

IN THE COURT OF DISTRICT MUNSIF, METTUR, SALEM DISTRICT

Present: Thiru. M.Selvam, B.A., B.L.,

District Munsif, Mettur

Thursday, this the 25th day of June 2026**O.S. No. 229 of 2013**

(CNR No. TNSA17-000102-2013)

Gurusamy

... Plaintiff

/Versus/

1. R. Nallathambi

2. N. Kalaivanan

3. Gopal

... Defendants

This suit came up before me for final hearing in the presence of Mrs. M. Selvi, M.A., M.L., the Learned counsel appearing for the plaintiff and Mr. R. Arasu, B.L., the Learned counsel appearing for the defendants 1 to 3. Upon hearing both side submissions and having perused the entire records, written argument and having stood over for my consideration till this day, this court delivered the following,

JUDGMENT

This suit has been filed by the plaintiff under Order 7 Rule 1 to 6 of CPC for the relief of declaration, to declare the plaintiff's absolute title over the land left by him as pathway, measuring 7 feet width and 40 feet length in S.No.315/8 (old S.No.57/1 pa) of Kolathur Village, Mettur taluk, which is situated on the eastern side of the suit property and consequently for the relief of permanent injunction, restraining the defendants, their men, agents, servants or anyone on behalf of them from in any manner disturbing the plaintiff's usage in the cart track, either by proceeding further with the construction works in the encroached portion or by any other means and for the relief of mandatory injunction, directing the defendants to remove the unlawful construction made by them by encroaching the

suit pathway, within the time to be specified by this court or to do the same through process of court, at the costs of the defendants and to award the cost of the suit.

1) Brief averments in the plaint is as follows:

1.1. The suit property was originally a natham poramboke land. The plaintiff's father namely One Kuppan acquired natham land long ago and continued to be in possession and enjoyment of the same by putting up residential house in it. The said Kuppan was succeeded by the plaintiff and in recognition of long possession and enjoyment in natham land, the Special Tahsildar of Natham land Tax Scheme, issued patta under No.339 in favour of the plaintiff for the suit property on 2.9.1993 and he was being in possession and enjoyment of the same by residing in the house along with his family members for more than 41 years .

1.2. The house situate in the suit property is assessed to house tax and equipped with electric service connection in the name of One Soundari. The said Soundari is the 1st wife of the plaintiff's father and she died issue-less. The plaintiff's mother died at the plaintiff's child age. The plaintiff's father was died in the year of 1970. The plaintiff is regularly paying the necessary house taxes in the name of said Sunadari to the concerned authorities, regularly without fail.

1.3. The plaintiff had left pathway 7 feet width to the length of 40 feet in his property for his own use, which is running north-south to reach Thandavan Street of Kolathur and in alternative. This pathway has been in existence for more than 50 years i.e., from when the land was acquired by the plaintiff's father. Except this pathway, the plaintiff has no other alternative way for reaching the said street from his house and in alternative.

1.4. The 2nd defendant is the son of the 1st defendant. The 3rd defendant is the henchmen of defendants 1 and 2. With regard to the suit property, the defendants are purely third parties and have no manner of right, title, interest or

possession over any single portion of the same. On the eastern side of the suit property, one Pulikkara Mani of Kolathur's house property is situated. The said Mani's vendor Ponnusamy is none other than the paternal uncle of the plaintiff. Hence, considering the relationship, the plaintiff has allowed the said Ponnusamy to use the said pathway for his access. The said Ponnusamy settled the said adjoining property to his son Jeeva through a registered settlement deed dated 20.09.1985 under document No. 358/1985 and the said Jeeva in turn sold the said property to the above said Mani through a registered sale deed dated 11.10.1988 under document No. 378/1988 of Kolathur Sub Registrar office.

1.5. The said Mani, after purchasing the adjacent property started to put up house construction in it. The said Mani, while constructing the house, has encroached the said pathway left out by the plaintiff in his property, by protruding the sunshade of the house in the pathway, by 2 feet. On seeing the said Man's highhanded activity, the plaintiff lodged complaints before Kolathur police as against the said Mani on 1.12.1996 in C.S.R. No.110/1996 and on 30.03.1998 in C.S.R. No. 54/98 and the police strictly warned the said Mani. Hence the said Mani stopped his further illegal activities.

1.6. While so, the said Mani has sold his property to the 2nd defendant through a registered sale deed dated 9.9.2011 under document No. 1196/2011 of Kolathur Sub Registrar office. The 2nd defendant after purchasing the property now started to continue the construction works by encroaching the suit pathway. The plaintiff has strongly objected the defendants 1 and 2's act of encroaching the suit pathway and explained the previous complaints and enquiry by police. But the defendants 1 and 2, with the active support of the 3rd defendant, are going on putting up constructions in their property by encroaching the suit pathway. Due to the illegal encroachment of the suit pathway by the defendants, the pathway is now narrowed to the width of 1 to 2 feet alone through which, even a two wheeler cannot pass.

