

IN THE COURT OF PRINCIPAL DISTRICT MUNSIF
AT KANCHIPURAM

PRESENT: Tmt.Fanny Rajan, B.A., B.L.,(Hons)
Principal District Munsif, Kanchipuram

On Wednesday, the 18th day of March 2026

O.S.No.85 of 2020

CNR. No.TNKP08-000144-2020

Mrs. Vasanthi

...Plaintiff

Versus

E. Santhanam

... Defendant

This suit has come up on 10.03.2026 for final hearing before me in the presence of M/s. K.Jagadeesan, P.Ezhilarasi, R.Soundarapandi, T. Gunaseelan advocates for the Plaintiff and M/s.P.Rajamanikkam, G.Bharani advocates for the Defendant, and upon hearing and perusing the connected material records and having stood over till this day for consideration, this court delivers the following:

JUDGMENT

1. This suit is filed seeking for granting permanent injunction against the defendants restraining him from in any way putting up any further construction over the common narasam marked as DEFG portion to pass such or other orders and for costs.

Concise Statement of the Plaintiff as per the Plaintiff:

2. The plaintiff has averred that originally the entire property belonged to one Mr. Murugan who was in possession as an absolute owner. After his death, his sons Pal Manickam, Sinthamani, Ekambaram orally divided the same by family arrangement in 1978. Accordingly, the front, middle and rear portion in A, B and C plot plan were allotted to Pal Manickam, Sinthamani and Ekambaram respectively. They were in possession of the A, B, C portions with backyards A1, B1, C1 respectively in the plot plan.

3. After the death of the said Mr. Pal Manickam, his A and A1 backyard in the plot plan came into the enjoyment and possession of the Plaintiff's husband Mr. P. Selvaraj as his only legal heir. Whiles, the Mr. Sinthamani B and B1 backyard portion, after his death devolved on his wife Kamakshi Ammal and Minor son Mahendran. Whiles, Mr. Ekambaram's C and C1 backyard portion devolved upon his son E. Santhanam i.e. the defendant herein after his demise.

4. Her husband during his lifetime, purchased the B and B1 backyard vacant site from Kamachi Ammal and her minor son through the Registered Sale Deed dated 02.05.1980. Her husband put up a RCC construction in A & B properties, obtained electricity connection and paying the property tax and electricity charges. Her husband executed a Registered Settlement Deed dated 07.01.2020

in her favour for the B and B1 property in the Plaintiff plan. Since she is in possession of the middle portion with backyard. The Joint Patta No. 781 is issued to the plaintiff, her adjacent owners viz., defendant and one Mahandran, with the present sub division S. No. 191/32.

5. The defendant being the owner of the C and C1 backyard portion. Her husband was bed ridden for 6 months and taking advantage in the last week of December, 2019, the defendant has started construction in the portion marked as A1 & B1 in the plaintiff plan and unlawfully put up a construction in the common narasam marked as DEFG in the plaintiff plan. Further, he tried to block the common narasam. When questioned, the defendant used abusive language and continued with the illegal construction in the common narasam. This is an encroachment and taking advantage of the plaintiff's situation and Covid, the defendant continued his unlawful and illegal construction.

6. Her husband died on 10.06.2020. The defendant is not a law abiding citizen. She and her family are afraid of their life because of the illegal threat and interference of the defendant by blocking the common narasam marked as DEFG portion in the plaintiff plan. Hence, this suit for permanent injunction regarding the unlawful construction in the common narasam portion DEFG.

Concise Statement of the defendant as per the Written statement :

7. The defendant has denied the allegations and stated that the suit is not sustainable when the plaintiff has not been able to enjoy the property. The Joint Patta 781 is in the name of the Plaintiff, the defendant's father's name and one Mahendran. The suit property is a Natham property and natham patta was issued on 28.07.1995. The Plaintiff's father in law Mr.Pal Manickkam and the defendant's father Mr.Ekamabaram are brothers. As her father in law died, the S.No.192-32 was issued in the name of the Plaintiff's husband and the defendant's father, based on possession. As per the patta sketch the length is 148 feet and breadth 23 feet, admeasuring south 5 mtrs, north 5.2 mtrs, west 46.5 mtrs and east 45.6 mtrs.

