



**IN THE COURT OF THE DISTRICT MUNSIF OF UDHAGAMANDALAM,
THE NILGIRIS**

Present: **Thiru. L. PRAKASH, B.Sc., B.L.,**
DISTRICT MUNSIF, UDHAGAMANDALAM.

Monday, the 01st day of June 2026

O.S. No. 53 of 2020
(C.N.R. No. TNNS030 - 00086 - 2020)

H. Ravichandran

... Plaintiff

/Vs/

K. Sivaji

... Defendant

This suit came on 30.04.2026 for final hearing before me in the presence of Mr. Pon Ramchandran, learned Counsel for the Plaintiff and of Mr. B.S. Sivakumar, learned Counsel appearing for the Defendant, upon hearing both side arguments, and upon having stood over till this day for consideration, and this court delivered the following:

JUDGMENT

1. This suit is filed by the plaintiff for the relief of permanent injunction, restraining the defendant, his servants, agents, and all those claiming through or over or under the defendant or in trust for them from putting up any construction and altering the nature of the property in the encroached portion interfering with the peaceful possession of the plaintiff within the suit schedule property and for the relief



of consequential mandatory injunction directing the defendant to demolish the illegal construction put up by the defendant in the suit property failing which the Hon'ble Court may demolish the illegal construction and recover the possession and costs from the defendant and for costs of the suit.

Gist of Complaint:

2. The plaintiff states that, the suit property measuring an extent of 0.03 acres in R.S. No. 131/20 of Ebbanad Revenue Village-I, Ootacamund Taluk, The Nilgiris together with the building bearing Door No. 3/164 originally belonged to his father Shri. Hutha Gowder by way of inheritance and subsequent family partition and been in possession and enjoyment of the same without any disturbances. The plaintiff claims that after the death of his father, he came into possession and enjoyment of the property through an oral partition, and mutated his name in the revenue records and has been peacefully enjoying the property without interference.

3. The plaintiff further states that, the suit property consists of row of houses constructed in badaga villages with common wall separating the plaintiff's and defendant's houses. During the plaintiff's absence at Coimbatore due to his daughter's health check up and the COVID-19 lockdown, the defendant allegedly demolished the common wall without consent and made illegal construction by encroaching upon the plaintiff's front yard and aerial space without proper approval from the Panchayat authorities. Upon returning on 12.06.2020, the plaintiff discovered the encroachment and damages, and he claims that photographs and supporting materials establish the illegal construction, and that Police advised seeking relief through Civil Court.



4. The plaintiff further alleges that on 18.06.2020, the defendant continued unauthorized construction activities by putting the mud into the Keri (common front yard) and blocked the right of way and drainage, and threatened the plaintiff using influence and manpower. According to the plaintiff, the defendant attempted to unlawfully dispossess him from the suit property. If the defendant succeed in his illegal attempt in starting further construction, the plaintiff would suffer irreparable loss and great hardship. Hence the plaintiff constrained to file the suit for permanent injunction not to put any further construction by encroaching on the plaintiff's property and the consequential relief of mandatory injunction directing the defendant to demolish the construction put up by him, failing which the Hon'ble Court may demolish the same and recover the possession and costs from the defendant.

Gist of Written Statement:

5. The defendant contends that the suit filed by the plaintiff is false, frivolous, vexatious and not maintainable either in law or on facts. He states that the suit schedule property is merely Natham property as per the Revenue records and the plaintiff hiding all the relevant facts and projected as if that the property is Patta land. No person can claim any ownership and the plaintiff has falsely claimed ownership over the suit property by relying on inhertiane rights over patta land. According to the defendant, the property under construction exclusively belongs to him, and the plaintiff has no right to interfere with the construction activities. It is further alleged that the enjoyment certificate issued by the V.A.O. is not genuine, is unsupported by revenue records, and therefore cannot be relied upon.

6. The defendant further states that neither the plaintiff nor his father, has ever been recorded in the revenue records relating to S. No. 131/20 of Ebbanadu-I



village. The plaintiff has produced fabricated enjoyment and possession certificates and intentionally mentioed incorrect survey numbers in an attempt to unlawfully claim the property. The defendant asserts that the property described in the suit differs entirley from S. No. 131/20 and that the suit has been filed with malafide intention for illegal gain. The suit property described by the plaintiff has no connection with S. No. 131/20 of Ebbanadu-I village. The revenue and Chitta records relating to the said S. No. 131/20 contain the names of other individuals, namely Dhonaiya Gowder, Lingam, Thippay, Nare and Billa Gowder and neither the plaintiff nor his father's name appear in those records and he also failed to produce any conveyance or title documents establishing ownership. The plaintiff is attempting to interfere with and intrude upon the defendant's lawful rights over the property.