1.7. The plaintiff had so many times approached the defendants 1 and 2 person and by convening panchayats to remove the unlawful encroachment made by them in the pathway. But the defendants are not amenable for amicable settlement. During such panchayats the plaintiff came to know that, by committing fraud and misrepresentation the defendants 1 and 2's vendor Mani had obtained patta for 828.5 sq.feet i.e., 0.0077.0 sq.mts including the plaintiff's land in which the pathway was running, even though he had purchased only 810 sq.feet of land during 1988 from Jeeva. The plaintiff will take suitable proceedings before the Appellate revenue authorities pertaining to the patta, in future. Unless the encroachment of the defendants 1 and 2 is removed, the plaintiff has to loose his valuable land and he cannot have easy access in the suit pathway land. On 12.09.2013, the defendants had again tried to proceed further with the construction work by encroaching the suit pathway and with great difficulties, the plaintiff had prevented the same. Hence, this suit.

2) Brief averments in written statement filed by the 1st defendant and adopted by 2nd and 3rd defendant is as follows:-

2.1. The defendants had specifically denied the averments put forth by the plaintiff in his plaint. The plaintiff had not filed any documents to show that the suit property absolutely belongs to him. The alleged pathway was classified as Sanitary Lane in the revenue records, which is a public passage provided for the access to the Thandavan Street and for the flow of drainage water. The plaintiff owns the house site property in Survey No.315/8, Kolathur Village. The adjacent property in Survey No.315/10 was assigned under the Natham Settlement Scheme to the plaintiff's brother's son namely One Appu. The said Appu's house is situated on the northern side of the plaintiff's property.

2.2. The property in Survey No.315/9, situated on the eastern side of the plaintiff's house, was purchased by One Pulikkar Mani from One Jeeva under a registered Sale Deed No.378/1998 for valuable consideration. Though the sale deed

covered an extent of 810 square feet, only 740 square feet was reflected in the patta. The remaining 70 square feet, together with a pathway and street portion, had been wrongly included in the patta standing in the name of the said Appu. At the relevant time, the said Appu was working in the Village Administrative Office and had manipulated village records and obtained patta in his name for the portion of land belonging to the said Mani.

2.3. Aggrieved by the same, the Pulikkar Mani filed an petition before the Revenue Divisional Officer, Mettur and then preferred appeal before the Assistant Settlement Officer, Dharapuram in S.R. No.19/97 seeking cancellation of the patta issued in the name of the said Appu for the property in Survey No.315/10 and to include the said property along with his property in Survey no. 315/9 and to classify the pathway and street portion separately.

2.4. After enquiry, the Assistant Settlement Officer passed an order dated 21.07.1997. Under the said order, the Survey No.315/10 to an extent of 0.0166.0 sqmt was subdivided into Survey Nos.315/10A, 315/10B and 315/10C and the Survey No.315/10A to an extent of 0.0079.5 sqmt remained in the name of the Appu and the Survey No.315/10B to an extent of 0.0009.0 sqmt was assigned in the name of the Mani and the Survey No.315/10C to an extent of 0.0027.5 sqmt was classified as a "Sanitary Lane". It was further ordered that the Survey No.315/10B to be clubbed with Survey No.315/9 and corresponding corrections be made in the Natham Settlement records. Consequently, Survey No.315/9 to an extent of 0.0068.0 sqmt and Survey No.315/10B to an extent of 0.0009.0 sqmt were merged and patta for the Survey no. 315/9 to an extent of 0.0077.0 sqmt was issued in the name of C.S. Mani.

2.5. The order specifically provided a right of appeal before the District Revenue Officer within 30 days. However, the said Appu never challenged the order. Therefore, the order dated 21.07.1997 became final and patta was duly issued in

favour of C.S. Mani. Subsequently, the 2nd defendant had purchased the said property from C.S. Mani under a registered sale deed dated 09.09.2011 and was being in lawful possession and enjoyment of the same. The revenue records were also mutated in the name of the 2nd defendant.

2.6. The suit pathway to an extent of 7 x 40 feet stands in Survey no. 315/10C to an extent of 0.0027.5 sqmt and the same was classified in revenue records as Sanitary Lane. The 2nd defendant is entitled to construct his house within his own property and no person can legally prevent him from doing so. The defendants have not encroached upon any portion of the plaintiff's property. In fact, the 2nd defendant owns vacant land on the northern side of his house, which is being unlawfully used by the plaintiff and the said Appu. As per the revenue records, the property in Survey No.315/10C is a sanitary lane measuring approximately 3.28 feet in width and 20.33 feet in length, totalling only about 66.68 square feet. The plaintiff has no right or access through the said sanitary lane. The plaintiff had alone encroached a portion of 1 feet in width to the length of 41 feet on the eastern side of the 2nd defendant's property. The plaintiff has always been using the Vadakku Raja Veethi situated on the southern side of his house for ingress and egress. Hence, this suit is liable to be dismissed.

3) Issues:

3.1. Upon considering the plaint, written statement and the documents, the following issues were framed:-

(i) Whether the plaintiff is entitled to get the relief of declaration of suit property/pathway along with consequential for permanent injunction as prayed for ?

(ii) Whether the plaintiff is entitled to get the relief of mandatory injunction as prayed for ?

(iii) To what other relief ?

