

**IN THE COURT OF THE DISTRICT MUNSIF, SANKARI**

Present: Tmt. R. ELAMATHI, B.A., B.L.,

District Munsif, Sankari

Monday, the 05<sup>th</sup> day of January, 2026

திருவள்ளூர்வராண்டு 2056, விசுவாவசு வருடம், மார்கழி திங்கள் 21-ம் நாள் திங்கட் கிழமை

**I.A. 7/2023 in O.S.29/2020**

1. Sellamuthu(Died)

2. S. Palanimuthu

3. Pappathi

...

Petitioners/Plaintiffs

**//Versus//**

1. S.K. Venkatachalam

2. K. Senthilmurugan

3. P. Mohanraj

...

Respondents/ Defendants

This Petition came up for final hearing before me in the presence of Thiru. V. Anandhan Advocate for Petitioners and Thiru.A. Kailassanathan Advocate for 3<sup>rd</sup> Respondent and Respondents 1 and 2 were remained exparte and upon perusing both side pleadings and records and having stood over till this day for consideration and this court passed the following:

**ORDER**

This Interlocutory Application has been filed by the Petitioners/Plaintiffs seeking Amendment of the plaint by incorporating an additional relief of Mandatory Injunction, alleging that during the Pendency of the suit, the Respondents/Defendants have obliterated and destroyed the suit ABC cart track, which is claimed as an Easementary pathway.

**2) The Gist of the Petition:-**

2.1) The 2<sup>nd</sup> Petitioner submits that he is the 2<sup>nd</sup> Plaintiff in the suit. The 1<sup>st</sup> Plaintiff/1<sup>st</sup> Petitioner is his father, pending suit he died, leaving behind himself and Petitioner mother who is the 3<sup>rd</sup> Plaintiff herein as his legal heir. The Petitioners have filed the suit seeking for the relief of Declaration and Permanent Injunction.

2.2) The Petitioner's submits that the lands in S.No.406 originally belonged to their family. The lands in S.No.406 sub-divided into S.No.406/1, 406/2, 406/3, 406/4A, 406/4B, 406/4C and 406/4D. The lands in S.No.406/3, 406/4, and its sub-divisions were sold long back the Petitioner's family and retains S.Nos.406/1 and 406/2.

2.3) The Petitioner's submit that the lands in S.No.406/1 and 406/2 enjoyed by Chettiya gounder who is grandfather of 1<sup>st</sup> Petitioner. The said Chettia gounder had two sons namely Semba gounder and Panchiyanna gounder. The Semba gounder and Pachiyanna gounder were no more.

2.4) The Petitioner submits that the land in S.No.406/1 exclusively belonged to them. The legal heirs of Semba gounder and Pachiyanna gounder were jointly enjoying the lands in S.No.406/2 without any division. In fact there is no dispute with regard to joint possession and enjoyment. The lands in S.No's.406/1 and 406/2 are agricultural lands. The Petitioners were cultivating the same by raising all types of seasonal crops. The Patta No.153 in respect of S.No.406/1 stands in the name of 1<sup>st</sup> Petitioner. The Patta No.430 in respect of S.No.406/2 stands in the name of father of 1<sup>st</sup> Petitioner and his brother Semba gounder. The 1<sup>st</sup> Petitioner is paying kist to his lands. The online Patta No.153 and 430 and available kist receipt are filed herewith as a plaint document.

2.5) The Petitioners submits that the lands in S.No.406 is in one block. After sub division the lands were sub-divided into four parts viz. S.No.406/1, S.No.406/2, S.No.406/3, S.N.406/4 and its sub divisions. The FMB plan and rough Plan attached along with plaint would reveal the exact topography of the lands in S.No.406. The lands in S.No.406/4 and its sub-divisions is lying adjoining to Edappady- Sankari main road on the west. The lands is S.No. 406/1 and S.No. 406/2 lying on the west of the lands in S.No.406/4 and its subdivisions.

2.6) The Petitioner further submits that there is North-South Edappady-Sankari thar road is lying on the immediate east of the lands in S.No.406/4A and its sub-divisions. There is cart track starts from Edappady- Sankari thar road on the west, runs on the extreme northern side of S.No.406/4A and 406/3 and enter into the Petitioner's land in S.No.406/2. The breadth of the cart track is around 15 feet. The length of the cart track is around 300 feet. The suit cart track is common one, which is in exists from time immemorial, more than 100 years. Through the said suit cart track alone. The Petitioner's and others were reaching their land from Edappady- Sankari thar road. The suit cart track is shown as "ABC" in the plaint rough plan. The rough plan attached along with the plaint would reveal the exact topography of the suit cart track.

