

TNKK150002912025



IN THE COURT OF THE SUBORDINATE JUDGE, ERANIEL

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

Thursday, 13th day of August 2026

A.S.No.1/2026

(CNR.No. TNKK15-000291-2025)

1. S. Janamejeyan
2. J. Senthil Kumar
3. J. Jegadish

... Appellants/Defendants

-vs-

S. Murugan

... Respondent/Plaintiff

This appeal has been preferred by the Appellants/Defendants against the judgment and decree dated 26.09.2025, made in O.S.No.35/2018, passed by the learned District Munsiff, Eraniel.

O.S.No.35/2018

S. Murugan

... Plaintiff

-vs-

1. S. Janamejyan
2. J. Senthil Kumar
3. J. Jegadish

... Defendants

This Appeal Suit came up for final hearing before me on 24.07.2026 in the presence of Thiru. T.J. Panneer Selvam, Counsel for the Appellants/Defendants and the Respondent/Plaintiff called absent set exparte and upon hearing arguments of appellants side and upon perusing the evidence and records and having stood over for my consideration till this day, this court delivered the following:

JUDGMENT

This appeal has been preferred by the appellants/defendants against the judgment and decree dated 26.09.2025, made in O.S.No.35/2018, passed by the learned District Munsiff, Eraniel.

The suit seeks for demarcate the southern side of the plaint A schedule property thereby putting boundary stones on the south eastern side and south western side, to declare that the B schedule property as pathway as per the settlement deed No.795 of 1988 so as to reach the plaint A schedule property from road and for permanent injunction, restraining the defendants their men or anybody claiming under them from obstructing or in any other manner causing interference over the plaint B schedule pathway and cost and other reliefs.

2. The brief averments made in the suit before Trial Court are as follows:-

The plaintiff and the 1st defendant are the Brothers. The 2nd defendant and 3rd defendants are the sons of the 1st defendant. The 2nd defendant is working as police and the 3rd defendant is working as an engineer at Chennai. The father of the plaintiff and the 1st defendant namely Mr. Subramanian Nadar, during his life time settled all his properties in favour of the plaintiff and the 1st defendant thereby reserved life interest to his wife to enjoy the properties in her life time. As such, the plaint A schedule property was settled in favour of the plaintiff through the settlement deed No.795 of 1988, dated 09.06.1988, likewise the 1st defendant was also settled the remaining properties on 09.06.1988. The mother of the plaintiff died on 10.07.2006. Hence, the settlement deed executed by the Mr. Subramanan Nadar in favour of the plaintiff and 1st defendant were acted upon. Originally, the plaint A schedule property in its larger area having an extent of 19.302 cents, in R.S.No.395/5

of Colachel Village, lies as a single plot. In view of the above settlement deeds, an extent of 8.659 cents on the northern side of the property was allotted to the plaintiff and the remaining area to an extent of 10.643 cents on the southern side has been allotted to the 1st defendant. Under the settlement deeds, a pathway was granted to both the plaintiff and 1st defendant starts from the road on the southern side leading towards the western side connecting the 1st defendant's property, thereby the plaintiff A schedule property from the date of settlement deed, the plaintiff and his family members are using the said pathway to reach the plaintiff A schedule property without any hindrance or obstructions for more than 3 decades. The said pathway are described as plaintiff B schedule pathway. The 1st defendant had executed a settlement deed on 14.09.2012, in Re survey No.395/5, to an extent of 3.05 cents, in favour of the 2nd defendant. The 2nd defendant had constructed a house and residing thereon along with his family. Now, the 1st defendant in order to construct a new house digged foundation for the remaining area of the 1st defendant property. The defendants with some ill motive started to give obstructions to the plaintiff and his family members in using the plaintiff B schedule pathway and it was defeated by the plaintiff and his family members on every occasion. The whole intervention of the defendants 1 to 3 are to close the plaintiff B schedule pathway permanently and to restrain the plaintiff and his family members from enjoying the plaintiff A schedule property. On 1.4.2018, the 1st defendant stopped in using the plaintiff B schedule pathway to reach his property and it was questioned, for which the 1st defendant replied that he had exclusively right to use the plaintiff B schedule pathway and no one have any authority over it. At the time of settling the plaintiff A schedule property by his father, pathway has been expressly granted in the settlement deed indicating as red marked area. Therefore, the defendants have no right to restrain the plaintiff and his family members from using the B schedule pathway to reach the plaintiff A schedule property but dismantled the southern side boundary of the plaintiff plaintiff A schedule property and removed the boundary stones. At present, there is no separating boundaries, in plaintiff A schedule property and 1st defendant, and it lies at a single

