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

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

Wednesday, the 05th day of August 2026

O.S. No. 97 of 2016
(CNR No. TNNS03 - 00304 - 2016)

J. Ravindran ... Plaintiff

/Vs/

1. M. J. Subban

2. P. Suresh Babu ... Defendants

This suit came on 30.07.2026 for final hearing before me in the presence of Thiru. Pon Ramachandran, learned Counsel for the Plaintiff and of Thiru. B.S. Sivakumar, learned Counsel appearing for the Defendants, upon hearing both side arguments and upon having stood over till this day for consideration, this court delivered the following:

JUDGMENT

1. The plaintiff has instituted the present suit seeking (i) a declaration that the Sale Deed dated 01.04.2016, registered as Document No.419 of 2016 on the file of the Sub-Registrar, Joint-II, Ootacamund, The Nilgiris, executed by the first defendant in favour of the second defendant, is null and void insofar as the suit schedule property is concerned; (ii) a declaration that the plaintiff is the absolute owner of the suit schedule property, having valid right, title and interest therein; (iii) a decree of mandatory injunction directing the defendants to demolish the alleged illegal construction put up by them within the suit schedule property within such time as may be fixed by this Court, failing which, to permit the same to be demolished through the process of the Court at the cost of the defendants; and (iv) the costs of the suit.

Gist of Plaint:

2. The plaintiff has averred in the plaint that the first defendant is his elder brother and that the suit property, measuring 0.41⅓ acres in old R.S. No.104, Hullathi Revenue Village, Ootacamund Taluk, originally belonged to their grandfather, Shri Bella Gowder, who purchased the same under a Sale Deed dated 20.09.1928, registered as Document No.692 of 1928 before the Sub-Registrar of Assurances, Ootacamund. According to the plaintiff, in September 2001, an oral family settlement took place among the plaintiff, the first defendant, their brother Ashok and their father, M.B. Joghee, under which the plaintiff was allotted an extent of 0.06 acres in old R.S. No.104, corresponding to new R.S. No.270/6 (as amended pursuant to the order passed in I.A. No.01 of 2025 dated 08.07.2025), for the purpose of constructing a dwelling house. It is his case that the said family arrangement was accepted by all the family members and was acted upon. Pursuant thereto, during October 2003, the plaintiff constructed a residential house over an extent of 3.25 cents out of his own funds, for which Door No.2/210 was assigned by the Hullathi Village Panchayat. He further states that he constructed a compound wall with a grill gate on the western side of the suit property, laid a pathway measuring 5 feet in width and 30 feet in length leading to the house, and utilised the adjoining 1.25 cents as a kitchen garden. According to him, there is no vacant land available beyond the said extent in R.S. No.270/6.

3. The plaintiff has further pleaded that he has been regularly paying house tax in respect of the dwelling house and had obtained permission from the Hullathi Village Panchayat to install a borewell in the vacant portion situated on the northern side of the pathway. According to him, he has been in peaceful possession and enjoyment of the suit property as its absolute owner without any interference. It is his case that, being jealous of the improvements effected by the plaintiff, the first defendant, along with the second defendant and certain hired persons from Coimbatore, attempted to trespass into the suit property on 20.03.2016, threatened the plaintiff and his family members with dire consequences and attempted to take forcible possession of the property. The plaintiff claims that he, with the assistance of the villagers, successfully resisted the said attempt. It is further pleaded that the first defendant lodged a false police complaint and that, during the police enquiry, the villagers of Melur confirmed that the plaintiff was in peaceful possession and enjoyment of the suit property. The plaintiff has further alleged that the first defendant, by exercising undue political influence and without any lawful entitlement, fraudulently obtained a sub-division in R.S. No.270/6B measuring 0.03 acres through the Tahsildar, Ootacamund Taluk. According to the plaintiff, the first defendant was never in possession of the suit property and the sub-division order was challenged before the Revenue Divisional Officer. He further states that he had also submitted an objection before the Tahsildar on 23.08.2013, together with postal proof.

4. The plaintiff has further stated that he caused a legal notice dated 24.03.2016 to be issued to the first defendant calling upon him not to trespass into the suit property or interfere with his peaceful possession and enjoyment. The first defendant issued a reply notice dated 05.05.2016, which was received by the plaintiff on 10.05.2016. According to the plaintiff, it was only from the contents of the said reply notice that he came to know that the first defendant, in collusion with the second defendant, had executed a Sale Deed dated 01.04.2016, registered as Document No.419 of 2016, in favour of the second defendant in respect of 0.03 acres in R.S. No.270/6B. The plaintiff alleges that the said sale deed is forged, fabricated, null and void, as the first defendant had neither title nor possession over the property and had no lawful authority to convey the same. It is further alleged that the defendants intentionally omitted to mention the names of the owners of the boundary properties in the sale deed. According to the plaintiff, the second defendant is not a bona fide purchaser, as the recitals contained in the sale deed themselves disclose that he had knowledge of the dispute relating to the property. The plaintiff further alleges that the second defendant has been attempting to take forcible possession of the suit property on the strength of the said invalid sale deed.

5. The plaintiff has further pleaded that, notwithstanding his objections, the Tahsildar, Ootacamund Taluk, included the name of the second defendant in the Chitta Extract on 23.05.2016, even though the plaintiff's earlier appeal was still pending. According to the plaintiff, such mutation was secured by the defendants through undue influence, money power and political influence. He therefore preferred another appeal before the Revenue Divisional Officer on 16.08.2016. The plaintiff has further stated that on 17.08.2016, the second defendant, accompanied by his henchmen, trespassed into the suit property, threatened the plaintiff and his wife and attempted to take forcible possession of the property. According to him, the said attempt was successfully resisted and the second defendant openly proclaimed that he would demolish the compound wall and pathway laid by the plaintiff. Consequently, the plaintiff issued a legal notice dated 19.08.2016 to the second defendant and thereafter approached this Court seeking appropriate relief.

6. The plaintiff has reiterated that the Sale Deed dated 01.04.2016, registered as Document No.419 of 2016, executed by the first defendant in favour of the second defendant in respect of R.S. No.270/6B, is null and void, since the first defendant had neither title nor possession over the property. According to the plaintiff, the defendants, acting in collusion, attempted to take forcible possession of the suit property on 17.08.2016 on the strength of the said invalid sale deed. He has further alleged that, while he and his family members were away at Bangalore for a medical check-up, the defendants took advantage of his absence, demolished the compound wall with the grill gate, the pathway and the borewell constructed by him, encroached upon approximately 2¾ cents out of the allotted 6 cents, and put up an illegal construction thereon. The plaintiff contends that, unless the defendants are restrained, he would suffer irreparable loss and hardship. On the above averments, he has instituted the present suit seeking a declaration that the Sale Deed dated 01.04.2016 is null and void, a declaration that he is the absolute owner of the suit schedule property having valid right, title and interest therein, and a decree of mandatory injunction directing the defendants to demolish the alleged illegal construction put up by them within the suit schedule property.

Gist of Written statement of 1st Defendant:

7. The first defendant, in his written statement, denied the averments made in the plaint and contended that the suit is false and not maintainable. While admitting the execution of the Sale Deed dated 20.09.1928, the first defendant contended that, although the said sale deed mentions the total extent as 0.41⅓ acres, the actual extent available on the ground is only about 0.35 acres. According to him, out of the total extent of 41 cents, the plaintiff's father, M. Joghee, and his brother, late M.B. Mathan, were each entitled to 20 cents. It is his further case that late M.B. Mathan sold his share to Mr. T. Nanjan under Document No.1138 of 1975, who, in turn, conveyed the same to the defendants under a registered Sale Deed bearing Document No.1650 of 1975. The first defendant further alleged that, while the defendants were residing at Lovedale, The Nilgiris, the plaintiff attempted to put up construction in the year 2004 on the land purchased by the defendants, but upon their immediate objection, the construction was stopped.

8. The first defendant further contended that the family members requested him not to interfere with the plaintiff's construction and that the plaintiff, in turn, agreed to allot an extent of 0.03 cents from the family property to the defendants. It was only on the basis of such understanding that the plaintiff was permitted to proceed with the construction of the residential house. The first defendant specifically denied the plaintiff's claim that an extent of 0.06 cents had been allotted to him under an oral family settlement and put the plaintiff to strict proof of the alleged family arrangement. According to him, the family property continues to remain in joint possession. He further submitted that the plaintiff constructed the house only over an extent of 3.25 cents and had already relinquished his share in the family property. It is his case that the remaining extent of 0.03 cents exclusively belongs to him and has remained in his possession ever since its purchase. He denied the plaintiff's claim that the said extent was being used as a kitchen garden and further alleged that the plaintiff had no authority to install a borewell in the disputed property and that the permission, if any, might have been obtained by practising fraud.

