

IN THE COURT OF THE SUBORDINATE JUDGE, NAGAPATTINAM.

Present: Tmt. S. Indragandhi, M.L.,
Subordinate Judge, Nagapattinam.

Monday, the 13th day of July 2026

CNR:NO.TNNGO3-000744-2024

Appeal Suit No. 24 of 2025

Abdul Hameed	.. Appellant/Defendant
..Vs..	
Alimuthu	.. Respondents/ Plaintiffs

On appeal from the decree and Judgment of the District Munsif Court,
Nagapattinam in O.S.No.86/2016, dated : 27.08.2024

Alimuthu	Plaintiff
..Vs..	
Abdul Hameed	Defendant

This appeal coming before me for final hearing on 02.07.2026 in the presence of Mr. S.Raman counsel appearing for the appellant and of Mr. R.Balaji counsel appearing for the respondent, upon hearing the arguments of both sides, upon perusal of all connected material records and having stood over for consideration till this date, this court, pronounced the following

// JUDGEMENT //

I. This appeal has been filed by the appellant/plaintiff against the judgment and

decree passed by the learned District Munsif Court, Nagapattinam in O.S.86/2016 dated 27.08.2024 which was filed for relief of permanent injunction with respect to the suit 1st item property and mandatory injunction to remove the encroachment made by the defendant in the 2nd item suit property and for cost of the suit.

II. The case of the plaintiffs:-

The suit property to an extent of 0.38 1/3 cents situated in Survey No.105/15B1/2, Kallar Village, North Poikainallur, Nagapattinam (hereinafter referred to as suit 1st scheduled property) was purchased by the plaintiff on 08.10.1982 vide sale deed document No.105/1B1/1982 registered before SRO, Nagapattinam. The suit property to an extent of 4.50 Ares in Survey No.105/15B1/6 (hereinafter referred to as suit 2nd scheduled property) was in continuous possession of the plaintiff based on which the Revenue Tahsildar had issued a patta with regard to the above said property. The defendant's property is situated to the Southern side of the suit 1st schedule property and to the west of the suit 2nd schedule property. On 10.03.2016, the defendant had encroached an extent of 6 feet (east to west) X 20 feet (north to south) in suit 2nd schedule property and had made new construction despite objections from the plaintiff. The 2nd schedule property is the way of access to the 1st schedule property and due to the encroachment by the defendant, the access to the southern side entrance of the old roof house in the 1st schedule property is restrained and blocked. On 30.03.2016 the defendant had removed the southern side

fence and old compound wall in the 1st schedule property. Therefore the plaintiff had come forward with a suit for permanent injunction with respect to the suit 1st schedule property and mandatory injunction with respect to the suit 2nd schedule property to remove the encroachments made by the defendant. Hence this suit.

III. The case of the Defendant:-

The plaintiff had only encroached the portion in Survey No.15B/3 belonging to the defendant and that the defendant and that the defendant had not tried to remove the southern side fence of the 1st schedule property and his father Jaleel Badshah had purchased an extent of 4 Ares in Survey No.105/15B13 on 23.07.1997 and had constructed a house in the year 1998. On 08.05.2009, his father had transferred the above saide property to him vide oral hibbat and subsequently had notarised the written hibbat on 12.05.2009 and he had altered the front portion of the house and said alteration had taken place in the existing building and the 2nd schedule property is a road where heavy vehicles are passing by and the plaintiff cannot claim the same as an independent right. Hence this suit is to be dismissed.

IV. The following issues were framed for trial by the trial court:

1. Whether the plaintiff is entitled for the relief of permanent injunction as prayed for?
2. Whether the plaintiff is entitled for the relief of mandatory

injunction as prayed for?

3. Whether other relief of both side are entitled?

V. The findings of the trial court

1. On the analysis of oral and documentary evidences, The trial court had allowed the suit, aggrieved against which the defendant had preferred this appeal. The trial court had allowed the suit on the point that the plaintiff had proved the title and ownership of the suit properties.