8. Without any written partition, the Plaintiff's husband was in possession of 50 feet in the front portion and remaining back portion was enjoyed by Mr.Ekamabaram. When the said Ekamabaram died, his legal heirs are the defendant, Rajeswari and Mercy. Whereas, the front portion approximately 50 feet was in the enjoyment of the Plaintiff's sister in law Mahi for 30 years. The remaining approximately 50 feet are in his possession. The Plaintiff's husband was living at the Adhidravidar Kudiiruppu for 30 years.

9. Even before 1940, his grandfather Murugan was residing in the suit property. He had 3 sons Mr.Palmanicakkam, Mr.Sinthamani and Mr.Ekambaram. They were all residing therein in separate portions without any formal partition. Whiles, due to financial needs, the wife of Mr.Sinthamani sold her residential portion to the Plaintiff's husband Mr.Selvaraj, but even then there was no formal partition. However, the sale in 1980 is not proper. Even assuming there is a sale, the name of one Mr.Mahendran is reflected in the patta and there is no clarity regarding the same.

10. The property belonging to Mr.Palmanicakkam and his son is 48 feet in length and thereafter it is the Ekambaram's property. As Mr.Palmanickkam and Mr.Sinthamani died in 1985 and 1978 respectively, the 1995 Natham Patta was issued in the name of Selvaraj and Ekambaram. They were in joint possession and no individual patta has been issued. The front portion 50 ½ feet is in the use of Mrs.Mahi the sister of Mr.Selvaraj. Thereafter, he constructed a building and in the remaining vacant space he planted Coconut, Plantain, Jackfruit, Tamarind and Teak trees.

11. There is no proper description of the 3 feet common narasam, it is not mentioned in the sale deed executed by Mrs.Kamatchi. The middle property of Mr.Sinthamani is not duly identified. The backportion of 46 feet is garden and

vacant. The house of Selvaraj's sister and the defendant is 50 ½ feet and 53 feet and the remaining is a garden.

12. The share of Selvaraj in the property is not proper. The settlement executed in the name of the Plaintiff alone is not proper as it has mentioned about 2 portions. The remaining is the ancestral property of Mr.Selvaraj and all the daughters of Selvaraj have right in it. The suit for injunction alone is not maintainable without the relief of declaration. The suit is bad for non joinder of parties. Hence, the suit has to be dismissed with costs.

Issues:-

13. On perusal of the plaint and written statement filed by the defendant, this Court framed the following issues on 28.11.2023.

(i) Whether the plaintiff is entitled for permanent injunction as prayed for?

(ii) What other relief the plaintiff is entitled?

Evidences:-

14. To prove the case of the Plaintiff, the Plaintiff has examined herself as PW1 and has marked Ex.A1 to Ex.A9 documents through her. On the side of the defendant, the advocate commissioner and Taluk Surveyor were examined as DW1, DW2 and has marked Ex.B1 to Ex.B3 on their side. Whiles, the Ex.C1 to C3 are marked as Court exhibits.

Discussion and Findings:

15. This Court considers the submissions of the Learned Counsel for the Plaintiff and Defendant, also perused the materials on record including the written arguments of the plaintiff.

16. **Case of the Plaintiff:** The learned counsel for the Plaintiff had contended that the Ex.A1 Sale Deed in favour of the Plaintiff's husband and Ex.A2 Settlement Deed in favour of the Plaintiff clearly substantiate the title of the Plaintiff. The Ex.A7 encumbrance certificate would also substantiate the conveyance of title. In the absence of any cloud over title, there is no question of seeking for declaration of title as per the Judgment in *Anathulla Sudhakar Vs. P.Buchi Reddy, (2008) 4 SCC 594*. The Ex.A3 Patta, Ex.A4 and Ex.A5 Tax receipts would establish the continuous possession.

