

TNKK150003282019



IN THE COURT OF THE SUBORDINATE JUDGE, ERANIEL

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

Wednesday, 17th day of June 2026

A.S.No. 10/2022

(CNR.No. TNKK-15000-328-2019)

V. Venkateswaran

... Appellant/Plaintiff

-vs-

1. N. Murukesan
2. M. Revathi
3. T. Kumaresan

... Respondents/Defendants

This appeal has been preferred by the appellant/plaintiff against the dismissal part of the suit vide judgment and decree dated 29.04.2019 passed in O.S.No.88/2018 by the Principal District Munsiff Cum Judicial Magistrate, Eraniel.

O.S.No.88/2018

V. Venkateswaran

... Plaintiff

-vs-

1. N. Murukesan
2. M. Revathi
3. T. Kumaresan

... Defendants

This Appeal suit came up on 10.06.2026, for final hearing before me in the presence of Mr.C. Retnaraj Counsel for Appellant/Plaintiff and respondents 1 and 2 called absent and set exparte and 3rd respondent dispensed and upon hearing arguments on appellant 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 appellant/plaintiff against the judgment and decree dated 29.04.2019, passed in O.S.No.88/2018, by the Principal District Munsiff Cum Judicial Magistrate, Eraniel.

The suit has been for permanent injunction restraining the defendants and their men from interfering in the possession of the plaintiff over the plaint schedule property and for a decree to construct retaining wall through the southern boundary of the suit property in accordance with the resurvey plan through court and the cost of the suit is to be realised from the contesting defendants and from their movable and immovable assets and for other reliefs.

2. The brief averments of the Plaint filed before the trial court are as follows:-

The plaintiff is the title and patta holder of the suit property about 13 cents in resurvey No.872/48 of Vellichanthai 'B' Village, and in peaceful possession of the same by paying tax. The suit property is the western side 13 cents out of the eastern 53 cents of old survey No. 1094 of Kadiapattanam Village. The plaintiff purchased the above said 53 cents under the sale deed No. 1460 of 2004, dated 08.11.2004. While, the plaintiff was enjoying the 53 cents in pursuance of the above said sale

deed, he sold the eastern side 40 cents in favour of the two persons namely Mr. Parameswaran S/o. Pachamal and Mr.Veeramani S/o. Rajaretnam under sale deed No.2182 of 2009. Then, while the title holders of the of survey No.872/4 were enjoying their respective plots, sub division was effected for plot 872/4 in accordance with their right and possession in it. In the sub division proceedings, the plaintiff's 13 cents is shown as plot No.872/4B in the resurvey plan. The plaintiff got separate patta, No.11952, for the suit property and he is in peaceful possession of the suit property by paying land tax. The defendants are the owners of the property lying adjoining to the south of the suit property. The 1st defendant is the father of the 2nd defendant. Boundary stones were put in the suit property when sub division was effected for the suit survey number. On 26.08.2018, the 1st defendant made an attempt to grab some portion of the suit property and to annex the same along with his property, he moved the boundary stone available in the south eastern corner of the suit property with his own J.C. B.No. TN 75 AF 1561). Hence the plaintiff filed a petition before the Sub Inspector of Vellichanthai Police Station against the 1st defendant. The Sub Inspector visited the suit property and found the mark of grabbing and the removal of boundary stones from the suit property. The Sub Inspector warned the 1st defendant not to do any obstruction while a granite retaining wall would be constructed through the southern boundary of the suit property by the plaintiff. On that basis, the property was measured by the Town Sub Inspector of survey and L.R on 19.09.2018, after giving notice to the Plaintiff and 1st defendant. Boundary stone in the south eastern corner was also planted. Thus, the surveyor closed the file No. 197/2018, the plaintiff's signature was also obtained by the surveyor. On 30.09.2018, the plaintiff went to the suit property with his men to continue his work, then the plaintiff found that the boundary stone was again removed from

the place. At that time, the 1st defendant was also available in his plot. The plaintiff asked the 1st defendant about the missing of the survey stone. For that, the 1st defendant abused the plaintiff by using filthy words and also made an attempt to attack the plaintiff. Hence the plaintiff filed a petition before the Inspector of Police, Vellichanthai against the 1st defendant on 30.09.2018 with relevant documents. The 1st defendant told that he gifted his right in resurvey number 872/5 infavour of his daughter under deed no. 1247 of 2013 of Manavalakurichi Sub Registry Office. The Inspector of Police was reluctant to take action against the 1st defendant by saying that the dispute is having a civil nature and asked the plaintiff to seek remedy through Civil Court. The 1st defendant alone is enjoying the 87.200 cents in the adjoining southern property, after the execution of the settlement deed infavour of 2nd defendant. If a permanent granite retaining wall is not constructed between the suit property and the adjoining southern property of the defendants, the plaintiff will be put to great hardship and, irreparable loss. Only a very little portion of the 3rd defendants plot touching the suit property at the south western corner of the suit schedule. The defendants have no right in any portion of the suit property. The plaintiff reliably came to know that the 1st defendant is waiting for an opportunity to encroach portion from the suit property. If the 1st defendant succeeds in his attempt the plaintiff will be put to great hardship and irreparable loss. Hence, the defendants are be restrained permanently by an order of injunction from disturbing from the possession of the plaintiff over the suit property. The plaintiff made several demands with the defendants for affording Co-operation for demarcation and putting separate retaining wall through the southern boundary of the suit property, such a last request and was made on 25.11.2018. The defendants neglected all the lawful demands of the plaintiff. Hence suit. The defendants were set exparte in suit.

