

IN THE COURT OF THE SUBORDINATE JUDGE, UDHAGAMANDALAM

**Present: Tmt. G. Bharathi Prabha, B.A., B.L.,
Subordinate Judge,
Udhagamandalam
(J.O.Code: TN01448)**

Thursday, the 25th day of June, 2026

A.S.No. 20 of 2025

CNR No.TNNS02-000325-2025

T.Shanthi ... Appellant/2nd defendant

-Vs-

Chandran ... Respondent/Plaintiff

Appeal against the Judgment and Decree passed in O.S.No.26/2013 on the file of District Munsif Court, Udhagamandalam Dated 28.02.2025.

Chandran ... Plaintiff

-Vs-

1. B.K.Nandhi Gowder (Since deceased)

2. T.Shanthi ... Defendants

This appeal is coming on 12.06.2026 before me for final hearing before me in the presence of Thiru. B.Nepoliyan, B.A., LL.B., Advocate for the Appellant and M/s.Patel T.Srinivas, B.A., L.L.B., Advocate for the Respondent and upon perusing the documents and upon hearing the both side arguments and having stood over for consideration till this day, this Court delivered the following:-

JUDGMENT

The appeal is filed for setting aside the Decree and Judgment of the trial court in O.S.No.26/2013 dated 28.02.2025 passed by the District Munsif of Udhagamandalam and to dismissed the suit. No cost.

Gist of the Plaint:-

2. An extent of 0-03 acres of land in R.S.No.760/1A of Udhagamandalam Town amongst other properties originally belonged to one H.B.Raju Gowder. The said H.B.Raju Gowder in turn conveyed the said extent in favour of the one Thathan under an Indenture of Sale deed dated 30.09.1982. The said Thathan in turn conveyed the said extent of 0-03 Acres in R.S.No.760/1A to one T.M.Raman under the Indenture of sale dated 04.09.1985. The said Raman after his purchase, constructed a building thereon and thereafter the said Raman conveyed the said extent of 0-03 acres of land together with building thereon in favour of the plaintiff herein under a sale deed dated

05.05.1995 with specific boundaries. After the said purchase, the name of the plaintiff has been included in the revenue records and the assessment in respect of the building was transferred in the plaintiff's name. After conveyance of the said 0-03 acres by Thathan in favour of T.M.Raman, the said Thathan was entitled only to the remaining extent and the said Thathan transferred the remaining extent in favour of the defendants herein. The defendants ever since, 26.01.2011 were creating lot of nuisance to the plaintiff in his enjoyment of the suit property as they wanted to park their car in the property belonging to the plaintiff namely the suit property which resulted in the plaintiff giving a complaint on 26.01.2011 against the 1st defendant and his son Paramasivam at the B-1 Police station, Udthagamandalam. The plaintiff applied for sub-division which was not completed due to objection by the defendants. The defendants applied for sub-division wherein notice was issued to the plaintiff for inspection on 22.03.2012 but, the survey was not conducted. But, the defendants are now bringing 3 parties and threatening the plaintiff to give up some portion of land in the suit property to the defendants for parking their vehicle ever since 07.02.2013. But, the plaintiff did not agree. The defendants have proclaimed that they will forcefully enter into the suit property. Hence, the suit.

Gist of the Written Statement filed by the 2nd Defendant is as follows:-

3. The 1st defendant who is the father in law of the 2nd defendant died as early on 16.12.2008 long before the suit. The alleged cause of action is false. Hence, the suit is liable to be dismissed summarily. The said T.M.Raman became entitled only to an extent of 0.02-3/4 acre out of the 0.03 acre and the remaining 0.00-1/4 acre was kept as common land for the plaintiff and the 2nd defendant's predecessor in title and the 2nd defendant. The said T.M.Raman under unilateral agreement executed by him on 11.09.1985 has agreed and confirmed that he has paid the sale consideration only for the extent of 0.02-3/4 acre and that the remaining 0.00-1/4 acre in front of the house should be always kept as common area for the beneficial enjoyment of both parties. The plaintiff has deliberately suppressed the same and filed this frivolous suit. The plaintiff was attempting to raise a compound wall with the intention of appropriating the common land. The allegation that ever since 07.02.2013, the defendants brought 3rd parties and threatened the plaintiff are all false. As the 1st defendant died on 16.12.2008 itself. The cause of action is patently false. The plaintiff who has not approached with clean hands is not entitled for equitable relief of injunction. The plaintiff is not entitled for injunction for the land which is commonly enjoyed by the

plaintiff and the 2nd defendant. Hence, the suit is liable to be dismissed.