17. The defendant had no right to encroach in the common narasam. The encroachment is clearly substantiated by the Ex.C1 to Ex.C3 Advocate Commissioner Report, sketch and surveyor report. The same is also substantiated by the DW1 Advocate Commissioner and DW2 Taluk Surveyor evidence. The encroachment prevents the Plaintiff from accessing the backyard portion and interfering with her right. Hence, she is entitled to the relief of permanent injunction. Apart from that the defendant had proceeded only with

the Patta and as per the dictum in *CMT Govindarajan Vs. S.Padmavathi 2014*, revenue records do not determine title. Hence, the suit has to be decreed.

18. Case of the Defendant: Per contra, the learned counsel for the defendant replied that the suit is filed only for permanent injunction. The suit property is a natham property. There is no clarity regarding the extent and title of the Plaintiff and settled possession in the suit property which is a natham land. There is a clear cloud over the title of the Plaintiff in the suit property, as the Natham Patta is a joint patta and there has been no partition so far as established by the DW2. The measurements and boundaries are not proper.

19. Even the DW1 advocate commissioner admits that the measurement of the alleged encroachment is not described. There is no clarity regarding the extent of property of the Plaintiff and the other co-owners. The possession of the Plaintiff in the suit property and the common pathway is not proved. Even as per the Ex.C1 to Ex.C3 it is clear that the common passage in question is vested with the government and separate survey number is allotted.

20. There is no proper description and proof of encroachment. There is cloud over title. The possession of the Plaintiff is contradicted by the presence of one Mr.Mahendran in the Ex.C3 joint patta. In the absence of clear proof of title and usage in the common passage nothing survives in this case. Also the relief

for removal of encroachment is not sought for. The suit has to be dismissed with costs.

21. Ocular and documentary evidence: This court finds that the PW1 being the Plaintiff has been examined. The Trial in this suit commenced on 18.11.2024 and therefore, this suit is governed under the Bharathiya Sakshya Adhiniyam (hereinafter referred to as BSA for sake of brevity) as per Section 170 (1) of the BSA.

22. The DW1 and DW2 are the advocate commissioner and Taluk Surveyor who conducted the inspection and filed Ex.C1 to Ex.C3 reports. This court finds that there is no material on record to question the admissibility of their evidence. Hence, the ocular evidence of PW1, DW1, DW2 are admissible in evidence.

23. This court finds that the Ex.A1 to Ex.A8, Ex.B2 are either produced in original or certified copies. This court finds that the Ex.A1 to Ex.A8, Ex.B2 are all admissible as primary or secondary evidence under Section 59 and 60 of the BSA.

24. Whileso, the Ex.A9, Ex.B1 and Ex.B3 are photographs produced. From the records, it noted that the said photographs have been produced with the CD and Certificate by the Plaintiff and Defendant. The said certificate annexed

with the photographs are not in compliance with the mandate under Section 63(4)(c) of the BSA. There is no details as required under Part A of the Section 63 certificate. Due to the lack of due details in the certificat as under Section 63 of the BSA, this court finds that the Ex.A9, Ex.B1 and Ex.B3 though admitted without any objections have failed to meet the required mandates under Section 63 of the BSA. Hence, the said exhibits are not admissible in evidence.

25. The Ex.C1 to Ex.C3 are the advocate commissioner report, plan and surveyor report filed in compliance with the order of inspection in I.A.No.4 of 2022. This court finds that the learned counsel for the defendant had contended that the details including measurement of the alleged encroachment and physical features are not mentioned. Hence, the advocate commissioner report is not reliable.

26. This court finds that the DW1 being the advocate commissioner and the DW2 surveyor have both been examined in chief and cross examination. The Ex.C1 to Ex.C3 are only to assist the court to identify the issue between parties and not to gather evidence. Hence, this court finds that there is no disparity in relying on the Ex.C1 to Ex.C3 as the same is within the scope of the warrant. Thus, the Ex.C1 to Ex.C3 are admissible in evidence as permissible under law.

27. Therefore, this court discusses the evidentiary value of PW1, DW1, DW2, Ex.A1 to Ex.A8, Ex.B2 herein below.

Issue No.1 : Permanent Injunction

28. **Admitted facts:** From the above case of the Plaintiff and defendant, this court finds that there is no dispute regarding the relationship between the parties. The factum of the suit property being a natham land is not in question. There is also no dispute on the fact that before the plaintiff and defendant, the property was occupied and settled by Mr.Murugan in 1940.