plot. Due to the absence of clear boundary in plaintiff A schedule property and the 1st defendant property inconvenience was caused to the plaintiff from enjoying the plaintiff B schedule property. Hence, the plaintiff sought for demarcation, and permanent injunction over the B schedule property and for declaration, that the B schedule property as pathway.

3. The brief averments made in the written statement filed by the defendants are as follows:

The plaintiff and the 1st defendant father had executed a will dated 29.09.1978, in favour of them and as per the above will, the plaintiff obtained 19.785 cents and the 1st defendant obtained 19.875 cents in Re survey No.395/3, southern side was given to the plaintiff and northern side was given to the 1st defendant. But these 2 plots are situated on the western side as well as the 1st defendant property. The plaintiff and the defendants had equal area in the property. The plaintiff father provided a pathway, it is situated southern in the western side of the 1st defendant and this pathway. Further 36 cents on the southern plot A schedule property, the said pathway provided only for the portion of 10.643 cents belongs of the 1st defendant, which is situated on the southern side of the plaintiff A schedule property in fact only for the access of the 1st defendant to reach his property. The said pathway is only having width of 5 links and not 3 1/2 feet as scheduled. Apart from that a convenient pathway is also available having a width of 4 feet at the spot on the northern side of the plaintiff A schedule property and the plaintiff used pathway for the free enjoyment of the plaintiff schedule property. Even though the pathway stated in the document, the plaintiff never used this pathway on any occasion and said pathway right is mistakenly stated in the documents. The plaintiff father constructed compound wall on the western side of plaintiff and 1st defendants property and this compound wall is in existence. The plaintiff purposely suppressed this fact. The plaintiff and his family members never used the B schedule pathway, at any point of time. The plaintiff's father planned to provide southern side 19.875 cents to the 1st defendant, but the plaintiff changed his area and demanded 19.875 cents allotted the

plaintiff and allotted northern 19.875 cents to the 1st defendant. The plaintiff father executed a deed dated 09.08.1988, in favour of the 1st defendant in respect of the 10.643 cents situated on the southern side of the plaintiff A schedule property and it will be clear that the pathway is only for 1st defendant. The allegation made by the plaintiff that the defendants constructed the separate house on pathway is false. The sole intention of the plaintiff is to obstruct the construction of the 1st defendant. The plaintiff B schedule property is not used by the plaintiff property. The plaintiff A schedule property and the defendants southern property are having separate boundaries. Hence, no demarcation is necessary and prayed for dismissal.

4. The trial court framed the following issues :

1. Whether the plaintiff B schedule property is the pathway as per settlement deed No.795 of 1998 to reach the plaintiff A schedule property from road ?
 2. Whether the plaintiff B schedule pathway is only access to reach the plaintiff A schedule property ?
 3. Whether the plaintiff is entitled to decree for declaration that the B schedule is a pathway ?
 4. Whether the plaintiff is entitled to decree for demarcate the southern side of plaintiff A schedule property ?
 5. Whether the plaintiff is entitled for permanent injunction as prayed for ?
 6. To what other relief the parties are entitled ?
5. Upon careful consideration of the pleadings and evidence adduced by the parties respectively, the trial court decreed the above suit, vide Judgment and Decree dated 26.09.2025, granting the decree of demarcation of the southern side of the plaintiff A schedule property by putting boundary stones, granting a decree, declaring that the B schedule property is a pathway as per the settlement deed and permanent injunction was also granted. Aggrieved by the judgment and decree passed by the learned District Munsiff dated 26.9.2025, made in O.S.35/18, the defendants have filed the above appeal on the following grounds.

