

TNKK150004102022



IN THE COURT OF THE SUBORDINATE JUDGE, ERANIEL

**Present : Thiru. R. Karl Marx, B. L.,
Subordinate Judge, Eraniel**

Wednesday, the 24th day of June, 2026

Original Suit No.83/2022
(CNR No.TNKK15-000410-2022)

1. Christhu Rani

2. J. Joefelix

3. Antony Jegan

4. J. Anto Vijayan

5. Amalarani

... Plaintiffs

-VS-

1. T. Dhasan

2. J. Antony Sunil

3. J. Antony Agwindhas

... Defendants

This suit is came up on 18.06.2026 for final hearing before me in the presence of Mr. S. Surendran, Counsel for Plaintiffs and Mr. M. John Bosco, Counsel for 1st Defendant and defendants 2 and 3 were called absent and set exparte and upon hearing the arguments of plaintiffs and 1st defendant sides and after perusing all the available records and having stood over for consideration till this day and this Court delivered the following:-

JUDGMENT

The suit has been filed by the plaintiffs under Order VII Rule 1 of CPC, for,

A. Decree for Declaration of title and recovery possession of the plaint schedule property in Re. Sy. No.450/9B measuring 0.02.0 areas 4 ½ cent equivalent to 1960.2 sq. ft. at Kadiyapattinam Village, Kalkulam Taluk, Kanyakumari District,

B. Decree for mandatory injunction, to demolish the building area of the newly constructing building encroached by the 1st defendant which is owned by the plaintiffs in Re. Sy. No.450/9B at Kadiyapattinam Village, Kalkulam Taluk, Kanyakumari District,

C. Decree for permanent injunction not to disturb the peaceful possession and enjoyment of the plaintiffs by the 1st defendant and their men in Re. Sy. No. 450/9B at Kadiapattinam Village, Kalkulam Taluk, Kanyakumari District.

D. Any other relief and cost of the suit.

The brief averments of the plaint are as follows:

2. The father of the plaintiffs 2 to 5, defendants 2 and 3 and the husband of the 1st plaintiff namely Mr. Joseph had purchased the plaint schedule property, situated at re survey no. 450/9B, in correlation of old survey number 4577, measuring about 4 ½ cents situated at Kadiyapatinam Oor, Kalkulam Taluk, Kanyakumari District, through the sale deed dated 13.05.1996, in Doc. No. 497/1996, and he had constructed the house bearing door No.4-3V/4, and his family lived in the said house. The said Joseph died on 10.10.2020, and the plaintiff as well as the defendants 2 and 3 are legal heirs had jointly took possession and enjoyment of the suit schedule property. The 1st defendant property is situated at eastern side of the suit schedule property, and he has constructing a building in his 1.5 cents, in Resurvey 450/9A, in the same

village by encroaching the suit schedule property on the eastern side of the plaintiffs property. The same was questioned and a police complaint was lodged before the Sub Inspector of Police, Manavalaikurichi Police Station, against the 1st defendant. The 1st defendant has not stopped the illegal activities and police has not taken any action. The 1st defendant filed a caveat petition and the plaintiffs 1 to 3 have received a copy of the said petition, and filed this suit for declaration of title over the suit schedule property and recovery of possession and for mandatory injunction, to demolish the building area of the newly constructed building encroached by the 1st defendant in re survey no. 450/9B and Permanent injunction restraining the 1st defendant from disturbing the peaceful possession and enjoyment of the plaintiffs.

The brief averments made in the written statement filed by the 1st defendant is as follows:

3. The allegation made by the plaintiffs are false. The 1st defendant had purchased vacant site measuring about 1.5 cents in Resurvey No. 450/9A, at Kadiyapattinam Village, through the Document No. 59/2004, from one Anthirayas on 10.01.2004. The 1st defendant in order to construct a house, approached Tamil Nadu Mercantile Bank Ltd., for availing housing loan and executed loan documents. The bank had sanctioned the loan to the 1st defendant and started construction of house, within the boundary of 1.50 cents after getting plan approval. On seeing the growth of the building, the plaintiffs started giving trouble to this 1st defendant. There is a custom prevails in coastal areas where common pathway existing for the maintenance of building and pathway. In the same way, the vendor of this 1st defendant left 2½ feet width pathway as empty space in between plaintiffs property and 1st defendant's property. But, the plaintiffs attempted to encroach the common pathway space. The plaintiffs property measuring 4.500 cents enjoyed by them by constructing a house over the entire area and the plaintiffs made the false

allegations and filed the suit and its cause of action are totally denied as false and prayed for dismissal.