29. After his demise, the property came into the joint possession of his sons Mr.Pal Manickkam, Mr.Sinthamani and Mr. Ekambaram. Whiles, after the demise of the said persons, their shares were inherited by his son Mr.Selvaraj (the Plaintiff's husband), Mrs.Kamatchi and her children and the defendant respectively.

30. Whiles, after demise of the said Mr.Sinthamani, his wife on behalf of herself and her minor children executed the Ex.A1 Sale Deed regarding the share vested upon them from her husband in the suit property. Whiles, the Ex.A2 Settlement Deed executed by the Plaintiff's husband in her favour. As seen from Ex.A8 encumbrance certificate no adverse entry is reflected. The

Ex.B2 is the Natham patta issued on 30.09.1995 in the name of the Plaintiff's husband and the above mentioned Mr.Ekambaram i.e. the defendant's father. Though the execution is not in dispute regarding the Ex.A1 and Ex.A2, the dispute relates to the lack of partition, conveyance of title and the description of properties vested with the Plaintiff and the common pathway. In light of Section 53 of the BSA, the admitted facts alone need not be proved.

31. This court is of the considered view that irrespective of the high contest between the parties regarding the title in their respective portion of properties and lack of due partition, this suit is limited to the permanent injunction in respect of the common pathway. Therefore, the first aspect to be identified is and proved by the Plaintiff is the existence of the common pathway, the alleged encroachment and her entitlement, right in the same.

32. Description of property: As per the Plaintiff the schedule is *“In Kanchipuram District, Kanchipuram Registration District, Kanchipuram Taluk, Joint II SRO, Kanchipuram Town, Sevilimedu Village, In Dr.Ambedkar Street, in Gramanatham 5. No. 191 Part, in the front portion the site with building measuring East to West 21 feet including narasam; North to South 48 feet; total 1008 sq. ft. marked as A in the plaintiff plan and the vacant site on*

the backyard measuring East to West 21 feet inclusive of narasam; North to South 50 feet; total 1050 sq. ft. marked as A1 in the plaint plan (2058 sq. ft.) marked as A & A1 portion in the plaint plan.

In Kanchipuram District, Kanchipuram Registration District, Kanchipuram Taluk, Joint II SRO, Kanchipuram Town, Sevilimedu Village, in Dr. Ambedkar Street, in Gramanatham S. No. 191 Part, in the middle portion the site with building measuring East to West 21 feet including narasam; North to South 48 feet; total 1008 sq. ft. marked as B in the plaint plan and the vacant site on the backyard measuring East to West 21 feet inclusive of narasam; North to South 50 feet; total 1050 sq. ft. marked as B1 in the plaint plan (2058 sq. ft.) together with electric service connection No. 608-008-20, water service connection No. 823 and its deposits etc. with present sub division 191/32. Bearing Door No. 27/47, marked as B & B1 portion in the plaint plan. (Boundaries: South by Street; West by Ponrangan property; North by channel; East by Annakkili house;)

In both the portions, the common narasam measuring East to West 5 feet; North to South 147 feet marked as DEFG in the plaint plan in this unlawful construction made by the defendant”

33. This court finds that from the Ex.C1 report and Ex.C2 Sketch it is noted that the common pathway is mentioned as a government poramboke common pathway. From the Ex.C3 Surveyor report it is clear that the common pathway in question is subdivided and situated at S.No.191/33. The same is also reflected in the FMB sketch and Adangal annexed with Ex.C3.

34. From a thorough reading of the DW2 evidence, it is clear that the common narasam in dispute is already subdivided as common pathway and noted as S.No.191/33. It is clearly deposed by the DW2 that the said common pathway belongs to the Government and no individual patta is issued. The same is duly reflected in Ex.B2 Patta. As per the Ex.B2 natham patta there is no partition or subdivision in S.No.191/32. There is no mention about any common pathway therein.