4) Trial:

(i) To substantiate his claim, the plaintiff examined himself as PW1 and marked Ex.A1 to Ex.A15. Ex.B1 and Ex.B2, Ex.C1 to Ex.C5 were marked during the cross examination of PW1. One Mrs. Kosalai was examined as PW2 and no documents were marked through her. One Mr. Karuppasamy, Village Administrative Officer of Kolathur Village was examined as PW3 and marked Ex.X1 to Ex.X4. On other hand, 1st defendant was examined as DW1 and marked Ex.B3 to Ex.B12.

5) Submissions:

(i) The learned counsel for the plaintiff had submitted that the suit property is a natham poramboke land and patta was also issued in favour of the plaintiff and he was being in possession of the same. The plaintiff had left pathway of 7 x 40 feet for his own usage in his property to reach the Thandavan street. The 2nd defendant is the adjacent land owner. The previous vendor of the 2nd defendant had started to construct his house by encroaching 2 feet in the said pathway and he had sold the property to the 2nd defendant, who had also continued to make his construction by encroaching the said pathway. Though several objections and panchayats were convened by the plaintiff, the 2nd defendant and his father, the 1st defendant herein and their henchmen, the 3rd defendant herein were not amenable and hence, this suit is filed by the plaintiff to declare that he is the absolute owner of the suit pathway and to remove the encroachment made by them. The plaintiff had examined the PW2, who had also deposed in support his case. The commissioner report and plan filed in this case would also establish the said encroachment. The 2nd defendant and his vendor had obtained patta in excess of the land what they holds and had encroached the suit pathway. Hence, the suit has to be decreed as sought for in the plaint.

(ii) Resisting the arguments advanced by the learned counsel for the plaintiff, the learned counsel for the defendants had submitted that the plaintiff had not let any such pathway in his suit property and the said pathway is described as sanitary

lane in the revenue records, which was evident through the PW3, who is the Village Administrative Officer. The commissioner report and plan also shows that the said 7 x 40 feet of land on the eastern side of the suit property as described in the plaint schedule does not come within the suit property of the plaintiff in Survey no. 315/8 and One Appu, who is the relation of the plaintiff and adjacent land owner had only encroached the suit property. Though he was at present died, the plaintiff had not neither implead him or his legal heirs in the suit when it was filed in the year 2013. The 2nd defendant had purchased his property from One Mani, who owns the same by way of his sale deed and patta issued by the revenue department after conducting enquiry. Therefore, the suit filed by the plaintiff itself is not maintainable and liable to be dismissed.

6. Issue No. (i) :

6.1. The sum and substance of the case of the plaintiff is that the suit property is a natham poramboke land and his father namely Kuppan had acquired the lands long ago and been in possession of the same and after his demise, the Special Tahsildar of Natham Land Tax Scheme issued patta no. 339 in favour of the plaintiff and he is being in possession of the same. The plaintiff had left pathway to an extent of 7 feet width to the length of 40 feet in his property for his own usage to reach the Thandavan Street of Kolathur and in alternative and the same is in existence for more than 50 years. On the eastern side of the suit property, One Pulikkara Mani's house is situated, whose vendor is One Ponnusamy, who is none other than the paternal uncle of the plaintiff. Considering the relationship, the plaintiff had allowed him to use the said pathway.

6.2. After purchasing the adjacent property, the said Mani had started to put up a house construction by encroaching the suit pathway to an extent of 2 feet. Since, the plaintiff had lodged complaint as against him, the said Mani had stopped his illegal activities. Then the 2nd defendant had purchased the property from the said Mani and continued the construction work by encroaching the suit pathway. Though

the plaintiff had objected and explained about the previous complaint, the defendants 1 and 2 with the support of 3rd defendant going on putting up the construction. The defendant's vendor namely the said Mani had obtained patta fraudulently for 828.5 sqfeet i.e) 0.0077.0 sqmt including the plaintiff's property, even though he had purchased only 810 sqft.

6.3. Per Contra, it has been contended by the defendants that the suit pathway described by the plaintiff is located in Survey no. 315/10C, which is classified as Sanitary lane in the revenue records. The defendants had not encroached any portion in the suit property belongs to the plaintiff. The patta for the extent of 0.0077.0 sqmt was issued to the 2nd defendant's vendor only on the basis of the enquiry conducted by the Settlement officer.

6.4. Both side rival submissions heard and perused the pleadings and materials on record. The plaintiff herein had claimed the relief of declaration, to declare that the suit pathway left by him in his property in Survey no. 315/8, Old Survey no. 57/1pa to an extent of 7 feet width and 40 feet length. The said property in Survey no. 315/8 is the suit property herein. It is the contention of the plaintiff that the suit property in Survey no. 315/8 is a natham poramboke land and was acquired by his father and he had been in possession of the same long ago and later the Special Tahsildar of Natham Land Tax Scheme issued patta no. 339 in favour of the plaintiff and he was being in possession of the same. The said patta was marked on the side of the plaintiff as Ex.A1. On due perusal of the Ex.A1 patta and the form - 3 and form -1 annexed therewith, it shows that the same was first entered in the name of One Soundari W/o. Kuppan, who is none other than the plaintiff's father's first wife. After that, the name of the said Soundari was seems to have been crossed out and the name of the plaintiff has been mentioned therein. Even in the Ex.A1 patta also, the name of the holder of patta was erased and the name of the plaintiff was incorporated therein. There was no initial or counter sign for the said corrections by the Special Tahsildar, who issued the said patta and the form -3 and form -1 annexed therewith.