2. The parties are referred according to their litigative status before the lower court for the purpose of convenience.

VI. The learned counsel for the appellants raised the following grounds for appeal

The judgment and decree of the court below are contrary to law, facts and evidence of the case. The Lower court miserably failed to note the pleadings in the case and has rendered the judgment contrary to pleadings and to failed apply the well settled principles of natural justice, fair play and good conscience while deciding the suit. The lower court without advertng to the legal issues involved in the suit has simply failed by scrutinizing the facts which are immaterial for deciding the suit claim. The lower court failed to appreciate the pleadings of the respective parties towards the suit claim and has miserably failed to judge the cause on the admitted, proven and produced oral and documentary evidence in the case. The lower court failed to appreciate the scope of the suit and travelled on

extraneous matters so as to reach a wrong conclusion and to decree the suit on legally untenable grounds. The approach of the lower court has caused a miscarriage of justice since the same travelled beyond the scope of the pleadings and evidence in this case. The lower court failed to appreciate that the admitted fact need not be proved is the basic principle of law. The lower court failed to frame necessary issues on the basis of the pleadings. The court below has failed to appreciate that in respect of claim relating to the 1st item of the suit property is purely based upon the extent available to the plaintiff in R.S.No.105/15B1/2 and the plaintiff herself has referred that the dispute is with reference to her southern fence line has drawn in the rough sketch attached in the plaint. The lower court failed to appreciate that the learned Advocate Commissioner who inspected the property was unable to fix the boundary line and therefore the said report is not helpful in elucidating the dispute in controversy and therefore the lower court ought to have directed for the resurvey of the suit property. The lower court failed to see that with regard to the 1st item, the plaintiff has not proved her entitlement for the relief of Permanent Injunction. The lower court failed to appreciate that on proper measurement the 2nd item of the suit property will fall within the limits of the appellant property and therefore the relief without assessing those facts ought not to have been granted infavour of the respondent. The lower court failed to appreciate that PW1 in his evidence would categorically admit those facts and also she is having uninterrupted access to the road and therefore B schedule property is not the only way for the plaintiff to have the access to the road.

The lower court failed to appreciate that in respect of the B schedule property since the plaintiff is neither having title nor possession the relief of Mandatory injunction is not at all maintainable under the eye of law and has got a right to file the suit.

VII. POINT NO. 1

1) The suit was filed by the plaintiff for the relief of permanent injunction with respect to the suit 1st item property and mandatory injunction to remove the encroachment made by the defendant in the 2nd item suit property. The 1st item is comprised in Survey No.105/15B1/2 in Kallar Village, North Poikainallur, Nagapattinam and the suit 2nd item property is situate in Survey No.105/15B1/6. The grievance of plaintiff is that the defendant had made an encroachment in the 2nd item property and causing obstruction to the plaintiff's house from the road. The defendant denied the factum of obstruction and he had stated that the construction in his property bearing Survey No.105/15B1/3 was made by his father Jaleel Batsha in the year of 1998 after purchasing the property on 23.07.1997. The defendant had further stated that he had altered the front portion of the house in an already existing building.

2) An Advocate Commissioner is appointed by the trial court and the advocate commissioner had filed his report stating that the suit 2nd item property is a road property and the land to the road was given by the people who were residing there and patta was given in the name of

the village people. The advocate commissioner had stated in his commissioner report that the boundary stone cannot be identified and the suit properties were measured by fixing the boundary from the house of one Ismail. In the commissioner report, he had not mentioned that the defendant had encroached but he had stated that the Balcony in front of the defendant's house measuring 6x20 situate in the road and the road is in the name of plaintiff. In the commissioner report, the Taluk surveyor report is enclosed and in the report it is mentioned that the suit 2nd item property is used as a pathway and a road is laid in the suit 2nd item property and it is in the name of Alimuthu, the plaintiff and two others Vize Checha and Abdulkarim. Both the plaintiff and defendant had filed objection to the commissioner report, the plaintiff stating that the encroachment is not mentioned and the defendant stating that the suit properties were not properly measured by identifying the boundary stone.

