

IN THE COURT OF THE DISTRICT MUNSIF AT AMBATTUR.
PRESENT: TMT.J.MADHUMITHA, B.A. B.L(HONS.), L.L.M.,
DISTRICT MUNSIF, AMBATTUR.

Monday, the 10th day of August 2026.

ORIGINAL SUIT NO.273 OF 2022
CNR.No.TNTR22 - 000571 - 2022

Mr.V.Ramamoorthy

.....Plaintiff

Vs

1. Mr.Anandan

2. Mr.K.Suresh

3. Mr.Srinivasan

.....Defendants

This suit having come on 04.06.2026 before me for final hearing in the presence of Shri.N.Sasikumar, learned counsel for the Plaintiff, 1st Defendant was set exparte on 30.03.2026, Shri.M.Viswanathan and D.Vinodh Kumar, learned counsels for 2nd and 3rd Defendants, upon hearing the arguments made by the learned counsel for the Plaintiff and the learned counsels for the Defendants and on perusal of records, this suit having stood over for consideration till this day, this Court delivers the following:

J U D G M E N T

1. This suit is filed by the plaintiff seeking for granting a relief of permanent

injunction restraining the defendants, and their men and agents or any other person on behalf of the defendants claiming through them from disturbing the plaintiff peaceful possession to put compound wall in western side of suit property and awarding costs of the suit.

CONCISE STATEMENT OF THE PLAINT FILED BY THE PLAINTIFF:

2. The Plaintiff submits that the plaintiff is the lawful owner of the suit property by virtue of a registered will deed dated 02.03.1990 executed by plaintiff's mother Tmt.Maragathammal vide document No.17/1990 on the file of Konnur Sub Registrar Office. The suit property is situated Manjakuppam, Mogappair Village in Survey No.67/3A, to an extent of 0.33 cents out of 0.11 cents in Grama Natham property situated in Survey no.91. That obtaining the Patta and Electricity connection in his name and the plaintiff peacefully possession and enjoyment of the suit property without any hindrance. Subsequently, the plaintiff decided to put a compound wall in western side of the suit property. On 20.09.2022 the plaintiff engaged mason workers to started construct the compound wall. The defendants restrained the plaintiff construct work with help of rowdy elements. Whereas, the defendants have no way connectivity suit schedule property.

3. That the plaintiff opposed that defendants illegal activity and tried to construct the compound wall in western side of suit property. Hence, the plaintiff could not able to start further construct compound wall work in suit property. The defendants used unparliamentary words and threatened the plaintiff and his family. That

defendants property situated in adjacent of plaintiff property hence, the defendants collude and grab from plaintiff western side suit property thereby, the defendants made a unlawful attempt and disturbed the plaintiff to put compound wall in western side of suit property. Hence, the plaintiff no other option except to approach this Hon'ble Court for necessary reliefs.

**CONCISE STATEMENT OF THE WRITTEN STATEMENT FILED BY THE
2nd AND 3rd DEFENDANTS:**

4. At the outset these defendants deny each and every one of the allegations contained in the plaint as false and incorrect except those that are specifically admitted herein and put the plaintiff to strict proof for the same. The above suit is not maintainable in law as well as on facts and it is liable to be dismissed in limini. The defendants has no knowledge about the alleged will with regard to the suit property and put the plaintiff to prove the same in a manner known to law. The plaintiff's mother Mrs.Maragathammal has executed a registered will in favor of the plaintiff brother Mr.Srinivasan in document no.16 of 1990 on the file of Ambattur Sub Register Office. In the said Will Mrs.Maragathammal has executed a common passage of 10 feet to the plaintiff.

5. These defendants deny the allegation contained in paragraph 4 of the plaint as false and correct. The plaintiff has illegally attempted to encroach 2 feet of the defendants' property by putting up compound wall in addition to 10 feet allotted to the plaintiff. It is admitted by the plaintiff that the Western portion of the plaintiff's

property is Ellappa Naicker property i.e., the property of the defendant's grandfather. Thus the defendants have protected their right, title and interest in defendants' property. Hence it is proved that the plaintiff is attempting to encroach the defendants' property. The other allegations contained in paragraph 4 are denied as false and incorrect.