9. The first defendant further pleaded that he had permitted the plaintiff to use the extent of 0.03 cents only with a view to avoid unnecessary family disputes. He specifically denied the allegation that, out of jealousy, he interfered with the plaintiff's possession or threatened the plaintiff on 20.03.2016 with the assistance of hired persons from Coimbatore, contending that such allegations are false, baseless and made solely for the purpose of filing the present suit. According to him, the allegations have been made only to gain the sympathy of the Court. He further contended that the disputed extent of 0.03 acres had been duly sub-divided in the year 2013 in his favour and that the same had been incorporated in all the relevant revenue records. It is also his case that the Panchayat President had approved the building plan for construction on the said property. The first defendant emphatically denied the allegation that the sub-division had been fraudulently obtained with the assistance of the Tahsildar. According to him, if the plaintiff was aggrieved by the order passed by the Tahsildar, he ought to have challenged the same before the appropriate appellate authority. However, the plaintiff failed to do so for more than four years, and the subsequent complaint and appeal were merely an afterthought intended to grab the property belonging to the first defendant.

10. The first defendant further submitted that the Tahsildar had rightly rejected the plaintiff's objections and consequently mutated the defendants' names in the revenue records. He contended that the alleged statements said to have been given by the villagers regarding the plaintiff's possession do not confer any title over the property and are of no legal significance. While admitting the exchange of legal notices between the parties, the first defendant denied the plaintiff's allegations against the reply notice and contended that the reply notice correctly narrates the true facts and exposes the plaintiff's mala fide intention. He accordingly denied the plaintiff's challenge to the Sale Deed executed in favour of the second defendant. According to the first defendant, the second defendant is a bona fide purchaser for valuable consideration, having acquired valid title and lawful possession of the property. It is further contended that the plaintiff has no locus standi to challenge the said Sale Deed and that the present suit has been filed only to disturb the peaceful possession of the second defendant and to unlawfully claim the property. It is his further case that, after verifying all the relevant records, the Tahsildar rightly entered the name of the second defendant in the Chitta, and that the plaintiff's complaint before the Revenue Divisional Officer is of no consequence, as his earlier complaint had already been rejected by the competent authority.

11. The first defendant further pleaded that his father, Joghee Gowder, had settled an extent of 0.03 cents out of the 20 cents in the ancestral property in his favour under Document No.647 of 2003. According to him, the plaintiff had already relinquished his share in the family property and, therefore, his claim that an extent of 0.06 cents had been allotted to him under an oral family arrangement is false and unsupported by any acceptable evidence. It is further stated that the said extent of 0.03 cents was subsequently sold to Mr. P. Suresh Babu under the Sale Deed dated 01.04.2016 bearing Document No.419 of 2016, pursuant to a sale agreement executed in the year 2013, and that possession of the property was also handed over to the purchaser. According to the first defendant, the second defendant commenced construction on the property during July 2016 and, by the time the suit came to be instituted, nearly 75% of the construction had already been completed. The allegation that the second defendant attempted to take forcible possession of the suit property is denied as false and baseless. According to the first defendant, the second defendant is the lawful owner in possession of the disputed extent. The first defendant also raised a preliminary objection as to the maintainability of the suit, contending that the dispute essentially relates to the title over an extent of 0.03½ cents of land.

12. The first defendant further contended that the defendants have never disputed the plaintiff's possession and enjoyment of the residential house in which he is residing. However, according to the defendants, the plaintiff has no right to seek the relief of injunction in respect of the vacant extent of 0.03½ cents, which exclusively belongs to the second defendant and stands mutated in his name in the revenue records. It is further contended that the plaintiff is not entitled to seek a declaration that the Sale Deed dated 01.04.2016 is null and void, as the title to the disputed property vests exclusively with the second defendant. According to the defendants, the suit is devoid of any valid cause of action, and the alleged cause of action is imaginary and invented only for the purpose of filing the suit. On the above pleadings, the defendants prayed for dismissal of the suit with costs.

Gist of Written Statement of 2nd Defendant:

13. The second defendant filed a separate written statement adopting the written statement filed by the first defendant. In addition thereto, he denied the allegation that the Sale Deed executed in his favour was the result of any collusion between the defendants. According to him, the sale agreement in respect of the suit property had been entered into as early as the year 2013 and, pursuant thereto, the Sale Deed was duly executed and registered in his favour. Thereafter, his name was lawfully mutated in all the relevant revenue records by the Tahsildar after due verification of the relevant documents. The second defendant contends that he is a bona fide purchaser for valuable consideration, that he has constructed a building on the property, and that he is in lawful possession and enjoyment thereof. He therefore asserts that the plaintiff's allegation that the Sale Deed is null and void is wholly baseless. It is further contended that, since the building has already been constructed, the relief originally sought by the plaintiff is not maintainable and that the only remedy available to the plaintiff, subject to establishing his title over the property, is to seek a decree for mandatory injunction directing demolition of the alleged encroached portion.

14. The second defendant further contended that the plaintiff's claim is legally unsustainable, as the suit has been instituted after an unexplained delay of more than three years and is barred by limitation. According to him, he is the lawful owner of the disputed property, has constructed a building thereon, and has been in peaceful possession and enjoyment of the same. He further contended that the allegations made by the plaintiff are wholly false, baseless and unsupported by any acceptable evidence. On the above pleadings, the second defendant prayed for dismissal of the suit with costs.

Gist of Additional Written Statement filed by the 2nd Defendant and Adopted by the 1st Defendant:

15. In the additional written statement, which has been filed by the second defendant and adopted by the first defendant, the defendants have further contended that they have not encroached upon any portion of the plaintiff's property and that the allegations of encroachment are wholly false and baseless. According to the defendants, the plaintiff has approached this Court after an unexplained delay of more than nine years and, therefore, the reliefs of declaration and mandatory injunction are barred by limitation. It is further contended that the plaintiff is not entitled to the relief of recovery of possession, as there has been no encroachment by the defendants and, consequently, no cause of action has arisen for seeking either mandatory injunction or recovery of possession. The defendants have also contended that the plaintiff has not paid the requisite court fee in respect of the relief of declaration of title and, therefore, the suit is not maintainable in its present form. On the above pleadings, the defendants prayed that the suit be dismissed with costs.

Issues framed:

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

- ***(i)*** ***Whether the plaintiff is entitled the relief of declaration of sale deed vide Doc. No. 419/2016 dated 01.04.2016 is null and void?***
- ***(ii)*** ***Whether the plaintiff is entitled to relief of declaration as prayed for?***
- ***(iii)*** ***Whether the plaintiff is entitled for the relief of Mandatory Injunction as Prayed for?***
- ***(iv)*** ***Whether the 2^{nd} defendant is a bonafide purchaser of the suit property?***
- ***(v)*** ***To what other relief?***

Plaintiff's side evidence:

17. On the side of the plaintiff, the plaintiff, **Mr. J. Ravindran,** examined himself as Pw-1 through him **Ex. A-1 to Ex. A-17** were marked. The Pw-1 was cross examined by the defendants' side in full. Further on the plaintiff's side, one witness namely, **Mr. Vediyappan** (Zonal Deputy Tahsildar on behalf of the R.D.O., Udhagamandalam) examined as **Pw-2,** through him **Ex. A-18** was marked and another witness namely, **Mr. Arun** (Zonal Deputy Tahsildar on behalf of the D.R.O., Udhagamandalam), examined as **Pw-3,** through him **Ex. A-19** was marked. The Pw-2 and Pw-3 not cross examined by the defendants' side. The plaintiff's side evidence was closed with Pw-2 and Pw-3.

Defendants' side evidence:

18. On the side of the defendants, the 1^{st} defendant **Mr. J. Subban,** examined himself as **Dw-1** through him **Ex. B-1 to Ex. B-3** were marked. The Dw-1 was cross examined by the plaintiff's side in full. Further on the defendants' side, the

2nd defendant, **Mr. P. Suresh Babu,** examined as **Dw-2,** through him no exhibits were marked. The Dw-2 was cross examined by the plaintiff's side in full, and during cross examination of the Dw-2, **Ex. A-20** was marked on the plaintiff's side. The evidence of defendants side is closed with Dw-2.

