

TNKK040005382011



Presented on : 14-02-2011
Registered on : 14-02-2011
Decided on : 29-04-2026
Duration : 15 years, 2 months, 15 days

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

Present : Selvi. V. Sivaranjani, B.A., L.L.B.,

II Additional District Munsif, Nagercoil
Wednesday, on the 29th day of April, 2026.

O.S.No.92 of 2011

CNR No.TNKK04-000538-2011

Sundarlingam

... Plaintiff

-vs-

1. Rajavel

2. The Commissioner,

Nagercoil Municipal Corporation,

Nagercoil

(Amended as per order in I.A.No.6 of 2024

dated 29.02.2024 and plaint amended

as per order in I.A.No.7 of 2024

dated 15.03.2024)

Addl. 3. The District Collector,

Kanyakumari District

Nagercoil.

(3^{ed} defendant impleaded as per order
in I.A.No.11 of 2025 dated 17.06.2025
and Plaint Amended as per in I.A.No.13 of 2025
dated 12.08.2025)

... Defendants

his suit is coming on 20.04.2026 before me for final hearing, in the presence of Mr. K. Subhakaravel, Advocate for the plaintiff and Mr. T. Jayachandran, Advocate for the 1st defendant and Mr. A. Samuel Edwin, Advocate for the 2nd defendant and Mr. C. Johnson, Government Pleader for the 3rd defendant and upon hearing the both side arguments, perusing the material records and having stood over for consideration till this day, this Court hereby delivers the following:

J U D G M E N T

This suit is filed by the plaintiff for declaration declaring the plaintiff's title over the plaint 'A' schedule property and for permanent injunction restraining the defendant, their men, servants, agents and anyone else claiming right under them from disturbing the peaceful possession and enjoyment of the plaintiff over the plaint 'A' schedule property and from encroaching the plaint 'A' schedule property and annex the same with the 'B' schedule property for putting up tar and for the cost of the suit.

2. The case of the Amended plaint in nutshell:-

The plaintiff stated that he is the absolute owner in possession and enjoyment of the plaint 'A' schedule property situated in Old Sy.No.3407 correlated to Resurvey No.261/1 of Thengamputhoor Village having an extent of 13 cents.

3. The plaintiff also submits that the plaint 'A' schedule property originally belonged to one Chellaiah Nadar, S/o. Sundarlingam Nadar of Panikankudieruppu. The said Chellaiah Nadar had executed a sale deed in respect of the plaint 'A' schedule property in favour of one Sudalaimuthu Nadar of Panickankudieruppu who is the grandfather of the plaintiff.

4. The plaintiff further submits that the plaintiff and his family members are Hindus and governed under Hindu law. Hence as one of the coparceners, the plaintiff and his brother have derived the share over the plaintiff 'A' schedule property with his father. When the plaintiff, his brother and his father had been enjoying the plaint 'A' schedule property which they have inherited from the grandfather of the plaintiff, they effected a registered partition on 16.01.1976 through the Edalakudy sub registry and the document has been registered as Doc. No.20/1976.

5. The plaintiff claimed to have been allotted the plaint 'A' schedule property as item No.4 in 'A' schedule of the above said partition deed. Thus the

plaintiff became the absolute owner of the plaint 'A' schedule property and right from the date of execution of the partition deed, the plaintiff claimed to have entered into possession of the plaint 'A' schedule property exclusively and have been enjoying the entire 13 cents of property without any hindrance whatsoever.

6. The plaintiff stated that the plaint 'B' schedule property is an earthen pathway which is lying on the northern side of the plaint 'A' schedule property and the southern side of the property of the 1st defendant. The 'B' schedule property starts from the Thengamputhoor Pallam road, and runs towards the west in between the plaint 'A' schedule property and the 1st defendant's property and ends at the Anchukudieruppu Malaianithankudieruppu road. The plaint 'B' schedule property has been in existence from time immemorial as an earthen pathway.

7. The plaintiff alleged that now with an intention to make the said eastern pathway into a Tar road, the 2nd defendant panchayat is taking the preliminary steps. When the 2nd defendant's work is in progress on 25.01.2011 the 2nd defendant's workers, along with the 1st defendant have measured the property unauthorised and declared that they would encroach a strip of the land from the plaint 'A' schedule property. When the plaintiff enquired the defendants they said that the plaintiff is having the title only over the 9 cents of property. As such the defendants have created a cloud over the plaintiff's title

over the plaint 'A' schedule property. Hence the plaintiff's possession and title over the plaint 'A' schedule property to be declared.

