

IN THE COURT OF THE SUBORDINATE JUDGE, MELUR.

Present: Tmt. M. SAMUNDEESWARI PRABHA, M.A., M.L.,

Friday, the 27th day of March 2026

I.A.No.5/2023

in

O.S.No.185/2023

Melur Al Ameen Urudu Tamil Muslim Elementary

Padasalai Nirvaka Committee

(Regn.Old No.55/65 New No.152/1985, at

Mankatti Teppakulam Street, Melur Town,

Madurai District.

Represented by its present President

Thiru.M.O.Shahul Hameed

..... Petitioner/Plaintiff

// Vs //

Sri Kannika Parameswari Chathram (Regd)

at Trichy Madurai Main Road,

Opposite to Ganesh Cloth Stores,

Melur Town, Madurai District,

Represented by its present secretary

Thiru.V.Venkata Balasubramanian @ Prakash

..... Respondent/ Defendant

This petition is coming up for final hearing before this court on 23.03.2026 in the presence of Advocate.Thiru.V.Subramanian, Advocate for the Petitioner and Advocate.Thiru.K.Periyasamy, Advocate for the respondent and upon hearing the enquiry on both sides and on perusal of the records and having stood over for consideration till this day, this court delivers the following:-

ORDERS

This petition has been filed Under Order 39 Rule 1 & 2 and Section 92 and Section 151 of CPC pass an order of temporary mandatory injunction directing the respondent / defendant to restore the drainage channel in C schedule property at his own cost to its original stage on the date of suit and on the date of ad-interim injunction order in L.A.No.3/2023 was passed by this court and on his failure to permit the Petitioner / Plaintiff to have it done with the aid of this court and with

police protection and recover the cost of restoration from the respondent / defendant.

1. Brief averments of the petition :-

(I) The present President of the Petitioner / Plaintiff's Nirvaka Committee. The present suit is filed by the Petitioner / Plaintiff through the petitioner for declaration of the easement rights of the petitioner for discharging the rainy waters and the waste, dirty and filthy waters from the Plaintiff A schedule property into the drainage Vaikal in the Plaintiff C schedule property which is part of Plaintiff B schedule property and for permanent injunction restraining the defendant from interfering with the above said right of the plaintiff/Petitioner. Petitioner / Plaintiff's is the owner of the Plaintiff A schedule property. C schedule property is part of B schedule which belongs to the respondent/Defendant.

(ii) The Petitioner / Plaintiff is under law has acquired a right of Easement for the Plaintiff A schedule property for the purposes mentioned in the plaint over the drainage in the Plaintiff C schedule which is part of B schedule property. The above said right of Easement was acquired by the petitioner by prescription under section 15 of the Indian Easement Act and also by presumed grant under the said section. The

said Easement right is exercised by the Petitioner Plaintiff as of right and openly, peacefully continuously and without any interruption and to the knowledge of the respondent Chathram and its previous and present office bearers who did not raise any objection. Under such circumstances the present office bearers of the defendant Chathram are estopped under law for challenging the above said right of the Petitioner/Plaintiff.

(iii) The Melur Al Ameen Urudhu Tamil Elementary school was initially started in the premises belonging to the Melur Periya Pallivasal in the year of 1965. Subsequently on getting the Hiba in the year 1978 the plaintiff had shifted the said school to the plaint A schedule property. Subsequently in the plaint A schedule property Al Ameen Urudhu Tamil High School and English Medium High School were started. The Al Ameen Urudhu Tamil Elementary School and High School are Minority Institution with Government Aid. The English Medium High School administered by self finance. The said schools have earned good reputation in and around of Melur and showing good results. There are nearly 1526 students studying in the said school.

(iv) The present secretary of the Respondent / Defendent Chatham and his men without any reasons were threatening from 13.07.2023 and on wards to close the mouth of the drainage vaikal in C schedule and prevent the waste, dirty, Filthy and rain water from A schedule to pass through said drainage vaikkal and there by interfere with petitioners legitimate and legal right of Easement for the purposes mentioned in the plaint for the A schedule property over the plaint C schedule property. If the respondent's present secretary and his men carry out their threats into action the property in A schedule will be greatly damaged and the life and health of the students, staffs and other Assistance working in the school will be in danger, which can not be compensated with irreparable loss. This court having been satisfied with the prima-facie case and the balance of convenience in his favour granted an ex-parte order of ad-interim injunction in respect of the plaint C Schedule property and also allowed the commission petition filed by the petitioner in I.A.No.2/2023.

(v) The Commissioner at the petitioner request on 19.07.2023 made a preliminary inspection of the suit properties on 22.07.2023 in the presence of both parties and after having given prior notice to the

parties and submitted his preliminary commissioner report on 01.08.2023. The respondent after having received the notice and the interim injunction order passed by this court in I.A.No.3/2023 on 20.07.2023 and before the date of inspection by the commissioner had completely, flagrantly and illegally and disobeyed and violated the ad-interim injunction passed by this court and on 20.07.2023 and 21.07.2023 had closed the drainage channel in C schedule property with cut stone and other dirty used and waste materials and there by interfered with the easement right of the petitioner claimed in the suit as well as in complete disobedience of the order passed by this court in I.A.No.3/2023 on 17.07.2023 and also law and order.