3. Before the Trial Court, on behalf of the plaintiff, the plaintiff was examined as PW.1 and Ex.A1 to A9 were marked.

4. **The Grounds of Appeal Memorandum in this appeal are as follows:-**

The trial court dismissed the 'B' prayer to permit the appellant to construct retaining wall between the suit property and the defendant property, is erroneous while the trial Court allowed the injunction prayer to restrain the respondents defendants from interfering with the possession of the appellant over the suit property and to consider the fact that, the respondents 1 and 2 are incompetent to remove the boundary stone which was put up by Taluk surveyor on the strength of Sub division plan, did not consider the oral evidence as well as the documentary evidence adduced by the appellant/plaintiff. The trial Court ought to have decreed the suit by allowing the appellant to construct retaining wall between the suit property and the property of the defendants in accordance with the resurvey plan. Under the facts and circumstances of the case, to set aside the dismissal order of the trial court passed in [O.S.No. 88 of 2018](#) dated 29.04.2019 regarding its finding that the relief for permitting to construct retaining wall is not necessary, so that the appellant be able to construct the retaining wall in accordance with the resurvey plan for the property as prayed in the plaint.

5. Point for Consideration:

1. Whether the plaintiffs is entitled to the relief of mandatory injunction to permit him construct retaining wall through the southern boundary of the suit schedule property in accordance with the resurvey plan through court or not ?

2. Whether the judgment and decree passed by the trial court, in respect of the prayer of construction of retaining wall through the southern boundary of the suit schedule property, dismissing the same is valid or not ?
3. Whether the judgment and decree in respect of the construction of retaining wall to the southern boundary of the suit property is liable to be set aside or not?
4. Whether the appeal is to be allowed or not ?
5. To what other relief ?

Answer to the points 1 to 4 :-

6. The appellant is the plaintiff and the respondents are the defendants in the original suit, who are referred to as per their rank in the original suit in the present appeal too for convenience.

7. Heard the arguments advanced by the learned counsel for the appellant and perused the entire records including the records of the O.S. No. 88/2018 and perused carefully. On perusal, it is found that the plaintiff is the appellant herein and the plaintiff has filed the above suit, against defendants for permanent injunction, restraining the defendants from interfering the possession of the plaintiff over the suit schedule property and for a decree to construct retaining the wall through the southern boundary of the suit property, in accordance with the resurvey plan through Court. The learned trial Court Judge has decreed the suit partly by granting permanent injunction, restraining the defendants from interfering the possession of the plaintiff over the suit schedule property and dismissed the suit in respect of the prayer of construction of retaining wall through

the southern boundary of the suit schedule property, holding that the said prayer is not necessary due to granting of permanent injunction vide Judgment and decree dated 29.04.2019. Aggrieved by the decision of the learned Principal District Munsiff Cum Judicial Magistrate, Eraniel, in respect of the prayer of construction of retaining wall through the southern boundary of the suit schedule property, the plaintiff has filed the above appeal on various grounds as stated above.

8. According to the plaintiff, he had purchased the property of 53 cents in old survey no 1094 of Kadiapattanam Village and out of which he had sold the eastern side 40 cents to Mr. Parameswaran and Mr. Veeramani through the sale deed dated 04.12.2009, by retaining 13 cents in the western side of the said property. After the sale, the property was resurveyed and the retaining portion of 13 cents of the plaintiff was given resurvey no. 872/4B, for which the plaintiff has got patta bearing no. 11952, and he is in possession of the suit schedule property, but the 1st defendant who is the father of the 2nd defendant, are the owners of the adjoining to the southern side of the suit schedule property, on 26.08.2018, the 1st defendant had attempted to grab some portion of the suit schedule property and he moved the boundary stone available in the south eastern corner of the suit property through his own J.C.B, for which the plaintiff has filed a complaint before the Vellichanthai Police station and thereafter on the advice of the police, the property was surveyed through the surveyor and boundary stone were installed and the petition was closed by the authority. But, again on 30.09.2018, when the plaintiff went to the suit schedule property with his men, it was found that the boundary stone was again removed from the said place and it was asked by the plaintiff about the missing of the survey stone and the 1st defendant harassed the plaintiff

by using filthy words and attempted to attack him therefore, once again, the plaintiff has lodged a complaint to the police and thereafter, he came to to know that the property belongs to the 1st defendant was settled in favour of his daughter, who is the 2nd defendant and the 3rd defendant is also the adjacent owner of some part in the suit schedule property , therefore the plaintiff has filed the above suit.