6. The plaintiff has filed this frivolous suit before this Hon'ble Court by suppressing the common passage of 10 feet allotted to the plaintiff. The Western side of the plaintiff's property is the defendants' property in which the plaintiff has attempted to put up illegal compound wall. Thus the defendants have protected their right, title and interest in defendants' property. The plaintiff has not produced any document or survey report to prove the allegations contained in the plaint. Without property measurement and survey of the plaintiff's land, the above suit is not maintainable. With malafide intention, the plaintiff has approached this Hon'ble Court with unclean hands by setting out false and frivolous allegations. Hence prayed to dismiss the above suit with exemplary costs.

7. On perusal of the plaint and written statement filed by the defendants, this Court framed the following issues on 29.10.2024:

ISSUES

- 1. Whether there is an encroachment in the suit property?*
- 2. Whether the plaintiffs prove that they are in lawful possession of the suit property on the date of the suit?*
- 3. Whether the plaintiffs prove that they are entitled to the relief of*

permanent injunction as prayed for?

4. To what other relief the plaintiff is entitled to?

8. **Evidences:** On the side of plaintiff, the Plaintiff was examined as PW1 himself, and Ex.A1 to Ex.A3 documents were marked. The 1st Defendant was set exparte on 30.03.2026. No one was examined and no documents were marked on the side of Defendants No. 2 and 3.

Discussion and findings -

Answer to Issue No.1 to 3 –

9. As the suit has been filed by the Plaintiff for the relief of permanent injunction alone, it is important to look into the fact that whether on the date of filing of the plaint, the Plaintiff has been in lawful possession of suit property, and that they have been disturbed by the Defendant or not. It is the case of Plaintiff that an extent of 0.33 cents out of 0.11 cents in Grama Natham property situated in Survey no.91 was given to Plaintiff by virtue of a registered will deed dated 02.03.1990 executed by plaintiff's mother, and that while trying to build compound wall on western side, the defendants made a unlawful attempt and disturbed the plaintiff to put compound wall in western side of suit property. Hence this Court intends to look into the evidence with regard to whether compound wall was built within the Plaintiff's property in possession, and the proof as to the disturbance caused during building of the compound wall on western side of suit property.

10. The Plaintiff was examined as PW1, and Ex.A1 to A3 have been marked on side of Plaintiff. It is admitted by the Plaintiff that the Western portion of the plaintiff's property is Ellappa Naicker property i.e., the property of the defendant's grandfather. In Ex.A1 it is clearly mentioned that the Srinivasan, i.e., the elder brother of the plaintiff's flat is on the northern side and the Rajendiran i.e., the younger brother of the plaintiff's land is on the southern side. But the schedule mentioned in the plaint is entirely different from the Exhibit A1. It is contended by Defendant in written statement that the plaintiff has illegally attempted to encroach 2 feet of the defendants' property by putting up compound wall in addition to 10 feet allotted to the plaintiff. Thus is it clear that there is dispute regarding the boundaries of the property of Plaintiff and Defendant as they are lying next to each other. The plaintiff has not produced any document or survey report to prove that the compound wall was attempting for building within the plaintiff's property only.

11. It is observed that there are two attesting witnesses to the Ex.A1 Will. Section 68 of the Evidence Act, (now, section 67 of Bharatiya Sakshya Adhiniyam) makes it mandatory to examine at least one attesting witness to a Will, and this requirement cannot be dispensed with merely because the Defendant has not raised contradictory evidence before this Court. It is important to apply section 67 of BSA to the present case as the Plaintiff claims possession over suit property only through the will.

“Section 67. Proof of execution of document required by law to be attested.