6.5. Though the defendants disputed the ownership of the plaintiff during the cross examination of plaintiff, who was examined as PW1 and had also raised the specific defence during the course of arguments, no plausible reason was adduced by the plaintiff. The question with regard to the validity of the said Ex.A1 patta arose when the Village Administrative Officer of the Kolathur Village was examined before this court as PW3. Because he had specifically deposed that the revenue records including the patta, chitta and A-Register for the suit property in Survey no. 315/8, which is the suit property herein stood in the name of the above said Soundari till this time. The copy of the chitta and the A-Register for the suit property in Survey no. 315/8 stands in the name of the said Soundari was produced by the PW3 as Ex.X1 and Ex.X2.

6.6. Further, the defendants had also produced the present computerised patta dated 24.11.2025 for the suit property in Survey no. 315/8 as Ex.B6. The said Ex.B6 was also stands in the name of the said Soundari, who is the first wife of the plaintiff's father. The plaintiff had not taken any steps to establish that the Ex.A1 patta was duly issued to him by the Government and he is absolute owner of the suit property in Survey no. 315/8. Rather, the plaintiff had himself admitted in his cross examination as PW1 that the suit property still stands in the name of the said Sundari, who is the first wife of his father. The relevant deposition of PW1 is as follows,

"இவ்வழக்கு தாக்கல் செய்த சமயத்தில் ச.எண்.311/8 ல் (the suit property in Survey no. 315/8 is been mistakenly typed as 311/8, but the extent and patta number mentioned herein would tally with the suit property in Survey no. 315/8) உள்ள 0.0064.0 ச.மீ விஸ்தீரணம் கொண்ட பட்டா எண்.339 கொண்ட இந்த தாவா சொத்தானது என் தந்தையின் முதல் மனைவி செளந்திரியின் பெயரில் தான் இருந்தது என்றால், சரிதான்"

The above deposition made by the plaintiff during his cross examination is itself contrary to the plaint pleadings put forth by him.

6.7. In this case, an advocate commissioner was appointed and he had inspected and measured the suit property and the adjacent properties and had filed his report and plan, which was marked as Ex.C1 to Ex.C5. In the Ex.C1 – Commissioner's report, it has been mentioned as follow,

"பின்னர் தென்வடலாக ச.நெ 315/8 ஐ அளந்ததில் மேற்குபுறம் A முதல் C புள்ளி வரை 12.4 மீட்டர் உள்ளதென அளந்ததில் A மற்றும் B புள்ளி வரை 10.8 மீட்டர் வீடும் 0.4 மீட்டர் சந்து பகுதியும் இருந்தது. மீதி இடம் ச.நெ 315/10A ல் அப்பு என்பவர் கட்டிய வீட்டின் தென் பகுதியில் 1.2 மீட்டர் அமைந்தது. கிழபுறம் அளந்ததில் D மற்றும் E புள்ளி வரை 9.8 மீட்டர் அவருடைய வீட்டின் இருமுனைகளுக்கு பொருந்தி வந்தது.

மேற்படி 315/8 ல் ஆக்கிரமிப்பு உள்ளதா என்று பார்த்தால் வீடு பகுதியில் ஏதும் இல்லை. ஆனால் மேற்குபுறம் தென்வடல் 1.2 மீட்டர் கிழபுறம் 0.0 மீட்டர் அதாவது செங்கோண முக்கோணமாக 315/10A ல் வீடுகட்டியுள்ள பட்டாதாரர் ஆக்கிரமித்துள்ளதாக கருதுகிறேன்"

On perusal of the same and the Ex.C2 – Commissioner's plan, it shows that the plaintiff had left 0.4 meter as pathway, which runs west-east on the northern side of the suit property in Survey no. 315/8 and to an extent of 1.2 meters thereafter was encroached by One Appu, who is the cousin brother of the plaintiff and holds property in Survey no. 315/10A. Admittedly, the said pathway on the northern side in the suit property, which runs west-east is not the suit pathway herein. Because, it was categorically pleaded in the plaint that the plaintiff had left the pathway in his property in Survey no. 315/8 to an extent of 7 feet in width and 40 feet in length, which runs north-south to reach the Thandavan Street. The schedule of property shown in the plaint is also described in such manner.