Court witness:

19. On the plaintiff's side, one witness namely, **Mr. S. Sailesh,** Advocate Commissioner examined as **Cw-1,** through him **Ex. C-1** was marked. The Cw-1 was cross examined by the defendants' side in full. The further evidence of the plaintiff's side is closed with Cw-1.

Arguments on the plaintiff's side:

20. The learned counsel appearing for the plaintiff submitted that the defendants, in their written statement, have not specifically denied the construction of the plaintiff's house and compound wall. It was further contended that there is no specific denial regarding the participation of the defendants in the *Bhoomi Pooja* conducted by the plaintiff. The learned counsel further submitted that the defendants, in paragraph No.5 of the reply notice, have admitted as follows: *"your client has no right to put up a bore-well on the said extent and the same has been done without any authority and your client could not have played fraud to get permission to put up the bore-well."*

21. According to the learned counsel, the above admission clearly establishes that the defendants have admitted that the plaintiff had, in fact, put up the borewell in the suit property. The learned counsel further drew the attention of this Court to paragraph No.6 of the reply notice, wherein the defendants have stated as follows: *"If that is true your client could have filed the revision against the order* *passed by the Tahsildar which your client has not done so, and as stated in your notice if really any Revision is pending before R.D.O. your client very well could have furnished the details this alone would go to show your client can stoop to any level to grab our client's property."*

22. According to the learned counsel, the above statement amounts to an admission regarding the proceedings initiated before the Tahsildar. The learned counsel further pointed out that DW-1, in his chief examination, admitted as follows: *"And I submit that I had sold the said extent of 0.03 cents to one P. Suresh Babu under registered sale deed Document No.419/2016 as such I am nothing to do with the property as I had already handed over possession to Mr. P. Suresh Babu and the sale deed was executed based on the sale agreement already entered in the year 2013."*

23. The learned counsel also relied upon the admissions made by DW-1 during cross-examination, wherein he deposed as follows: "20.03.2016 தேதியில் காவல் ஆய்வாளரிடம் நான் எழுத்து மூலமாக நான் வெளியூர் சென்றிருந்த சமயத்தில் ரவீந்திரன் என்பவர் தாவா சொத்தில் அத்துமீறி நுழைந்து ஆழ்துளை குழாய் கிணறு மற்றும் நடைபாதை அமைத்துள்ளதாக எழுதிக்கொடுத்துள்ளேன் என்றால் சரிதான்." "எனது எதிர்வழக்குரையில் வாதி தனது வீட்டிற்கு அருகில் ஆழ்துளை குழாய் கிணறு அமைத்துள்ளதாக கூறியுள்ள நிலையில் வாதி அந்த பூமியில் ஆழ்துளை குழாய் கிணறு அமைத்துள்ளார் என்றால் சரிதான், ஆனால் வாதி அவரது வீட்டிற்கு பின்புறம் தள்ளி ஆழ்துளை குழாய் கிணறு அமைத்துள்ளார். அவ்வாறு வாதி ஆழ்துளை குழாய் கிணறு அமைத்துள்ள இடம் அவர் வீடு கட்டிய 3.25 சென்ட் போக மீதமுள்ள மூன்று சென்ட் இடத்தில்தான்

என்றால் சரிதான்." "தற்போது என்னிடம் காட்டப்படும் வா.சா.ஆ.15–ல் உள்ள மூன்றாவது புகைப்படத்தில் உள்ளது வாதியின் வீடு என்றால் சரிதான். அந்த மூன்றாவது புகைப்படத்தில் உள்ள வீட்டிற்கு முன்புறம் உள்ள படிக்கட்டு மற்றும் தடுப்பு சுவரை கட்டியது வாதிதான் என்றால் சரிதான். வா.சா.ஆ.15–ல் உள்ள புகைப்படங்கள் 25.03.2016 தேதியில் எடுக்கப்பட்டவை என்றால் சரிதான். நான் 2 ஆம் பிரதிவாதிக்கு தாவா சொத்தினை விற்பனை செய்ததாக சொல்லும் தேதி 01.04.2016 என்றால் சரிதான்."

24. Relying upon the above admissions, the learned counsel contended that the defendants have unequivocally admitted that the plaintiff had constructed the borewell, pathway, house, staircase and compound wall much prior to the execution of the sale deed dated 01.04.2016 in favour of the second defendant. According to the learned counsel, these admissions lend substantial support to the plaintiff's case regarding his possession and enjoyment of the suit property prior to the alleged sale in favour of the second defendant.

25. The learned counsel for the plaintiff further invited the attention of this Court to the admissions made by DW-2 during his cross-examination, wherein he deposed as follows: "நான் 01.04.2016 தேதியில் சொத்தினை கிரையம் பெற்ற நிலையில் அதில் எப்போது வீடு கட்டினேன் என்றால் கிரையம் பெற்ற 2 மாதங்களில் வீடு கட்டி முடித்துவிட்டேன், ஜுன் மாதத்தில் வீடு கட்டி முடித்துவிட்டேன்." "அவ்வாறு நான் வீடு கட்டியதற்கு உல்லத்தி பஞ்சாயத்தில் அனுமதி பெற்றுள்ளேனா என்றால் பெறவில்லை. நான் வாதி மீது 24.08.2016 அன்று ஒரு புகார் புதுமந்து காவல் நிலையத்தில்

கொடுத்து அதன் பெயரில் குற்ற எண் 173/2016 என்ற எண்ணில் முதல் தகவல் அறிக்கை பதிவு செய்யப்பட்டது என்றால் சரிதான். தற்போது என்னிடம் காட்டப்படும் ஆவணம் நான் கொடுத்த புகாரின் அடிப்படையில் பதிவு செய்யப்பட்ட முதல் தகவல் அறிக்கை என்றால் சரிதான். (அந்த 24.08.2016 தேதியிட்ட புதுமந்து காவல் நிலைய குற்ற எண் 173/2016–ல் பதிவு செய்யப்பட்ட முதல் தகவல் அறிக்கையின் ஒளி நகல் வா.சா.ஆ.20 ஆக குறியீடு செய்யப்படுகிறது)." "அந்த முதல் தகவல் அறிக்கையில் நான் கொடுத்துள்ள புகாரின் அடிப்படையில் 24.08.2016 தேதிக்கு முன்பே நான் கிரையம் பெற்ற பூமியில் வாதி சுற்றுச்சுவர் மற்றும் ஆழ்துளை குழாய் கிணறு அமைத்துவிட்டதற்காக நடவடிக்கை எடுக்கும்படி கேட்டுக்கொண்டுள்ளேன் என்றால் சரியல்ல. நான் மேற்படி முதல் தகவல் அறிக்கையின் அடிப்படையில் 24.08.2016 தேதிவரை மேற்படி கிரையம் பெற்ற பூமியில் எந்தவித கட்டிடமும் கட்டவில்லை என்றும், ஆனால் தற்போது வழக்கிற்காக 2016 ஆம் ஆண்டு ஜுன் மாதத்திலேயே கட்டிடத்தை கட்டி முடித்துவிட்டதாக பொய்யாக சாட்சியம் அளிக்கிறேன் என்றால் சரியல்ல, நான் கட்டிடத்தை கட்டினேன்."

26. Placing reliance upon the above admissions, the learned counsel submitted that the evidence of DW-2 clearly establishes that he had admittedly put up the construction only after purchasing the property under the sale deed dated 01.04.2016. It was further contended that DW-2 also admitted that he had not obtained any permission from the Ullathi Panchayat before raising the construction. According to the learned counsel, the admissions made by DW-2, coupled with Ex.A-20, namely, the First Information Report registered in Crime No.173 of 2016, clearly establish the existence of the construction and also corroborate the plaintiff's case regarding the physical features found in the suit property.

27. The learned counsel further submitted that the contents of Ex.A-20 establish the existence of construction in the suit property. According to him, the said document also indicates that the defendants were not in possession of the suit property at the relevant point of time. It was further contended that the Advocate Commissioner's Report records the existence of the footpath, borewell and the construction put up by the plaintiff during the year 2004.

28. The learned counsel further submitted that the defendants denied the existence of the pathway only in December 2016 and, consequently, the plaintiff suitably amended the plaint during January 2017 seeking the appropriate reliefs. It was further argued that the sale deed executed by the first defendant in favour of the second defendant is not binding upon the plaintiff. According to the learned counsel, Exs.B-1 and B-2 alone have been produced by the defendants to substantiate the title claimed by the second defendant, and except the said documents, no other title documents have been produced to establish the defendants' claim over the suit property.

