

TNKK040005502015



Presented on : 30-10-2015  
Registered on : 05-11-2015  
Decided on : 11-03-2026  
Duration : 10 years, 4 months, 12 days

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

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

I Additional District Munsif (FAC), Nagercoil

Wednesday, on the 11<sup>th</sup> day of March, 2026.

**O.S. No. 348 of 2015**

**(CNR NO. TNKK04-000550-2015 )**

1. T. Chithambara Vadivoo (Died)

Addl.2. M. Gopi

(Additional 2<sup>nd</sup> plaintiff is impleaded as per  
orders in I.A.No.352/2017 dated 05.08.2019  
and amendment carried out as per order  
in I.A.No.1/2019 dated 19.12.2019)

... Plaintiffs

-vs-

1. B.Pitchai Pillai (Died)

2. Chellappa Pillai

Addl.3. Vellammal

Addl.4. Bagavathy Perumal

Addl.5. Subramania Pillai

Addl.6. Meenakshi

Addl.7. Nagarajan

(Addl.D3 to 7 are impleaded as per orders in I.A. No.4/2020 dated 26.04.2020 and amendment carried out as per order in I.A.8/2024 dated 18.09.2024)

.... Respondents/Defendants Proposed parties 3 to 7

This Suit came up before me on 02.03.2026 for a final hearing in the presence of Mr.S.Subramaniam, Advocate for the Plaintiffs and Mr.T.Sriram, Advocate for the 1<sup>st</sup> to 6<sup>th</sup> Defendants, and 7<sup>th</sup> Defendants being exparte 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, their men, agents, representatives, assignees claiming under or through them from disturbing the peaceful, convenient enjoyment of the plaintiffs, their men, agent, representatives and assignees through the plaint 'A' schedule property for ingress and egress to the plaintiff's property available on the east of the plaint 'A' schedule property and ii.Mandatory injunction directing the defendants to close down the opening put up by them on the southern wall of the 'B' schedule property within a stipulated time as fixed by this court, failing which the plaintiff be allowed to close down the opening at the cost of the defendants and iii.Mandatory injunction directing

to remove the slab, subshade put up in the southern wall and western wall of the B schedule property and further the western side building available on the encroached portion of the common pathway on the western side of the defendant's property within a stipulated time fixed by this court, failing which the plaintiff be allowed to remove the slab, subshade and the building on the western side at the cost of the defendants.

**2. CRUX OF PLAINT FACTS STATED IN AMENDED PLAINT DT.25.10.2025:**

2.1) Both the plaintiff and defendants are relatives. The plaintiff's husband Murugesapillai draw his title under three documents namely 1.Doc.No.921/1952, 2.doc.No.400/2003 and Doc.No.1256/1959. The properties described in all three documents are lysing in juxtaposition to one another and it is one piece of land as of now. As per the Will deed No.114/2012, the plaintiff has been given the right of life estate in the property, which lies on the east of the common pathway/plaint 'A' schedule property. The property of plaintiff admeasures an area of 4.66  $\frac{2}{3}$  cents comprised in Resurvey No.1610/451 of Theroor village. The dispute between the parties is with regard to the enjoyment of the common pathway described in the plaint 'A' schedule property.

2.2) The 1<sup>st</sup> defendant is one of the sons of Meenakshiammal. The plaint 'A' schedule pathway being a common pathway left for the enjoyment of plaintiff's husband Murugesapillai and Meenakshiammal, as it is evident from the context of

sale deed No.921/1962. The plaint 'B' schedule property is defendant property, which is surrounded by common pathway on three sides. The plaint 'A' schedule common pathway is 4 feet pathway, running east to west on the southern side of plaint 'B' schedule property. The plaintiff has put up a gat at the eastern end of the plaint 'A' schedule common pathway. Though it is common pathway for enjoyment of plaintiff and defendant family, it mainly satisfies the requirement of the plaintiff for ingress and egress to her property. **It is the only pathway right for the plaintiff's family.**

**2.3)** The plaintiff being a Hindu, draws Kolam outside the gate everyday in front of the house. The defendants with an ill-will, are disturbing the plaintiff's enjoyment of plaint 'A' schedule pathway. The defendant on 07.10.2015, have left an opening on the southern wall of the new building, constructed in the plaint 'B' schedule property, for the purpose of ingress and egress to the building apart from the main entrance available on the front portion of the new building facing west. If it is allowed to exist, vehicle may be parked on the common pathway, thereby free movement of the plaintiff would be curtailed.