6.8. The relief of declaration of title claimed by the plaintiff is in respect of the pathway to an extent of 7 x 40 feet alleged to be left by him in Survey no. 315/8. The commissioner had also inspected and measured the said 7 x 40 feet pathway, which is described as suit pathway in the plaint schedule and had stated therein his Ex.C1 – Commissioner's report as follows,

"அதன் பின்னர் ச.நெ 315/8 ன் கிழபுறம் மனுதாரர் மனுவில் குறிப்பிட்ட பகுதியை பார்வையிட்டு அளந்த போது 315/8 ன் வடகிழக்கு D புள்ளியில் இருந்து F புள்ளி வரை 7 அடி தென்வடலாக அளந்து குறித்தேன். அதிலிருந்து 40 அடி கிழமேலாக அளந்த போது அது ச.நெ 315/15 ன் மேற்குபுற பகுதிவரை D,F மற்றும் G,H புள்ளி வரை இருந்தது. அந்த பகுதியை என் மாதிரி வரைபடத்தில் நீல வண்ணத்தில் காட்டி உள்ளேன். மேற்படி பகுதியானது ஏற்கனவே உட்பிரிவான ச.நெ 315/10B ஆக இருந்து ச.நெ 315/9 ல் உள்ளடங்கிய ஒருங்கணைக்கப்பட்ட பகுதியில் வடமேற்கு பகுதியில் ஆரம்பித்து கிழமேலாக ச.நெ 315/10C யில் சேர்ந்து விடுகிறது. அதில் வடமேற்கு பகுதியில் ஆரம்பித்து வரும் போது செங்கோண முக்கோணமாக ச.நெ 315/10A யில் பட்டதாரானவர் வீடு 2.5 மீ கிழபுறம் அகலமும் 3 மீ நீளமும் கூடிய செங்கோண முக்கோண அளவில் கட்டிடம் உள்ளது. மற்ற பகுதிகள் காலியாக உள்ளது"

On perusal of the same, it is clear that the said 7 x 40 feet pathway claimed by the plaintiff does not located within his property in Survey no. 315/8 and the same to an certain extent runs in the Survey no. 315/10B, which is clubbed with the property of the 2nd defendant in Survey no. 315/9 to which Ex.B5 patta was also issued to him and then runs through Survey no. 315/10C, which is classified as 'Street' in the revenue records as per the deposition of the PW3 and the Ex.X4 – Adangal extract and then ends in the Survey no. 315/15.

6.9. Neither the plaintiff nor the defendants had filed any objections to the commissioner report and moreover, they had endorsed as no objection to the same. The plaintiff had also not produced any materials contrary to the commissioner's report and plan. Though the plaintiff had averred in the plant averments that he alone had left the suit pathway to an extent of 7 feet width to the length of 40 feet in his property in Survey no. 315/8 for his own use which is running north-south to reach Thandavan Street of Kolathur, the said averments were disproved through the Ex.C1 – Commissioner's report and Ex.C2 – Commissioner's plan. Further, the plaintiff herein had claimed the absolute ownership as the relief of declaration in respect of the said pathway alleged to be left by him in his property in Survey no. 315/8, Old Survey no. 57/1pa. But he had also not produced any documents to show that he owns the land, wherein the said 7 x 40 feet alleged pathway runs.

6.10. The plaintiff, who was examined as PW1 had admitted that the door way of his house in the suit property in Survey no. 315/8 faces south towards the Vadaku Raja Veethi. The relevant deposition of the PW1 is as follows,

"தற்போது என்னிடம் காட்டப்படும் நீ.ம.சா.ஆ.5 நீதிமன்ற ஆணையரின் புகைப்படங்களில் 1-வது புகைப்படத்தில் கண்டுள்ளது போல் என்னுடைய விடு வடக்கு ராஜ வீதியில் தெற்கு பார்த்த தலைவாசலுடன் அமைந்துள்ளது என்றால், சரிதான். ஆனால் தற்போது சுமார் 5, 6 ஆண்டுகளாகதான் தெற்கு பார்த்த தலைவாசல் உள்ளது. அதற்கு முன்பு வடக்கு பார்த்த தலைவாசல் இருந்தது.

மேற்படி வடக்கு ராஜவீதி 16 அடி அளவுள்ள பிரதான சாலை அமைந்துள்ள வீதி என்றால், சரிதான்"

Therefore, it is clear that the plaintiff is having access to ingress and egress his property that too via 16 feet road as admitted by himself. Though the plaintiff had further deposed that 5 to 6 years before the door way of house faces northern side, there was no materials on record to establish the same.

6.11. It is the further contention of the plaintiff that the 2nd defendant's vendor namely Mani had purchased the property on the eastern side of the suit property only to an extent of 810 sqft from One Jeeva in the year 1988, but had fraudulently obtained patta to an extent of 828.5 sqft i.e) 0.0077.0 including the plaintiff's land. It is true that the 2nd defendant's vendor namely the said Mani had purchased his property in Survey no. 315/9, Old Survey no. 57/1 to an extent of 810 sqft vide Ex.A5 sale deed and had sold to an extent of 0.0077.0 sqmt, which is equalent to 828.5 sqft to the 2nd defendant vide Ex.A6 sale deed. But on perusal of the said Ex.A6 sale deed, it shows that the said Mani had sold the properties, which was purchased by him under Ex.A5 and also obtained by him through the patta issued in his favour vide the order passed by the Assistant Settlement Officer in S.R.No. 19/97 dated 21.07.1997.