4. On the basis of the above pleadings, the trial Court framed the following issues:-

1.	Whether the plaintiff is in possession of the suit property?
2.	Whether the plaintiff is entitled to get the relief as prayed for?
3.	To what other relief the plaintiff is entitled?

5. Before the trial court, on the side of the plaintiff, the plaintiff examined himself as PW1 and Ex.A1 to Ex.A14 were marked. On the side of the defendants, the 2nd defendant examined herself as DW1 and Ex.B1 marked.

6. The trial Court, after considering the entire oral and documentary evidence, has decreed the suit. Having aggrieved over the same, the 2nd defendant has preferred this appeal.

GROUND OF APPEAL:-

7. The Judgment and decree of the Trial Court is against law, weight of evidence and circumstances of the case. The Trial Court has erred in decreed the suit. The Trial Court ought to have dismissed the suit. The Trial Court has completely misunderstood the scope of the suit and the issues involved. The Trial Court has neither cared to go through the pleadings nor the evidence. The Trial Court has arrived at the erroneous decision on assumptions and conjectures. The Trial Court failed to understand the reason for decree, its foundation and the basic elements of the case and has ruled arbitrarily decree the suit. The case of the Respondent is that the property measuring an extent of 0.03 Acre of land purchased by Mr.T.M.Raman from one Mr.Thathan. The said Mr.T.M.Raman constructed a building in the said land and conveyed the same to the Respondent in R.S. No.760/1A of Udhagamaundalam Town together with the building thereon under a sale deed dated 5/5/1995 with specific boundaries. The said Mr.Thathan conveyed the remaining property to the Appellant herein and her father-in-law Mr.B.K.Nandhi Gowder, the 1st Defendant in the suit. The said Mr.B.K.Nandhi Gowder and the Appellant ever since 26/1/2011 were creating problem in the suit property which resulted in the respondent giving a complaint on 26/1/2011 against the said Mr.B.K.Nandhi Gowder, the 1st Defendant in the suit and his son Mr.Paramsivam at the B-1 Police Station, Udhagamandalam. The Trial Court failed to note that the Plaintiff has not convincingly proved that the cause of action and prima facie case of the suit. It is the suit which is filed against the dead person. In any event, it is beyond one's comprehension as to how the Trial Court has held that the 1st Defendant disturbed the

Plaintiff in the year 2011 since he died as early as 16/12/2008. Therefore, there is no cause of action for the suit framed. The alleged cause of action is false. Hence, the Trial Court ought to have dismissed the suit. The Trial Court failed to frame these issues that 1) whether a suit can be file against a deceased person and 2) whether the defendant approached the trial court with clean hands. However, in page 9 in para 13 of the Judgement, the Trial court held that the 1st Defendant died prior to institution of suit. Therefore, there is no cause of action for institution of suit. The Trial Court ought to have held that the Respondent has neither proved the cause of action for the suit because the 1st Defendant in the suit who is the father-in-law of the Appellant herein died as early on 16/12/2008 long before the suit nor the prima facie and should to have dismissed the suit on that score alone. The Trial Court failed to consider that the plaintiff had not established that no case had been filed against the deceased person. The Trial Court has erroneously passed the decreed and judgment, in the absence of any pelition filed by the plaintiff to amend the plaint that the first defendant was deceased, the trial court not even perusing the same, added in the decree and judgment that the 1st defendant was deceased. The Trial Court has strained itself, on the side of the Plaintiff and has passed a perverse order. The reasoning of the Trial Court is erroneous and its conclusions are untenable. For the above grounds and other to be urged at the time of hearing the Judgment and Decree on trial court are liable to set aside. Hence, this appeal.