**2.4)** The plaintiff on 23.10.2015 met the 1<sup>st</sup> defendant and apprised about the inconvenience being caused to the plaintiff and the defendants rejected the plaintiff's request. Though the defendants right to use the common pathway is unrestricted, in equity and under law of easement the plaintiff's right to use the common pathway be safeguarded. On 14.11.2015, the defendants have unscrupulously committed new extension work on the southern side and western side of the plaint 'B' schedule

property. On the southern side of the 'B' schedule property, the defendants have put up slab to a width of almost one foot running to full extent from west to east likewise on the western side of 'B' schedule property the defendants have put sunshade to a width of 4 feet to full extent from north to south. And the above illegal construction committed by the defendants amount to aerial trespass and land encroachment by the defendants on the common pathway available on the southern side and western side of the plaint 'B' schedule property respectively and those have to be removed for free access of plaint 'A' schedule property. Thus, this suit was filed.

**3. CRUX OF WRITTEN STATEMENT FILED BY ADDL. 2ND DEFENDANT ON 25.10.2025, WHICH WAS ADOPTED BY ADDL. DEFENDANTS 3 TO 6 VIDE MEMO:**

(Though the 1st defendant had appeared through summon, he died, without filing written statement)

**3.1)** All the averments in the plaint except those that are hereinafter admitted, shall be deemed to have been denied. It is admitted that there is 4 feet common pathway running from east to west to access the plaintiff as well as the defendant's property. The right of 4 ft pathway is vested on the land and not with the family. The said pathway has been allotted to access the defendant's 'B' schedule property and the adjacent property on the east. Originally the plaint schedule properties and more area measuring 10 cents were belonged to one Devi pillai @ Chellammal

D/o.Neelakandapillai. She sold it to several persons including the 1<sup>st</sup> defendant's mother Meenakshiammal by providing 4 feet common pathway on the south and 4ft pathway on the west in the year 1962. The 1st defendant inherited from his mother and they are using and enjoying the common pathway from 1962.

**3.2)** On 10.12.1980, partition was effected between the 1<sup>st</sup> defendant and his brother Nadaraja pillai. The 1<sup>st</sup> defendant was allotted with plaint 'B' schedule property and his brother with eastern portion. Both are allotted with 4ft common pathway. Then his brother Nadaraja pillai sold his share to one Ravi and his wife Vimala on 23.09.1992 without providing any pathway right. Subsequently Ravi and his wife sold their right to the plaintiff's husband without providing any pathway right.

**3.3)** The plaintiff is neither the absolute owner nor having exclusive right over the plaint 'A' schedule 4 feet pathway. The plaintiff is having a right of way to access their property from the road. The alleged Sale deed of plaintiff's husband, clearly depicted that his vendor conveyed only property and not the right of pathway. His vendors did not convey title over the pathway to the plaintiff's husband. The alleged gate in front of the pathway had been put up by the predecessors in interest of the plaintiff as well as the defendant for the benefit of all owners who are having right of way. The defendants derived their right of way over the plaint 'A' schedule property under valid title and grant and not mere easement of necessity and they

have every right to put up door or window or opening facing the pathway in any portion of plaint 'B' schedule building to protect his property.

**3.4)** The defendant had altered the structure of plaint 'B' schedule property without obstructing or encroaching the plaint 'A' schedule property. The plaintiff's husband Murugesu pillai purchased 1/3rd share of the defendants' family property from one Ravi. Hence the plaintiff is estopped from putting forth any claim under law. The plaintiff has suppressed the facts of inheritance and physical features of the properties.

**3.5)** The defendant has constructed within the defendant's property and it is embedded on the old structure which was existing more than several years. The defendant had not effected any changes or altered the physical features after the suit. The plaintiff never pleaded right over the plaint schedule property either through inheritance or under grant or easement or prescription or necessity. The claim of the plaintiff is unsustainable and unknown to law. Thus, he prayed to dismiss the suit with costs.

**4.CRUX OF ADDITIONAL WRITTEN STATEMENT FILED BY ADDL. 2ND DEFENDANT ON 27.11.2025, WHICH WAS ADOPTED BY ADDL. DEFENDANTS 3 TO 6 VIDE MEMO:**

The main suit as well as the subsequent pleading are not maintainable under law and facts. The plaintiff admitted that the dispute between the parties is with

regard to enjoyment of common pathway. Hence, the plaintiff has no manner of right to question the defendant's construction within their owned property. No construction has been made within the pathway. The Advocate commissioner visited and measured the property with aid of qualified surveyor and prepared plan and took photos. It revealed that the defendants have never put any construction within the pathway. No aerial encroachment or land encroachment at any point of time by the defendants. The plaintiff filed objection to the Commissioner's report and plan for non-mentioning of the aerial encroachment. The entire suit is unsustainable and liable to be dismissed with cost.