35. Further, the DW2 in her evidence specifically stated that

“எனது அறிக்கையில் நான் குறிப்பிட்டுள்ள ஆக்கிரமிப்பு பகுதி என்பது ஆணையரின் உத்தரவுப்படி சர்வே எண் 191/33யை அளந்தோம் கிராம கணக்குப்படி அது பொது வழி ஆகும். அந்த பொது வழியானது 14.6 மீட்டர் அளவுக்கு பொது வழியாகவும் அதற்கு வட புறத்தில் ஆக்கிரமிப்பு உள்ளதாகவும் நான் குறிப்பிட்டுள்ளேன். எனது அறிக்கையில் நான் குறிப்பிட்டுள்ளது மேற்படி விவரத்தை தான் ஆக்கிரமிப்பு பகுதியின் நீள, அகலத்தை எனது அறிக்கையில் நான் குறிப்பிட்டு சொல்லவில்லை.”.

36. However, the Plaintiff had claimed that there is a common pathway in DEFG portion in Ex.A7 rough sketch. In fact there is a clear mention about a common narasam in the S.No.191 at Ex.A1 Sale Deed and S.No.191/32 at Ex.A2 Settlement Deed. The Ex.A3 Patta relied by the Plaintiff does not include any sketch. On the other hand the Ex.B2 Patta relied by the Defendant has the sketch and extent of the entire S.No.191/32 and does not reveal any common pathway.

37. This court finds that as admitted by the PW1 in her cross examination, the property owned by her and the Defendant are located in S.No.191/32. She also admits that the same is not partitioned or sub divided in her cross examination. There is no evidence to show that the suit property in S.No.191/32 has been duly partitioned between the legal heirs and the exact share in the individual possession of each individual and the common narasam in S.No.191/32. Though the Plaintiff claims that the suit property is already partitioned, the alleged family arrangement or oral partition is not duly established, by adducing necessary material facts.

38. The portion of property as narrated in the Ex.A7 Rough Sketch and the extent of property allotted to the share of Plaintiff and the defendant in the suit

property is not described duly and pleaded as mandated under Order VI Rule 2 CPC and proved by the Plaintiff. This court finds that there is no single evidence to indicate and prove if there is anyother common pathway other than the S.No.191/33 mentioned hereinabove.

39. The Ex.A1 Sale Deed, the Ex.A2 Settlement Deed and the Ex.A8 Encumbrance certificate does not assist the Plaintiff in proving the existence of any common pathway inside the S.No.191/32. Further, the Ex.A3 Patta, Ex.A4, Ex.A5 tax receipts, Ex.A6 Electricity card do not assist in proving and identifying the common pathway in S.No.191/32.

40. This courts considers that Order VII Rule 3 CPC mandates that the Plaintiff ought to clearly plead the description of the property with the boundaries and numbers. It is for the Plaintiff to clearly identify the common narasam with linear measurements and boundaries to identify the same. In fact despite the defendant raising dispute regarding the description, the Plaintiff had failed to duly identify the alleged common pathway in S.No.191/32. The Plaintiff ought to have clearly described the entire common narasam. Only when the entire common narasam in S.No.191/32 is clearly identified, this

court would be in position to proceed with and identify the dispute regarding encroachment. It is also noted that the Plaintiff has not described his property and the portion of common narasam therein.

41. It is true that the existence of common narasam and ingress and egress is not disputed but the same is not identified in S.No.191/32 as described by the Plaintiff in her suit schedule. From the Ex.C1 to Ex.C3 and DW2 evidence it is clear that the common pathway for S.No.191/32 is adjacent to the S.No.191/33. This court finds that the Plaintiff had failed to clearly identify the East to West 5 feet and North to South 147 feet marked as DEFG in the Ex.A7 Rough Sketch in S.No.191/32. This court finds that the the Ex.A7 rough sketch not being filed to scale is not assisting in identifying the common narasam. Therefore, this court concludes that the suit is bad for lack of clear description of the common narasam as mandated under Order VII Rule 3 CPC.