4. The following Issues were framed for trial :

1) Whether the 1st defendant has encroached the suit property as alleged by the plaintiffs?

2) Whether the plaintiffs are entitled to the relief of declaration of title as prayed for?

3) Whether the plaintiffs are entitled to the relief of recovery of possession as prayed for?

4) Whether the plaintiffs are entitled to the relief of mandatory injunction as prayed for?

5) Whether the plaintiffs are entitled to the relief of permanent injunction as prayed for?

6) To what other relief, are the plaintiffs entitled?

Oral and Documentary evidence :

5. On behalf of the plaintiffs, the 1st plaintiff was examined as PW1 and Ex.A1 to A9 were marked. On behalf of the plaintiffs also examined three witnesses as PW2 to 4 and Ex.B1 and Ex.X1 were marked. On behalf of the 1st defendant, the 1st defendant was examined as DW1, Ex. B2 to B8 were marked.

Answer to issues No. 1 and 2:

6. Heard the arguments advanced by the learned counsel for the plaintiffs and 1st defendant respectively and perused entire records carefully. On perusal, it is found that, the plaintiffs have filed the above suit for, declaration of title over the suit schedule property and recovery of possession, mandatory injunction, to demolish the building area of the newly constructing building encroached by the 1st defendant in re survey no. 450/9B, at Kadiyapattinam Village and for permanent injunction restraining the 1st defendant from disturbing the peaceful possession and enjoyment of the suit schedule property.

7. The learned counsel for the plaintiffs would submit that the suit schedule property was purchased by the husband of the 1st plaintiff through the sale deed dated 13.05.1996, and he had constructed the house in the said property and died on 10.10.2020, thereafter, the legal heirs of the deceased 1st plaintiff's husband are the plaintiffs and the defendants 2 and 3. The 1st defendant who is having property in the eastern side of the suit schedule property, constructing a building by encroaching the suit schedule property, therefore, the plaintiffs made a complaint to the police and filed the suit. In order to establish the plaintiffs case four witnesses were examined as PW1 to 4 and Ex. A1 to 9 were marked. The evidence of the plaintiffs side would show that the suit schedule property belongs to the 1st plaintiff's husband and the 1st defendant encroached the said property, by constructing a house, therefore, prayed for decree as per the suit.

8. The learned counsel for the 1st defendant would submit that the 1st defendant is an absolute owner of the property in survey No. 450/9A, measuring about 1.5 cents, and the 1st defendant had decided to construct the house by availing loan and he is in possession of the said property. The 1st

defendant has not encroached the plaintiffs property and all the allegations are false.

Answer to issues No. 1 to 3.

9. It is admitted by the parties that the suit schedule property was purchased by the 1st plaintiff's husband through Ex.A1 on 13.05.1996, measuring about 4 1/2 cents, in re survey No. 450/9B, in old survey No. 4577 and the said property is situated at Kadiyapattinam village, Kalkulam Taluk, Kanyakumari District. Similarly, the eastern side of the suit property was purchased by the defendant through the Ex.B4, measuring about 1 1/2 cents, in resurvey No. 450/9A, through the sale deed dated 10.01.2004. It is clear from the above, the suit schedule property measuring about 4 .500 cents and the 1st defendant's property measuring about 1.500 cents were purchased by the 1st defendant's husband and 1st plaintiff respectively. The cause of action for the above suit is, when the defendant constructing the building, according to the plaintiffs, the 1st defendant encroached the suit schedule property by constructing the building for which, the plaintiffs made a complaint to the Manavalakurichy police on 13.07.2022, and the police have not registered the case.