6. The Grounds of Memorandum of appeal are as follows:-

The trial court failed to consider Ex.A2 document settlement deed, which stands in favour of the 1st Defendant/1st Appellant, produced by the plaintiff/respondent. The Plaintiff/Respondent never objects Ex.A2 document and it is admitted document of the Respondent/Plaintiff. Ex.A2 clearly proves the plaintiff B schedule pathway is totally including the area of this 1st appellants/1st defendants property. But the trial court fails to consider it. The commission report and plan, Ex.C1 and C2, clearly reflects that the area of B schedule property is not a part of plaintiff A schedule property. The trial court failed to consider this aspect also. But the trial court wrongly found in issue No.3. The trial court failed to consider the height of the plaintiff B schedule property on the southern side from the ground level and the rubble granite stones available on the southern entrance of the plaintiff B schedule pathway, and it is admitted facts of plaintiff and it is never used as pathway by the respondent/plaintiff on any occasions, The trial court fails to consider this aspect also. The trial court fails to consider that eventhough as per document plaintiff B schedule pathway is provided the respondent/plaintiff never used plaintiff B schedule property as pathway at any point of time. In respect of issue No.2, the 1st Respondent/Plaintiff admits that the alternative pathways are available to the respondent for the free access of plaintiff A schedule property from the main road and the trial court failed to consider this aspect also. The finding of issue No.4 is erroneous and unsustainable under law. The Commissioner in his commission report and plan, never states that the boundary stones in plaintiff A schedule property are not available in his report. On the other hand, the 1st Respondent/Plaintiff never proved that this appellants/defendants removed this boundary stones of A schedule properties as alleged in the plaintiff. The trial court failed to consider no cause of action arose for demarcation of boundary of plaintiff A schedule property as per the oral evidence of PW1. The trial court failed to consider the plan appended along with Ex.A1 and A2 documents produced by the respondent/plaintiff never proved that dismantled of the southern boundary of plaintiff A schedule property and removed the boundary stones by

these appellants/defendant. The Respondent/plaintiff never requested the commission to note the non availability of the said southern boundary stones of the plaint A schedule property. The commission also never stated that no boundary stones are available on the southern side of plaint A schedule property and the trial court miserably failed to consider this aspect also. For demarcation and putting up of boundary of plaint A schedule property all four side property owners are necessary parties for the trial adjudication. The Respondent/plaintiff admits in his oral evidence that all four side owner of plaint A schedule properties are not impleaded in this case. Without impleading all four side owners of plaint A schedule property this suit is not maintainable for demarcation and putting up of boundaries. The trial court failed to consider this aspect also. The Respondent/Plaintiff never applied for sub division of his property from the appellants/defendants property till date and it is admitted by PW1 in his oral evidence. Without sub division through revenue authorities, the respondent/plaintiff has no right to claim demarcation and putting of boundaries. There may be a chance to arise difference from the area of the both parties. The trial court failed to consider this aspect also. The trial court failed to consider that the commissioner never, not and report the area of this Appellants/Defendants in his report and plan. As the schedule properties obtained from the family settlement deed without fixing the area of these appellant/defendant the respondent/plaintiff alone never got any right to demarcate his area alone without measuring and provide the area of this appellants. These appellant document was also marked by the respondent/plaintiff as Ex.A2 and it is his duty to fix the Ex.A2 are of these appellants. The respondent/plaintiff failed to do so. The trial court failed to consider this aspect also. The finding of issue No.5 is erroneous and unsustainable. The appellant/plaintiff has no right to entitle to permanent injunction, against the true owner. As per the commission report, no obstruction is made in the pathway. As per oral evidence the family temple was constructed abutting the pathway without obstruct the pathway long prior to filing of this suit and there is no wispher in the plaint pleading about the family temple. As per the oral evidence of DW1 clearly

proves the family temple was constructed by his father. The plaintiff/respondent never pleaded that family temple of this appellant/defendants obstruct the pathway. As such the respondent/plaintiff never seek any permanent injunction against the appellants without having any valid reasons.

7. The learned counsel for the Appellants/defendants would submit that the trial court has not considered the evidence as well as the Commissioner report and concluded that B schedule property is a pathway and as such the demarcation of the property as well as injunction have been granted.