29. The learned counsel further submitted that the defendants had obtained a sub-division in respect of R.S. No.270/6B. However, the plaintiff had challenged the said sub-division as early as in the year 2013 by submitting objections before the Revenue Authorities under Exs.A-6 and A-7. Thereafter, the sub-division in R.S. No.270/6B was cancelled by the Revenue Divisional Officer under Ex.A-17. The said order was challenged by the defendants before the District Revenue Officer, who dismissed the appeal under Ex.A-16. It was further submitted that no second appeal has been preferred against the said order and, therefore, as on date, the only existing survey number is R.S. No.270/6.

30. The learned counsel further relied upon the admissions made by DW-1 during his cross-examination, wherein he deposed as follows: "**உல்லத்தி கிராமம் பழைய சர்வே எண் 104-ன் மொத்த விஸ்தீரணம் 3.72 ஏக்கர் என்றால் சரிதான். அதில் 20 செண்ட் பூமியைத்தான் மாதா கவுடர் என்பவர் நஞ்சன் என்பவருக்கு பி.வா.சா.ஆ.1 கிரையப்பத்திரம் மூலம் விற்பனை செய்துள்ளார் என்றால் சரிதான். பி.வா.சா.ஆ.1 ஆவணத்தில் மேற்படி விற்பனை செய்யப்பட்ட 20 செண்ட் பூமிக்கு செக்குபந்தி காண்பிக்கப்படவில்லை என்றால் சரிதான், கூட்டு பட்டா என்பதால் செக்குபந்தி காண்பிக்கப்படவில்லை. தற்போது என்னிடம் காட்டப்படும் பி.வா.சா.ஆ.1 ஆவணத்தில் மாதா கவுடருக்கு எவ்வாறு சொத்து பாத்தியப்பட்டது என்பது குறித்து எதுவும் கூறப்படவில்லை என்றால் சரிதான். நஞ்சன் என்பவர் எனக்கு 20 செண்ட் பூமியை விற்பனை செய்ததற்காக ஏற்படுத்தப்பட்ட பி.வா.சா.ஆ.2 கிரையப்பத்திரத்திலும் 20 செண்ட் பூமிக்கான செக்குபந்தி காட்டப்படவில்லை என்றும், மொத்த விஸ்தீரணம் 3.72 ஏக்கர் என்று காட்டப்பட்டுள்ளது என்றும் சொன்னால் சரிதான். தற்போது என்னிடம் காட்டப்படும் பி.வா.சா.ஆ.2 ஆவணத்தில் எனக்கு 20 செண்ட் பூமியை விற்பனை செய்த நஞ்சன் என்பவருக்கு எவ்வாறு அந்த சொத்து பாத்தியப்பட்டது என்று சரத்து எதுவும் இல்லை என்றால் சரிதான். வாதி வீடு கட்டியுள்ள இடம் எனக்கு பாத்தியப்பட்டது என்பதை காண்பிக்க ஏதாவது ஆவணங்களை இந்த வழக்கில் நான்**

தாக்கல் செய்துள்ளேனா என்றால் பட்டா மற்றும் சிட்டா தாக்கல் செய்துள்ளேன்."

31. The learned counsel submitted that although DW-1 claimed during his cross-examination that patta and chitta had been filed before this Court, no such documents have, in fact, been produced or marked on the side of the defendants. According to the learned counsel, this admission materially weakens the defendants' claim of title over the suit property.

32. The learned counsel for the plaintiff further relied upon the following admissions made by DW-1 during his cross-examination: **"நான் தாக்கல் செய்துள்ள எதிர்வழக்குரை பத்தி–3–ல் 1928 ஆம் ஆண்டு எனது தாத்தா பெள்ளா கவுடர் கிரையம் பெற்ற 41 சென்ட் பூமியில் எனது தகப்பனார் ஜோகிக்கு 20 சென்ட்டும், எனது பெரியப்பா மாதன் என்பவருக்கு 20 சென்ட்டும் ஒதுக்கப்பட்டதாக கூறியுள்ளேன் என்றால் சரிதான். நான் தாக்கல் செய்துள்ள பி.வா.சா.ஆ.1 மற்றும் பி.வா.சா.ஆ.2 ஆவணங்களில் ஏற்கனவே எனது தகப்பனாருக்கும், எனது பெரியப்பாவிற்கும் இடையில் பாகப்பிரிவினை ஏற்பட்டு அதில் ஒதுக்கப்பட்ட பூமி விற்பனை செய்யப்படுவதாக காண்பிக்கப்படவில்லை என்றால் அவ்வாறு காண்பிக்கப்படவில்லை, ஆனால் நஞ்சா கவுடர் அனுபவித்து வந்த பூமியை எனக்கு விற்பனை செய்ததாக காண்பிக்கப்பட்டுள்ளது. அவ்வாறு நஞ்சா கவுடர் அனுபவித்து வந்த பூமியை எனக்கு விற்பனை செய்ததாக கூறும் நிலையில் நஞ்சா கவுடர் அந்த பூமியை அனுபவித்து வந்தார் என்பதை காண்பிக்க இந்த வழக்கில் ஆவணங்கள் ஏதாவது தாக்கல் செய்துள்ளேனா**

என்றால் இல்லை. எனது தாத்தா கிரையம் பெற்ற 41 சென்ட் பூமி ஒரே இடத்தில் உள்ள பூமி என்றால் சரியல்ல, அவை வெவ்வேறு இடங்களில் உள்ள பூமிகள் ஆகும். தற்போது என்னிடம் காட்டப்படும் வா.சா.ஆ.1 எனது தாத்தா கிரையம் பெற்ற பத்திரத்தில் சொத்துக்கள் வெவ்வேறு இடத்தில் உள்ளதாக காண்பிக்கப்பட்டுள்ளதா என்றால் இல்லை. எனது தகப்பனாருக்கு ஒதுக்கப்பட்டதாக சொல்லும் 20 சென்ட் பூமியும் ஒரே இடத்தில்தான் உள்ளது என்றால் சரியல்ல, வெவ்வேறு இடத்தில் உள்ளது. அது எத்தனை இடங்களில் உள்ளது என்றால் மூன்று இடங்களில் உள்ளது. நான் தாக்கல் செய்துள்ள எதிர்வழக்குரையில் எனது தகப்பனாருக்கு ஒதுக்கப்பட்ட 20 சென்ட் பூமி மூன்று இடங்களில் உள்ளது என்று கூறியுள்ளேனா என்றால் இல்லை. தற்போது என்னிடம் காட்டப்படும் நான் நஞ்சா கவுடர் என்பவரிடமிருந்து 20 சென்ட் பூமியை கிரையம் பெற்றதற்கான பி.வா.சா.ஆ.2 கிரைய ஆவணத்தில் 20 சென்ட் பூமியும் ஒரே இடத்தில் இருப்பதாகத்தான் காண்பிக்கப்பட்டுள்ளது என்றால் சரிதான். பி.வா.சா.ஆ.1 மற்றும் பி.வா.சா.ஆ.2 ஆவணங்கள் தாவா சொத்திற்கு தொடர்பில்லாத ஆவணங்கள் என்றால் சரியல்ல, தொடர்பு உள்ளது, இந்த தாவா சொத்து பொறுத்து நஞ்சா கவுடர் பெயரில் பட்டா உள்ளது. நான் நஞ்சா கவுடர் பெயரில் பட்டா உள்ளது என்று கூறும் நிலையில் அந்த ஆவணத்தை இந்த வழக்கில் தாக்கல் செய்துள்ளேனா என்றால் தாக்கல் செய்துள்ளேன். நான் அவ்வாறு ஆவணம் எதுவும் தாக்கல் செய்யாமல் வழக்கிற்காக தாக்கல் செய்துள்ளதாக பொய்யாக சாட்சியம் அளிக்கிறேன் என்றால் சரியல்ல."

33. The learned counsel submitted that the above admissions clearly demonstrate that although DW-1 repeatedly asserted that patta had been produced before the Court to establish his title, no such patta has been filed or marked on the side of the defendants. It was therefore contended that the defendants have failed to substantiate their claim of title by producing the best available documentary evidence.