10. It is clear from the above, according to the plaintiffs, the 1st defendant had encroached the suit schedule property. In order to substantiate the above, the 1st plaintiff was examined as PW1, through her the sale deed stands in the name of her husband was marked as Ex. A1. Death certificate of the 1st plaintiff's husband was marked as Ex.A2. The print out copy of the legal heirs certificate of the deceased Joseph was marked as Ex. A3. Ex. A1 would show that the suit schedule property has been purchased by Mr. Joseph and the said Joseph died on 10.10.2020, as per Ex.A2. The said Joseph had legal heirs among them one Mr. Antony Makesh, per-deceased as unmarried, therefore, the plaintiffs 1 to 5, as well as the defendants 2 and 3, are his legal heirs, as per

Ex.A3. Tax receipt as well as patta stands in the name of the said Mr. Joseph, Mr. Vimal Raj and Mr. Loola in respect of survey No. 450/9B were marked as Ex. A4 and A5. Copy of the complaint given by the 4th plaintiff, to the Manavalakurichy police station dated 13.05.2022, stating that on 12.05.2022, the 1st defendant had threatened the plaintiffs while questioning the encroachment, was marked as Ex.A6. Copy of CSR marked as Ex.A7. Rough sketch marked as Ex. A8. Copy of the caveat filed by the 1st defendant against the 1st plaintiff, Mr. Beno and Mr. Jegan was marked as Ex. A9.

11. It is clear from Ex. A6 and Ex. A7, there was a dispute raised by the plaintiffs side, that the 1st defendant had encroached the suit schedule property. As per Ex. A1, the suit schedule property is having 4.500 cents and the 1st defendant property is 1.500 cents. The PW1, during her cross examination, she had stated that the 1st defendant had encroached 1/2 cents, for which she had submitted document and Advocate Commissioner has not inspected the suit property. One Mrs. Selvi, who is a Zonal Deputy Block Development Officer was examined as PW2, and she had produced, the building permission plan of the 1st defendant and she deposed that after construction of building, and on site verification it was found that the building area is more than 1 cent. During her cross examination, she had stated that she has not filed any document to show that he had constructed, apart from the approved area. She also admits that the approved plan given by her office was marked as Ex.B1. She also stated that as per the approved plan, the defendant constructed the house. The document marked through PW2, is Ex.X1. Ex.X1 is the copy of the proceedings of the Panchayat President, as well as the plan and the plan would show that the permitted area is 28.49 meter square and the site area is 1500 cents. The document, which was marked through PW2 in the cross examination, would show that the proposed construction area is 55.48 square meter that is, 596.96 square feet, i.e., within the 1.500 cents. The said Ex. B1

is also, having the signature of the Panchayat President and it was admitted by PW2, that Ex. B1 plan was approved by the Panchayat. On perusal of Ex. X1 and Ex. B1, both the plans are having difference, but the PW2 had no explanation as to why two different plans were issued.

12. Ex. X1 plan proposed area is different from the Ex. B1 area and it was admitted by the PW2 that the 1st defendant had constructed as per the approved plan in Ex. B1 and she has not filed any document to show that the 1st defendant had encroached 1 cent. The PW1 had stated that the 1st defendant had constructed nearly 1 cent more than the approved area, but it is not stated that the encroached area is from the plaintiffs property. The evidence of PWs 3 and 4 would show that they have stated that there were dispute between the plaintiffs and the 1st defendant towards encroachment of the plaintiffs property.

13. The PW1 evidence, would show that she deposed that 1/2 cent of her property has been encroached by the 1st defendant. The PW2 stated that on inspection of the 1st defendant building, it was found that the building area is more than 1 cent of the approved area, for which no documents have been produced and the plan produced by the PW2 as well as the Ex. B1 plan are differs. The PW2 admits that the 1st defendant had constructed as per Ex. B1 plan. The evidence of PW2, is having total contra, and the document produced by the PW2 in Ex. X1, and Ex.B1 are totally different. The PW2 has not given valid reason as to why the PW2 has not produced Ex.B1, as she had admitted that the Ex. B1 was issued by her office. Therefore, the evidence given by the PW2, without furnishing any document to show that the 1st defendant had encroached the plaintiffs property about 1 cent and the non production of Ex. B1, it cannot be decided that the 1st defendant had encroached suit property. The PW1 has stated that 1/2 cents has been encroached by the 1st defendant, for which the plaintiffs have not filed any proof, even the plaintiffs have not taken any steps to appoint the Advocate Commissioner to note down the physical

