

**IN THE COURT OF DISTRICT MUNSIF, SHENCOTTAI.**

Present : **Thiru.K.N.Guru, B.A.B.L.,**  
District Munsif, Shencottai.

Monday, the 30<sup>th</sup> day of March 2026

**ORIGINAL SUIT No.118/2024**

**(CNR.No.TNTS11-000888-2014)**

Sudalaiyandi

.. Plaintiff

/Vs/

1. Mookkan (Died)

2. Executive Officer, Ilanji Town Panchayat, Tenkasi Taluk.

.... 2<sup>nd</sup> Defendant/Counter Claimant

3. The Government of Tamil Nadu through its District Collector, Tenkasi District

4. Chellammal

5. Karpaga Vinayagam

6. Suresh

.... Defendants

**(Amended as per order in I.A.No.2/2023 dated 07.06.2023)**

**(Amended as per order in I.A.No.15/2025 dated 26.11.2025)**

This suit came before me for final hearing on 18.03.2026 in the presence of Thiru. M. Kanthasamy, Advocate for the Plaintiff, and Thiru.S. Murugesan, Advocate for the 2nd Defendant/Counter-claimant; and the 1st Defendant having died and the

other Defendants having been set *ex-parte*; and after hearing both sides, and on perusal of the records and having stood over for consideration till this date and this court delivers the following:-

### **JUDGMENT**

This suit is filed by the Plaintiff seeking the relief of declaration of title in respect of the Suit 2nd Schedule Property and for a consequential permanent injunction restraining the Defendants, their men, and agents from interfering with the Plaintiff's peaceful possession and enjoyment of the same, together with the costs of the suit.

In response, the 2nd defendant has filed a counter-claim seeking a declaration that the Counter claim 2<sup>nd</sup> schedule property is part of 1st schedule property is a public pathway belonging to the 3rd defendant, a permanent injunction restraining the plaintiff from obstructing public works such as laying a cement floor or installing street lights, and a mandatory injunction for the removal of the plaintiff's encroachments in the counter-claim 2nd schedule property to restore possession to the 2nd and 3rd defendants, together with the costs of the suit.

#### **2. Plaintiff's case in nutshell:-**

i) The Plaintiff's case is that the suit schedule properties originally belonged to his father, Thirumalai Vellar, who acquired the same under a Partition Deed dated 06.11.1981. From the date of such partition, the said Thirumalai Vellar was in absolute possession and enjoyment of the suit schedule properties till his demise on 15.05.2011.

ii) After his demise, his legal heirs effected a partition among themselves, in which the suit schedule properties were allotted to the share of the Plaintiff. Thereafter, the Plaintiff has been in continuous possession and enjoyment of the same as absolute owner.

iii) It is further stated that about 30 years ago, Thirumalai Vellar constructed a house in the suit 2nd schedule property and dug a bore well therein. Subsequently, about 15 years ago, a shed was also put up, and the properties have been enjoyed without any interruption.

iv) While so, the 1st Defendant, with an intention to disturb the Plaintiff's peaceful possession, gave a complaint before the Shencottah Taluk Legal Services Committee on 04.08.2014, falsely alleging that the Plaintiff had encroached upon a common pathway. Thereafter, on or about 19.11.2014, the 1st Defendant attempted to cut trees and demolish the compound wall in the suit property. In this regard, the Plaintiff's wife lodged a complaint before the Courtallam Police Station.

v) Further, in the month of December 2014, the 2nd Defendant also claimed right over the suit 2nd schedule property and threatened to remove the alleged encroachment, asserting that the property belongs to him.

vi) Hence, the Plaintiff is constrained to file the present suit seeking declaration that the suit 2nd schedule property is his exclusive property and for consequential permanent injunction restraining the Defendants from in any manner interfering with his peaceful possession and enjoyment of the same.