8. The points for consideration in this Appeal are as follows:-

1.	Whether the Trial Court was right in granting the decree of permanent injunction in favour of the plaintiff against the second defendant?
2.	Whether the Trial Court was right in holding that the suit is maintainable against the second defendant, notwithstanding the fact that the first defendant had died prior to the institution of the suit?
3.	To what other reliefs?

9. Both side arguments heard. Records perused. For the sake of convenience, both parties are referred as plaintiff and defendants as referred in the Judgment of the Learned Trial Court.

Point No.1:-

10. The plaintiff filed the suit for bare permanent injunction on the basis of his possession over the suit property. According to him, the suit property originally belonged to H.B. Raju Gowder, who sold an extent of 0.03 acre in R.S.No.760/1A to Thathan under a registered sale deed dated 30.09.1982. Thereafter, Thathan sold the same property to T.M. Raman under a registered sale deed dated 04.09.1985. Raman constructed a residential

building in the property and subsequently sold the land together with the building to the plaintiff under a registered sale deed dated 05.05.1995. The plaintiff also produced the revenue records and property tax receipts to show that he has been in possession and enjoyment of the suit property.

11. The second defendant does not dispute the execution of the registered sale deeds in favour of T.M. Raman and thereafter in favour of the plaintiff. In fact, during cross-examination, DW1 admitted that her father Thathan sold three cents to Raman and that Raman later sold the same three cents together with the building to the plaintiff. These admissions lend considerable support to the plaintiff's case.

12. The principal defence of the appellant is that Raman was entitled only to $2\frac{3}{4}$ cents and that the remaining $\frac{1}{4}$ cent was agreed to be kept as a common area under an unregistered agreement dated 11.09.1985. Admittedly, the said document is not a registered document. The trial court refused to mark the document holding that it is inadmissible as it seeks to vary the rights created under the registered sale deed. This Court finds no infirmity in the said finding. When a registered sale deed conveys an extent of three cents, the rights flowing therefrom cannot be curtailed by relying upon an unregistered document alleged to have been executed subsequently. Moreover, if really only $2\frac{3}{4}$ cents had been sold, nothing prevented the vendor from executing a rectification deed or taking appropriate legal proceedings for rectification or cancellation of the earlier registered conveyance. No such step was admittedly taken.

13. The main defence of the second defendant is that though Thathan executed a registered sale deed conveying three cents of land to T.M. Raman, Raman was actually entitled only to $2\frac{3}{4}$ cents and the remaining $\frac{1}{4}$ cent was agreed to be left as a common passage for the benefit of both properties. According to the second defendant, Raman executed an agreement in favour of her father-in-law, Thathan, on 11.09.1985 acknowledging the said arrangement. However, a careful reading of the evidence does not support the defence put forward by the second defendant. During her cross-examination, DW1 made a clear admission that her father-in-law Thathan purchased the property from H.B. Raju Gowder and thereafter sold three cents of land to T.M. Raman under a registered sale deed dated 04.09.1985. She further admitted that Raman constructed a house in the said three cents and subsequently sold the entire three cents along with the house to the plaintiff under a registered sale deed. These admissions clearly support the plaintiff's case regarding

the extent of the property conveyed under the registered sale deeds

14. After making the above admissions, DW1 attempted to explain that Raman had subsequently executed an agreement stating that $\frac{1}{4}$ cent out of the three cents should always be kept as a common area. Thus, the defence is not that the registered sale deed conveyed only $2\frac{3}{4}$ cents. On the contrary, the defence itself proceeds on the basis that the registered sale deed conveyed three cents, but relies upon a subsequent unregistered agreement to reduce the plaintiff's rights. The burden to prove such an agreement squarely lies upon the defendants. Mere oral evidence is not sufficient when the defendants rely upon a specific written document. The best evidence would be the original agreement itself or secondary evidence admissible under law after laying the necessary foundation.

15. In the present case, the defendants did not produce the original agreement before the Court. What was sought to be produced was only a xerox copy. Since it was only a photocopy and the defendants failed to establish the circumstances under which secondary evidence could be admitted, the trial Court rightly refused to mark the document. Consequently, the alleged agreement has not become part of the evidence on record and cannot be relied upon for deciding the rights of the parties. Even assuming for the sake of argument that such an agreement had existed, it is stated to be an unregistered document. It seeks to alter or restrict the rights flowing from a registered sale deed by carving out $\frac{1}{4}$ cent as a common area. Such a document cannot override or modify the terms of the earlier registered sale deed. If Thathan intended to retain $\frac{1}{4}$ cent as common land, the proper course would have been to execute the registered sale deed itself accordingly or thereafter execute a registered rectification deed. No such registered document has been produced.