(vi) In the above circumstances and to meet the ends of justice and to maintain the original status-Quo of the drainage channel in C schedule in its original position on the date of suit, a temporary mandatory injunction is to be granted in favour of the petitioner as against the respondent for defendant directing the respondent to restore the drainage channel in C schedule property to its original condition at his cost with in the particular time to be fixed by the court. Failing which permitting the petitioner to have it done with the aid of the court

and with police protection and recover the cost of the restoration of the drainage channel in C schedule from the Respondent / defendant. If such an order of temporary mandatory injunction is not passed in favour of the petitioner / plaintiff the health and safety to the life of the school children, teachers, staffs and other officials of the school and servants will be greatly impaired and there would be serious damage and injury to the school premises by the commission of illegal acts and in disobedience of the interim injunction order passed by this court on 17.07.2023 committed by the respondent.

(vii) The status-Quo of the plaint C schedule property on the date of the suit and when ad-interim injunction order was passed has to be maintained. The illegal acts committed by the respondent and in disobeying the order of the ad-interim injunction passed in I.A.No.3/2023 by closing the drainage channel in C schedule property can not be compensated with adequate damages or cost. It is due to the heavy rain that took place on 07.08.2023 and 08.08.2023 and on 12.08.2023 the rain water had accumulated in the school premises because of the closure of the drainage channel by the respondent as a result the petitioner have to engaged the labour services for cleaning of

the stagnated water and has to spend a huge amount for it. Hence this petition has to be allowed.

2. Brief averments of the counter affidavit filed by the respondent/defendant :-

(2.1) The respondent of the secretary of Sri Kannika Parameswari Chathram and the defendant in the above main suit. The petitioner deny all the allegations stated in the affidavit filed by the petitioner in support of the contempt temporary mandatory injunction application and the petitioner alone is put to strict proof of those allegations. It is true that the Petitioner has filed the main suit for the reliefs of declaration of Easement rights for discharging the rainy waters and the waste dirty and filthy waters from the A Schedule Property into the alleged drainage vaikal in the "C" Schedule Property which is part of "B" Schedule property and for permanent injunction restraining the respondent from interfering with the alleged right of the Petitioner; but the Petitioner is not entitled to the said relief against the respondent in respect of the temple property of the Respondent. The allegation that the "C" Schedule Property is the part of the "B" Schedule Property is incorrect, false and is not admitted.

(2.2) In that connection the respondent submit that,

(i) no such "C" Schedule Property is existing in the field of the Respondent and the same is only imaginarily invented by the Petitioner for the purpose of the case.

(ii) no such drainage channel is existing on the south - west of the Respondent's property comprised in T.S.No.6 and on the South of the Respondent's property comprised in T.S.No.9.

(iii) no such drainage channel is existing in the Respondent's property to a length of East West 192 feet North - South 3 feet with a depth of 2 feet and the alleged drainage channel is imaginarily invented by the Petitioner and wrongly described in the "B" and "C" schedule properties and the said insertion is meaningless, baseless and fraudulent according to the will and pleasure, whim and fancy of the Petitioner.

iv) the North-South municipality drainage runs on the east of the Respondent's property and no drainage channel is joined from the Respondent's property.

(v) the Petitioner's drainage water flows through the property of Subbaiahpillai Pettai land and joining in the North-South Municipality Drainage Channel.

(2.3) Infront of the "A" Schedule Property of the Petitioner Melur Municipality drainage channel runs North to South in the Hanumarkovil Street Mankatti Theppakulam Street and the said channel is having 2 feet breadth and 3 feet depth and the same is comfortable and convenient to the Petitioner. At no point of time the Petitioner's filthy water flow through the Respondent's property and the same can be substantiated from the letter of the Petitioner dated 10.07.2017 addressed to the respondent by requesting permission to flow the rain water and the same was refused by the respondent.

(2.4) It is the well settled legal position as, "the Petitioner has no legal right to discharge filthy water in the neighbour's land and commit nuisance". The Present Secretary of the Respondent Chathram backed by some people are threatening to block the mouth of the plaint "C" schedule drainage and prevent the free flow of the rain water and other waste dirty and filthy waters being drained from the "A" schedule into "C" schedule on and from 13.07.2023 are meaningless, baseless and fraudulent and imaginary allegations invented for the purpose of filing this suit. When there is no drainage channel in the Respondent's

property and at no point of time the Petitioner drained any water through the Respondent's property and there was no occasion arose to threaten the Petitioner. On the other hand the balance of convenience is only infavour of the Respondent Chatram.

(2.5) In that connection the respondent submit that,

(i) as stated supra, no such "C" Schedule drainage channel is existing in the field of the Respondent Chathram and the respondent have never closed the alleged drainage channel.

(ii) the alleged cut stone compound wall was constructed nearly to an extent of 200 feet around the property of the Respondent Chathram even prior to 8 months of order of ad-interim Injunction dated 17.07.2023.