8. The plaintiff also contended that the defendants have no manner of right, title and possession over the plaint 'A' schedule property and they have no right to put up a tar road by encroaching the plaint 'A' schedule property. The plaintiff alleged that since the 1st defendant is having his own property on the northern side of the plaint 'B' schedule property, he tries to encroach a portion of the property from the plaint 'B' schedule property by saying a portion of the plaint 'B' schedule property lies in the plaint 'A' schedule property.

9. The plaintiff submits that if the defendants put up a tar road by way of encroaching the plaint 'A' schedule property, the plaintiff would be put into irreparable loss and hardship which could not be compensated with the value of money. The plaintiff further submits that the 2nd defendant could very well put up tar road on the plaint 'B' schedule eastern pathway which has enough width for the accomplishment of the said purpose. The plaintiff alleged that when the matters are as such on 02.02.2011, the defendants tried to measure the properties for putting up tar road by encroaching the plaint 'A' schedule property. The attempt of the defendants has been thwarted by the plaintiff by his timely intervention. Hence, the suit is necessitate

10. **The case of the written statement of 1st defendant's averments**

in brief:-

The 1st defendant contended that there is no necessity for him to encroach on the plaint 'A' schedule property or plaint 'B' schedule property. The 1st defendant admitted that the plaint 'B' schedule property is an earthen pathway. So, on behalf of the Panchayat administration and for the welfare of the general public, he made arrangements to convert the earthen pathway as a Tar Road and alleged that on measurement it is found that, the plaint 'A' schedule property was encroached by the plaintiff in the plaint 'B' schedule property. Therefore this respondent has no objection to measure the 'A' schedule property and 'B' schedule property and for fixation of boundaries with the help of Revenue records and find out the real truth.

11. The 1st defendant stated that the plaintiff is entitled only for 8 cents of land in the plaint 'A' schedule property. But the plaintiff has encroached the 'B' schedule property, and shown as that, he is the absolute owner and in possession of 13 cents, he should not be permitted to survive at the cost of others (i.e) the Panchayat pathway which is useful for plaintiff, 1st defendant and for general public. Hence the Panchayat pathway (i.e) the plaint 'B' schedule property has to be measured on the basis of Government "Revenue Records" and to fix the boundaries of plaint 'A' and 'B' schedule and stated no objection

for the measurement.

12. The case of the written statement of 2nd defendant adopted by the 3rd defendant averments in brief:-

The 2nd defendant is the Executive Officer, Thengamputhoor Town Panchayat, Thengamputhoor, Kanyakumari District, at Nagercoil (Now, the Commissioner, Nagercoil Municipal Corporation) stated that the Thengamputhoor Town Panchayat Council has decided to improve the road from South Anjukudieruppu, Pallam road through Puthukudieruppu hamlet, which ends at South Anjukudieruppu - Malaiannithankudieruppu road for the public use in the poromboke eastern pathway, the Council has resolved its Resolution No:597, dated 22.11.2010, and the Town Panchayat Council's motive is just to provide the basic facility, transport for that area people and not to encroach any private property. The 2nd defendant admitted the presence of an earthen pathway running from. Other averments have to be proved by the plaintiff. The 2nd defendant contended that the plaintiff has no cause of action to file this suit and the cause of action pleaded is false. Hence, prayed for the suit to be dismissed.

13. On the basis of the averments of the Plaintiff and Written statements, and upon hearing both sides, this court framed the following issues:-

1. Whether the Defendants are trying to encroach the Plaintiff 'A' Schedule property?
2. Whether the Plaintiff is entitled for the relief of declaration as prayed for?
3. Whether the Plaintiff is entitled for the relief of Permanent Injunction as prayed for?
4. To what other reliefs the parties are entitled?

14. On the side of the Plaintiff, Plaintiff was examined as PW1 and through her Ext. A1 and A7 and Ext.C1 were marked. and one Tmt. Krishnakumari (Village Administrative Officer, Thengamputhoor Village) was examined as PW2 and one Thiru. Prathab Singh (Senior Draftsman) was examined as PW3 and one Tmt. Vijaya Prabha (Head Assistant, District Collector Office) was examined as PW4 through her Ext.A8 to 10 were marked. On the side of the defendants, 1st defendant was examined as DW1. Ext.B1 was marked while cross examination of PW1 and Ext.B2 was marked while cross examining PW2. Ext.C2 – directed the plaintiff by this court and on production, suo-moto marked.