16. It is also significant that nearly ten years later, T.M. Raman executed a registered sale deed in favour of the plaintiff conveying the entire three cents together with the house constructed thereon. If Raman had really accepted that $\frac{1}{4}$ cent was to remain as common property, it is difficult to understand why he would execute a registered sale deed conveying the entire extent of three cents without any reservation. This circumstance also weakens the defence put forward by the second defendant. Therefore, the admissions made by DW1 regarding the registered sale transactions strongly support the plaintiff's case. On the other hand, the plea regarding the alleged agreement remains completely unproved, as the document was never marked in evidence and there is no legally admissible material to establish its contents. Consequently, the defendants cannot rely upon the alleged agreement

to contend that the plaintiff is entitled only to 2¼ cents or that ¼ cent is a common area. The finding of the trial Court rejecting this defence is therefore well-founded and does not warrant any interference.

17. The plaintiff in order to prove his possession of the suit property, has produced the Chitta extract and property tax receipts standing in his name. These documents corroborate his possession. Except the plea founded upon the unregistered agreement, the appellant has not produced any acceptable evidence to establish that the disputed ¼ cent is a common area jointly enjoyed by both parties. The argument that the plaintiff himself referred to the ¼ cent in the police complaint also does not advance the appellant's case. A recital found in a police complaint cannot prevail over registered title deeds and revenue records. Such a statement cannot divest the plaintiff of his lawful possession or title. The suit is one for permanent injunction and not for declaration of title. In such a suit, the primary consideration is whether the plaintiff was in settled possession on the date of the suit. The oral and documentary evidence produced by the plaintiff clearly establish his possession over the suit property. The appellant has failed to dislodge the same by any legally acceptable evidence. Hence, this Court finds that the Trial Court has properly appreciated the evidence and rightly concluded that the plaintiff was in lawful possession of the suit property and was entitled to the relief of permanent injunction.

Accordingly, Point No.1 is answered in favour of the respondent/plaintiff and against the appellant.

Point No.2:-

18. The appellant strongly contended that the first defendant had died on 16.12.2008, whereas the plaint alleged acts of interference by him during the year 2011 and thereafter. It is true that the death certificate produced by the second defendant establishes that the first defendant had died before institution of the suit. The trial court has rightly accepted the said fact and dismissed the suit as against the first defendant. However, the crucial question is whether the entire suit becomes a nullity merely because one of the defendants had died before the institution of the suit?.

19. There cannot be any dispute with the settled principle that a suit instituted against a person who was already dead on the date of presentation of the plaint is a nullity so far as that deceased person is concerned. A dead person is not a legal entity capable of suing or being sued. Therefore, no valid decree can be passed against a person who was not alive on the date of institution of the suit. If the suit is filed against a sole defendant who had

already died before the institution of the suit, such a suit is void from its inception and ordinarily cannot be continued by subsequently bringing the legal representatives on record, because there was no validly instituted suit against any living person. However, the legal position is different where there are more than one defendant.

20. When a suit is instituted against several defendants and one of them had died before the institution of the suit, the invalidity attached to the proceedings is confined only to the deceased defendant. The suit does not automatically become void in its entirety, provided there are other defendants who were alive on the date of institution and against whom an effective and independent relief is claimed. In such cases, the suit remains maintainable against the surviving defendants. The reason behind this principle is that the Court derives jurisdiction over the living defendants who are properly impleaded and served with summons. Merely because one of the defendants was wrongly shown as alive, the rights and liabilities of the remaining defendants cannot automatically disappear. The Court is still competent to adjudicate the dispute as between the plaintiff and the defendants who are legally before the Court.