(iii) our Honourable Apex Court rendered several decisions as draining filthy, dirty water in to the neighbour's land is not the right of easement and the same is committing nuisance.

(iv) The respondent have never disobeyed the order of ad-interim injunction dated 17.07.2023 passed by this court.

(v) The respondent submit that such a cut stone compound wall cannot be constructed within 3 days from receiving the Injunction order on 18.07.2023 and the inspection made by the Commissioner on 22.07.2023

and constructing such cut stone compound wall is impossible within 3 days.

(vi) The respondent have never disobeyed the order of ad-interim injunction dated 17.07.2023 passed by this court and hence the respondent need not be detained in Civil Prison and the property of the Respondent Chathram need not be attached.

(vii) When the Petitioner has no legal right over the Respondent Chathram's temple property the Petitioner is not entitled to any reliefs prayed in the suit and in the Interlocutory applications when more particularly when the Petitioner's letter dated 10.07.2017 reveals the truth.

(2.6) While the facts are so, the allegations that to meet the ends of justice and to maintain the original status quo of the drainage channel in "C" Schedule in its original position on the date of suit a temporary mandatory injunction is to be granted infavour of the Petitioner as against the Respondent/Defendant directing the Respondent to restore the drainage channel in C schedule property to its original condition at his cost within the particular time to be fixed by the court and failing which permitting the Petitioner to have it done with the aid of the court

and with Police Protection and recover the costs of the Restoration of drainage channel in "C" Schedule from the Respondent /Defendant are meaningless and fraudulent and are not admitted. When the Petitioner is not entitled to the suit reliefs, the Interim Injunction Application and the contempt petition, Temporary mandatory Injunction petition are all not maintainable under law and on facts and has to be dismissed summarily. Hence this petition has to be dismissed with costs.

3. The point for consideration aroused is that:-

Whether the petition has to be allowed or not ?

4.Point :-

4.1 Both sides heard. Records perused. It is found that the suit has been filed for declaration of the easementary right for discharging the rain water, waste, dirty and filthy water from 'A' schedule property into the drainage through 'C' schedule property. This petition has been filed for ad-interim mandatory injunction to restore the water channel for drainage through 'C' schedule property.

4.2 The petitioner/plaintiff is school established in the year 1965 and the plaintiff society was registered on 08.06.1965. The school property is in T.S.No.5. The Kanniga Parameswari Temple is situated in

T.S.No.6 and the Kanniga Parameswari Chatram is situated in T.S.No.9. Pending litigation the Advocate Commissioner was appointed to inspect the suit property and to file a report and plan. In the interim report, Advocate Commissioner has mentioned about the north - south drainage channel running on the eastern portion and there was a rainwater drainage hole for free flow of water was seen on the east - west wall on its corner portion. He also mentioned about the construction work in "ELMN" region in his interim report. Where in the final report he didn't mention about the rain water out let hole in the east - west wall region. Hence it is found that there was a construction after the Advocate Commissioner interim report was filed.

4.3 Anyway, there is an ad-interim injunction order granted by this court. The Learned counsel for the petitioner argued that the drainage of sewage water was blocked by the respondent pending litigation.

4.4 On the other hand, the Learned counsel for the respondent cited the case law reported in (AIR 1967 All 41) *Bankey Lal Vs Kishan Lal and another* which held that no one can acquire a prescription right to commit nuisance on another's land. Throwing filth on the another's land is not covered under easementary right acquired by prescription.

4.5 Hence considering the case records and arguments made on both sides, this court finds that the letter dated 10.07.2017 gave by the plaintiff/petitioner to the respondent/defendant seeking permission to drain the rainwater by fixing the pipes on their own expenses. Hence the petitioner/plaintiff themselves seeking the permission for the drainage of rainwater is seen from the above letter.

4.6 It is evident that there was a rainwater drainage hole on the east – west wall on it's corner in the 'C' schedule property in T.S.No.9 which is the property of the respondent/defendant. In the subsequent report of the advocate commissioner, the above hole for the drainage of rainwater is not noted or found in that region. Hence there is a necessity on the part of the plaintiff/petitioner which is a school established under the society in 1965 and for the sake of drainage of rainwater the hole was made for the flow of rainwater from preventing the stagnation. Hence in order to drain the rainwater alone, the respondents are hereby directed to refix the free flow of rainwater around the compound wall in the 'C' schedule property is necessary. Hence to that extent for the drainage of rainwater, the blockage made on the east – west wall corner

in 'C' schedule property necessary channel to be refixed as before within a period of 1 month.

5. Result:-

In the result, this petition is partly allowed. No costs.

Written to the Steno Typist by me, and typed by her directly, corrected and pronounced by me in open court, this the 27th day of March 2026.

**Sub Judge,
Melur.**

BOTH SIDES OF DOCUMENTS AND WITNESSES:- NIL

**Sub Judge,
Melur.**

Draft/Fair Order
in
IA.No.5/2023
in
O.S.No.185/2023
Dt : 27.03.2026
Sub Court, Melur