6.12. In this regard, the defendants had specifically pleaded in their written statement that though the sale deed of the 2nd defendant's vendor namely One Mani covered an extent of 810 square feet, only 740 square feet was reflected in the patta and the remaining 70 square feet, together with a pathway and street portion, had been wrongly included in the patta standing in the name of One Appu and the said Mani had filed an petition before the Revenue Divisional Officer, Mettur and then preferred appeal before the Assistant Settlement Officer, Dharapuram in S.R. No.19/97 and after enquiry, the Assistant Settlement Officer passed an order dated 21.07.1997, under which the Survey No.315/10 to an extent of 0.0166.0 sqmt was subdivided into Survey Nos.315/10A, 315/10B and 315/10C and the Survey No.315/10A to an extent of 0.0079.5 sqmt remained in the name of the said Appu and the Survey No.315/10B to an extent of 0.0009.0 sqmt was assigned in the name of the Mani and the Survey No.315/10C to an extent of 0.0027.5 sqmt was classified as a "Sanitary Lane". It was further contended that as per the said order, the Survey No.315/10B be clubbed with Survey No.315/9 and corresponding corrections be made in the Natham Settlement records. Consequently, Survey No.315/9 to an extent of 0.0068.0 sqmt and Survey No.315/10B to an extent of 0.0009.0 sqmt were merged and patta for the Survey no. 315/9 to an extent of 0.0077.0 sqmt was issued in the name of C.S. Mani.

6.13. The above defence raised by the defendants were also admitted by the plaintiff to an certain extent, who was examined as PW1 during his cross examination. The relevant portion is as follows,

"மேற்படி புளிக்கார மணி தன்னுடைய முன் விற்பனையாளரான ஜீவா என்பரிடமிருந்து கிரயம் பெற்ற சொத்தில் 0.009 சதுர மீட்டர் அளவு குறைவாக உள்ளது என்றும், மேற்படி குறைவாக உள்ள நிலத்தை என் பெரியப்பா மகன் அப்பு என்பவர் ஆக்கிரமித்துள்ளார் என்றும் கூறி நத்தம் மேல்முறையீடு தாராபுரம் நிலவரிதிட்ட உதவி அலுவலரிடம் SR.No.19/1997 ன் படி 27.01.1997 ம் தேதியில் மேல்முறையீடு தாக்கல் செய்திருந்தார் என்றால், சரிதான்.

மேற்படி காலகட்டத்தில் என் பெரியப்பா மகன் அப்பு கொளத்தூர் கிராம நிர்வாக அலுவலகத்தில் கிராம நிர்வாக அலுவலரின் உதவியாளராக பணிபுரிந்து வந்தார் என்றால், சரிதான். மேற்படி அப்பு தனது செல்வாக்கை பயன்படுத்தி மேற்படி 0.009 சதுர மீட்டர் நிலத்தையும், அதுபோன்ற இதர நிலங்களையும் மேற்படி அப்பு இல்லாத நபர்களின் பெயரில் பதிவுகளை செய்துவிட்டார் என கண்டறியப்பட்டு மேற்படி குறைபாடுகள் சரிசெய்யப்பட்டது என்றால், சரிதான்"

But thereafter, the PW1 had deposed that he does not aware about the sub-division made in the Survey no. 315/10 and allotment of the Survey No.315/10A to an extent of 0.0079.5 sqmt in the name of the said Appu and the Survey No.315/10B to an extent of 0.0009.0 sqmt in the name of the Mani and classification of the Survey No.315/10C to an extent of 0.0027.5 sqmt as a "Sanitary Lane" and the clubbing of the Survey No.315/10B with the property of the 2nd defendant in Survey No.315/9.

6.14. The said order passed by the Assistant Settlement Officer dated 21.07.1997 were also admitted by the PW3, who is the Village Administrative Officer of Kolathur Village, wherein the suit property and the 2nd defendant's property was situated and the said order was also reflected in the Ex.X4 – Adangal extract produced by the PW3. Though it was pleaded in the plaint pleading that the plaintiff will take suitable proceedings before the Appellate Authority, there was no such materials on record to show that the plaintiff had taken any such proceedings or the above said Appu had initiated any such proceedings.

6.15. Further more, the patta for the excess extent of 810 sqft of land purchased by the 2nd defendant's vendor was only given in respect of the property in Survey no. 315/10B and not in respect of the property claiming by the plaintiff in Survey no. 315/8. Moreover, the property of the 2nd defendant was also measured by the advocate commissioner and had described in his Ex.C1 – Commissioner's report and Ex.C2 – Commissioner's plan. On perusal of the same, it clearly shows that the 2nd defendant had not at all encroached any portion in the suit property in

Survey no.315/8. Therefore, the contention of the plaintiff to this effect that the 2nd defendant had encroached upon the suit property in Survey no. 315/8 are all liable to be rejected.

6.16. At this juncture, this court wants to rely on the judgment of **Our Hon'ble Supreme Court** reported in **2014 (2) SCC 269** in the case of **Union of India and Others Vs. Vasavi Cooperative Housing Society and others**. The relevant portion of the judgment reads as hereunder:

“It is trite law that, in a suit for declaration of title, burden always lies on the plaintiff to make out and establish a clear case for granting such a declaration and the weakness, if any, of the case set up by the defendants would not be a ground to grant relief to the plaintiff.