34. The learned counsel further relied upon the following portion of the cross-examination of DW-1: **"நான் எனது எதிர்வழக்குரையில் 2004 ஆம் ஆண்டு வாதி எனது இடத்தில் வீடு கட்ட வந்ததை நான் தடுத்ததாக கூறியுள்ள நிலையில் அவ்வாறு அந்த பூமி எனக்கு பாத்தியப்பட்ட பூமி என்பதை காண்பிக்க இந்த வழக்கில் ஆவணங்களை தாக்கல் செய்துள்ளேனா என்றால் சர்வே எண் 270/6–ல் 7 ½ சென்ட் பூமி எனக்கு பாத்தியப்பட்டது என்பதை காண்பிக்க பட்டாவை தாக்கல் செய்துள்ளேன். நான் மேலே கூறியதுபோல இந்த வழக்கில் எந்தவித பட்டாவும் தாக்கல் செய்யாமல் பட்டா தாக்கல் செய்துள்ளதாக வழக்கிற்காக பொய்யாக சாட்சியம் அளிக்கிறேன் என்றால் சரியல்ல."**

35. According to the learned counsel, this admission is also of no assistance to the defendants since, admittedly, no patta has been filed before this Court despite the repeated assertion made by DW-1. The learned counsel further relied upon the admissions of DW-1 relating to the alleged family arrangement, wherein he deposed as follows: **"நான் தாக்கல் செய்துள்ள எதிர்வழக்குரையில் நான் கிரையம் பெற்ற பூமியில் வாதி குடும்ப ஏற்பாட்டின்படி வீடு கட்டியுள்ளார் என்று கூறியுள்ளேன் என்றால் சரிதான். அவ்வாறு நான் எதிர்வழக்குரையில்**

கூறியுள்ள குடும்ப ஏற்பாட்டை காண்பிக்க ஏதாவது ஆவணங்கள் உள்ளதா என்றால் இல்லை. நான் எனது எதிர்வழக்குரையில் குடும்ப ஏற்பாடு வாய்மொழியாக ஏற்பட்டது என்றும் குறிப்பிடவில்லை என்றால் சரிதான், எனது தகப்பனார் கேட்டதால் நான் கொடுத்தேன், குடும்ப ஏற்பாடு எதுவும் ஏற்படவில்லை."

36. Placing reliance upon the above admission, the learned counsel submitted that DW-1 has admitted in unequivocal terms that the plaintiff had put up the house pursuant to a family arrangement. Though DW-1 subsequently attempted to explain the circumstances under which permission had been granted, he categorically admitted that no document had been executed evidencing such arrangement. According to the learned counsel, the said admission corroborates the plaintiff's case that the construction was put up by him pursuant to the family arrangement between the parties.

37. The learned counsel further relied upon the following admissions made by DW-1 concerning the revenue proceedings: "நான் தற்போது தாக்கல் செய்துள்ள எனது முதல் விசாரணை பிரமாண வாக்குமூலம் பத்தி–8–ல் வாதி உட்பிரிவிற்கு எதிராக மேல்முறையீடு எதுவும் தாக்கல் செய்யவில்லை என்றும், வாதி வட்டாட்சியரிடம் தாக்கல் செய்த மனுவை வட்டாட்சியர் தள்ளுபடி செய்ததாகவும் கூறியுள்ளேன் என்றால் சரிதான். ஆனால் 13.02.2017 அன்று எனது பெயரில் செய்யப்பட்ட 270/6B என்ற உட்பிரிவானது ரத்து செய்யப்பட்டுவிட்டது என்றால் சரிதான், உட்பிரிவை RDO ரத்து செய்தார், அதில் வட்டாட்சியர் முறையான செயல்முறைகளை பின்பற்றவில்லை என்றும், மேல்முறையீடு தாக்கல் செய்ய அறிவுறுத்தியும்

உத்தரவு பிறப்பித்திருந்தார், அதன் அடிப்படையில் நான் DRO–விடம் மேல்முறையீடு செய்துள்ளேன். நான் DRO–விடம் தாக்கல் செய்திருந்த மேல்முறையீடு 27.01.2025 தேதியில் தள்ளுபடி செய்யப்பட்டுவிட்டது என்றால் சரிதான்."

38. The learned counsel submitted that the above admissions clearly establish that the sub-division effected in favour of DW-1 under R.S. No.270/6B stood cancelled by the Revenue Divisional Officer and that the appeal preferred before the District Revenue Officer also came to be dismissed on 27.01.2025. It was further contended that although DW-1 consistently asserted during his cross-examination that the relevant patta had been filed before this Court, no such patta has, in fact, been produced or marked on the side of the defendants. According to the learned counsel, the failure to produce the very documents relied upon by DW-1 gives rise to an adverse inference against the defendants and considerably weakens their claim over the suit property.

39. The learned counsel for the plaintiff further submitted that DW-1, in paragraph No.8 of his chief examination, had made incorrect statements regarding the proceedings initiated by the plaintiff challenging the sub-division effected in favour of the defendants. In this regard, DW-1 has stated as follows: *I't is very serious allegation made that I had created bogus sub-division with the help of Tahsildar by adopting back door method are per-se defamatory statements for which the plaintiff is answerable if that is true the plaintiff could have filed revision against the order passed by the Tahsildar which the plaintiff has not done so, and as stated in the plaintiff if really any revision is pending before R.D.O. the plaintiff very well could have furnished the details this alone would go to show the plaintiff can stoop to any level to grab the defendant's property, the second appeal filed is only an* *afterthought, since the plaintiff complaint was false and no merits the Tahsildar rightly dismissed his plea and included my name in all revenue records, the plaintiff could have taken an appeal but after slept over for more than 4 years for the purpose of the suit filed so called complaint against the 2nd defendant."*

40. The learned counsel submitted that the above statement has subsequently been rendered factually incorrect by the admissions made by DW-1 during his cross-examination, wherein he admitted that the Revenue Divisional Officer, by order dated 13.02.2017, cancelled the sub-division made in his favour in R.S. No.270/6B and that the appeal preferred before the District Revenue Officer also came to be dismissed on 27.01.2025. According to the learned counsel, the documentary evidence marked as Ex.A-17 and Ex.A-16 fully corroborates the said admissions.

41. The learned counsel further contended that the defendants have admitted the family settlement as well as the plaintiff's construction of the compound wall and residential house. Though the defendants have pleaded that the entire building belongs to the first defendant and that he had merely permitted the plaintiff to construct the house, they have not produced any oral or documentary evidence to substantiate the said plea. It was therefore submitted that the contention advanced on behalf of the defendants that the plaintiff has failed to produce documentary evidence to prove the family arrangement is untenable in view of the admissions elicited from DW-1 and DW-2 during cross-examination and the documentary evidence available on record.

42. With regard to the contention relating to non-joinder of necessary parties, the learned counsel submitted that the said objection is wholly misconceived. According to him, the plaintiff has approached this Court asserting an independent and exclusive title over the suit property, whereas the first defendant also claims exclusive ownership over the very same property. In such circumstances, the dispute is essentially between the plaintiff and the defendants, and the presence of the other legal heirs of late Joghee Gowder is not necessary for an effective adjudication of the controversy involved in the suit. It was further submitted that, at the time of institution of the suit, the plaintiff's father was alive and that he passed away only during the pendency of the proceedings. Therefore, according to the learned counsel, the plea regarding non-joinder of necessary parties is devoid of merits.

43. The learned counsel also answered the contention of the defendants based on paragraph Nos.7 and 9 of the proof affidavit of PW-1. It was submitted that the statement in paragraph No.7, wherein PW-1 stated that the defendants were attempting to take forcible possession of the suit property, related to the original prayer for permanent injunction as contained in the plaint at the time of institution of the suit. Subsequently, owing to the developments that took place during the pendency of the suit, the plaint was amended, the relief of permanent injunction was deleted, and the consequential relief of mandatory injunction was sought. Therefore, according to the learned counsel, the said statements cannot be construed as admissions regarding the defendants' possession so as to defeat the plaintiff's claim.

44. In conclusion, the learned counsel submitted that the plaintiff has successfully established his case by examining the material witnesses, namely PW-1 to PW-3, by producing the relevant documentary evidence marked as Exs.A-1 to A-20, and by eliciting material admissions from DW-1 and DW-2 during their cross-examination. It was therefore contended that the oral and documentary evidence, read as a whole, clearly establishes the plaintiff's entitlement to the reliefs sought in the plaint. Accordingly, the learned counsel prayed that the suit be decreed by granting the reliefs of declaration, declaration that the sale deed executed by the first defendant in favour of the second defendant is null and void insofar as the suit property is concerned, and mandatory injunction, together with costs.