42. Encroachment in the common narasam: It is the contention of the Plaintiff that the defendant had encroached and constructed building in the common narasam. The DW2 in her cross examination stated that

“ நான் அளக்க சென்ற போது சர்வே எண் 191/32 ஆனது பட்டா இடம் 191/33 ஆனது பொது வழி. அந்த பொதுவழியில் ஒரு பகுதி ஆக்கிரமிப்பு செய்யப்பட்டிருந்தது. ஆக்கிரமிப்பு

செய்யப்பட்டிருந்த பகுதிக்கு பின்புறத்தில் காலி இடம் இருந்தது. ஆக்கிரமிப்பு செய்யப்பட்டிருந்த விவரத்தை எனது அறிக்கையில் குறிப்பிட்டுள்ளேன் அளவீடுகள் சொல்லப்படவில்லை.”

43. This court finds that the Ex.C1 to Ex.C3 Advocate Commissioner report, Report and Surveyor Report and the ocular evidence of the DW1 Advocate Commissioner and DW2 Taluk Surveyor had duly established about the alleged encroachment in S.No.191/33. Though the extent is not revealed, this substantiates the encroachment. However, the said encroachment relates to the common narasam in S.No.191/33 and not in S.No.191/32. It is pertinent to note that as already held hereinabove the common narasam is not described for due identification by the Plaintiff in her schedule. Whiles, the alleged encroached portion is also not described in the suit in accordance with Order VII Rule 3 CPC to identify the same.

44. Therefore, there is no clarity even to the Plaintiff regarding the alleged encroachment in the suit schedule property. There is no material evidence produced in this case to identify the alleged portion of encroachment. Thus, this court finds that the Plaintiff had failed to prove any encroachment in the common narasam by the Defendant, within S.No. 191/32.

45. **Cloud over title:** This court takes note of the law laid down by the Hon'ble Apex Court in *Anathula Sudhakar Vs. P.Buchi Reddy (Dead) by Lrs. & Ors, 2009 2 LW 546* as relied by the learned counsel for the Plaintiff. Wherein, it has been clearly differentiated the circumstances in which a suit for bare injunction would lie and where there is a cloud over title, declaratory relief has to be sought for.

46. Further, this court finds that the Plaintiff in her pleadings mentions as if the suit property in S.No.191 was first occupied and in the possession of Mr.Murugan. On his demise it devolved upon his sons, who partitioned the same in 1978 as per family arrangement. However, no single evidence is let to proof the said family arrangement. The date, mode and manner of partition is not pleaded as mandated under Order VI Rule 2 CPC.

47. Further, the PW1 in her cross examination admits that

“தாவா சொத்து தற்போது வரை பிரிபடாமல் உள்ளது. 1978ல் பாகம் பிரித்ததாக சொல்லியுள்ளேன் அது யார் யாருக்கு இடையே நடந்தது. அதற்கான ஆவணம் உண்டா என்றால் பாகம் பிரிக்கவில்லை. பிரதிவாதி எவ்வளவு இடத்தில் வீடு கட்டியுள்ளார். அவருக்கு இவ்வளவு இடம் சொந்தமானது என்பதை குறிப்பிட்டு வழக்கில் சொல்லியுள்ளேனா என்றால் எவ்வளவு இடம் என்று எனக்கு தெரியாது. நாங்கள் பின்பக்கம் செல்வதற்கு இடம் எதுவும் கிடையாது.”

48. Thus, there is no clarity regarding the partition. In fact the Ex.A3 Patta is a joint patta in the name of the Plaintiff, the defendant and one Mr.Mahendran. Whereas, the Ex.B2 Patta is in the name of the Plaintiff's husband and the defendant's father only. Even as per the DW2 evidence and the Adangal in Ex.C3, the name of the Plaintiff and defendant is found alongwith one Mahendran.

49. It is true that as held in *CMT Govindarajan Vs. S.Padmavathi 2014*, revenue records do not prove title. It for the plaintiff and defendant to establish their title through appropriate evidence as mandated under Section 91 or 92 of the Indian Evidence Act. However, there is no document to show the conveyance of title and partition as explained in the plaint Ex.A7 rough sketch and suit schedule.

