadum perumal, who had his wife Annapackiam and one daughter Thanganadachi. After the demise of parents, Thanganadachi

constructed thatched house and she executed settlement deed no.1393/2003 on 07.05.2003. Muthuswamy had created partition deed on 10.07.1982 with respect to the property of national highway. It did not convey any right over the suit property. He obtained exparte against Thanganadachi in OS no.163/2004, without impleading the defendants 1 to 4 with full knowledge of the execution of the settlement deed in favour of them. The said decree would not bind upon the defendants 1 to 4. The delivery of possession in EP was symbolic, whereas the defendants' mother went to pilgrimage. The signature of the defendants' mother was forged in the delivery note in Execution proceedings. The defendants have been in possession and enjoyment of the suit property from the date of delivery of possession in EP for the decree in OS no.471/2012. The plaintiff has not proved his possession and enjoyment of suit property and this suit is not maintainable without the relief of title declaration. Thus, they plead to dismiss this suit with cost.

7. REASON FOR DETERMINATION:

ISSUE NO.1: Whether the plaintiff is entitled to suit A relief of declaration, as prayed for?

ADDITIONAL ISSUE NO.1: Whether the judgment and decree passed in O.S. No.471/2012 against the plaintiff's predecessor-in-title, after they have divested their interest over the suit property, will bind the plaintiff?

7.1. The fact-in-issues and its discussions to issue no.1, 2 and additional issue no.1 were one and the same, so they were taken together for discussion.

7.2. The learned counsel for plaintiff argued that behind the back of this plaintiff and other vendors from Muthuswamy, the defendants 1 to 4 obtained exparte decree in OS No.471/2012 for title declaration and recovery of possession. The defendants 1 to 4 got execution of decree through Execution petition. One of the vendors of Muthuswamy preferred civil Revision petition before the Hon'ble Madras High court. Through the order and judgment of Appellate suit, the O.S. No.471/2012 was remanded back to trial court. Hence the 1st relief sought for in this suit became infructuous.

7.3. It is admitted by both parties that as per order in Civil Revision petition, which was filed one Daniel, against the judgment and decree of OS no.471/2012, the Hon'ble High Court has directed him to prefer appeal before Hon'ble Subordinate court, by giving him liberty. In the appeal suit no.17/2022, the Hon'ble II Additional Subordinate court remanded back the OS no.471/2012 to the trial court to try afresh by set aside the decree already passed in OS no.471/2012. On record, at present there was no judgement and decree available in OS no.471/2012 to set aside or to decide its binding nature upon the parties. Thus, the 1st relief sought for to declare the judgment and decree in OS No.471/2012 as null and void, became infructuous. Therefore, this suit is dismissed with respect to the 1st relief of declaration and thus, the issue no.1 and additional issue no.1 were answered accordingly.

ISSUE NO.2: Whether the plaintiff is entitled to suit B relief of declaration, as prayed for?

ISSUE NO.3: Whether the plaintiff is entitled to the suit C relief of permanent injunction as prayed for?

7.4. The facts-in-issue and the discussions to the issue no.2, 3 were interlinked with each other, so they were taken together for discussion below.

7.5. SUIT PROPERTIES: The suit property is 8 cents 052sq.links of property with right to pathway, constrained in resurvey no.547/3 of Agastheeswaram taluk, Kanyakumari district.

7.6. The learned counsel for the plaintiff argued that originally the suit property and more of extent 65 cents belonged to one Padmanabhan nadar, who had 3 sons namely, 1.Subramaniam, Muthuswamy and Chithambaram. After the death of Padmanabhan nadar, his 3 sons partitioned his properties through partition deed no.240/1982 dt.10.02.1982. In which, the 2nd son Muthuswamy was allotted with the said 65 cents as 2nd item in B schedule of properties. The writer mistakenly stated resurvey no.544/3 instead of resurvey no.547/3. The resurvey no.544/3 was national highway and there was no possibility to mention the resurvey number of highway. It was an inadvertent mistake. The learned counsel for defendant argued that the suit property and more of extent 65 cents belonged to Sudalayadum perumal. After his demise, his sole daughter Thanganadachi put up thatched house and executed a settlement deed no.1393/2003 in favour of her four daughters/defendants 1 to 4.