#### **5. ISSUES:**

Based on the pleadings and documents, this court has framed following issues on 27.11.2025,

**i.** Whether the plaintiff has legal and enforceable right over the plaint 'A' and 'B' schedule property?

**ii.** Whether the plaintiff has been in peaceful possession and enjoyment over the plaint 'A' and 'B' schedule property?

**iii.** Whether the plaintiff is entitled to plaint A relief of Permanent injunction as prayed for?

**iv.** Whether the plaintiff is entitled to plaint B relief of Mandatory injunction as prayed for?

v. Whether the plaintiff is entitled to plaint C relief of Mandatory injunction as prayed for?

vi. What other reliefs, both parties are entitled? What order as to costs?

## **6.EVIDENCE:**

On the plaintiff side, the 2<sup>nd</sup> plaintiff was examined as PW1, Ex.A1 to Ex.A6 and Ex.C1, Ex.C2 were marked. On endorsement of learned counsel for plaintiff, the plaintiff side evidence was closed on 02.02.2026. On the defendant side, the 2<sup>nd</sup> defendant was examined as DW1, Ex.B1 to Ex.B8 were marked. On endorsement of learned counsel for defendants, the defendants side evidence was closed on 19.02.2026.

## **7.ARGUMENTS:**

7.1) The learned counsel for plaintiffs argued that the plaintiffs' property was situated on the eastern side of the plaint 'A' schedule common pathway. The said 4ft common pathway runs in an east–west direction and thereafter turns right, proceeding in a south–north direction. It is admitted by the defendants that the plaintiff has right over the common pathway. The defendants have their property/B schedule property, on the northern side of the said common pathway. They constructed slab, sunshade on the southern wall and western wall of the 'B' schedule property. Further they encroached by constructing their western side building on the pathway and they have laid door on the southern wall of the 'B' schedule property. The defendants have no

right to encroach the common pathway. Their encroachment was elucidated through commissioner Report and Plan. The 2<sup>nd</sup> defendant admitted in his evidence the said encroachments. He claimed those encroachments did not create any disturbance to anyone. The plaintiffs have derived pathway right over the plaint 'A' schedule common pathway vide the parental deed No.921/1962. Hence, they prayed to decree the suit with costs.

7.2) The learned counsel for defendants 2 to 6 argued that the plaintiffs' title deeds did not convey any right of pathway over plaint 'A' schedule common pathway and their predecessors in interest as well as the plaintiffs have no right over the plaint 'A' schedule common pathway. Though it is the case, the defendants did not prevent or disturb the plaintiffs' enjoyment of plaint 'A' schedule pathway to access to their property. The plaintiff did not describe their property in the plaint schedule of property. The plaintiffs have no right to question the construction of defendants in the plaint 'B' schedule property, in which the defendants have right, title. The commissioner did not report any encroachment as stated by the plaintiffs. The plaintiff, in his deposition, asserted ownership of the plaint 'A' schedule pathway as his private right of way. Without declaratory relief of plaint 'A' schedule property, this suit is not maintainable. Thus, he prayed to dismiss this suit with cost.

**8. REASON FOR DETERMINATION:**

**ISSUE NO.1:** Whether the plaintiff has legal and enforceable right over the plaint 'A' and 'B' schedule property?

**ISSUE NO.2:** Whether the plaintiff has been in peaceful possession and enjoyment over the plaint 'A' and 'B' schedule property?

**ISSUE NO.3:** Whether the plaintiff is entitled to plaint 'A' relief of Permanent injunction as prayed for?

**8.1)** The fact in issues of the issue No.1 to 3 were interlinked to each other, hence these 3 issues were taken together for discussion.

**8.2)** The plaint 'A' schedule property is common pathway having width 4ft, length 30ft approximately comprised in old Survey No.1610/451A, resurvey No.1084/1B2 of Theroor village, Agasteeswaram Taluk, Kanyakumari district and it runs in an east–west direction. The plaint 'B' schedule property is 460sq.ft. of land with electrified building comprised in Old survey No.1610/451A, resurvey No.1084/1B2 of Theroor village, Agasteeswaram Taluk, Kanyakumari district. Admittedly, the plaint 'B' schedule is the property of defendant and the plaintiff has no right over it. Hence, the issues No.1 and 2 are negated with respect to plaint 'B' schedule property, as the plaintiff has no legal right and enjoyment over the plaint 'B' schedule property.