3) The title of the plaintiff for the 1st item and the title of the defendant in survey No. 105/15B1/3 is not denied by both the parties in the cross examination of PW1 she had stated "யாரிடம் நான் கிரயம் பெற்றேன் என்றால் உம்மாகபீபா என்பவரிடமிருந்து கிரயம் பெற்றேன் என்றும், உம்மாகபீபா பிரதிவாதி அப்துல்ஹமீதுக்கு என்ன உறவு முறை என்றால் சின்ன பாட்டி என்றும், உம்மாகபீபா அம்மாவிற்கு சொந்த ஊர்

கல்லார் என்றும், திருமணம் செய்து கொடுத்தது திருப்பூண்டி என்றும், உம்மாகபீபாவிற்கு உடன்பிறந்தவர்கள் யார் என்றால் அபுசாலி, ஷேக்ஷா, ஹனீபா, சகோதரர்கள் ரகுமான்பீவி சகோதரி என்றும், சகோதர சகோதரிகள் அனைவரும் பிறந்து வளர்ந்த ஊர் கல்லார் என்றால் சரிதான் என்றும், நான் மற்றும் உம்மாகபீபா சகோதர சகோதரிகள் அவர்களின் வகையறா அனைவரும் தானும், பிரதிவாதியும் குடியிருந்து வரும் தாவா சொத்தினை சுற்றி தான் குடியிருந்து வருகிறார்கள் என்றும், தான் குடியிருந்து வரும் வீடானது தெற்கு பார்த்த வீடு என்றும், அந்த வீடு 1993 ல் கட்டினோம் என்றும், தான் வீட்டின் தெற்கேயும், கிழக்கேயும், பள்ளிவாசல் தெரு உள்ளது என்றும், பள்ளிவாசல் தெரு சுமார் 20 அடி அகலம் இருக்கும் என்றும், பள்ளிவாசல் தெருவில் தெருவிளக்குகள் உள்ளது என்றும், பள்ளிவாசல் தெரு தார் ரோடு என்றும், பள்ளிவாசல் தெருவிற்கு ரோடு போட்டது வடக்கு பொய்கைநல்லூர் பஞ்சாயத்து என்றும், 2 வது அயிட்ட சொத்துதான் தான் கூறும் பள்ளிவாசல் தெரு என்றும், பள்ளிவாசல் தெரு தனக்கு சொந்தம் என்பதற்கு ஆவணங்கள் இல்லை என்றும், பட்டா மட்டும் உள்ளது என்றும், தனக்கும்,

அப்துல்ஹமீது வீட்டிற்கும் இடையே சுமார் 15 அடி தூரம் இருக்கும் என்றும், நீதிமன்றத்திலிருந்து சர்வேயர் வந்து தாவா சொத்தினை அளந்தார்கள் என்றும், அவ்வாறு அளக்கும்போது கல்லார் ஜமாத்தார்கள் இருந்தார்கள் என்றும், தங்களுக்கும், அப்துல்ஹமீது இடத்திற்கும் கிழமேலாக வேலி உள்ளது என்றும், தன்னுடைய சொத்தின் சர்வே எண் வேறு, பிரதிவாதி சொத்தின் சர்வே வேறு என்றும், பள்ளிவாசல் தெருவிலிருந்து நேரடியாக தன்னுடைய மனைக்கட்டிற்கு செல்ல முடியும் என்றும்" சாட்சியமளித்துள்ளார்.