7.7 INADVERTENT OF RESURVEY NO.547/3: While considering these rival arguments based on available records, if the error of resurvey number 544/3 was inadvertent, why the said Muthuswamy had taken steps to rectify the same in his

lifetime. Till date, the Ex.A25/joint patta no.3189 for resurvey no.547/3B1A stood in name of 15 persons, including Muthuswamy, the plaintiff herein, the plaintiff of OS no.156/2016, the defendants 1 to 4 herein.

7.8. In Ex.A4/plaint copy of OS no.163/2004, which was filed by Muthuswamy against Thanganadachi, the plaintiff Muthuswamy did not utter a single word for the error of resurvey number and he directly mentioned the resurvey number as 547/3. **The plaintiff herein has taken a new plea** in her plaint that the document **writer** had inadvertently erred the resurvey number as 544/3 instead of 547/3. In contra, she deposed that the said error was made by **Surveyor**. Further, she deposed that **she and the power holder of Muthuswamy and others had given petition** to correct the resurvey number. It is not clear that **to whom** the petition was filed? What was the proceedings taken to adjudicate the said error? Whether it was rectified through due process of law or arbitrarily. The plaintiff did not produce any document for such proceedings of correcting the resurvey number.

7.9. Even in Ex.A1/sale deed no. 3820/2007, Ex.A2/Sale deed no.183/2011, which were executed by the power agent S.Paulpandian on behalf of principal 1.Muthuswamy, 2.Jegan, 3.Tamilselvi, in favour of the plaintiff herein, **no explanation was found for the alleged wrong resurvey number mentioned in Ex.A3/partition deed no. 240/1982 dt. 10.02.1982 as well as no explanation was found for the mentioning of resurvey number 547/3 instead of 544/3. further, the correction proceedings taken by the plaintiff and the power holder of Muthuswamy and others were not stated in the sale deed/Ex.A1.**

7.10. O.S. NO.163/2004: On perusal of records, it is found that EX.A4/plaint in O.S. No.163/2004 was filed on 29.01.2004 immediately after the execution of Ex.A10/Settlement deed no. 1393/2003 dt.07.05.2003. Along with the plaint, the plaintiff Muthuswamy had filed

1.10.02.1982 dated Partition deed,

2.01.04.2003 dated Tax receipt,

3. Patta book without date,

4. 02.11.2003 dt. FIR copy, 29.09.2003 dt Letter written by Sub-Registrar, Kottaram,

5. 18.10.2003 dt. Order copy of Hon'ble High court.

On careful reading of plaint/Ex.A4 in OS no.163/2004, the plaintiff Muthuswamy did not produce any title document for the resurvey no.547/3, but he described the suit property as resurvey no.547/3 in contra to the description of resurvey no.544/3 in partition deed no.240/1982.

7.11. NON-BINDING OF DECREE UPON DEFENDANTS 1 TO4: In the said plaint/Ex.A4, the plaintiff averred the execution of settlement deed no.1393/2003 by Thanganadachi in favour of her 4 daughters. But he did not implead the said 4 daughters. There was no reason stated for the omission of the said 4 daughters and no reason stated for arraying Thanganadachi alone as defedant who had already diversified her alleged right to her daughters. In such scenario, *the learned counsel for defendants' argument that the decree in OS no.164/2003 would not bind upon the daughters of Thanganadachi/defendants 1 to 4 herein, is found tenable.*

7.12. OLD SURVEY NO.1101 OR 1727?: The learned counsel for plaintiff argued that except resurvey number 544/3, all other details of old survey no.1101, village name, extent, four boundaries were stated correctly in Ex.A3/partition deed, so the boundaries prevail over the erred resurvey number. While considering this argument, it will only apply for the situation in which identification of property was at issue. *In this case on hand, the identification of property was not at all at issue. Both Muthuswamy and Thanganadachi were claiming their title, right, possession over the property of 65 cents in resurvey number 547/3 of Kanyakumari village.* In fact, the said Muthuswamy correlated the resurvey number 547/3 to the old survey number 1101, but Thanganadachi correlated it to the old survey number 1727.