7. The defendant futher contends that the plaintiff has no ownership, possession or even adjacency rights over the suit property. The defendant's building is around 100 years old, and is presently in a dilapidated condition, they are merely renovating the old structure and that the newly constructed wall is entirely separate from the old building and has no connection with the plaintiff's house. The defendant denies the plaintiff's claim that there existed any joint wall between the plaintiff's and defendant's porperties. Further it is also denied that the plaintiff was present at Coimbatore at the time when the renovation work was carried out. The plaintiff resides adjacent to the defendant's property and had never previously objected to the construction activities. When a misunderstanding arose, the dispute was amicably resolved before the Village Panchayathars and the plaintiff's son signed a Panchayat Muchalika acknowledging that he would not obstruct the defendant's construction work, while the defendant similarly agreed not to object to any future construction by the plaintiff.



8. The defendant further deny that he never blocked the pathway by dumping mud in the Keri, according to him, in Badaga villages it is customary for residents to temporarily use the front portion of the Keri for storing construction materials during renovation works and only bricks and other materials for construction were temporarily kept there and that the space would remain open for access once construction was completed. The plaintiff has filed the suit by suppressing material facts and falsely claiming obstruction of the pathway and the boundaries mentioned in the suit properties are false and hereby denied. The defendant asserts he is in legitimate need of his house for personal use and are conducting lawful construction within his own boundaries. The plaintiff is attempting to interrupt his work due to ill motives, ego and jealousy. The plaintiff is not entitled for any relief and there is no merit in the plaint. Hence the suit is liable to be dismissed with cost.

Issues framed:

9. On consideration of the pleadings of both sides this court framed the following issues:

- (i) *Whether the plaintiff is in possession of the suit schedule property?*
- (ii) *Whether the plaintiff is entitled to permanent injunction as prayer?*
- (iii) *To what other relief the plaintiff is entitled to?*

Plaintiff's side evidence:

10. On the side of the plaintiff, the plaintiff **Mr. H. Ravichandran**, examined himself as **Pw-1**, through him **Ex. A-1 to Ex. A- 4** were marked. The Pw-1 was cross examined by the defendant's side in full and during the cross examination of the Pw-1, **Ex. B-1** was marked on the defendant's side. The evidence of the



plaintiff's side is closed with Pw-1.

Defendant's side evidence:

11. On the side of the Defendant, the defendant, **Mr. K. Sivaji**, examined himself as **Dw-1**, through him **Ex. B-2** was marked. The Dw-1 was cross examined by the plaintiff's side in full. The evidence of the defendant's side is closed with Dw-1. Hence, the case posted for both side arguments.

Points for Consideration:

12. The arguments advanced by the learned counsels appearing on both sides were carefully considered. The plaint, written statement, and the oral and documentary evidence adduced by both parties were also carefully perused. The core point that arises for determination in this suit is whether the plaintiff is entitled to the relief of permanent injunction and mandatory injunction as prayed for. For deciding the same, the above issues were framed by this Court. The detailed discussion and findings on each issue are set out in the following paragraphs.

Discussion on Issue No. 1:

13. Issue No.1 is that, whether the plaintiff is in possession of the suit schedule property? The burden of proving possession over the suit schedule property lies upon the plaintiff. According to the plaintiff, the suit property measuring an extent of 0.03 acres situated in R.S. No.131/20 of Ebbanad Revenue Village-I originally belonged to his father Hutcha Gowder and after his demise, the plaintiff came into possession and enjoyment of the same through an oral partition. It is his further case that his name was mutated in the revenue records and that he has been in peaceful possession and enjoyment of the suit property.



14. In support of his case, the plaintiff examined himself as P.W.1 and marked Ex.A-1 to Ex.A-4. Ex.A-1 is the Land Tax Receipt dated 23.02.2020, Ex.A-2 is the Enjoyment Certificate dated 03.06.2020, Ex.A-3 consists of House Tax Receipts and Ex.A-4 consists of photographs. On the side of the defendant, D.W.1 was examined and Ex.B-1 Photograph and Ex.B-2 Chitta Extract were marked.