50. Also the details of partition as mentioned in the Ex.A7 rough sketch is not supported by the Ex.A1 Sale Deed, Ex.A2 Settlement Deed, Ex.A8 Encumbrance Certificate or the possessory documents like Ex.A3 Patta, Ex.A4, Ex.A5 Receipts and Ex.A6 Electricity card. In light of the above discussions, this court is of the considered view that in all preponderance of probability the Plaintiff has failed to established the alleged partition, her title and conveyance in the A, B property and A1, B1 Backyard portion as claimed. Further, despite

the disparity in the title conveyance and cloud over the title in the Plaintiff's property as mentioned in the schedule, no relief has been sought by the Plaintiff regarding the partition and declaration of title.

51. This suit is filed only for permanent injunction. In light of the findings hereinabove, there is cloud over the partition and allotment of property and conveyance of title as per the schedule claimed. The same involves complicated question of law and facts and cannot be decided in this suit for injunction simpliciter in the absence of the prayer for declaration or partition.

52. This court takes note of the judgment in *Ananthammal (died) and others Vs. M.Ramakrishnan and others, 2018 (1) CTC 24* and finds that the Plaintiff has to stand on his own legs to discharge in burden of proof and not on the weakness of the Defendants case. This court considers that it is for the Plaintiff to firstly ascertain and identify the the common pathway. Also the said common backyard portion to which the Plaintiff is claiming access is not established.

53. Under such circumstance, this court is unable to identify the common pathway as per the suit schedule, the common back yard portion, the purpose of access through the common narasam whether exists or not. Hence, when the Plaintiff is unable to discharge her initial burden regarding due identification of the common pathway or common backyard portion, the need to access the

common backyard portion, lack of relief regarding partition/declaration and removal of encroachment.

54. Suppression of material fact: This court takes judicial note of the judgment in *K.D. Sharma v. Steel Authority of India Limited, (2008) 12 SCC 481*, wherein it was held thus:

“ 34. The jurisdiction of the Supreme Court under Article 32 and of the High Court under Article 226 of the Constitution is extraordinary, equitable and discretionary. Prerogative writs mentioned therein are issued for doing substantial justice. It is, therefore, of utmost necessity that the petitioner approaching the writ court must come with clean hands, put forward all the facts before the court without concealing or suppressing anything and seek an appropriate relief. If there is no candid disclosure of relevant and material facts or the petitioner is guilty of misleading the court, his petition may be dismissed at the threshold without considering the merits of the claim.”

55. This court taking into consideration the ratio decidendi in the said judgment and considers if the discretionary power of permanent injunction under Section 38 of the Specific Relief Act can be granted to the Plaintiff. It is true that the common pathway in S.No.191/33 is identified and the encroachment therein is established.

56. However, no litigant can play 'hide and seek' with the courts or adopt 'pick and choose'. True facts ought to be disclosed as the Court knows law, but not facts. One, who does not come with candid facts and clean breast cannot hold a decree of the court with soiled hands. Suppression or concealment of material facts is impermissible to a litigant or even as a technique of advocacy.

57. The DW2 in her cross examination stated that

“சர்வே எண் 191/33 என்பதை கிராம கணக்கின் பொது வழியாக இருந்தாலும் கேட் போட்டு பட்டாதாரர்கள் தான் தங்களுக்கான வழியாக பயன்படுத்தி வந்தார்கள். மேற்படி பொது வழி பாதையில் ஆக்கிரமிப்பு உள்ளது.” “சர்வே எண் 191/33 ஆனதற்கு பட்டா யார் பெயரிலும் இல்லை. அது பொது வழியாகும். அது அரசுக்கு சொந்தமான இடம் ஆகும்.”

58. In this case as found hereinabove, the common pathway in question is not within S.No.191/32 but in S.No.191/33. As clearly deposed by the DW2, a compound wall has been raised annexing the S.No.191/33 which is a government common road. However, having unlawfully annexed the same and claiming individual right in the same as a part of their S.No.191/32 is high condemnable.