2.7) The Petitioner's submit that the 3<sup>rd</sup> Respondent's were allotted lands in S.No.406/4A, S.No.406/3 along with other properties under the registered Partition deed dated 10.06.1996 vide document. No.644/1996 on the file of S.R.O., Sankari. The registration copy of the Partition deed dated 10.06.1996 is filed herewith as plaint document.

2.8) The Petitioner's submit that though the 3<sup>rd</sup> Respondent allotted entire property in S.No.406/3 and 406/4A the Petitioner's and others were using the cart track without anybodies interference. In fact in the beginning of 2012, the 3<sup>rd</sup> Respondent

attempted to sell his lands including the cart track portion. But the Respondent's 1 and 2 were agreed to get the sale deed excluding the common cart track portion. As such the Respondent's 1 and 2 were purchased the lands in S.No.406/3 and 406/4A from the 3<sup>rd</sup> defendant under sale deed dated 29.03.2012 by excluding the common cart track area. It is pertinent to note that the total extent of lands in S.No.406/3 is 2.21 acres and the 3<sup>rd</sup> Respondent sold only 2.13 acres, excluding the common cart track portion. Likewise the total extent of land in S.No.406/4A is measuring 0.77 cents but the 3<sup>rd</sup> Respondent sold only 0.69 cents of land to the Respondent's 1 and 2 excluding the common cart track portion. At this stage it is pertinent to note that the plan attached along with the sale deed dated 29.03.2012 reveals that the cart track portion is kept in idle and the remaining properties alone were sold to the Respondent's 1 and 2. The registration copy of the sale deed dated 29.03.2012 is filed herewith as plaint document.

2.9) The Petitioner's submit that there is no dispute till the month of May 2020. The Petitioner's and others were using the suit cart track for their ingress and egress from Edappady-Sankari thar road. Except the suit cart track there is no other access to reach their lands in S.No.406/1 and S.No.406/2.

2.10) The Petitioner's further stated that the Respondent's 1 and 2 intent to convert their lands into house plot. Towards the same in the 1<sup>st</sup> week of June 2020 the Respondent's 1 and 2 using the JCB and convert their lands in S.No.406/3 and S.No.406/4A into same level by removing rocky portion and fill up all pits. During that time the Respondent's joined together and attempted to encroach the cart track portion and obliterated the same and thereby include the same for making use of house sites. The same was prevented by the well wishers and our neighbours.

The Photographs attached along with the plaint would reveal the defendants land and the cart track area.

2.11) The Petitioner's contends that the Respondent's have no right to prevent the Petitioner's from using the suit common cart track or obliterate the same. They are claiming right over the suit cart track as easement of prescription, since the cart track is in existence and used by the Petitioners and their ancestors for more than several decades.

2.12) The Petitioner's submits that, While so on 01.07.2020 the Respondent's were attempted to obstructed their family members from passing through the suit common cart track. During the same time the Respondents attempted to obliterate the same by using JCB. Further the Respondents openly challenged that at any cost they prevent us from using the suit cart and thereby fence their property by preventing us from using the suit common cart track. Hence, the petitioner's had file the above suit for the relief of Permanent Injunction. Since the Respondent's deny the cart track right, They have come forward with a prayer for declaration to use the suit common cart track under prescription.

2.13) The Petitioner's submit that in the second week of March 2022 the Respondent's and their men completely obliterated the suit ABC cart track in our absence. Thereafter, the petitioner had question the Respondent's for their unlawful act through Panchayathars. In fact the Respondent's agreeded to restore the suit ABC Cart track in its original position within short period. Believing their words the Petitioner's kept quite and waited for the Respondent's to keep up their words. In spite of the obliteration, as usual the Petitioner's have passed through the cart track portion to their lands in S.No.406/2. Since the Respondent's have not come-forward to restore

the suit ABC cart track they were forced to file this amendment application to amend the plaint for relief of Mandatory Injunction.

2.14) The Petitioner's submits that the proposed amendment is absolutely necessary since the respondents have obliterated the suit cart track unlawfully and illegally. Hence the Petitioner's have no other option except to come forward with present application to amend the plaint for the relief of Mandatory Injunction. Unless this application is allowed the Petitioner's will be put to irreparable loss and hardship. Since the main relief in the suit is for declaration in respect of claiming easement right to use the ABC cart track. The petitioner's have entitled to file his application for Mandatory Injunction.