15. **Answer to Issue No.1,2 and 3:**

15.1. In the present case, it is pertinent to note that neither title nor possession of the plaintiff over the plaintiff 'A' schedule property is generally

denied but only an extent of the plaint 'A' schedule property is denied by stating that it exists only as 9 cents and not as 13 cents. In order to establish the case of the plaintiff, the plaintiff himself examined as PW1 through him Ext A1 to A7 marked. Ext. A1 is the sale deed bearing Doc.No. 811 of 1954 dated 22.04.1954 discloses that the Chellaiah Nadar had executed a sale deed in respect of the plaint 'A' schedule property of 13 cents in Old survey No.3407 in favour of one Sudalai Muthu Nadar who is the grandfather of the plaintiff. Ext.A2 is the registered partition deed bearing Doc.No.20 of 1976 executed by the plaintiff Sundara lingam, his brother Swami Sundaram, and their father Chella Vadivu on 06.01.1976 with respect to the plaint 'A' schedule property which they have inherited from the grandfather of the plaintiff. Ext. A4 and Ext.A5 are the land tax receipts dated 25.03.1969 and 21.03.1970 in the name of the plaintiff's father wherein it clearly shows that there were 13 cents in Old Survey No.3407. Exhibit A7 is the Settlement Register for the Plaint 'A' schedule Property which also discloses 13 cents in Old Survey No 3407.

15.2. The above deeds proves that the the Chellaiah Nadar had executed a sale deed in respect of the plaint 'A' schedule property of 13 cents in Old Survey No.3407 in favour of one Sudalai Muthu Nadar who is the grandfather of the plaintiff and subsequently, upon partition between the plaintiff, his brother and father, the plaintiff got the plaint 'A' schedule property of 13 cents in Old

Survey No. 3407 as 4th item in 'A' schedule as per registered partition deed.

15.3. The above receipts from the year 1969 and 1970 proves only the possession of the plaintiff's father over the plaint 'A' schedule property after the sale deed in favour of the plaintiff's father and before partition in 1976. In addition to that, Ex.C2 – Encumbrance Certificate from the year 1954 to 2026 clearly depicts that there were no transaction held since the plaintiff got title over the plaint 'A' schedule property of 13 cents after the partition deed effected in the year 1976 till date. As such, the plaintiff established that the plaint 'A' schedule property is having 13 cents and discharged his initial burden.

15.4. Per contra, in the revenue records, one Head Assistant, District Collectorate Office, Nagercoil was examined as PW4, through her, Ext.A8 to Ex.A10 marked. Ext.A8 is the Correlation Certificate dated 06.11.2025 which shows New Survey No.261/1 correlates the Old Survey No. 3407/2. Ex.A9 is the FMB Sketch dated 06.11.2025 which shows no sub-division in Resurvey No.261. Ex.A10 is the 'A' Register reveals Re survey No.261/1 is having an extent of 3.5 ares in the name of “Chella Vadivu Nadachi”.

15.5. PW4 also deposed about Ex.A7 - Settlement Register, which was compared with the original she brought as there were 13 cents in Resurvey No. 261/1 before the settlement in the year 1972 and 1979 and after that there exists only 3.5 ares which is equivalent to 0.03.5 hectare and in cents 8.65 cents and

also she deposed that after the settlement, further names have not been added.

15.6. On perusal of Ex.C1, Preliminary Report of an Advocate Commissioner, this court could only perceive that the plaint 'A' schedule property has compound wall in its north, east and south sides and the northern compound wall not completed towards western side as it is stated that no measurement of the properties done and no photographs taken by the advocate commissioner,

15.7. In fine, the above revenue documents shows discrepancies in the extent of the plaint 'A' schedule property situated in Old Sy.No.3407 correlated to Resurvey No.261/1 having an extent of 13 cents.

