

**IN THE COURT OF ADDITIONAL DISTRICT MUNSIF
PADMANABHAPURAM.**

**Present: Tmt: S. Immaculate Buddha B.Sc., L.L.M,
Additional District Munsif,
Monday, the 06th day of April 2026**

**I.A No. 03 of 2026
in
O.S No.14 of 2026**

1. C.K. Marsilin Joe
2. C.K. Pushapa Ranjan
(Rep. by the Power of Attorney
The 1st plaintiff C.K. Marsilin Joe) ... Petitioners/Plaintiffs

/Vs. /

Srikrishnan ... Respondent/ 1st Defendant

This petition is coming before me for final hearing in the presence of Mr. R. S. Vinu, learned counsel for the petitioners/plaintiffs and Mr. S. Sunil, learned counsel for the respondent/ 1st defendant. Upon hearing the counsel of both side and on perusal of the records stood over for consideration till this day, this court delivers the following :

ORDER

This petition is filed Under Order XXXIX Rule 1 and 2 and under Section 151 of Civil Procedure Code to pass an order of interim injunction restraining the Respondent/1st defendant from constructing

any structure, compound wall in the disputed plaint B schedule property infringing the rights of the petitioners/plaintiffs until the final disposal of the suit.

2. THE AVERMENTS IN THE PETITION IN BRIEF :-

i) The petitioners/plaintiffs filed the suit for declaration and other reliefs against the defendants. The petitioners are brothers and 2nd petitioner is represented by the 1st petitioner through a Power of Attorney executed by the 2nd petitioner on 04.02.2026 that was duly notarized. The Plaint schedule properties and other properties originally belongs to one Late. Lakshmanan Nadar. He died intestate, he had two sons namely Masilamani and Muthunayagam, they have orally Partitioned the plaint schedule properties and other properties of Lakshmanan Nadar and as per the partitioned of all properties Plaint A schedule property was allotted to Masilamani and Plaint B schedule property was allotted to Muthunayagam. The plaintiffs are legal heirs of one Chellappan who is only son of Masilamani. The plaint A schedule property and other properties that were orally allotted to Chellappan and he was in absolute possession and enjoyment over the plaint A schedule property and other properties and that was partitioned via D.No.387/2017 duly registered at the Sub Registrar Office at Munchirai

by the petitioners and the Plaint A schedule property was allocated for common enjoyment as the place of graveyard.

ii) The petitioners parents are buried in the plaint A schedule property. The plaint B schedule property is a graveyard wherein Lakshmanan Nadar and his wife were buried who are the common ancestors of petitioners/plaintiffs and the 2nd defendant. The northern part of Plaint B schedule property there is 6 feet width pathway and 37.3 feet length that runs from east to west that is scheduled as C schedule property and that was enjoyed from the day of Oral partition that took place in between Masilamani and Muthunayagam for ingress and egress to the plaint A schedule property from Ramanthurai Road. The plaint A, B and C schedule properties are not sub divided and the resurvey No is 397/3 and is a Joint patta in favour of the plaintiffs, the 2nd defendant and the predecessors. The 2nd defendant now had executed a sale deed in favour of the 1st defendant over the plaint B schedule property by suppressing the easementary right over the plaint C schedule property enjoyed by the plaintiffs and also, he had alienated the property of graveyard in favour of the respondent/1st defendant without the knowledge of the plaintiffs and other legal heirs and descendants of late Lakshmanan Nadar who is their forefather.

iii) Originally the plaint B schedule property was to be enjoyed as a graveyard permanently and no members of the family are entitled to change the nature of the property except as graveyard. Now the 2nd defendant had alienated the plaint B schedule property to the respondent/1st defendant and he in turn on 04.02.2026 had destroyed the cemetery of the Lakshmanan Nadar and his wife and further had dug the area of the plaint C schedule property thereby obstructing the pathway which is the only pathway for the access to the plaint A schedule property. The plaintiffs therefore gave a complaint before the police station at Puthukadai on 04.02.2026. The police had enquired the same and had registered the complaint as CSR. No. 143/2026. The sale is not enforceable since there is a pathway of plaint C schedule property which is the only pathway for the access to the plaint A schedule property and since there is no other alternative pathway other than the plaint C schedule property. Moreover, the alienation of graveyard by the 2nd defendant to 1st defendant is not of legal sanctity and so the sale deed D.No.390/2026 dated 03.02.2026 be declared as null and void. The petitioners files this petition for temporary injunction to restrain the respondent/1st defendant from erecting any compound wall in the plaint B schedule property until the final disposal of the suit because the plaint C schedule property that runs through the plaint B schedule property is the only pathway for the plaintiffs free access to the plaint A schedule

property and there is no other alternative pathway to have access to the plaint A schedule property.