### **3) The Brief Averments of the Counter filed by the 3<sup>rd</sup> Respondent:-**

3.1) The Respondent contends that the petition filed by the petitioners is false, frivolous, fraudulent, and wholly unsustainable in law and on facts, and is liable to be dismissed in limine. The Respondent categorically denies all the averments made in the affidavit filed by the petitioners, except those that are specifically admitted herein, and puts the petitioners to strict proof of the same. The Respondent prays that the Written Statement already filed by him may be read as part and parcel of the present counter-affidavit.

3.2) The Respondent contends that the petitioners originally filed the above suit seeking the relief of Declaration and Permanent Injunction by suppressing material facts and by pleading false and fabricated circumstances. Upon the filing of the written statement by the respondents, wherein the true facts were clearly brought to light, the petitioners realised that their fraudulent acts had been exposed. Apprehending dismissal of the suit, they have come forward with the present

amendment, falsely alleging the destruction of a non-existence of suit cart track and have belatedly and retrospectively sought additional mandatory injunctive reliefs with mala fide intention.

3.3) The Respondent submits that the averment in the petition affidavit that the lands in Survey No.406 were allotted to the petitioners' family and that Survey Nos.406/1, 406/2, 406/3, 406/4A, 406/4B, 406/4C and 406/4D belong to them, and that Survey Nos.406/3 and 406/4 were sold long ago while the petitioners' family continues to enjoy the same, is false and blatantly incorrect.

3.4) The Respondent contends that in fact, the entire land in Survey No.406 of Devannagaundanur Village was never enjoyed by the petitioners' family. Survey Nos.406/3 and 406/4 have not been sold as alleged. Only Survey No.406/2 was the ancestral land of Chettiyagounder. The 1<sup>st</sup> Plaintiff is enjoying Survey No.406/1 separately by virtue of a registered sale deed dated 21.02.1980 in Sankari Sub-Registrar Office vide Document No.128/1980, from third parties. However, the petitioners have falsely claimed the same as ancestral property and have filed the suit and this amendment petition with false averments.

3.5) The Respondent alleges that, it is true that Chettiyagounder had two sons, namely Sembagounder and Pachiyannagounder, both of whom are deceased. Survey No.406/1 exclusively belongs to the Petitioners. Survey No.406/2 is jointly enjoyed by the heirs of Sembagounder and Pachiyannagounder without partition, and there is no dispute regarding the same. Survey Nos.406/1 and 406/2 are agricultural lands. Patta No.153 for Survey No.406/1 stands in the name of the 1<sup>st</sup> Plaintiff, and the patta for Survey No.406/2 stands in the names of the 1<sup>st</sup> plaintiff's father and his brother. The 1<sup>st</sup> Plaintiff is paying rent for his land. Hence, the contrary averments in the affidavit are false and misleading.

3.6) The Respondent further alleges that the Survey No.406 was originally in one block of land and later subdivided as Survey Nos.406/1, 406/2, 406/3 and 406/4. Survey No.406/4 and its sub-divisions lie to the west of the Edappadi–Sankari main road. Survey Nos.406/1 and 406/2 lie further west of Survey No.406/4. The Edappadi–Sankari tar road runs on the eastern side of Survey No.406/4A, and another tar road measuring 15 feet in width runs on the northern side of Survey Nos.406/3 and 406/4. The allegation that a 300-feet long ABC public cart track exists through Survey Nos.406/3 and 406/4 and that it has been in existence for over 100 years is false, fabricated, and imaginary.

3.7) The Respondents averred that, the lands in Survey Nos.406/3 and 406/4A belonged to this respondent. The Petitioners and others were never enjoyed any cart track as claimed. In early 2012, when this respondent intended to sell the land, the purchasers agreed to exclude the alleged cart track portion. Accordingly, by sale deed dated 29.03.2012, only 69 cents out of the total 77 cents in Survey No.406/4A was sold, excluding the alleged cart track portion. The rough sketch annexed to the said sale deed clearly reflects the same. Hence, the petitioners' allegations are false.