15. On perusal of Ex.A-1, it is seen that Patta No.243 and Survey No.131/20 have been mentioned therein. However, the extent of the property is not mentioned. Likewise, Ex.A-3 House Tax Receipts reveal Door No.3/164, but they do not disclose the extent or measurements of the property. Therefore, the documents relied upon by the plaintiff do not satisfactorily establish the identity and extent of the suit property.

16. The plaintiff has described the suit property boundaries as follows: North : Defendant's House, South : Bojan's House, East : Keri, West : Drainage and Foot Path, the defendant has specifically disputed the correctness of the property description. During the cross-examination of P.W.1, it was elicited that Bojan's house is situated on the western side of his house and that a pathway exists on the southern side. The relevant portion of the deposition reads as follows: "எனது வீட்டிற்கு பின் பக்கம் அதாவது மேற்கில் போஜன் என்பவரின் வீடு உள்ளது, நான் வாதுரையில் எனது வீட்டிற்கு மேற்கில் நடைபாதை என குறிப்பிட்டுள்ளது தவறு என்றால் தற்போது போஜனின் வீடுதான் உள்ளது, முன்பு நடைபாதை இருந்தது. தெற்கில்தான் நடைபாதை உள்ளது என்றும் ஆனால் நான் தெற்கில் போஜன் வீடு என தவறாக நான்கு எல்லைகளை எனது வாதுரையில் காண்பித்துள்ளேன் என்றால் சரியல்ல." Thus, the oral evidence of P.W.1 creates doubt regarding the correctness of the boundaries



furnished in the plaint schedule.

17. In order to ascertain the physical features of the property and the allegation of encroachment, an Advocate Commissioner was appointed by this Court. The Advocate Commissioner inspected the property with the assistance of the Taluk Surveyor and submitted his report and plan. A perusal of the Commissioner's report reveals that the boundaries mentioned in the warrant were: North : Defendant's House South : Bojan's House, East : Keri, West : Drainage and Foot Path. However, the Advocate Commissioner found that the boundaries existing on ground were: North : Defendant's House, South : 6 Feet Right of Way, East : Keri, West : Toilet. Thus, the Advocate Commissioner has specifically recorded that the boundaries found on ground do not tally with the boundaries furnished in the plaint schedule and commission warrant. This discrepancy assumes significance since identification of the property is the foundation for deciding possession and encroachment.

18. The Advocate Commissioner has further reported that, as per the Surveyor's inspection, the properties of both the plaintiff and the defendant are situated not only in R.S. No.131/20 but also in R.S. No.131/23 of Ebbanad Village. However, the commission warrant mentions only R.S. No.131/20. The Commissioner has categorically stated that the omission of Survey No.131/23 in the warrant created difficulty in identifying the exact extent of the properties.

19. The Advocate Commissioner has further observed that neither party possesses any registered title document and that both parties appear to be in enjoyment of their respective residential buildings. The Commissioner has also stated that there is no separate title document, no sub-divided chitta and no linear measurements available to identify the exact extent of land enjoyed by the plaintiff.



Consequently, the Commissioner has specifically concluded that the alleged encroachment by the defendant, either on the ground or in the aerial space, could not be accurately identified.

20. The report of the Advocate Commissioner is an independent piece of evidence and there is nothing on record to discredit the findings recorded therein. The report clearly establishes that the identity of the suit property itself is uncertain. The discrepancy in boundaries, the existence of two survey numbers, the absence of title documents, the absence of sub-division records and the inability of the Surveyor and Commissioner to identify the alleged encroached portion all create serious doubt regarding the plaintiff's claim of exclusive possession over the suit property as described in the plaint.

21. In a suit for injunction, the plaintiff must establish not only possession but also the identity of the property over which such possession is claimed. When the very identity and boundaries of the property remain uncertain and when even the Advocate Commissioner is unable to identify the alleged encroachment, this Court cannot safely conclude that the plaintiff has established his possession over the suit schedule property as described in the plaint.