59. This court finds that the Plaintiff is only seeking for permanent injunction not to construct in the common pathway. It is pertinent to note that as admitted

by the Plaintiff in her pleadings, the construction is already started and sought to stop further construction. As the Plaintiff in her pleadings has specifically admitted the commencement of the construction in the alleged encroachment portion, she was duty bound under Order II Rule 1 CPC to seek for all the necessary relief arising out of the same cause of action. However, in this case, the Plaintiff had failed to seek for the removal of the encroachment and the recovery of possession in the said encroached common pathway.

60. It is evidenced that the Plaintiff knowingly suppressed the material fact about the actual classification and description of the common pathway. Further, though claimed that the partition happened in 1978, she admits that there is no partition in the PW1 cross examination. Further, the construction and encroachment was well within the knowledge of the Plaintiff but she sought only for permanent injunction against further construction. Thus, this court finds that the plaintiff had knowingly suppressed material facts regarding the actual status of the construction and alleged encroachment and pleaded wrong facts with an intention to mislead this court about the partition.

61. Thus from the conduct of the Plaintiff it is clear that she had failed to approach this court with clean hands and attempted to mislead this court. Apart

from that the Plaintiff had failed to discharge the onus of proof regarding the existence of common pathway in S.No.191/32 and her right over the common narasam, also failed to seek all the necessary reliefs as mandated under Order II Rule 1 CPC for the same cause of action, or sought leave regarding the same under order II Rule 2 CPC

62. As per the well established principle of law there can be no injunction granted against a co-owner except under extraordinary circumstances. In this case, the dispute being the common narasam, this court finds that unless the Plaintiff proves an extraordinary circumstance demanding protection from the co-owner, there can be no permanent injunction in respect of the common narasam which both are entitled to use.

63. Thus, this court considers that the conduct of the Plaintiff suppressing material facts and misleading the court, lack of proof regarding existence of common pathway in S.No.191/32 and failure to seek necessary reliefs, does not warrant the exercise of the discretionary power in her favour against the co-owner and ought to be refused under Section 41(i) of the Specific Relief

Act. Hence, this court concludes that the Plaintiff had not discharged his burden of proof regarding the relief for permanent injunction. Now the issue No.1 is answered accordingly against of the Plaintiff.

ISSUE NO.2: Other Relief

64. As the Issue No.1 has been answered against the Plaintiff and this Court considers that both parties are not entitled to any other relief.

65. Considering the nature of the relief sought for, the dispute between the parties, relationship between them, this court considers that both the parties shall bear their own costs. Thus, Issue No.2 is answered accordingly.

RESULT:

In the result, this suit is dismissed. No costs.

Dictated to the steno typist partly, who directly typed the same in her Computer and partly typed by me, corrected and pronounced by me in open court, this the 18th day March 2026.

**PRINCIPAL DISTRICT MUNSIF
KANCHEEPURAM.**

Plaintiff's side Witness:

PW1 – Vasanthi (Plaintiff)

Plaintiff's side Exhibits:

Ex.A1	Registered Sale deed dated 02. 05.1980	Original
Ex.A2	Registered Settlement deed dated 07.01.2020	Certified copy
Ex.A3	Patta No. 781 dated 07.02.2020	Original
Ex.A4	Property tax receipt in the year 1997-1998	Original
Ex.A5	Property tax receipt	Original
Ex.A6	TNEB card	Original
Ex.A7	Rough sketch	Original
Ex.A8	Encumbrance certificate (01.02.1975 to 02.01.2020)	Online copy
Ex.A9	Photo with CD	Original

Defendant's Side Witness :

DW1 – Elango (Defendant)

DW2 – Santhi (3rd party)

Defendant's Side Exhibits:

Ex.B1	Photo	Original
Ex.B2	Patta dated 30.09.1995	Original
Ex.B3	Photo	Original

Court's Side Witnesses: NIL

Court's Side Exhibits:

Ex.C1	Advocate Commissioner Report	Original
Ex.C2	Sketch	Original
Ex.C3	Surveyor Report	Original

**PRINCIPAL DISTRICT MUNSIF
KANCHEEPURAM.**