Arguments on the Defendants' side:

45. The learned counsel appearing for the defendants vehemently contended that the plaintiff has utterly failed to establish the very foundation of the suit, namely, the alleged oral family partition said to have taken place during September 2001. According to him, except the interested testimony of PW-1, there is absolutely no independent evidence available on record to prove such an oral arrangement. The plaintiff himself admitted during cross-examination that no document whatsoever had been executed recording the alleged oral partition. Further, the plaintiff specifically pleaded that his father, mother, brother Ashok and himself were present at the time of the alleged oral arrangement. However, the said Ashok, who is stated to be an eyewitness to the alleged partition, has not been examined. Likewise, none of the other legal heirs or co-sharers have been examined to corroborate the plaintiff's version. Therefore, an adverse inference has to be drawn under Section 114(g) of the Indian Evidence Act.

46. The learned counsel further submitted that admittedly the suit property originally belonged to the common ancestor and thereafter devolved upon various legal heirs. Therefore, unless all the co-owners are impleaded, no effective declaration regarding title can be granted. He relied upon the judgment of the Hon'ble High Court of Madras in the case of ***P.K.Padmanaban v. B. Janakiraman and another*** reported in ***2022 (5) CTC 1150***, wherein it has been held that although a suit for bare injunction may be maintainable without impleading all the co-owners, a suit seeking declaration of title cannot be effectively adjudicated in the absence of all necessary co-owners. According to the learned counsel, even though the defendants have not specifically pleaded non-joinder of necessary parties in the written statement, the same is a pure question of law affecting the maintainability of the suit and can be raised at any stage of the proceedings.

47. The learned counsel for the defendants further relied upon the judgment of the Hon'ble High Court of Madras in ***Lakshmi Ammal and others v. S. Bakthavatsalu Naidu, 2026 (2) CTC 590***, wherein the Hon'ble High Court reiterated that in a suit for declaration of title, the burden squarely lies upon the plaintiff to establish an existing legal right over the suit property by clear, cogent and convincing evidence. Mere production of title deeds or reliance upon recitals in a partition deed, without corroborative oral or documentary evidence, is insufficient to prove title. The Court further held that where the defendant disputes the plaintiff's claim to the disputed extent, the plaintiff must specifically plead and prove how such larger extent came into the possession of his predecessor-in-title and adduce satisfactory evidence in support thereof. The Court also observed that declaratory relief, being an equitable relief under Section 34 of the Specific Relief Act, cannot be granted on assumptions, presumptions or conjectures, but only upon strict proof of title. Applying the said principles to the present case, the learned counsel submitted that the plaintiff has neither proved the alleged oral partition nor examined the material witnesses or co-sharers to establish his exclusive title over the suit property. Hence, according to the learned counsel, the plaintiff is not entitled to the reliefs of declaration, declaration of the sale deed as null and void, or mandatory injunction.

48. The learned counsel further invited the attention of this Court to the Advocate Commissioner's report and the plan appended thereto. According to the plaint, the plaintiff claims declaration in respect of **6 cents**. However, the

Commissioner, after conducting a scientific survey with the assistance of the Taluk Surveyor, has specifically found that the plaintiff is actually in physical possession of **7¼ cents**, which has been shown in pink colour in the Commissioner's sketch. Therefore, even the identity and extent of the property claimed in the plaint do not tally with the actual physical features found on the ground. Hence, the very relief of declaration sought by the plaintiff is factually unsustainable.

49. With regard to the relief of mandatory injunction, the learned counsel submitted that the plaintiff alleged encroachment of **2¾ cents** by the defendants. However, the Advocate Commissioner has categorically recorded in his report as follows: *Though the extent in the schedule mentioned property mentioned in the warrant given to me shows as 6 cents, on ground the schedule mentioned property is 7¼ cents. In view of the foregoing facts which have been ascertained on a careful inspection and meticulous survey of the property, which is evident from the plan enclosed to this report, I submit that the subject matter regarding encroachment can be decided only upon trial since the extent mentioned in the warrant given to me varies with ground reality during survey and therefore I am not able to conclude regarding any encroachment as per Point No.5 in the warrant."*

50. Therefore, according to the learned counsel, when the Commissioner himself is unable to conclude that there has been any encroachment, the relief of mandatory injunction directing demolition of the alleged construction cannot be granted. The learned counsel further pointed out that in paragraph 7 of the proof affidavit, PW-1 has stated that the second defendant, on the strength of the impugned sale deed, is attempting to take forcible possession of the suit property. However, in paragraph 9 of the same proof affidavit, PW-1 has stated that he is entitled to recover vacant possession of the suit property from the defendants. These two pleadings are mutually destructive. By seeking recovery of vacant possession, the plaintiff himself admits that the defendants are in possession of the disputed property. Such admissions completely belie the plaintiff's case of continuous and exclusive possession.

51. The learned counsel for the defendants further submitted that the consistent case of the defendants, both in the written statement as well as in the oral evidence of DW-1, is that the suit property forms part of the property belonging to the first defendant and that, out of love and affection, the first defendant had merely permitted the plaintiff to construct a residential house in a portion of his land. According to the learned counsel, such permissive occupation does not confer any right, title or interest upon the plaintiff. It was therefore contended that the mere fact that the plaintiff had constructed a house, compound wall, borewell or pathway would not, by itself, establish his title over the suit property.

52. The learned counsel further submitted that the relief seeking declaration that the sale deed dated 01.04.2016 executed by the first defendant in favour of the second defendant is null and void is purely consequential to the plaintiff establishing his own title. Unless and until the plaintiff proves his lawful and exclusive title over the suit property, he cannot seek cancellation or declaration that the sale deed executed between the defendants is null and void. Since the plaintiff has failed to establish his title by acceptable oral and documentary evidence, the consequential relief relating to the sale deed is also liable to be rejected.

53. The learned counsel further invited the attention of this Court to the order passed by the Revenue Divisional Officer marked as Ex.A-17 and submitted that the said order itself makes it abundantly clear that the civil suit relating to the title of the property was already pending before the competent Civil Court. The Revenue Divisional Officer has observed that the parties are at liberty to work out their rights before the Civil Court and that further revenue proceedings would necessarily depend upon the outcome of the civil suit. Therefore, according to the learned counsel, Ex.A-17 cannot be construed as a declaration of the plaintiff's title nor can it confer any right upon the plaintiff. At best, the said order only leaves the question of title open for adjudication by the competent Civil Court.

54. The learned counsel therefore submitted that the revenue authorities have neither declared the plaintiff as the owner of the suit property nor finally adjudicated the title in his favour. Since the plaintiff has failed to independently establish his title before this Court, the revenue proceedings relied upon by him are of no assistance in granting the declaratory reliefs sought in the suit.

55. In view of the above submissions, the learned counsel contended that the plaintiff has failed to establish his exclusive title over the suit property. Consequently, he is not entitled to the relief of declaration of title, the consequential declaration that the sale deed dated 01.04.2016 executed by the first defendant in favour of the second defendant is null and void, or the relief of mandatory injunction as prayed for. Accordingly, he prayed that the suit be dismissed with costs.

Points for determination:

56. Having heard the learned counsels appearing for both parties and upon careful consideration of the pleadings, namely the plaint, the written statement and the additional written statement, the oral and documentary evidence adduced on either side, the report of the Advocate Commissioner, the submissions advanced by the learned counsels, and the exhibits available on record, this Court is of the view that the core questions that arise for determination are whether the plaintiff is entitled to the declarations sought in the plaint and whether he is entitled to the relief of mandatory injunction as prayed for.

57. In order to adjudicate the aforesaid reliefs, this Court has framed the issues extracted above. The discussion and findings on each of the issues are set out hereinafter. For the sake of convenience and to avoid repetition, Issue No.2 is taken up for consideration first, since the findings on the remaining issues substantially depend upon the determination of the said issue.

58. Before proceeding to consider Issue No.2, it is necessary to record a clarification with regard to the reliefs claimed in the plaint. After the suit had been reserved for judgment, while preparing the judgment, this Court noticed that in paragraph No.13 of the amended plaint, the plaintiff, while setting out the valuation of the suit and the court fee paid in respect of the relief of declaration of ownership and possession, had stated that *for the relief of declaration and consequential permanent injunction the value is Rs.90,000/- and the court fee is paid a sum of Rs.1,350/- being half of the value under Section 25(b) of the Tamil Nadu Court Fees and Suits Valuation Act, 1955."*However, on a perusal of the amended plaint, this Court found that, after the amendment, the plaintiff had not sought any relief of consequential permanent injunction and had instead sought the relief of mandatory injunction.