If a document is required by law to be attested, it shall not be used as evidence until one attesting witness at least has been called for the purpose of proving its execution, if there be an attesting witness alive, and subject to the process of the Court and capable of giving evidence :

[Provided that it shall not be necessary to call an attesting witness in proof of the execution of any document, not being a Will, which has been registered in accordance with the provisions of the Indian Registration Act, 1908 (XVI of 1908), unless its execution by the person by whom it purports to have been executed is specifically denied.] ”

Insofar the Will is concerned, the Bharatiya Sakshya Adhiniyam, 2023 prescribes the manner in which a Will should be proved under Section 67 of the Act. A person who wants to rely upon a Will has to necessarily prove the Will only in accordance with Section 67 of the Act. In the absence of attesting witness, the Will has to be proved in accordance with Section 68 and 69 of the Bharatiya Sakshya Adhiniyam. Section 63 of the Indian Succession Act provides for the manner in which a Will should be executed by the testator and the requirement of attesting witnesses.

12. Section 67 of the Bharatiya Sakshya Adhiniyam only provides for an exception under the proviso to the said Section wherein it is specifically provided that it shall not be necessary to call an attesting witness in proof of execution of any document, **“not being a Will”**, which has been registered in accordance with the provisions of the Indian Registration Act. It is clear from this proviso that the exception is available for any other documents other than a Will. In other words, a Will has to be proved

only in accordance with Section 67 to 70 of the Bharatiya Sakshya Adhiniyam Act. In regard to the facts and circumstances of this case, this Court refers to the Judgment of Hon'ble Madras High Court in Arunachalam pillai and another vs. Sorimuthu pillai, reported in 2004 AIR MAD 185, wherein it was held in para 9 that, “It is well established principle that the plaintiff must win or fall on his own pleadings and evidence”. On application of the above dictum to the present case, the Plaintiff has the burden to prove the execution of will as prescribed by law. But not even one of the two attesting witnesses were examined before the Court. Hence the Ex.A1 Will is not proved in accordance with Section 67 to 70 of the Bharatiya Sakshya Adhiniyam Act. Hence Ex.A1 cannot be taken up for evidence to prove the possession over suit property.

13. On the side of the Defendant, it is contended that the plaintiff has illegally attempted to encroach 2 feet of the defendants' property by putting up compound wall in addition to 10 feet allotted to the plaintiff. But the Defendant have not furnished any further evidence to disprove the case of Plaintiff, and has admitted in the DW1 Cross examination that Plaintiff has not encroached upon the Defendant's land.

DW1 Cross examination

"எனது பதில் உரையில் 10 அடி நிலம் வாதிக்கு ஒதுக்கப்பட்டதாக என்றால் பேரா 3 ல் சொல்லியுள்ளேன் என்றால் சரிதான். 10 அடி நிலம் இல்லாமல் மேலும் 2 அடி நிலத்தை வாதி ஆக்கிரமித்து உள்ளார் என்பதை காட்டுவதற்கும் எனக்கு அந்த 2 அடி நிலத்தில் உரிமை உள்ளது என்பதை காட்டுவதற்கும் ஆவணம் தாக்கல் செய்துள்ளேனா என்றால் இல்லை. 2 அடி நிலத்தில் ஆக்கிரமிப்பு செய்யும் விதத்தில் வாதி

எந்த சுவரும் கட்டவில்லை என்றால் சரிதான்."

The defendant admitted the plaintiff has not encroached the 2 feet of the defendants' property, and has constructed western side wall in his own property.

14. On perusal of records submitted by Plaintiff there is no evidence submitted with regard to the compound wall in question, as the suit itself is for injunction seeking not to disturb the construction of the compound wall on western side of suit property. On perusal of the evidence deposed by the Plaintiff, it is observed from cross examination of plaintiff that he has constructed the wall in the western side of his property and the property in which the wall is constructed belongs to him.

PW1 Cross examination

"வழக்கு எதற்காக தாக்கல் செய்துள்ளேன் என்றால் எனது இடத்திற்கு காம்பவுண்ட் கட்டுவது சம்மந்தமாக. நான் கட்டியுள்ள காம்பவுண்ட் சுவர் மேற்குபக்கம் கட்டியுள்ளேன்..."