4) In the cross examination of PW2 he had stated "பிரதிவாதி அப்துல்ஹமீது குடியிருப்பதற்கு முன்னர் அவர் குடியிருந்து வரும் இடத்தில் அவரது தந்தை ஜலீல் பாஷா குடியிருந்தார் என்றும், தற்போது இருக்கும் மாடி வீடு பிரதிவாதி தந்தை ஜலீல்பாஷாவால் கட்டப்பட்டதா என்றால் இல்லை என்றும், ஜலீல்பாஷா குடிசை வீட்டில்தான் இருந்தார் என்றும், பிரதிவாதி தான் தற்போதுள்ள மாடி வீட்டை கட்டினார் என்றும், ஜலீல்பாஷா உயிருடன் இருந்தபோது மாடி வீடு கட்டப்பட்டுவிட்டது என்றும், ஜலீல்பாஷா எப்போது இறந்தார்

என்றால் 3, 4 ஆண்டுகளுக்கு முன்னர் இறந்தார் என்றும், மாடிவீடானது எப்போது சுமாராக கட்டப்பட்டிருக்கும் என்றால் 1999 லிருந்து 2000 ம் ஆண்டிற்குள் கட்டப்பட்டது என்றும், பிரதிவாதி தற்போது கட்டிடத்தின் முகப்பினை மட்டும் மாற்றி கட்டியுள்ளார் என்றும், பிரதிவாதி வீட்டிற்கு எதிரே உள்ள தென்வடல் ரோடானது தங்களுக்கு பூர்வீக சொந்தமான ரோடு அல்ல என்றும், வருவாய் துறை அதிகாரிகளிடம் செல்வாக்கினை கொண்டு பட்டாவினை தங்களது பெயரில் தென்வடல் ரோட்டிற்கு பெற்றுள்ளோம் என்றால் சரியல்ல என்றும், தென்வடல் ரோட்டிற்கு தங்களுடைய அனுபவத்தினை கொண்டு பட்டா பெற்றுள்ளோம் என்றும்" சாட்சியமளித்துள்ளார்.

5) From the oral evidence of PW1 and PW2 both of them had stated the suit 2nd item property is a road and there was a dispute regarding boundary with the defendant and there was a complaint given by defendant against the plaintiff in the Jamath. Ex.A1 is the patta for the suit 2nd item property and in the patta it is mentioned as it is given to Alimuthu, W/o. Hajamoideen and two others. In the Taluk Surveyor report the other two names of the pattatharers are mentioned as Checha and Abdulkarim. Further the plaintiff as PW1 had stated in the cross

examination that the thaar road was laid by North Poikainallur Panchayat in the 2nd item property and PW2 had stated that the defendant's property was constructed in between 1999 to 2000 and the defendant had only altered the front elevation of his house. From the oral testimonies of PW1 and PW2 the house of the defendant was constructed in 1999 and the suit 2nd item property is a road property where is the Panchayat had laid road and the street light were erected by the Panchayat.

6) With respect is 1st item property the title of the plaintiff is not denied by the defendant. Further from Ex.A1, the plaintiff alone is not the absolute pattatharer and two other persons are also pattatharers for the suit 2nd item property and the 2nd item property is classified as road in the revenue records. The trial court had failed to note the joint patta and the admissions in the oral evidence of PW1 and PW2 about the suit 2nd item as a road and the house in the defendant property was constructed as early as in the year of 1999 and the suit 2nd item property is a road property where in the Panchayat had laid road and the street light were erected by the Panchayat. If any encroachment or obstruction is made the local body is to take action to remove the encroachment. The plaintiff had not added the local body as a party to the suit, when the suit 2nd item property is maintained by the local body. Hence, the plaintiff ought to have added the local body as a necessary party to the suit.

In the result, this appeal is partly allowed and the judgment and decree of the learned District Munsif, Nagapattinam passed in O.S.86/2016, dated : 27.08.2024 is partly setaside and the permanent injunction is granted to the plaintiff as prayed for with respect to the suit 1st item property and with respect to the prayed for the suit 2nd item property the suit is dismissed and the judgment of the trial court is setaside. No costs.

This judgment has been dictated to the Steno Typist by me and typed by her, corrected and pronounced by me in the open court on this the 13th day of July 2026.

Subordinate Judge,
Nagapattinam.

Encl : Nil

Subordinate Judge,
Nagapattinam.

To :
The District Munsif Court, Nagapattinam.

Draft Judgment / Fair Judgment
SUB COURT, NAGAPATTINAM
A.S.No.24/2025
DATE :13.07.2026