8. On careful consideration of the entire submission as well as the the records the following points are taken consideration,

1) Whether the B schedule property is a pathway to the suit A schedule property or not ?

2) Whether the B schedule property is a pathway of plaintiff and defendants or not ?

3) Whether the plaintiff is entitled to the relief of demarcation of A schedule property or not ?

4) Whether the plaintiff is entitled to the relief of declaration that the suit schedule property B is pathway or not ?

5) Whether the plaintiff is entitled to the relief of permanent injunction or not ?

6) Whether the Judgment and decree passed by the learned trial Judge is liable to be interfered or not ?

7. Whether this appeal is to be allowed or not ?

8. To what other reliefs the parties are entitled to ?

9. **Answer to point No. 1 to 8 :-**

Heard, the arguments advanced by the learned counsel for the appellant and perused the entire records carefully. The respondents have not come forward to contest the above appeal case. Therefore, this court has no other option except to dispose the above appeal based on the records as well as the arguments advanced by

the learned counsel for the appellants and in order to dispose the above appeal on merits, the parties are referred as per their ranks in the suit.

10. The defendants in the suit are the appellants herein. The respondent herein is the plaintiff in the above suit. The plaintiff has filed the above suit before the District Munsif, Eraniel, for demarcation of the southern side of the plaintiff A schedule property, to declare that the B schedule property is pathway for the A schedule property and for permanent injunction, restraining the defendants from interfering the plaintiff B schedule pathway. According to the plaintiff, the plaintiff and the 1st defendant are brothers and their father namely Subramanian Nadar had various properties and during his life time, he has settled his property to the plaintiff and 1st defendant respectively. As such, the plaintiff A schedule property to an extent of 8.659 square feet on the northern side of the larger extent of 19.30 cents in re survey No.395/5 of Colachel village, was allotted to the plaintiff and the remaining area to an extent of 10.643 cents on the southern side was allotted to the 1st defendant, through the settlement deeds dated 9.6.1988, both the documents were executed on 09.06.1988 respectively in two documents ie. document No.765/88, and Document No.796/88. As per the above settlement deeds, according to the plaintiff, the B schedule property was allotted as pathway for the plaintiff to reach the road and the defendants sold 3.505 cents, on 14.9.2012. The 2nd defendant constructed a house and residing therein. Thereafter, the defendants had constructed a house in the remaining portion by obstructing the pathway and it was stopped by the plaintiff. But the 1st defendant replied that he alone have the exclusive right over the B schedule property and on 10.4.2018, dismantled the southern side boundary of the plaintiff A schedule property and removed the boundary stones, as if the A schedule property as well as the 1st defendant's property are one and the same. The defendants had attempted to encroach the plaintiff A schedule property to annex the 1st defendant property illegally. Therefore, the plaintiff sought for the relief.

11. The said suit has been contested by the defendants by filing the written statement stating that the plaintiff A schedule property is an exclusive property of the 1st

defendant and the plaintiff had no right to use it, but however the measurement given in the B schedule property are not proper as per the settlement deed. The pathway is only having the width of 5 links not 3 1/2 feet as stated by the plaintiff. Any how the defendants have not disturbed the pathway and the allegation made by the plaintiff against the defendants are not proper and liable to be dismissed.

12. Considering all the above, the trial court decreed the suit as prayed for against which the present appeal has been filed by the defendants,