15.8. Now, the onus shifts upon the defendants to prove an alleged encroachment of the plaintiff over the plaint "B" schedule property. The plaint 'B' schedule property is described in the schedule of property as an earthen pathway in Resurvey No. 261/6 and in boundaries it lies north to the plaint 'A' schedule property in Resurvey No.261/1. Whereas, from Ex.B2 marked on the 1st defendant side while cross examining PW2, which is Resurvey Plan for Resurvey No.261 dated 01.07.2024, wherein it discloses that the above said Resurvey No. 261/6 and Resurvey No. 261/1 is distant from each other and PW3, Senior Draftsman, Agasteeswaram Taluk deposed in his cross examination that Resurvey No. 261/6 and Resurvey No. 261/1 are not lying next to each

other and there exists 3 plots in between them thereby corroborates Ex.B2. In addition to that, Ex.B1 - Resurvey Plan for Resurvey No.261/1 dated 01.07.2024 marked on the side of the 2nd defendant while cross examining PW1, which shows that an extent of Resurvey No.261/1 is only 3.5 ares thereby corroborates Ex.A7, Settlement register. The defendants failed to opt for an appointment of an advocate commissioner to prove an alleged encroachment by the plaintiff over the plaint 'B' schedule property.

15.9. Considering the above discrepancies about the exact location of the plaint 'B' schedule property and the defendants despite given revenue records showing that there exists an extent of 3.5 ares in Resurvey No.261/1, the same failed to depict when it has been reduced and upon what transaction. Hence, this court is of the view that there were no possibility for an extent of 13 cents to have been reduced to 3.5 ares without any entries recorded as to any transaction have held.

15.10. Therefore, this court is satisfied that the plaintiff established that he is the absolute owner in possession and enjoyment of the plaint 'A' schedule property situated in Old Sy.No.3407 correlated to Resurvey No.261/1 having an extent of 13 cents thereby entitled to the relief of declaration and permanent injunction as prayed for.

Accordingly, Issue No. 1, 2 and 3 are answered in favour of the plaintiff.

16. **Answer to Issue No.4 :**

In view of the above answered issues and upon the facts and circumstances of the case, this court holds that both the parties are not entitled to any other reliefs.

In the result, the suit is decreed as follows:-

(i) The relief of declaration of the plaintiff's title over the plaint 'A' schedule property and for permanent injunction restraining the defendant and their men from disturbing the peaceful possession and enjoyment of the plaintiff over the plaint 'A' schedule property and from encroaching the plaint 'A' schedule property and annex the same with the 'B' schedule property for putting up tar is hereby granted.

(ii) No cost.

The Judgment is directly dictated to steno-typist typed in computer, and after making necessary corrections, and pronounced by me in the open court, this the 29th day of April 2026.

II Additional District Munsif,
Nagercoil.

Plaintiffs side witnesses :-

PW1. Thiru. Sundarlingam (Plaintiff)

PW2. Tmt. Krishnakumari (Village Administrative Officer, Thengamputhoor Village)

PW3. Thiru. Prathab Singh (Senior Draftsman)

PW4. Tmt. Vijaya Prabha (Head Assistant, District Collector Office)

Plaintiffs side Documents :-

Ex.A1	22.04.1954	Copy of Sale deed bearing Doc.No.811 of 1954 executed by Chellaiah Nadar in favour of in favour of Sudalai Muthu Nadar
Ex.A2	06.01.1976	Partition Deed (Original)
Ex.A3	26.06.1966	Land tax receipt in the name If Chella Vadivu Nadar
Ex.A4	25.03.1969	Land Tax receipt in the name of Chellavadivu Nadar
Ex.A5	21.03.1970	Land Tax receipt in the name of Chellavadivu Nadar
Ex.A6	...	Rough Plan showing in the plaint schedule property
Ex.A7	...	Settlement Register for the Plaint schedule Property
Ex.A8	06.11.2025	Correlation Certificate for Old Survey No. 3407/1 New Survey No. 261/2pt
Ex.A9	...	FMB Sketch
Ex.A10	...	'A' Register for Survey Number 261/1 is recorded as Chellavadivu Nadachi.

Court Documents:

Ex.C1	...	Preliminary Report
Ex.C2	...	Encumbrance Certificate

Defendants side witnesses:-

DW1. Thiru. Rajavel (1st defendant)

Defendants side document:-

Ex.B1	01.07.2024	Resurvey Plan for Survey No.261/1 of Thengamputhoor Village
Ex.B2	01.07.2024	Resurvey Plan for Resurvey No.261 of Thengamputhoor Village

II Additional District Munsif,
Nagercoil.

II ADM
Draft/Fair Judgment
in O.S.No.92/2021
Dt.29.04.2026