59. Accordingly, this Court sought a clarification from the learned counsel for the plaintiff regarding the apparent inconsistency in paragraph No.13 of the amended plaint. In response, the learned counsel for the plaintiff filed a Memo dated 03.08.2026, clarifying that the plaintiff is not seeking the relief of consequential permanent injunction in the present suit and that the reference made in paragraph No.13 of the amended plaint dated 24.07.2026 to "declaration and consequential permanent injunction" was only for the limited purpose of indicating the valuation of the suit and the court fee payable under the provisions of the Tamil Nadu Court Fees and Suits Valuation Act, 1955, and was not intended to indicate that such a substantive relief had been claimed.

60. In view of the said clarification, this Court records that the plaintiff has not sought the relief of consequential permanent injunction in the present suit and that the reliefs claimed by the plaintiff are confined to those specifically set out in the amended plaint, namely, the declarations sought therein and the consequential relief of mandatory injunction. The issues framed and the discussion that follows shall, therefore, be confined to the said reliefs.

Discussion on Issue No.2:

61. Issue No.2 is, whether the plaintiff is entitled to the relief of declaration as prayed for? The burden of proving title squarely lies upon the plaintiff. It is a settled principle of law that the plaintiff must succeed on the strength of his own case and cannot derive any advantage from the weakness, if any, in the case of the defendants. Therefore, it is incumbent upon the plaintiff to establish, by acceptable oral and documentary evidence, that he has valid right, title and interest over the suit schedule property and that he is consequently entitled to the declarations sought in the plaint.

62. The specific case of the plaintiff is that the suit schedule property originally formed part of the ancestral property purchased by his grandfather, Shri Bella Gowder, under Ex.A-1 Sale Deed dated 20.09.1928. According to the plaintiff, during September 2001, an oral family settlement took place between himself, the first defendant, their brother Ashok and their father, M.B. Joghee, under which an extent of 6 cents in R.S. No.270/6 was allotted to him for construction of a residential house. It is on the strength of the said oral family settlement that the plaintiff claims exclusive title over the suit schedule property. The defendants have categorically denied the alleged oral family settlement and have specifically disputed the plaintiff's claim of allotment of 6 cents. Therefore, the primary question that falls for consideration is whether the plaintiff has satisfactorily proved the alleged oral family settlement and the allotment of the suit property in his favour.

63. In order to establish his case, the plaintiff examined himself as P.W.1. He also examined P.W.2, who is the Deputy Zonal Tahsildar, and P.W.3, who is also a Zonal Deputy Tahsildar. A careful appreciation of the evidence of P.W.2 and P.W.3 shows that they have not deposed regarding the alleged oral family settlement or the plaintiff's title over the suit property. P.W.2 was examined only to speak about the proceedings before the Revenue Divisional Officer relating to the objections raised by the plaintiff against the sub-division, while P.W.3 was examined only to prove the proceedings of the District Revenue Officer relating to the cancellation of the sub-division. Their evidence is confined to the official revenue proceedings and does not, in any manner, establish the oral family settlement or the alleged allotment of 6 cents in favour of the plaintiff. Admittedly, according to the plaintiff himself, the oral family settlement took place in the presence of his father, M.B. Joghee, his elder brother, the first defendant, and another brother, Ashok. It is also not in dispute that the plaintiff's father was alive throughout the trial and till the conclusion of the evidence. Nevertheless, the plaintiff has not chosen to examine his father, who was admittedly one of the principal participants in the alleged oral family settlement. Likewise, Ashok, who is also stated to have been present at the time of the alleged family arrangement, has not been examined. No explanation whatsoever has been offered by the plaintiff for withholding the evidence of these material witnesses.

64. It is well settled that though an oral partition or oral family arrangement is legally permissible, the same must be proved by cogent, convincing and reliable evidence. Where persons who admittedly participated in the alleged family arrangement are available and yet are not examined, the Court is justified in drawing an adverse inference against the party who asserts such arrangement. In the present case, except the interested testimony of P.W.1 and the supporting evidence of P.W.2 and P.W.3, there is no independent evidence establishing that an oral family settlement was in fact effected in September 2001 or that an extent of 6 cents was exclusively allotted to the plaintiff.

65. The plaintiff has produced Ex.A-1 to Ex.A-20 in support of his case. Ex.A-1 evidences the purchase of the ancestral property by the plaintiff's grandfather. Exs.A-2 to A-20 primarily relate to the plaintiff's possession, construction of the residential house, payment of house tax, installation of borewell, correspondence with the revenue authorities, legal notices, proceedings before the Revenue Divisional Officer and District Revenue Officer and the criminal complaint. None of these documents, however, constitute evidence of the alleged oral family settlement or establish that an extent of 6 cents was exclusively allotted to the plaintiff. Likewise, none of the documents confer title upon the plaintiff independently of the alleged family arrangement.

66. At the same time, the oral and documentary evidence adduced by the plaintiff, coupled with the admissions made by D.W.1 during cross-examination, clearly establish that the plaintiff had constructed a residential house, compound wall, pathway and borewell in the suit property long prior to the institution of the suit. The defendants have also admitted several of these factual aspects during the course of evidence. The Advocate Commissioner, who was examined as C.W.1, has also noticed the physical features available in the property. Thus, the evidence on record satisfactorily establishes that the plaintiff has been in possession and enjoyment of the property where the residential house stands.

67. However, proof of possession by itself cannot be equated with proof of title. Where the title itself is seriously disputed, mere possession, however long it may be, cannot automatically confer ownership, particularly when the plaintiff seeks a declaration of title. In the present case, the defendants have consistently disputed the plaintiff's ownership and have taken a specific defence that the plaintiff was only permitted by the first defendant to construct the residential house in the disputed property. Though the defendants have not satisfactorily proved such permission by producing acceptable documentary evidence, the failure of the defendants to establish their defence cannot relieve the plaintiff of the burden of proving his own title.

68. The law is well settled that the plaintiff cannot succeed merely because the defendants have failed to prove their defence. The burden always rests upon the plaintiff to establish his own case. Unless the plaintiff proves his title by acceptable evidence, no declaration can be granted merely because the defendants have failed to substantiate their version. Therefore, this Court is unable to accept the contention of the learned counsel for the plaintiff that the alleged weaknesses in the defendants' case are sufficient to decree the suit.

69. The Advocate Commissioner's Report marked as Ex.C-1 also does not advance the plaintiff's case regarding title. On the contrary, the Commissioner has specifically stated that he is unable to conclude whether there is any encroachment and has further reported that the plaintiff is in possession of approximately 7¼ cents of land, whereas the schedule property described in the plaint is only 6 cents. The Commissioner has categorically stated that, in view of the variation between the extent mentioned in the warrant and the actual physical extent found during survey, he is unable to arrive at any conclusion regarding the alleged encroachment. Therefore, the Commissioner's Report cannot be treated as proof of the plaintiff's title over the suit property.

70. In view of the foregoing discussion, this Court is of the considered opinion that, although the plaintiff has satisfactorily established his possession over the property in which he has constructed the residential house and other structures, he has failed to establish the very foundation of his claim, namely, the alleged oral family settlement and the allotment of 6 cents in his favour. In the absence of convincing evidence proving such oral family settlement and allotment, this Court cannot hold that the plaintiff has established exclusive right, title and interest over the suit schedule property. Consequently, the plaintiff is not entitled to the declarations sought in the plaint. ***Accordingly, Issue No.2 is answered against the plaintiff.***

Discussion on Issue No.1:

71. Issue No.1 is, whether the plaintiff is entitled to the relief of declaration that the Sale Deed vide Document No.419 of 2016 dated 01.04.2016 is null and void? As already discussed while deciding Issue No.2, the plaintiff has failed to establish that he has exclusive right, title and interest over the suit schedule property. The principal relief sought by the plaintiff is for declaration of his title and, consequentially, for declaring the Sale Deed dated 01.04.2016 executed by the first defendant in favour of the second defendant as null and void.

72. The plaintiff has challenged the said Sale Deed mainly on the ground that the first defendant had no manner of right, title or possession over the property and, therefore, was incompetent to execute the same. However, before seeking to invalidate a registered conveyance executed between the defendants, it is incumbent upon the plaintiff to first establish his own legal right over the property. Unless the plaintiff proves that the property exclusively belongs to him, this Court cannot declare a registered document executed by another person as null and void merely on the basis of allegations.

73. Though the plaintiff has questioned the validity of the sale transaction by relying upon the revenue proceedings marked as Ex.A-16 and Ex.A-17, those proceedings themselves do not confer title upon the plaintiff. On the contrary, the order passed by the Revenue Divisional Officer itself makes it clear that the dispute relates to title and that further action would depend upon the outcome of the civil proceedings. Revenue proceedings are only fiscal in nature and neither create nor extinguish title.