3.8) The Respondent denies the allegations that till May 2020 there was no obstruction, that the respondents attempted to destroy the cart track by using JCB, that the petitioners prevented the same with the help of neighbours, and that on 01.07.2020 the respondents obstructed the cart track and threatened the petitioners are all false. There never existed any ABC cart track on the northern side of Survey Nos.406/3 and 406/4A. Neither the petitioners nor any other persons have ever used such a cart track . Therefore, no such cart track is reflected in the FMB of Survey No.406.

3.9) The Respondent states that the 1<sup>st</sup> Plaintiff, while purchasing Survey No.406/1 under sale deed dated 21.02.1980, has clearly mentioned the existence of a cart track leading to the pond on both the northern and southern sides of the said land. Suppressing this vital document and the admitted cart track, the petitioners have fraudulently filed the suit and amendment petition claiming a cart track over the respondents' land on the eastern side. Even after the respondent produced the said sale deed, the petitioners have not denied its contents, which clearly establishes their mala fide intention.

3.10) The Respondent contends as early as in the year 1998, he constructed a borewell on the north-eastern side of Survey No.406/3 and obtained a 10 H.P electricity service connection bearing SC No.483. If there been any public cart track as alleged, the petitioners would have objected at that time of constructing the borewell , this itself proves that there is no such cart track ever existed. Survey Nos.406/3 and 406/4 slopes from south to north, and a pond was constructed by the ancestors of this respondent in Survey No.407/6 to collect rainwater, which is being enjoyed till date. In order to protect the borewell and water flow, this respondent retained the northern portion of the land while selling the remaining portion in 2012.

3.11) The Respondent further alleges that the allegation in the second week of March 2022 the respondents destroyed the alleged ABC cart track and promised before the Panchayatdharars to restore it is absolutely false. The further allegation that the petitioners waited patiently and thereafter filed the amendment petition is a blatant lie. The Respondent stoutly denies that, if at all any cart track had been destroyed in March 2022, the petitioners would have immediately lodged a police complaint, filed photographs, and sought appointment of an Advocate Commissioner.

The filing of the petition after a delay of about nine months clearly proves that the petition is an afterthought. No credible document has been produced to prove destruction of any cart track.

3.12) The Respondent submits that, photographs filed by him clearly show the existence of stone boundary lines and palmyra trees between Survey Nos.406/2 and 406/3 and establish that no continuous cart track ever existed. Hence, the petitioners are not entitled to any Mandatory Injunction as a matter of law. The Respondent denies that the affidavit in support of the amendment petition falsely states that the amendment is necessary due to illegal destruction of the cart track. The petitioners have failed to file any legal or reliable evidence to substantiate such claim. Hence, the amendment petition is legally unsustainable.

3.13) The Respondent further alleges that the suit was posted for trial on 05.12.2022 as a last chance, but the petitioners failed to proceed with the hearing and thereafter filed the present petition with false allegations solely to delay the proceedings.

3.14) The Respondent contends that having stated that they are enjoying the alleged pathway even now, the petitioners are not entitled to seek injunctive relief. The petition is contradictory, malicious, and filed with fraudulent intent to prolong the litigation.

3.15) The Respondent further alleges that the proposed amendment does not specify the length, width, or exact description of the alleged ABC carriageway, rendering the relief vague and unenforceable. The respondent prayed on this ground also, the petition is liable to be dismissed as no injunction can be granted on the basis of vague and imaginary pleadings.

**4) Point for Consideration:-**

Whether the Petitioners/Plaintiffs are entitled for the relief as prayed for?

5) On the side of Petitioners, Registered sale deed in favour of Respondents /Defendants 1 and 2 executed by power of 3<sup>rd</sup> defendant is marked Ex.P1. On the side of Respondents / Defendants, sale deed in favour of 1<sup>st</sup> Plaintiff in respect of S.No.406/1 dated 21.02.1980 is marked as Ex.R1. Photographs in respect of S.No's. 406/3, 406/4A (10 in No's with CD) is marked as Ex.R2. Photo Bill dated 27.06.2023 is marked as Ex.R3.