**8.3) PLAINTIFFS' PROPERTY:** The plaintiff has averred that the plaintiffs' property was situated on the eastern side of the plaint 'A' schedule common pathway. The plaintiff's husband derived title under 3 documents 1.Doc.No.921/1962, 2. Doc.No.400/2003, 3. Doc.No.1256/1969. The properties in all 3 documents are lying in juxtaposition to one another and it is one piece of land. The said properties were dealt in the Ex.A1/Will deed No.114/2012.

**8.4)** While considering the plaintiff's averments, it is found that the plaintiff has not described his property in the plaint schedule of property. The Ex.A6/property tax receipt did not depict the physical features of the plaintiff's property.

**8.5) 4FT. COMMON PATHWAY:** The plaintiff pleaded that the plaint 'A' schedule/4ft common pathway runs in an east-west direction and thereafter turns right, proceeding in a south-north direction. Originally the plaint schedule properties and more properties were belonged to one Devipillai @ Chellammal. The plaintiff's husband has purchased 3 cents of land from Devipillai @ Chellammal on 19.03.1962 vide Ex.A4/Sale deed, in which the right of common pathway in plaint 'A' schedule was devolved to the plaintiff. The defendant's mother Meenakshiammal has purchased plaint 'B' schedule property from Devipillai @ Chellammal on the same date 19.03.1962 vide Ex.B1/Sale deed. In these sale deeds, the right of common pathway was conveyed to the plaintiff's husband and the defendants' father. The defendant property has common pathway on three sides. The plaintiff has only plaint

'A' schedule property to ingress and egress to her property and she has exclusive right over it.

**8.6)** While considering these pleadings, the plaintiff described the plaint 'A' schedule property in the description of property, as common pathway having width 4ft, length 30ft approximately comprised in old Survey No.1610/451A, resurvey No.1084/1B2 of Theroor village, Agasteeswaram Taluk, Kanyakumari district and it runs in an east–west direction. **The plaintiffs averred the word “north-south”, but they did not describe its length, breadth, extent of such north-south pathway. The said north-south pathway was situated in the western side of the plaint 'B' schedule property and no way connected with plaintiff’s property. Hence the plaint A schedule pathway is only the east-west pathway width 3 ft and length 30 ft approximately.**

**8.7)** Her right over the plaint 'A' schedule common pathway was derived from the sale deed/Ex.A4. The defendants’ property with common pathway on three sides; its main entrance facing western direction and the defendants’ easy access to main road from west, does not exclude his right over common pathway on the southern side of their property. The defendants’ right over the plaint ‘A’ schedule common pathway having been admitted by the plaintiff in his pleadings, the plaintiff is estopped from subsequently asserting an exclusive right thereto.

**8.8)** The 2<sup>nd</sup> plaintiff in his evidence asserted right of common pathway from Ex.A4/Sale deed at one point, but as exclusive private pathway at later point. In the plaint, the 1<sup>st</sup> plaintiff described her right over plaint 'A' schedule property as common pathway at some places and asserted her exclusive right over plaint 'A' schedule property on the ground that it is the only pathway to access her house. It is well settled principle of law that the plaintiff is barred from taking inconsistent pleas. The 2<sup>nd</sup> plaintiffs in 3<sup>rd</sup> page of his cross examination, deposed that **they have an easementary right over the plaint 'A' schedule of common pathway and not claiming right through title deeds.**

**8.9)** It is true that the plaintiff has right over common pathway/plaint 'A' schedule property from the Sale deed/Ex.A4. Other than the plaintiff's husband, persons named Azhagappapillai, Dhanappapillai, Isakkimadan pillai, Meenakshiammal have right over the said common pathway as per the Sale deed/Ex.A4. Those other persons were having lands around the said common pathway. But the 2<sup>nd</sup> plaintiff/PW1 denied the right of those other persons on the ground that they have access to their property through other way. The 2<sup>nd</sup> plaintiff has claimed his right over plaint 'A' schedule property from Sale deed/Ex.A4, in contra he denied other rights over the same plaint 'A' schedule property to the others who really entitled.

**8.10)** If the plaintiff asserted the **easementary right**, the plaintiff has to plead the allied facts, circumstances to substantiate the nature of easementary right either

by prescription or by necessity or by grant, etc. Further, to assess whether the plaint 'A' schedule property is only pathway available to ingress and egress, it is mandatory to schedule plaintiff's property and to aver the physical features of the plaintiff's property. Thus, the plaintiff failed to prove their nature of right over the plaint 'A' schedule property and it is held that **the plaintiff has not proved their right, possession and enjoyment of plaint 'A' schedule common pathway. Hence issue No.1 and 2 are answered negatively.**