9. The defendants have not contested before the Trial Court, there by they were set exparte.

10. Since the defendants have not contested the suit, the trial court has not framed any issues and proceeded the suit. On behalf of the plaintiff, the plaintiff was examined as PW1 and Ex.A1 to A9 were marked before the trial Court and after considering the evidence of the plaintiff side, the trial Court found that the plaintiff has proved the case as such, decreed the suit partly, that is, in respect of the permanent injunction restraining the defendants from interfering the suit schedule property alone and dismissed the prayer of mandatory injunction to construct retaining wall through the southern boundary of the suit schedule property.

11. The proof affidavit filed by the plaintiff, would show that he has reiterated the averments contained in the plaint and the sale deed which was marked as Ex. A1, would show that the plaintiff had purchased the entire 53 cents, on 08.11.2004, from Mr. Raveendran. Certified copy of the sale deed dated 04.12.2009, which was marked as Ex. A2, would show that the plaintiff has sold it for valid consideration, for the Ex.A1 property to the purchaser by retaining the suit schedule property. The certified copy of the settlement deed dated 14.08.2013, which was marked as Ex. A3, would show that the 1st defendant had settled 87 cents of the settlement deed property. Ex. A4 to A6 would show that the revenue records stands in the name of the plaintiff and of the proof affidavit as well as the document

were not disputed by the defendants, there by it is clear from the above evidence, the plaintiff is having right over the suit schedule property. Ex. A8 and A9 are the complaint as well as CSR and the complaint as well as CSR, would show that the plaintiff made a complaint to the police on 30.09.2018, that when the plaintiff went to the suit property for constructing retaining wall, it was found that the boundary stone was not available and it was questioned to the 1st defendant and the 1st defendant harassed him in filthy language and also threatened him. The above Ex. A8 and A9 are clear that there was a dispute between the plaintiff and the 1st defendant in respect of southern side boundary of the plaintiff and in order to challenge the evidence of PW1, the defendants have not appeared before the trial court, or before this Court, therefore, the learned Principal District Munsiff Cum Judicial Magistrate, Eraniel, has rightly decided that the plaintiff was entitled to the relief of permanent injunction.

12. The only grievance of the plaintiff is that the trial court has not given an another relief of mandatory injunction and it was stated that it was not necessary, for the reason, that the trail court was granted the permanent injunction. The relief granted by the trail court in respect of permanent injunction, from disturbing the possession of the suit schedule property and if the defendants are disturbed the possession, then the plaintiff can very well approach the court in accordance with law. Since, the allegation made in the complaint that the 1st defendant removed survey stone and attempted to attack while trying to construct the retaining wall through the southern side boundary and it was not disputed by the defendants, the same can be taken for consideration. During the appeal, an Advocate Commissioner was appointed and he also filed his report along with plan.

13. Considering all the above as well as report, this Court of the considered opinion if the said relief is granted to the plaintiff, he can

construct the wall without any disturbance. In fact, the cause of action for the suit was when the 1st defendant disturbed the plaintiff to construct the retaining wall therefore, the finding of the Trial Court that the prayer of mandatory injunction was not necessary is not sustainable and liable to be set aside to that extent alone.

14. In view of the above, the plaintiff is entitled to the relief of decree, to construct the retaining wall in the southern boundary of the suit schedule property, in accordance with the resurvey plan and these points are answered accordingly.

Answer to point No.5

15. In view of the findings given in points no.1 to 4, the plaintiff is not entitled to any other relief.

In the result, the judgment and decree passed by the learned Principal District Munsif cum Judicial Magistrate, Eraniel made in O.S.No.88/2018, dated 29.04.2019 is set aside, to the extent of the dismissal of mandatory injunction for constructing the retaining wall on the southern boundary of the suit schedule property alone, as such the appeal is allowed to that extent with the cost.

Dictated to Steno typist, transcribed and computerized by her, corrected and pronounced by me in the open court, on this 17th day of June 2026.

**Sub Judge,
Eraniel.**

Appellant side Witness : Nil

Appellant side Documents : Nil

Respondents side Witness : Nil

Respondents side Documents : Nil

Court Document in Appeal Suit

Ex. C1 - 04.02.2026 - Commissioner Report and Plan

**Sub Judge,
Eraniel.**

Copy to:

The District Munsif Court,
Eraniel.

Sub Court,
Eraniel.
Fair/Draft Judgment
A.S.No.10/2022
Date: 17.06.2026