The legal position, therefore, is clear that the plaintiff in a suit for declaration of title and possession could succeed only on the strength of its own title and that could be done only by adducing sufficient evidence to discharge the onus on it, irrespective of the question whether the defendants have proved their case or not. We are of the view that even if the title set up by the defendants is found against, in the absence of establishment of plaintiff's own title, plaintiff must be non-suited”

The relied judgment squarely applicable to the facts of the present case. In this case too, the plaintiff herein is seeking the declaratory relief in respect of his ownership over the suit pathway, such being the position, the plaintiff has to independently establish his title through his own evidence and cannot stand on the weakness over the defendants case.

6.17. The plaintiff had examined One Kosalai, who is his cousin sister as PW2. She had deposed that the plaintiff is using the suit pathway. As already discussed

supra, the suit pathway does not lie within the property of the plaintiff in Survey no. 315/8 and that the plaintiff had also not produced any documents to establish that the said pathway to an extent of 7 x 40 feet runs in Survey no. 315/10B, which is clubbed with the property of the 2nd defendant in Survey no. 315/9 and runs through the Survey no. 315/10C belongs to him. While being so, even if the plaintiff is in usage of the said pathway, he cannot claim its absolute right or title and rather, he has to seek the relief by way of easementary right to use the same without any interference of others. But the plaintiff is mainly seeking the relief of declaration of his title in respect of the suit pathway, which is not located in his property and further to which he had not produced any evidence to establish his claim. Hence, the evidence of the PW2 would also not support the case of the plaintiff.

Therefore, from the overhaul discussion, this court comes to the conclusion that the plaintiff is not entitled to the relief of declaration and permanent injunction as sought for in the plaint.

7) Issue No. (ii) :

7.1. The plaintiff herein had also sought for the relief of mandatory injunction to direct the defendants to remove the unlawful construction made by them by encroaching the suit pathway. In the foregoing issue, it was already decided that the defendants herein had not encroached any portion in the property of the plaintiff in Survey no. 315/8 and the alleged suit pathway is also not located in the property claimed by him in Survey no. 315/8 and he had also not produced any documents to establish his ownership over the same. Further, in the Ex.C1 – Commissioner's report and Ex.C2 – Commissioner's plan, it was clearly mentioned that One Appu, who is the adjacent property holder in Survey no. 315/10A had encroached to an extent of 1.2 meters north-south on the western side of the suit property and also encroached to an extent of 2.5 x 3 meters in the suit pathway. For better appreciation, the relevant portion in the Ex.C1 – Commissioner's report is once again extracted below,

"மேற்படி 315/8 ல் ஆக்கிரமிப்பு உள்ளதா என்று பார்த்தால் வீடு பகுதியில் ஏதும் இல்லை. ஆனால் மேற்குபுறம் தென்வடல் 1.2 மீட்டர் கிழபுறம் 0.0 மீட்டர் அதாவது செங்கோண முக்கோணமாக 315/10A ல் வீடுகட்டியுள்ள பட்டாதாரர் ஆக்கிரமித்துள்ளதாக கருதுகிறேன்"

"அதன் பின்னர் ச.நெ 315/8 ன் கிழபுறம் மனுதாரர் மனுவில் குறிப்பிட்ட பகுதியை பார்வையிட்டு அளந்த போது 315/8 ன் வடகிழக்கு D புள்ளியில் இருந்து F புள்ளி வரை 7 அடி தென்வடலாக அளந்து குறித்தேன். அதிலிருந்து 40 அடி கிழமேலாக அளந்த போது அது ச.நெ 315/15 ன் மேற்குபுற பகுதிவரை D,F மற்றும் G,H புள்ளி வரை இருந்தது. அந்த பகுதியை என் மாதிரி வரைபடத்தில் நீல வண்ணத்திலி காட்டி உள்ளேன். மேற்படி பகுதியானது ஏற்கனவே உட்பிரிவான ச.நெ 315/10B ஆக இருந்து ச.நெ 315/9 ல் உள்ளடங்கிய ஒருங்கணைக்கப்பட்ட பகுதியில் வடமேற்கு பகுதியில் ஆரம்பித்து கிழமேலாக ச.நெ 315/10C யில் சேர்ந்து விடுகிறது. அதில் வடமேற்கு பகுதியில் ஆரம்பித்து வரும் போது செங்கோண முக்கோணமாக ச.நெ 315/10A யில் பட்டதாரானவர் வீடு 2.5 மீ கிழபுறம் அகலமும் 3 மீ நீளமும் கூடிய செங்கோண முக்கோண அளவில் கட்டிடம் உள்ளது. மற்ற பகுதிகள் காலியாக உள்ளது"

Though the said Appu was now alleged to be died, this suit is filed in the year 2013, but the plaintiff herein had neither impleaded him or his legal heirs for the best reason known to him.