vi) So if the respondent is allowed to construct wall around the plaint B schedule property the plaintiffs cannot have access to the plaint A schedule property and so it is very urgent to pass an interim order of restraining the 1st defendant from erecting an construction in the plaint B schedule property obstructing the pathway plain C schedule property and also of changing the classification of a graveyard of the plaint B schedule property. The 1st defendant is a rowdy element in the society and he deliberately with intention of infringing the rights of the plaintiffs is trying to build compound walls around the plaint B schedule property. So, it is urgently necessary to restrain the 1st defendant from constructing any structure in the plaint B schedule property in the larger interest of justice. Hence in the larger interest of justice and for proper adjudication of the suit an interim order be passed restraining the respondent from constructing any structure in the nature of a compound wall or any other in the plaint B schedule property until the final disposal of the suit. Hence, this petition.

3. THE AVERMENTS IN THE COUNTER FILED BY RESPONDENTS/ DEFENDANTS R1 AND R2 ARE IN BRIEF :-

i) The plaintiffs have instituted the present suit with a malafied intention to harass the defendants and to unlawfully interfere with their peaceful possession and enjoyment of the Plaint B schedule property. The plaintiffs have not approached this court with clean hands and have deliberately suppressed true and material facts while putting forth false, imaginary, and misleading all allegations. The plaintiffs claim that the Plaint B schedule property is a family or ancestral property is wholly false and is specifically denied. The said property is a self acquired property which has passed through several lawful transactions under valid registered documents. The 2nd defendant derived title to the property through a registered Settlement Deed No. 2344/2022 dated 14.06.2022 executed by his father Kanagaraj. The said Kanagaraj had purchased the property from Vasanthakumari, wife of Selvaraj, under a registered Sale Deed No. 2622/2010 dated 20.09.2010. The said Vasanthakumari had acquired the property under sale deed No. 1337/2005 from one Thanga Raj. Thus, the plaint B schedule property has changed hands in the year 2005, 2010, 2022, and 2026 through valid and independent transactions.

ii) It is significant to state that during all these years, no person, including the plaintiffs, has ever raised any claim of pathway, easement or existence of graveyard in the said property. The present claim is therefore an afterthought, invented solely for the purpose of filing this suit. The allegation that the plaint B schedule property is a graveyard or contains the burial place of Lakshmanan Nadar and his wife is absolutely false, fabricated, and emphatically denied. There has never been any cemetery, burial ground, or tomb in the plaint B schedule property at any point of time. On the contrary, the actual burial place of Lakshmanan Nadar and his wife is situated in Re.Sy.No. 395/2 of Enayamputhenthurai village, which is approximately 300 meters away from the plaint B schedule property. This property also in the hand of petitioners. The petitioners have deliberately made this false allegation with an intention to mislead this court and to create a false right over the defendants' property. On the eastern side of the plaint A schedule property lies a property belonging to the Thangamony Nadar family, which is being used as a graveyard containing about seven tombs, and on the southern side of the said property there exists a pathway of about 3 feet width which provides access to the plaint A schedule property. Hence, the claim of pathway through the plaint B schedule property is false, unnecessary, and legally untenable.

iii) Thereafter, the 2nd defendant, being the absolute owner of the property, sold the same to the 1st defendant under a registered Sale Deed No. 390/2026 dated 03.02.2026 for valid and adequate consideration. Aggrieved by such refusal, the plaintiffs have filed the present suit with a clear ulterior motive to harass the defendants and to compel them to part with the property at a low price. The plaint B schedule property has a width of about 23 feet on the eastern side and is suitable for construction of a residential building. The 1st defendant has purchased the property with the intention of constructing a residential house. If the false claim of a 6 feet pathway as alleged by the plaintiffs is accepted, the 1st defendant will be prevented from putting up any construction in the property, thereby rendering the property unusable. The plaintiffs are fully aware of this fact and have therefore filed the present suit with a malicious intention to obstruct the defendant from enjoying their property, to reduce its value, and to force the defendant to sell the same to them at a throwaway price. The entire suit is therefore a clear case of misuse of judicial process for unlawful gain. The sale deed D.No. 390/2026 executed in favour of the 1st defendant is valid, legally binding, and supported by proper consideration. The plaintiffs have no locus standi to challenge the said sale deed, and the relief sought for declaring the same as null and void is wholly unsustainable in law.