6) Heard, the Learned Counsels for Both sides. Records Perused. This Interlocutory Application has been filed by the Petitioners/Plaintiffs seeking amendment of the plaint of incorporating an additional relief of Mandatory Injunction alleging that during the pendency of the suit the Respondents / Defendants have obliterated and destroyed the suit ABC cart track which is claimed as an Easementary Pathway. The case of the Petitioners in brief as, the Petitioners/Plaintiffs have filed the suit seeking declaration of Easementary right by prescription and Permanent Injunction in respect of a cart track shown as ABC in the plaint rough plan, situated in S.No.406. According to the Petitioners the S.No.406 originally belonged to their family and was later subdivided into S.No.'s 406/1, 406/2, 406/3, and 406/4 with further sub divisions. The Petitioners claim possession and enjoyment of S.No.'s 406/1 and 406/2 as agricultural lands. The Petitioners contends that a 15-feet- wide and 300 feet long cart track runs from Edappadi-Sankari Main road along the northern side of S.No's 406/3 and S.No.406/4A and enters their land in S.No.406/2 and that the said cart track has been in existence for more than 100 years serving as the only access to their lands. The Petitioners Case is that though Respondents 1 and 2 purchased lands in S.No's 406/3 and 406/4A under sale deed

dated 29.03.2012, the said sale deed specifically excluded the cart track portion, which is evident from the reduced extent sold and the plan annexed to the sale deed. The Petitioners alleges that the Respondents/Defendants attempted to encroach upon and ultimately obliterated the cart track in March 2022. As the Respondents/Defendants failed to restore the pathway despite assurances, the Petitioners seek amendment to claim mandatory injunction for restoration of the cart track.

6.1) On the other hand, the Respondents/Defendants denies the very existence of any such ABC cart track and contends that the Petition is false, fraudulent and filed to delay the suit. It is stated that the 1<sup>st</sup> Petitioner has an alternative access on the western side as per his 1980 sale deed, which has been deliberately suppressed. The alleged cart track is not reflected in FMB (or) revenue records and long standing constructions such as a borewell disprove its existence. The claim of destruction in March 2022 is termed and after thought, unsupported by contemporaneous complaints (or) evidence. The Respondents/Defendants contends that the amendment is stated to be vague, belated and legally unsubtainable and is therefore liable to be dismissed.

6.2) Upon careful consideration of contentions of both sides, it is seen that the suit is one for declaration of Easementary right and Permanent Injunction. The Proposed Amendment seek to introduce a relief of Mandatory Injunction on the ground that the suit cart track was destroyed during the pendency of suit. At the outset, it is to be noted that the very existence of the suit cart track is seriously disputed by the respondents even in his Written Statement. In the present case, except for self-serving affidavits and rough sketches prepared for the purpose of litigation, the Petitioners have not produced any independent (or) statutory documents such as

revenue records, FMB (or) long standing public records evidencing the existence of the alleged cart track. The absence of the alleged cart track in official records significantly weakens the claim of the Petitioners. The Respondents have relied upon the registered sale deed dated 21.02.1980 standing in the name of 1<sup>st</sup> Petitioner, which discloses an access on the western side. The Petitioners have not offered an explanation regarding the said access. Although the Respondents have also produced the photographs indicating physical features, and probalilise their version that their is no continuous exists. The Petitioner alleges that the cart track was obliterated in March 2022, however no police complaint was lodged, no Advocate Commissioner was sought immediately and no contemporaneous photographs has been produced. The Interlocutory Application for amendement of relief was filed only after considerable delay and after the suit has been posted for trial. This conduct raises doubt regarding the genuineness of the allegation. More over the proposed amendment does not clearly specify the exact length, width and location of obliterated the portion by the Respondent's allegedly destroyed. A relief of Mandatory Injunction which is in the nature of a positive direction requiries clear and specific pleadings. While Amendment of pleading is generally to be allowed to avoid multiplicity of proceeding, such indulgence cannot be granted when the amendment appears to be vague, belated and likely to prejudice the opposite party (or) when it introduces a disputed factual claim without prima facie material. Based upon the discussion made above this court is of considered opinion as the existence of the suit cart track itself is in serious dispute. The allegation of obliteration is not supported by immediate or convincing evidence. The Amendment sought is vague and filed at a belated stage. Therefore, allowing the Amendment would cause prejudice to the Respondents and delay the disposal of the suit.

7. In result, this Interlocutory Application is dismissed. No cost.

This Order directly dictated to the Typist and typed by her and corrected by me, and Pronounced in the Open Court in the 05<sup>th</sup> day of January 2026.

**District Munsif,  
Sankari.**

**Encl:**

**Petitioners side Witnesses & Exhibits:-** NIL

**Respondents side Witnesses & Exhibits:-** NIL

**District Munsif,  
Sankari**

-----  
District Munsif Court, Sankari.  
Draft / Fair Order  
I.A.7/2023 in  
O.S.No.29/2020  
Date: 05.01.2026  
-----