21. The distinction between a suit against a sole deceased defendant and a suit against one among several defendants who had already died is therefore of considerable importance. In the former case, there is no valid suit at all because there was no living defendant before the Court on the date of institution. In the latter case, there is a valid suit against the surviving defendants and only the proceedings against the deceased defendant are non est.

22. The Trial Court has relied upon the decision in *C. Muttu v. Bharath Match Works*, AIR 1964 Mysore 293, wherein after considering several earlier decisions, it has been held that if one among several defendants had died before the institution of the suit, the legal representatives of such deceased defendant may be brought on record, subject to the law of limitation, and that the suit itself does not fail because it had been validly instituted against the surviving defendants. In the present case, admittedly, the first defendant had died prior to the institution of the suit. The Trial Court, after appreciating the death certificate produced by the second defendant, rightly recorded a finding that the first defendant was already dead and consequently dismissed the suit as against him. There is no challenge to that finding on facts.

23. The question that remains is whether the decree against the second defendant can survive. This Court is of the considered opinion that it can. The second defendant was alive on the date of institution of the suit. She was properly impleaded, entered appearance, filed a written statement, cross-examined the plaintiff, adduced evidence as DW1 and fully contested the suit on merits. Therefore, the proceedings against her cannot be said to be void merely because another defendant had already died before the institution of the suit.

24. Further, the relief sought by the plaintiff is one of permanent injunction, which is essentially a personal remedy operating against the persons who interfere with the plaintiff's possession. Such a decree is enforceable only against the persons against whom it is granted. Since the Trial Court has ultimately granted the decree only against the second defendant and not against the deceased first defendant, no decree has been passed against a dead person.

25. The appellant has further contended that the plaint contains incorrect averments stating that the first defendant interfered with the plaintiff's possession in the year 2011, though he had already died in the year 2008. Undoubtedly, such pleading is factually incorrect. However, every incorrect statement in the plaint does not necessarily render the entire suit non-maintainable. The Court has to examine whether there exists a real dispute between the plaintiff and the surviving defendant and whether the plaintiff is otherwise entitled to the relief claimed.

26. In the present case, the second defendant has throughout disputed the plaintiff's possession by asserting that the plaintiff is entitled only to $2\frac{3}{4}$ cents and that the remaining $\frac{1}{4}$ cent is common property. Such assertion itself amounts to a denial of the plaintiff's exclusive possession and gives rise to a live and subsisting cause of action against the second defendant. Therefore, notwithstanding the incorrect pleading regarding the first defendant, the plaintiff had a valid cause of action against the second defendant.

27. It is also relevant to note that procedural law is intended to advance the cause of justice and not to defeat substantial rights on mere technicalities. Unless the presence of the deceased defendant was indispensable for effective adjudication of the dispute, the entire suit need not fail merely because one defendant had died before its institution. In the present case, no relief has ultimately been granted against the deceased first defendant, and the controversy between the plaintiff and the second defendant has been completely adjudicated on the basis of the evidence available on record.

28. Hence, this Court finds that the Trial Court rightly held that although the suit could not continue against the deceased first defendant, it was perfectly maintainable against the second defendant, who was alive, contested the proceedings and against whom the decree has been passed. Consequently, the contention of the appellant that the entire suit is a nullity is devoid of merits and is liable to be rejected.

Hence, Point No.2 is answered against the appellant.

Point No.3:-

29. In view of the answers given by this court in the above for points nos. 1 and 2, this court answers for this point that, the plaintiff is entitled for the relief for permanent injunction and the grounds of appeal do not warrant interference by this appellant court in the judgment and decree passed by the learned District Munsif Court, Udhagamandalam in OS.No.26 of 2013 on 28.02.2025 and so the appeal fails and it is liable to be dismissed.

30. In the result,

The Appeal is dismissed by confirming the Decree & Judgment passed by the Learned District Munsif, Udhagamandalam in OS.No.26 of 2013 dated 28.02.2025. No costs.

Dictated to the Steno-typist, transcribed by him, corrected and pronounced by me in open Court on this the 25th day of June, 2026.

SUB JUDGE,
UDHAGAMANDALAM.

Both side oral evidence & documents:- Nil.

SUB JUDGE,
UDHAGAMANDALAM.

Copy of Order	
Appeal Suit No.	20/2025
Dated	25.06.2026