22. Therefore, in view of the inconsistencies in the property description, the admissions elicited during the cross-examination of P.W.1, the findings of the Advocate Commissioner and the absence of satisfactory documentary evidence identifying the suit property, this Court holds that the plaintiff has failed to prove that he was in lawful and exclusive possession of the suit schedule property as on the date of the suit. ***Accordingly, Issue No.1 is answered against the plaintiff.***

**Discussion on Issue No. 2:**

23. Issue No.2 is that, whether the plaintiff is entitled to the permanent injunction as prayed for? Though the issue framed by this Court relates only to the entitlement of the plaintiff for the relief of permanent injunction as prayed for, the plaintiff has also sought the consequential reliefs of mandatory injunction directing demolition of the alleged unauthorized construction put up by the defendant and recovery of possession of the alleged encroached portion. No separate issues have been framed with regard to the reliefs of mandatory injunction and recovery of possession. However, since both parties have let in evidence and advanced arguments touching upon the alleged encroachment, demolition of the construction and recovery of possession, this Court proceeds to consider those reliefs also while answering Issue No.2.

24. It is a settled principle of law that the relief of permanent injunction can be granted only when the plaintiff establishes his lawful possession over the suit property as on the date of the suit and proves interference or threatened interference by the defendant. Likewise, the relief of mandatory injunction can be granted only when the plaintiff satisfactorily proves his right over the property and establishes the exact nature and extent of encroachment committed by the defendant. Similarly, a decree for recovery of possession can be granted only when the identity of the property and the extent of the alleged encroachment are clearly established.

25. As already discussed under Issue No.1, the plaintiff has failed to establish his lawful and exclusive possession over the suit schedule property. Though the plaintiff relies upon Ex.A-1 Land Tax Receipt, Ex.A-2 Enjoyment Certificate, Ex.A-3 House Tax Receipts and Ex.A-4 Photographs, none of these documents disclose the exact extent and measurements of the suit property. The plaintiff has also



failed to produce any registered title deed, partition deed, patta containing measurements, sub-division records or any other reliable document identifying the exact extent of the property claimed by him.

26. The defendant has specifically disputed the identity and description of the suit property. The evidence of P.W.1 itself discloses inconsistencies regarding the boundaries of the suit property. While the plaint schedule describes the southern boundary as Bojan's house and the western boundary as drainage and foot path, P.W.1, during cross-examination, admitted circumstances indicating that Bojan's house is situated on the western side and that a pathway exists on the southern side. Thus, even the oral evidence of the plaintiff creates doubt regarding the correctness of the plaint schedule boundaries.

27. At this juncture, it is pertinent to note that though the Advocate Commissioner's report and plan have not been marked as exhibits on either side, the same form part of the records of this Court. The learned counsel appearing for the defendant relied upon the decision reported in **2020 (6) CTC 390, Rukkaiah Natchiyar Vs. P.M.S. Mohamed Aamina Beevi and others**, wherein the Hon'ble High Court of Madras has held that the Advocate Commissioner's report and plan are essentially Court documents and form part of the record under Order XXVI Rule 10 of the Code of Civil Procedure and that there is no necessity to formally mark the same as exhibits. The Hon'ble High Court has further observed that non-marking of the Commissioner's report does not denude it of its evidentiary value. Therefore, this Court is entitled to take into consideration the Advocate Commissioner's report and plan, which form part of the case records, for appreciating the factual aspects relating to the identity, physical features and alleged encroachment concerning the suit property.



28. A perusal of the Advocate Commissioner's report reveals that the boundaries mentioned in the commission warrant were North by the defendant's house, South by Bojan's house, East by Keri and West by drainage and foot path. However, during inspection, the Advocate Commissioner found the boundaries on ground as North by the defendant's house, South by a 6 feet right of way, East by Keri and West by a toilet. The Commissioner has specifically recorded that the boundaries found on ground do not tally with the boundaries mentioned in the warrant. This discrepancy assumes significance as the identity of the property itself becomes doubtful.

29. The Advocate Commissioner has further reported that, with the assistance of the Taluk Surveyor, it was found that both the plaintiff's and defendant's properties are situated in R.S. Nos.131/20 and 131/23 of Ebbanad Village. However, the commission warrant refers only to R.S. No.131/20. The Commissioner has specifically observed that one of the relevant survey numbers, namely R.S. No.131/23, was omitted from the warrant and therefore the exact extent of the properties could not be identified solely on the basis of the warrant description.