7.13. While determining the old survey number to the resurvey number 547/3, this court has taken the following documents into consideration such as Ex.A14, A17, A19 - SLR for resurvey no.547/3, Ex.A15, A18 - Correlation certificate of resurvey no.547/3 obtained through RTI, Ex.A16 - A register obtained through RTI, Ex.A22 – FMB map, Ex.A25 – SLR for old survey no.1727. On combined reading of these Exhibits, *though the Information officer has certified that the resurvey no.547/3 was correlated to old survey no.1101, the documents they enclosed has shown the old survey number as 1727 in enclosures of EX.A15 and A18, FMB map in EX.A22, SLR in Ex.A17 and Ex.A19.* Hence the reliability of correlation certificate is itself in question. The Deputy Zonal Tahsildar/DW2 deposed that the resurvey no.547/3 was correlated to old survey number 1101 and the correlation certificate was prepared on 08.10.2025, ie, after listing of this suit for trial. It does not inspire

confidence of this court. *Therefore, the settlement deed no.1393/2003 of defendants 1 to 4, would bind upon the plaintiff and thus, the issue no.1 is answered positively.*

7.14. EVIDENCE OF DW2: The Deputy Zonal Tahsildar/DW2 deposed by going through the revenue records. He did not elucidate the difference in the revenue records regarding the old survey number to the resurvey no.547/3. He deposed the particulars of Ex.A17 to Ex.A24 literally as such in those exhibits. He did not explain on which date, through whose order, the entries were made. The partition deed was 240/1982. The defendants alleged that Thanumalayan perumal had one son Subramaniam, who had 4 sons namely Padamanabhan, Sivasubramani, Kumara perumal and Sudalayadum perumal. The said Padmanabhan was the father of Muthuswamy and Sudalayadum perumal was the father of Thanganadachi. The plaintiff did not contend this fact. *The plaintiff did not examine any one of legal heirs of Muthuswamy to prove the inadvertent error of resurvey number or to disprove the alleged relationships between Muthuswamy and Thanganadachi.* Entries made in revenue records, with name of coparcener of a family would not dispossess other coparcener's entitlement. Hence the plaintiff's argument of boundaries prevail over the survey number, was rejected as untenable.

7.15. The learned plaintiff counsel argued that Muthuswamy filed EP no.373/2004 for delivery of possession and it was executed on 01.12.2004. He obtained possession through court and sold the said 65 cents to various persons. The plaintiff herein had purchased 8.052 cents of land from him vide sale deed no.2139/2006 dt. 19.06.2006. The learned counsel for defendant argued that the said

Thanganadachi was on pilgrimage trip, the suit property was divested to her 4 daughters and no delivery of possession report was signed by her.

7.16. While considering these rival claims, this court already held that the Ex.A8 and Ex.A9/judgment and decree in OS no.163/2004 would not bind upon the defendants 1 to 4. The possession and enjoyment were diversified to defendants 1 to 4 by their mother vide EX.A20/Settlement deed. Hence as per EX.A10/*delivery of possession from the person, who has not possession at that period of time, was not found tenable and it is non est.* It did not disturb the right of defendants 1 to 4 upon the settled 65 cents of land. The plaintiff averred the purchase of 8.052 cents through sale deeds through the power of attorney of Muthuswamy, but not produce the said power deed.

7.17. CAVEAT EMPTOR: On careful reading between the lines of Ex.A1/sale deed of plaintiff, the parent document of partition deed no.240/1982 and the decree of OS no.163/2004, execution order of EP no.373/2004 were mentioned in it. The plaintiff has purchased the suit properties by knowing the earlier title dispute between Muthuswamy and Thanganadachi. The plaintiff also not clarified the variation of resurvey number as 544/3 in partition deed/parental deed to the resurvey no.547/3 in OS no.163/2004, EP no.373/2004 and his sale deeds/Ex.A1, Ex.A2.