From the above statements it is clear that the plaintiff has finished constructing the wall. It is admitted by the Plaintiff itself that the compound wall in suit property was constructed. Therefore it is clear that the permanent injunction relief sought in this suit has become infructuous. With regard to this reference is made to citation of 2024 (1) CTC 287 in AIADMK (Amma) Vs AIADMK (Puratchi Thalaivi Amma) by Hon'ble High Court Of Madras, that discussion was made upon Supreme Court Judgment in paragraph 61 of the Judgment.

"In para 61, Hon'ble Supreme Court in Shipping Corporation of India Ltd v. Machado Brothers and others, 2002 (1) CTC 400 :

2004 (11) SCC 168. The Court after referring to the Judgment in Pasupuleti Venkateswarlu, referred to supra, and the Judgment of the Hon'ble Supreme Court of United States in Patterson v. State of Alabama, (294 US 600), concluded that by a subsequent event if the original proceedings has become infructuous, it will be the duty of the Court to take such action as it is necessary in the Interest of justice which includes disposing of an infructuous litigation.”

On application of the above ruling to the present case, it is inferred that even if additional construction was made on date of filing of suit, on subsequent events, the status of the permanent injunction relief has become infructuous as the compound wall has been constructed on the present day as per the averments of the plaintiff. Therefore, it is clear that the permanent injunction relief sought in this suit has become infructuous.

15. The main contention for disturbance caused by the Defendant was that when the Plaintiff decided to put a compound wall in the western side of the suit property, on 20.09.2022 the plaintiff engaged mason workers to construct the compound wall, and that the defendants restrained the plaintiff's construction work with help of rowdy elements. Further it is admitted by the Plaintiff that the 2nd and 3rd Defendants have not encroached the Plaintiff's property.

PW1 Cross examination

"...2 மற்றும் 3 பிரதிவாதிகள் எனது இடத்தில் காம்பவுன்ட் கட்டினார்களா என்றால் இல்லை. 10 அடி பாதை மேற்குபக்கத்தில் உள்ளது என்றாலும் மேற்குபக்கத்தில் தான் 2 மற்றும் 3 பிரதிவாதிகள் அவர்கள் இடத்தில் வீடு கட்டியுள்ளார்கள் என்றாலும் சரிதான்."

16. Further, no piece of evidence has been produced by the plaintiff to prove that the defendants have restrained the plaintiff's construction work. It is admitted in PW1 Cross examination by Plaintiff that no police complaint has been given by the plaintiff. Hence, as no piece of evidence has been produced by the plaintiff before this Court to substantiate the disturbance caused by the Defendants the plaintiff has failed to prove the cause of action. Thus this Court considers that the Plaintiff has not proved any encroachment in suit property by the Defendant, and that the relief for permanent injunction has become infructuous. **Thus the Issue No. 1 to 3 are answered against the Plaintiff.**

Answer to Issue No.4 -

17. Since this Court decided that the Plaintiff is not entitled to the relief of permanent injunction, it is decided that the Plaintiff is not entitled for any other reliefs. Thus **Issue No.4 is answered against the Plaintiff.**

RESULT:

18. In the result, this suit is dismissed. No order as to costs.

Dictated to the steno-typist, typed directly by her in the desktop, corrected and pronounced by me in the open Court on this 10th day of August 2026.

**DISTRICT MUNSIF,
AMBATTUR.**

PLAINTIFFS SIDE WITNESSES:

PW1 Ramamoorthy

PLAINTIFFS SIDE EXHIBITS:

Exhibit A1 02.03.1990 Will – Certified Copy

Exhibit A2 07.03.2005 Death Certificate of Tmt.Maragathammal – Online
Copy

Exhibit A3 01.10.2022 EB Receipt - Original

DEFENDANTS SIDE WITNESSES AND EXHIBITS: NIL

**DISTRICT MUNSIF,
AMBATTUR.**