30. The Advocate Commissioner has also reported that neither party possesses any registered title document and that there is no separate sub-divided chitta or other revenue record indicating the exact extent of the respective properties. The Commissioner has further noted that no linear measurements of the land allegedly enjoyed by the plaintiff were available in the warrant or the records produced before him. Consequently, the Advocate Commissioner categorically concluded that the alleged encroachment by the defendant, either on the ground or in the aerial space, could not be exactly identified. The Commissioner has also annexed photographs depicting the physical features of the locality. However, the photographs



do not establish the exact location or extent of the alleged encroachment.

31. The findings of the Advocate Commissioner assume considerable importance in the present case because they demonstrate that the identity of the suit property and the alleged encroached portion remain uncertain. When an independent Court-appointed Commissioner, assisted by the Taluk Surveyor, is unable to identify the exact encroachment allegedly committed by the defendant, this Court cannot arrive at a definite conclusion that the defendant has encroached upon any specific portion belonging to the plaintiff.

32. The relief of mandatory injunction directing demolition of a structure is a discretionary and equitable relief. Such a relief cannot be granted on mere assumptions or probabilities. The Court must be satisfied regarding the exact location of the encroached portion and the nature of the offending construction. In the present case, the alleged encroached portion has not been identified with certainty. Therefore, the relief of mandatory injunction directing demolition of the alleged construction cannot be granted.

33. Likewise, a decree for recovery of possession can be granted only when the property sought to be recovered is clearly identified. In the absence of reliable evidence establishing the precise location, extent and measurements of the alleged encroached portion, any decree for recovery of possession would be incapable of execution. Therefore, the plaintiff is not entitled to the relief of recovery of possession.

34. Since the plaintiff has failed to establish his lawful possession over the suit property and has further failed to prove the exact nature and extent of the alleged



encroachment by the defendant, he is not entitled to the relief of permanent injunction. For the very same reasons, he is also not entitled to the consequential reliefs of mandatory injunction and recovery of possession. ***Accordingly, Issue No.2 is answered against the plaintiff.***

Discussion on Issue No. 3:

35. Issue No.3 is that, to what other relief the plaintiff is entitled? In view of the findings rendered under Issue Nos.1 and 2, this Court has held that the plaintiff has failed to establish his lawful possession over the suit schedule property and has further failed to prove the alleged encroachment by the defendant. Consequently, the plaintiff is not entitled to the reliefs of permanent injunction, mandatory injunction or recovery of possession as prayed for in the plaint. No other relief has been established or proved by the plaintiff. Hence, the plaintiff is not entitled to any further relief. ***Accordingly, Issue No.3 is answered against the plaintiff.***

36. As regards costs, though the suit has been dismissed, considering the nature of the dispute between the parties relating to neighbouring residential properties situated in the same village and further considering that the controversy arose on account of uncertainty regarding the identity, boundaries and extent of the respective properties, this Court is of the view that it is not a fit case for awarding costs against either party. Accordingly, in the interest of justice, both parties are directed to bear their own costs of the suit.

**RESULT:**

37. *In the result, this suit is dismissed. There shall be no order as to costs.*

This judgment is dictated to the steno typist, typed by her in computer, corrected and pronounced by me in open court, on this 01st day of June 2026.

**DISTRICT MUNSIF,
UDHAGAMANDALAM**

List of witnesses and exhibits:**Plaintiff's side witnesses examined:**

1. H. Ravichandran - Pw-1 (The Plaintiff)

Plaintiff's side exhibits marked:

Sl. No	Date	Documents	Nature of Documents	Exhibits
1.	23.02.2020	Land Tax Receipt	Original	Ex. A-1
2.	03.06.2020	Enjoyment Certificate	Original	Ex. A-2
3.	-	House Tax Receipts – 3 Nos.	Original	Ex. A-3
4.	-	Photographs – 6 Nos.	Printed Copy	Ex. A-4

Defendant's side witnesses examined:

1. K. Sivaji - Dw-1 (The Defendant)

**Defendant's side exhibits marked:**

Sl. No	Date	Documents	Nature of Documents	Exhibits
1.	-	Photograph	Printed Copy	Ex. B-1
2.	17.12.2020	Chitta Extract	Online Certified Copy	Ex. B-2

**DISTRICT MUNSIF,
UDHAGAMANDALAM.**



Draft / Fair Judgment:

O.S. No. 53/2020

Dated: **01.06.2026**

**District Munsif Court,
Udhagamandalam**