7.18. It is well settled principle of law that **Caveat emptor** places the burden on the purchaser to perform due diligence and the buyer assumes risk of defects. It is clear that the defendants have denied the title of Muthuswamy over the suit property since 2003. In such circumstances, the plaintiff has to verify the vendor's title, right

over the suit property and the lacunae in the partition deed/parental deed. The plaintiff cannot claim valid title, right upon the defective title. Thus, ***the plaintiff has not proved his title, right over the suit property.***

7.19. The learned counsel for the plaintiff argued that the plaintiff has proved the possession and enjoyment of suit property over the suit properties through EX.A1 to Ex.A10, Ex.A12, Ex.A19. The defendants 1 to 4 strongly denied the house construction at suit property and they claimed their possession by operation of delivery of possession through the execution of decree in OS no.471/2012. They had produced Ex.B1 to Ex.B10 to prove their possession.

7.20. While considering the arguments regarding the possession of suit property, both parties have produced joint patta [**Ex.A3, A25 and Ex.B1**] inclusive of their names and kara receipts [Ex.A4, Ex.A5, Ex.B3 to Ex.B9] for the resurvey no.547/3B. Ex.A4, Ex.A5/Kara receipts were issued in the year 2012. All others were issued during the pendency of this suit and those documents did not strengthen the possession case of the plaintiff.

7.21. Further, the plaintiff described in plaint, of the ***suit property without any building thereon.*** The plaintiff averred the enjoyment of suit property by building a dwelling house thereon. For such averment, the plaintiff did not plead on which date, by whose order/***approval plan***, the said dwelling house was constructed. The details of house door number, EB number, water connection number, etc, were not described in the suit property to cross-verify the documents produced by the plaintiff. It is true that the **PW2/Deputy Zonal Tahsildar** deposed the plaintiff's dwelling house at suit

property. And already this court held that the evidence of PW2 not inspired the confidence on the ground of contradictions in their records exhibited in this case. It is well settled principle and as per **S.101 of Bharatiya Sakshiya Adhinayam**, the plaintiff has to prove his own case, not to stand on the weakness of other's case. Thus, this court held that the plaintiff has not proved his possession and enjoyment over the suit property; the plaintiff is not entitled to the relief of permanent injunction as he prayed for and the issue no.3 is answered negatively.

7.22. The learned counsel for the plaintiff argued that the defendants 1 to 4 got mechanical delivery of possession of suit property in EP no.27/2015 in os no.471/2012 by a stroke of a pen. The amin failed to note the real physical features of the suit property with residential building and a small scale industry. Two witnesses in delivery report of Amin were resident of Vadasery which is 30 kms away from the suit property. The witness who had signed for beating drum, is resident of Therivalai, wherein the 4th defendant resides. The delivery report of Amin is the outcome of tablework, so it has to be declared as null and void; unenforceable under law and will not bind the plaintiff's right over the plaint schedule property.

7.23. While analysing this argument, the very same counsel for plaintiff claimed the genuinity of the delivery of possession made by Amin from the mother of defendants 1 to 4 with respect to suit property in EP No.373/2004 in the OS no.163/2004. In the very same pleadings for the very same suit property, the plaintiff alleged the delivery of possession to the defendants 1 to 4 herein through Execution proceedings in OS no.471/2012 as paper work, table work, without directly visiting to

the spot. There is no restriction for a witness/any person to move in and around the world. The crucial point to consider is that whether the two witnesses present at the suit property, witnesses the delivery and signed the delivery report as depicted in the delivery report? To disprove the delivery, the plaintiff has to take steps to examine those witnesses. But she did not. Mere allegations without substantial proof against the court proceedings, is hereby rejected as it is not proved substantially. As per the remand order, the proceedings in OS no.471/2012 was res subjudice and it is not proper to decide this issue at this stage in this case. Thus, the plaintiff is not entitled to the suit B relief of declaration as prayed for and this issue no.2 is answered accordingly.