**8.11)** In addition, the 2<sup>nd</sup> plaintiff himself admitted that the defendants did not interfere in the enjoyment of plaint 'A' schedule property by the plaintiff to access his house. When there is no disturbance, interference, there is no cause of action to this relief as well as no prima facie case on the side of the plaintiff to the plaint 'A' relief of permanent injunction. Therefore, **the plaintiffs are not entitled to the plaint 'A' relief of permanent injunction as they prayed for and the issue No.3 is answered negatively.**

**ISSUE NO.IV:** Whether the plaintiff is entitled to plaint 'B' relief of Mandatory injunction as prayed for?

**8.12)** The plaintiff sought the plaint 'B' relief to remove the opening on the southern wall of the plaint 'B' schedule property, as it created disturbance in plaintiff's enjoyment of plaint 'A' schedule common pathway. In his cross-examination, the 2<sup>nd</sup> plaintiff admitted that the said opening was backdoor laid by the

defendant on their southern wall within their property/plaint 'B' schedule property. In Ex.A4/Sale deed of 1st plaintiff's husband and Ex.B1/sale deed of defendant's father, It is evident that no restriction was imposed with respect to the construction of doors on the southern wall of the plaint "'B' schedule of property. Therefore, the plaintiff is not entitled to the plaint 'B' relief of Mandatory injunction and this issue is answered negatively.

**ISSUE NO.5:** Whether the plaintiff is entitled to plaint 'C' relief of Mandatory injunction as prayed for?

**8.13)** The plaintiff pleaded that on 14.11.2015, the defendants have unscrupulously committed new extension work on the southern side and western side of the plaint 'B' schedule property. On the southern side of the 'B' schedule property, the defendants have put up slab to a width of almost one foot running to full extent from west to east likewise on the western side of 'B' schedule property the defendants have put sunshade to a width of 4 feet to full extent from north to south. And the above illegal construction committed by the defendants amounted to aerial trespass and land encroachment by the defendants on the common pathway available on the southern side and western side of the plaint 'B' schedule property respectively and those have to be removed for free access of plaint 'A' schedule property.

**8.14)** While considering these allegations, it is evident that the plaintiffs have no right over the 4ft pathway on the western side of the plaint 'B' schedule property.

Hence the plaintiffs have no right to seek relief against the defendants over the area on the western side of the plaint 'B' schedule property. Further, this court held in issue No.1 to 3, that the plaintiffs failed to prove their right over the plaint 'A' schedule property and the plaintiff is not entitled to the plaint 'C' relief of Mandatory injunction to remove slab and sunshade in the southern wall of the plaint 'B' schedule property. Thus, this issue No.5 is answered negatively.

**ISSUE NO.VI:** What other reliefs, both parties are entitled? What order as to costs?

**8.15)** The defendants are entitled to the cost of suit from the plaintiffs. The parties are not entitled to any other reliefs and this issue No.6 is answered accordingly.

**9.** In fine, it is dismissed, with cost of the defendants.

Dictated to Steno-Typist and typed by her directly in the Computer and corrected and pronounced by me in the Open Court on this the 11<sup>th</sup> day of March 2026.

I Additional District Munsif (FAC)  
Nagercoil.

**Appendix:**

**1) Plaintiffs side witnesses:**

PW1 - M. Gopi

**2) Plaintiffs side documents:**

Ex.A1	19.12.2012	Original Will deed No.114/2012 executed by Murugesapillai
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Ex.A2	19.02.2003	Original sale deed No.400/2003 in favour of Murugesapillai
Ex.A3	07.05.1969	Original sale deed No.1256/1969 in favour of Murugesapillai
Ex.A4	19.03.1962	Original sale deed No.921/1962 in favour of Murugesapillai
Ex.A5	24.10.2015	Original photo(4 nos.) and CD
Ex.A6	03.09.2015	Original Land tax receipt in the name of Murugesapillai

**3) Defendants side witnesses:**

DW1 - Chellappapillai

**4) Defendants side documents:-**

Ex.B1	19.03.1962	Original sale deed in the name of Meenachi Amma
Ex.B2	10.12.1980	Copy of Partition deed
Ex.B3	23.09.1992	Copy of sale deed in the name of Ravi
Ex.B4	-	Copy of Resurvey Plan
Ex.B5	-	Copy of patta
Ex.B6	09.06.2015	Original tax receipt
Ex.B7	-	Copy of Encumbrance Certificate
Ex.B8	-	Original rough plan

**5) Court documents:-**

Ex.C1	-	Advocate commissioner Report
Ex.C2	-	Advocate commissioner

I Additional District Munsif (FAC)  
Nagercoil.

I ADM Court  
Draft/Fair Judgment  
O.S.348 of 2015  
Dated: 11.03.2026.