iv) The plaintiffs are not entitled to any interim or permanent injunction as prayed for in the suit. The plaintiffs have not made out any prima facie case, as they have no manner of right over the plaint B schedule property. The balance of convenience is entirely in favour of the defendants, who are the lawful owners in possession of the property and who intend to put the property to lawful use by constructing a residential house. The plaintiffs will not suffer any irreparable loss or injury, as they have an later native pathway to access their property. On the other hand, the defendants will suffer irreparable loss and hardship if they are restrained from using their own property. The plaintiffs, having approached this court with false allegations and suppression of material facts, are not entitled to any equitable relief of injunction. Hence this petition is liable to be dismissed.

4. POINTS FOR DETERMINATION:

Whether the petitioner/plaintiff is entitled to the relief as prayed for or not?

5. DISCUSSION AND ANALYSIS :-

Heard both side learned counsel. Records perused carefully,

i) The learned counsel for the petitioner stated that the plaintiff schedule properties and other properties belonged to Lakshmanan Nadar. After his demise, his sons Masilamani and Muthunayagam partitioned the property. Plaintiff A schedule property went to the only son of Masilamani, Chellappan. So the Plaintiffs acquired the A schedule property from their father, Chellappan. As per the partition deed 387/2017 plaintiff A schedule property is a graveyard. The plaintiff B schedule property is located on the south of A schedule property that belonged to 2nd defendant. The plaintiffs and 2nd defendant have common ancestors. The property on the east of the A schedule property belongs to a stranger. The plaintiffs have a right of way through B Schedule property that pathway is described as plaintiff C schedule property. The ancestors of the plaintiffs used the same pathway. The 2nd defendant sold B schedule property to 1st defendant. The 1st defendant demolished the cemetery of Lakshmanan Nadar and his wife in B schedule property and is constructing a house. The C schedule pathway is obstructed by the 1st defendant. The plaintiffs have no other alternative pathway. If temporary injunction is not granted the 1st defendant might construct the compound wall, it will cause irreparable loss to the plaintiffs.

ii) The respondents countered that the B schedule property is not a family property. D2 acquired it from his father via Settlement deed.

His father acquired it from Vasantha Kumari via a registered sale deed on 20.09.2010, who acquired it from Thangaraj via sale deed. The plaintiffs did not claim easement right during this period. The plaintiffs have an alternative pathway on the east of their property through Thangamony Nadar's family graveyard. So the petition is liable to be dismissed.

iii) The plaint A schedule property is used as a graveyard is clear from the partition deed of the plaintiffs. It is surrounded by stranger's properties on the west, north and east as per the boundary description. The 2nd defendant and plaintiffs/petitioners belong to the same family. The 2nd defendant sold plaint B schedule property to the 1st defendant/respondent on 03.02.2026. B schedule property may be a graveyard or not, but it is an open space without any construction upto respondent's purchase. The respondent purchased the property and started construction. If the respondent constructs a house affecting the petitioners right of way it will cause irreparable loss to the petitioners. The petitioners have prima facie proved their case. Balance of convenience is in favour of the petitioners. So this court is inclined to allow this petition. Therefore, the petitioners are entitled to temporary injunction restraining the respondent from constructing any structure, compound wall in the plaint B schedule property until the disposal of this suit.

6. DECISION:

In the result this petition is allowed. No cost.

Dictated to the Steno-Typist directly, typed by her in computer, corrected and pronounced by me in open court, on this 06th day of April 2026.

Additional District Munsif,
Padmanabhapuram.

Petitioner side documents :-

- Nil -

Respondent side documents :-

- Nil -

Additional District Munsif,
Padmanabhapuram.

ADMC,
Padmanabhapuram.
I.A.No.03/2026 in O.S.No.14/2026
Draft/Fair Order:
Dt: 06.04.2026.