features of the suit schedule property as well as the 1st defendant property. If the commission is appointed, the court can very well ascertain the encroachment if any, but due to non availability of the physical features report, merely based on the evidence of PW1, the encroachment portion cannot be decided that the 1st defendant had encroached 1/2 cent over the suit schedule property. Apart from the above, the plaint had no particulars as to how much area, the 1st defendant had encroached and without pleadings, merely based on oral evidence of PW1 the court shall not concludes that the defendant had encroached 1/2 cent. It is seen from the Ex. A5 patta marked by the PW1, the area also more than 4.500 cents. The DW1 evidence would show that the plaintiffs could not get any answer against the 1st defendant had for encroachment, therefore, considering all the above, the plaintiffs have not established that the 1st defendant encroached the suit schedule property, as such the plaintiffs are not entitled to the relief of recovery of possession, but at the same time, the plaintiffs are entitle to the relief of declaration of title alone in respect of 4.500 cents. and these issues are answered accordingly.

Answer to Issues No. 4 to 6

14. Since, the plaintiffs have not proved the encroachment, they are not entitled to the relief of mandatory injunction. PW3 and 4 have categorically stated that there was a dispute between the plaintiffs and the 1st defendant about the encroachment and the Ex. A5 and 6 would show that the 4th plaintiff made a complaint to the police for threatening the plaintiffs against the 1st defendant. The above would show that the 1st defendant had disturbed the possession of the plaintiffs over the Ex.A1 schedule property, hence the plaintiffs are entitled to the relief of permanent injunction, in respect of 4.500 cents over Ex.A1 schedule property alone and the plaintiffs are not entitled to any other relief and these issues are answered accordingly.

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

i) it is hereby declared that the plaintiffs and the defendants 2 and 3 are having title over the suit schedule property, in respect of 4.500 cents alone, as per Ex. A1 sale deed.

ii) the 1st defendant is restrained from disturbing the peaceful possession and enjoyment of the 4.500 cents of the plaintiffs in survey no. 450/9B, as per Ex.A1 sale deed.

iii) Mandatory injunction and recovery of possession are dismissed.

iv) Parties shall bear their own costs.

Directly dictated to the steno typist and directly computerized by her, corrected and pronounced by me in the open court, on this 24th day of June 2026.

**Sub Judge,
Eraniel.**

1. List of witnesses on the plaintiffs side :

P.W.1 : Tmt. Christhu Rani
P.W.2 : Tmt. Selvi
P.W.3 : Thiru. Roobi Dellus
P.W.4 : Thiru. Panipitchai

2. List of exhibits on the plaintiffs side:

Ex.A1	13.05.1996	Sale deed bearing doc. No. 473/1996 (Original)
Ex.A2	13.10.2020	Death certificate of the Plaintiffs father (Original)
Ex. A3	30.12.2020	Legal heir Certificate of the plaintiffs (Print out Copy)
Ex.A4	12.05.2022	Tax receipt (Original)
Ex.A5	13.05.2022	Patta bearing No. 3304 (online copy)

Ex.A6	13.05.2022	Complaint (Copy)
Ex.A7	-	C.S.R. receipt (Copy)
Ex.A8	-	Rough sketch of the suit mentioned property(original)
Ex.A9	13.09.2022	Caveat Petition (Copy)
Ex. X1	20.01.2022	Proceedings issued by the Panchayat President

3. List of defendants side witness:

D.W.1 : Thiru. Dhason

4. List of defendants side documents:

Ex.B1	-	Building construction Plan (Copy)
Ex.B2	-	Aadhar card of the 1 st defendant (copy)
Ex.B3	-	Ration card of the 1 st defendant (copy)
Ex.B4	10.01.2004	Settlement deed (Certified copy)
Ex.B5	17.06.2004	Agreement deed (Certified copy)
Ex.B6	21.11.2022	Complaint (copy)
Ex.B7	09.10.2025	Property Tax receipt
Ex.B8	-	Building Photo (2 Nos.) along with Compact Disc.

**Sub Judge,
Eraniel.**

Sub court, Eraniel.
Fair/Draft Judgement
O.S. No. 83/2022
Date: 24.06.2026