ISSUE NO.5: To what other reliefs and cost the parties are entitled to?

7.24. The plaintiff is directed to pay the suit cost to the defendants 1 to 4. The parties are not entitled to any other reliefs and this issue is answered accordingly.

8. In fine, this suit is dismissed with costs of defendants 1 to 4.

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 6th day of July 2026.

Sd/-(K. Chithra)

I Additional District Munsif,
Nagercoil.

Appendix:

1) Plaintiff side witnesses:

PW1 - Elesabathmary

PW2 - Murugan (Zonal Deputy Tahsildar)

2) Plaintiff side documents:

Ex.A1	19.06.2006	Original Sale deed document No.2139/2006
Ex.A2	-	True copy of Adangal
Ex.A3	-	True copy of Patta
Ex.A4	08.06.2015	Original land Tax receipt
Ex.A5	21.02.2012	Original Land Tax receipt
Ex.A6	-	Original Map of Thaseel Property issued by VAO
Ex.A7	-	Original Map of Thaseel Property issued by Engineer
Ex.A 8	08.04.2004	Certified copy of Decree in O.S.No.163/2004
Ex.A 9	08.04.2004	Certified copy of Judgment in O.S.No.163/2004
Ex.A10	-	Certified copy of Delivery Report in O.S.No.163/2004
Ex.A11	10.02.2015	Certified copy of Decree in O.S.No.471/2012
Ex.A12	08.04.2004	Certified copy of Plaint in O.S.No.163/2004
Ex.A.13	07.10.2012	Certified copy of plaint in O.S.No.471/2012
Ex.A.14	-	Certified copy of Resurvey plan for Survey No.544
Ex.A.15	19.05.2016	Certified copy of F.I.R in crime No.223/2016 of Kanyakumari Police station
Ex.A.16	25.04.2016	Certified copy of Amin Report in O.S.No.471/2012
Ex.A.17	10.02.2015	Certified copy of Judgment in O.S.No.471/2012
Ex.A.18	-	Certified copy of F.I.R in crime No.222/2016 of Kanyakumari Police station.
Ex.A.19	12.02.1982	Certified copy Partition deed
Ex.A.20	07.05.2003	Certified copy of Settlement deed
Ex.A.21	-	Certified copy of S.L.R for survey No.547/3
Ex.A.22	-	Original Comparison Certificate for field number

Ex.A.23	-	Certified copy of S.L.R for survey No.547/3
Ex.A.24	-	Certified copy of 'A' Register for sy.no.547/3
Ex.A.25	-	Online copy of Computer patta for sy.no.547/3
Ex.A.26	-	Certified copy of Field map for sy.no.547
Ex.A.27	-	Certified copy of Field map for sy.no.544
Ex.A.28	-	Certified copy of A Register for sy.no.544

3) Defendants side witnesses:

DW1 - Selvi

4) Defendants side documents:-

Ex. B.1	24.06.2004	Certified copy of Patta for Re-Survey No.547/3
Ex.B.2	10.02.1982	Certified copy of Partition deed executed first in the name of Subramanian Nadar
Ex.B3	16.05.2024	Certified copy of Receipt of Tax paid by Rajakani
Ex.B4	16.05.2024	Certified copy of Receipt of Tax paid by selvi
Ex.B5	16.05.2024	Certified copy of Receipt of Tax paid by Suyampugani
Ex.B6	16.05.2024	Certified coy of Receipt of Tax paid by Kavitha
Ex.B7	11.09.2025	Certified copy of Receipt of Tax paid by Rajakani
Ex.B8	11.09.2025	Certified copy of Receipt of Tax paid by Kavitha
Ex.B9	11.09.2025	Certified copy of Receipt of Tax paid by Selvi
Ex.B10	11.09.2025	Certified copy of Receipt of Tax paid by Suyampugani

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

I ADM Court
Draft/Fair Judgment
O.S.252 of 2016
Dated: 06.07.2026.