7.2. The Ex.B1 and Ex.B2 are the copy of the plaint in O.S.No.337 of 2015 on the file of this court filed by the plaintiff herein as against the said Appu and copy of the written statement filed by the said Appu in the above suit respectively. The same was admitted by the plaintiff at the time of his cross examination as PW1. On perusal of the same, it shows that the said suit was filed by the plaintiff as against the said Appu for the relief of permanent injunction to restrain him from encroaching the suit property in Survey no. 315/8, which is also the suit property herein to an extent of 2 x 31 feet on it's northern side or by letting out the drainage water of his house in the 7 x 40 feet pathway. On perusal of the Ex.B3, it shows that the said suit was dismissed for default on 12.02.2021. There was no materials on record to show that the said suit was again taken on file. The filing of the above suit by the plaintiff itself shows that the plaintiff had the knowledge that the said Appu is

alone trying to encroach upon his property. But the plaintiff herein had wantonly failed to contest the said suit. Though, thereafter, through the Ex.C1 – Commissioner’s report filed in this case, the plaintiff had attained knowledge that the said Appu alone had encroached the suit property and the suit pathway, he had not impleaded him or his legal heirs in this suit.

Therefore, since the plaintiff had not established that the defendants herein had not encroached any portion in the suit property in Survey no. 315/8, he is not entitled for the relief of mandatory injunction as sought for in the plaint. This issue is answered accordingly.

8. Issue No. (iii):

8.1. Since the primary relief sought by the plaintiff is not granted in his favour, this court on considering the facts and circumstance of the case concludes that the plaintiff is not entitled to any other relief. This issue is answered accordingly.

In the result, this suit is hereby dismissed. Considering the facts and circumstance of this case, there is no orders as to cost.

This Judgment is typed by me in my official laptop, corrected and pronounced by me in open court on this 25th day of June 2026.

**District Munsif,
Mettur.**

Plaintiff side witnesses:

PW1 - Mr. Gurusamy (plaintiff)

PW2 - Mrs. Kosalai (3rd party)

PW3 - Mr. Karuppasamy (Village Administrative Officer of Kolathur Village)

Plaintiff side exhibits:

Ex.A1	21.09.1993	Patta No. 339 in favour of plaintiff	Original
Ex.A2	---	House tax receipts (13 No's)	Original
Ex.A3	2013	E.B. receipts (3 No's)	Original
Ex.A4	20.09.1985	Gift settlement deed in favour of One Jeeva	Certified copy
Ex.A5	11.10.1988	Sale deed in favour of One C.S. Mani	Certified copy
Ex.A6	09.09.2011	Sale deed in favour of the 2 nd defendant	Certified copy
Ex.A7	30.03.1998	C.S.R. receipts (2 No's)	Photocopy
Ex.A8	01.07.2013	Complaint given by the plaintiff	Hand copy
Ex.A9	03.02.1993	House tax receipt	Original
Ex.A10	25.01.2016	House tax receipt	Original
Ex.A11	13.03.2018	House tax receipt	Original
Ex.A12	27.03.2019	House tax receipt	Original
Ex.A13	06.01.2021	House tax receipt	Original
Ex.A14	15.12.2022	House tax receipt	Original
Ex.A15	30.09.2024	House tax receipt	Original

Defendants side witness:

DW1 - Mr. Nallathambi (1st Defendant)

Defendants side exhibits:

Ex.B1	08.12.2015	Plaint in O.S. No. 337/2015 on the file of this court	Certified copy
Ex.B2	28.04.2016	Written statement in O.S. No. 337/2015 on the file of this court	Certified copy
Ex.B3	12.02.2021	Decree and Judgment copy in O.S. No. 337/2015 on the file of this court	Certified copy
Ex.B4	09.09.2011	Sale deed in favour of the 2 nd defendant	Certified Copy

Ex.B5	27.06.2025	Patta No. 1318 issued in the name of the 2 nd defendant in respect of the property in Survey no. 315/9	Online Copy
Ex.B6	27.06.2025	Patta No. 339 issued in the name of the One Sundari in respect of the property in Survey no. 315/8	Online Copy
Ex.B7	---	House tax receipt (5 No's)	Original
Ex.B8	---	House tax receipt (5 No's)	Original
Ex.B9	---	House tax receipt (6 No's)	Original
Ex.B10	---	E.B. receipts (4 No's)	Original
Ex.B11	---	E.B. receipts (7 No's)	Original
Ex.B12	---	E.B. receipts (2 No's)	Original

3rd party exhibits:

Ex.X1	18.10.2002	Chitta of the suit property in Survey no.315/8	True copy
Ex.X2	28.04.1992	A-Register extract of the suit property in Survey no. 315/8	True copy
Ex.X3	02.09.1997	F.M.B Sketch of the property in Survey no. 315	True copy
Ex.X4	02.09.1997	Adangal extract of the property in Survey no.315/10	True Copy

Court exhibits:

Ex.C1	27.04.2022	Commissioner report	Original
Ex.C2	27.04.2022	Commissioner plan	Original
Ex.C3	27.04.2022	Surveyor plan	Original
Ex.C4	27.04.2022	F.M.B Sketch of the property in Survey no. 315	Photocopy
Ex.C5	27.04.2022	Photos (Nos.5) and C.D	Original

**District Munsif,
Mettur.**