74. The plaintiff has also contended that the first defendant had no title or possession over the suit property. Equally, the defendants have failed to satisfactorily establish their plea that the plaintiff was merely permitted to construct the residential house in the property belonging to the first defendant. However, the weakness in the defendants' case cannot by itself become the foundation for granting a declaration in favour of the plaintiff. The plaintiff has to succeed on the strength of his own title, which he has failed to establish.

75. Therefore, in the absence of proof of title in favour of the plaintiff, this Court is unable to hold that the Sale Deed dated 01.04.2016 bearing Document No.419 of 2016 is null and void. ***Accordingly, Issue No.1 is answered against the plaintiff.***

Discussion on Issue No.3:

76. Issue No.3 is, whether the plaintiff is entitled to the relief of Mandatory Injunction as prayed for? The plaintiff has sought a decree of mandatory injunction directing the defendants to demolish the alleged illegal construction put up by them after demolishing the plaintiff's compound wall, pathway and borewell and after encroaching upon approximately 2¾ cents of the suit property. The burden of proving the alleged encroachment squarely rests upon the plaintiff. In order to establish the alleged encroachment, the plaintiff mainly relied upon the report and plan submitted by the Advocate Commissioner marked as Ex.C-1.

77. A careful reading of the Commissioner's Report shows that the Commissioner has specifically stated that he was unable to conclude whether there was any encroachment. The Commissioner has further reported that though the extent mentioned in the warrant is 6 cents, the actual extent found on ground is about 7¼ cents and, in view of such variation, he was unable to express any opinion regarding the alleged encroachment. The relevant portion of the Commissioner's Report clearly states that the issue relating to encroachment can be decided only upon trial and that he is unable to conclude whether there is encroachment as alleged by the plaintiff.

78. The Commissioner was also examined as C.W.1 and even during his evidence he maintained that he was unable to conclude whether there was any encroachment. D.W.1 and D.W.2 have also consistently denied the allegation of encroachment. Thus, the very evidence relied upon by the plaintiff does not establish the alleged encroachment. In the absence of acceptable evidence proving the exact extent allegedly encroached and the identity of the encroached portion, no decree for mandatory injunction directing demolition of the defendants' construction can be granted.

79. Apart from the above, this Court has already held while deciding Issue No.2 that the plaintiff has failed to establish his exclusive title over the suit property. When the plaintiff has failed to establish his title and when the alleged encroachment itself has not been proved through reliable evidence, the equitable relief of mandatory injunction cannot be granted. ***Accordingly, Issue No.3 is answered against the plaintiff.***

Discussion on Issue No.4:

80. Issue No.4 is, whether the second defendant is a bona fide purchaser of the suit property? The defendants have contended that the second defendant is a bona fide purchaser for valuable consideration and that he purchased the property under the registered Sale Deed dated 01.04.2016 pursuant to an earlier sale agreement entered into in the year 2013. The plaintiff, on the other hand, contended that the second defendant was aware of the dispute and, therefore, cannot claim the status of a bona fide purchaser.

81. This issue, in the opinion of this Court, assumes significance only if the plaintiff had first established his title over the suit property. Since this Court has already held that the plaintiff has failed to establish his exclusive title, an adjudication as to whether the second defendant is a bona fide purchaser would not materially affect the ultimate decision in the suit.

82. Nevertheless, the materials available on record disclose that the sale in favour of the second defendant was effected under a registered document and that subsequent revenue entries were also effected in his favour. At the same time, the plaintiff has relied upon the recitals contained in the sale deed and the earlier disputes between the parties to contend that the second defendant had knowledge of the dispute.

83. In view of the finding already recorded that the plaintiff has failed to establish his title, this Court does not consider it necessary to render a conclusive finding on the question whether the second defendant is a bona fide purchaser. The said question is therefore left open. ***Issue No.4 is answered accordingly.***

Discussion on Issue No.5:

84. Issue No.5 is that, to what other relief the plaintiff is entitled in this suit. In view of the findings recorded on Issues Nos.1 to 4, particularly the finding that the plaintiff has failed to establish his exclusive title over the suit schedule property and has also failed to prove the alleged encroachment, the plaintiff is not entitled to any other reliefs in this suit.

85. Further, considering that the dispute is between close family members relating to ancestral property, this Court is of the view that it would be appropriate to direct each party to bear his own costs. ***Issue No.5 is answered accordingly.***

RESULT:

86. 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 the 05th day of August 2026.

LOGANATHAN PRAKASH

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Date: 2026.08.05 20:21:21 +0530

DISTRICT MUNSIF,
UDHAGAMANDALAM.

List of Witnesses and Exhibits:-

Plaintiff's side witnesses examined:-

1. J. Ravindran - **Pw-1** (Plaintiff)
2. Mr. Vediyappan - **Pw-2** (Zonal Deputy Tahsildar)
3. Mr. Arun - **Pw-3** (Zonal Deputy Tahsildar)

Plaintiff's side exhibits marked :-

Sl. No.	Date	Documents	Nature of Documents	Exhibits
1.	20.09.1928	Sale Deed	Certified Registration Copy	**Ex. A-1**

2.	14.03.2013	Ownership Certificate	Original	**Ex. A-2**
3.	-	House Tax Receipts – 4 Nos.	Original	**Ex. A-3**
4.	16.03.2016	Permission Letter given at the Ullathi Panchayat	Original	**Ex. A-4**
5.	23.08.2013	Objection Letter along with the Postal Receipt and Postal Acknowledgment Card sent by the Plaintiff to the Tahsildar, Udhagamandalam.	Photostat copy/Original	**Ex. A-5**
6.	17.09.2013	Complaint to the Revenue Divisional Officer (RDO)	Office Copy	**Ex. A-6**
7.	-	Proceedings served to the Plaintiff – 5 Notices	Original	**Ex. A-7**
8.	24.03.2016	Legal Notice	Office Copy	**Ex. A-8**
9.	-	Postal Acknowledgement Cards – 2 Nos.	Original	**Ex. A-9**
10.	05.05.2016	Reply Notice along with Postal Receipt	Original	**Ex. A-10**
11.	01.04.2016	Sale Deed	Certified Registration Copy	**Ex. A-11**
12.	23.05.2016	Objection Letter along with the Postal Receipt and Postal Acknowledgment Card sent by the Plaintiff to the Tahsildar, Udhagamandalam.	Photostat Copy/Original	**Ex. A-12**
13.	16.08.2016	Objection Letter along with the Postal Receipt sent by the Plaintiff to the Revenue Divisional Officer (RDO)	Photostat Copy/Original	**Ex. A-13**
14.	16.08.2016	Objection Letter along with the Postal Receipt sent by the Plaintiff to the Tahsildar, Udhagamandalam.	Photostat Copy/Original	**Ex. A-14**

15.	19.08.2016	Legal Notice along with Postal Receipts – 2 Nos. and photographs – 4 Nos.	Office Copy/Original	**Ex. A-15**
16.	27.01.2025	Order of the District Revenue Officer, Nilgiris	True Copy	**Ex. A-16**
17.	13.02.2017	Order passed by the Sub-Divisional Magistrate and Revenue Divisional Officer, Ootacamund	Original	**Ex. A-17**
18.	17.02.2026	Permission Letter	Original	**Ex. A-18**
19.	17.02.2026	Permission Letter	Original	**Ex. A-19**
20.	24.08.2016	FIR under Crime No. 173/2016, at Pudumund Police Station	Photostat Copy	**Ex. A-20**

Defendants' side witnesses examined:

1. J. Subban - **Dw-1** (1st Defendant)
2. P. Suresh Babu - **Dw-2** (2nd Defendant)

Defendants' side exhibits marked:

Sl. No.	Date	Documents	Nature of Documents	Exhibits
1.	18.06.1975	Registered Sale Deed	Original	**Ex. B-1**
2.	26.11.1975	Registered Sale Deed	Original	**Ex. B-2**
3.	-	Approved Building Plans	Original	**Ex. B-3**

Court witness:

1. Mr. S. Sailesh Babu - **Cw-1** (Advocate Commissioner)

Court exhibits marked:

Sl. No.	Date	Documents	Nature of Documents	Exhibits
1.	18.02.2026	Advocate Commissioner's Report along with five annexure	Original	**Ex. C-1**

LOGANATHAN PRAKASH

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DISTRICT MUNSIF,
UDHAGAMANDALAM.

Draft / Fair Judgment:

O.S. No. 97/2016

Dated: **05.08.2026**

District Munsif Court,
Udhagamandalam.