13. In order to decide the above appeal, the court has to see whether the pathway scheduled as B of the suit, is exclusively for plaintiff or and the defendants, or both of them, and in order to decide the above, it is just a necessary that the documents which were marked before the trial court are required to see, as such on perusal of the Ex.A1, it is a settlement deed dated 9.6.1988. On perusal of the settlement deed, which was executed by the father of the plaintiff in favour of the plaintiff in respect of the property situated as Re survey No.395/5, in respect of northern side of 8.659 cents, from the 19 cents 302 square links along with the pathway. Certified copy of the settlement deed executed in favour of the 1st defendant dated 9.6.1988 was marked as Ex.A2, and Ex.A2 would show that 10.643 cents were given to the 1st defendant in resurvey No.395/5 along with the pathway. The above Ex.A1 and A2 would show that both the parties having right over the pathway, which were given by the father of the 1st defendant. It is also stated in Ex.A1 that the plan has been attached and on perusal of the above, it would show that the Red colour area was marked as pathway and it would show that the plaintiff had right to use that pathway. The above also would show that the pathway includes the 19.302 cents, and the place which were marked as pathway in the plan are entitled to use both the plaintiff as well as the 1st defendant. Certified copy of the settlement deed executed in favour of the 2nd defendant by the 1st defendant was marked as Ex.A4 and it would show that the 1st defendant settled 3.305 cents in favour of the 2nd defendant, in Resurvey No.395/5 from the properties settled by the father of the 1st defendant, retaining about 6.343 cents. It is stated in the boundary

that there is a pathway on southern side. Ex.A1 and A2 would clear that the plaintiff and the 1st defendant are having the pathway rights as per the settlement deed executed by their father. Therefore, this court of the considered opinion that the parties to the suit that of the plaintiff and the 1st defendant are having right over the pathway as such the suit B schedule property is to be declared as pathway.

14. On perusal of the Commissioner report, which was marked as Ex.C1 before the trial court and it would show that the B schedule property is a pathway and the pathway is about 01.285 cents but the plaint has stated that the pathway is 1.5 cents. The above report is clear that the available area for pathway is 01.285 cents. The plaint filed by the plaintiff that the area of extent of the B schedule property is 1.5 cents approximately. Ex.A1 settlement deed would show that சிவப்பு அடையாளம் கொடுத்துள்ள பாதை ஸ்தலம் உள்பட உள்ளதுமான. It is seen from the Ex.A2, the red colour area which identified as pathway and the extension of pathway are not mentioned, but however both the settlement deeds are shows that there is a pathway, Commissioner report would shows that the available area is 1.285 cents, but not 1.5 cents. Therefore, considering all the above, the available area of pathway is to be recorded and the same area has to be considered as pathway, as such, the area given by the Advocate Commissioner, the property on the southern side of the plaint A schedule property is to be demarcated based on the available area as per commissioner report. The evidence of DW1 would show that the 1st defendant was examined as DW1, he had stated that he had no objection for using to use the B schedule pathway and similarly the 1st defendant had no objection to fix the boundary stone on the southern side of the boundary of the A schedule property.

15. Considering all the above, the plaintiff is entitled to declared as a B schedule property as a pathway in respect of the area given by the Advocate Commissioner instead of 1.5 cents given by the plaintiff, as such plaintiff is entitled to demarcate his property. Since the parties are having right to use the pathway, the defendants have no right to obstruct the pathway, therefore, permanent injunction is

to be granted. In view of the above, the plaintiff is entitled to the decree as decided by the learned District Munsif in respect of 1.285 cents alone which was given by the Advocate Commissioner and not 1.5 cents as stated in the plaint, and the said portion alone is to be modified in the Judgment and decree of the learned Trial court as it was not noticed by the learned Judge, and failed to note the same, otherwise the Judgment and decree passed by the learned trial Judgment needs no interference and these points are answered accordingly, as such the appeal is allowed to the above extent alone (ie) the area of pathway is 1.285 cents and these points are answered accordingly.

In the result, the appeal is partly allowed to the following an extent alone.

1) It is hereby declare that the suit schedule B property is the pathway to an extent of 1.285 cents to reach the A schedule property.

2) Plaintiff is entitled to demarcate the suit A schedule property on the southern side as prayed for. Permanent injunction is granted and the defendants are restrained from obstructing the plaintiff from using the over the suit schedule B property. No costs.

Directly dictated to the steno typist and directly computerized by her, corrected and pronounced by me in the open court, on this 13th day of August 2026.

**Sub Judge,
Eraniel.**

Appellant side Witness : Nil

Appellant side Documents : Nil

Respondent side Witness : Nil

Respondent side Documents: Nil

**Sub Judge,
Eraniel.**

Sub Court, Eraniel.

Fair/Draft Judgment

A.S.No.1/2026

Date: 13.08.2026