### **3. 1<sup>st</sup> Defendant Case in Nutshell:-**

The 1st Defendant contends that the suit property is situated in Pillaiyar Kovil Street, Ilanji Village, a narrow East–West lane consisting of eight houses arranged in opposite rows, wherein both the Plaintiff’s house on the western end facing North and the 1st Defendant’s house opposite thereto facing South were constructed by leaving a 5-foot space in the North–South direction in front of each house for use as a common pathway for ingress and egress. It is further stated that, with a view to facilitate provision of basic amenities such as road, drainage, drinking water and street lights, the 1st Defendant along with other residents executed a registered Gift Deed dated 02.07.2014 (Doc.No.1561/2014) in favour of the 3rd Defendant, donating the said 5-foot strip as a public pathway, and therefore the Plaintiff has no manner of right, title, interest or possession over the suit 2nd schedule property, the description of which is also incorrect. According to the 1st Defendant, the Plaintiff, who did not cooperate in the said arrangement, developed enmity and thereafter, with a mala fide intention to encroach upon the public pathway, obstructed the same by dumping materials and putting up a shed, thereby preventing the 1st Defendant from using the pathway, which constrained him to lodge a complaint before the authorities; though the Plaintiff is said to have admitted the encroachment and agreed to remove it, he failed to do so and has instead filed the present suit suppressing material facts, and hence, the suit is liable to be dismissed in limine.

#### **4. Case of the 2nd Defendant in the Counter-claim in brief:-**

The 2nd Defendant denies all the allegations made in the plaint, including the claim that the 2nd schedule property forms part of the Plaintiff's house property or that the Plaintiff and his predecessor were in possession and enjoyment of the same, and contends that the said property is in fact a portion of a public pathway. According to the 2nd Defendant, the locality forms part of Ilanji Village in Main Survey No.443, wherein an East-West pathway situated between eight houses—three on the southern side and five on the northern side—has been in existence for about 50 years for common use and has been subsequently sub-divided as Survey No.443/6A, constituting the 1st schedule property. It is further stated that, upon the request of the residents for provision of basic amenities such as cement road, water supply and street lights, the 2nd Defendant informed them that the pathway must vest with the Government, pursuant to which five residents executed a registered Gift Deed dated 02.07.2014 in favour of the Government of Tamil Nadu, though the Plaintiff, despite initially agreeing, later refused to join the same. The 2nd Defendant would further contend that taking advantage of the situation, the Plaintiff, in November 2014, encroached upon a portion of the said public pathway on its western side abutting his house by putting up poles, an asbestos sheet shed, a brick wall and cement flooring, which encroached portion is described as the 2nd schedule property. On a complaint by the 1st Defendant, the Plaintiff was called upon to remove the encroachment and though he undertook to do so, he failed to comply and instead filed the present suit

with false averments to thwart official action. It is also stated that a resolution has already been passed by the Town Panchayat for laying a cement road in the pathway, which could not be implemented due to the Plaintiff's obstruction, and that there is no personal enmity, the 2nd Defendant acting only in discharge of its public duties. The 2nd Defendant further contends that, in the absence of any registered relinquishment by the Plaintiff's sisters, they are necessary parties to the suit. Hence, the 2nd Defendant seeks dismissal of the suit and has filed a counter-claim for declaration that the 1st schedule property is a public pathway belonging to the Government of Tamil Nadu, for permanent injunction restraining the Plaintiff from interfering with developmental works, and for mandatory injunction directing removal of the encroachment in the 2nd schedule property and delivery of possession to the Defendants.

**5. Reply statement of the Plaintiff:-**

The Plaintiff denies the averments made in the counter-claim as false, frivolous and legally unsustainable, and contends that the property in Ilanji Village comprised in Survey No.443 is not a public pathway as alleged, but is the exclusive private property of the Plaintiff and certain specified owners, namely Annamalai Velar, Kumar, Ramalinga Velar, Andi Velar and Murugaiya Velar, who have only been using their respective front portions for convenience without any dedication to the public; the Plaintiff would further submit that the 2nd schedule property, forming part of the 1st schedule, is the absolute property of his father Thirumalaiavelar, acquired under a

registered Partition Deed dated 06.11.1981 (Doc.No.1070/1981), and upon his demise, the Plaintiff has succeeded to the same through family arrangement and has been in continuous, open and uninterrupted possession and enjoyment thereof. The Plaintiff specifically disputes the validity of the alleged Gift Deed dated 02.07.2014, contending that the executants had no right or title over the property and that the said document is void ab initio and vitiated by fraudulent recitals, including misdescription of parties, and hence not binding on the Plaintiff. The allegation of encroachment in November 2014 is emphatically denied, it being stated that the Plaintiff's father had constructed a house over 30 years ago, sunk a borewell more than two decades ago and put up a shed and raised trees long prior to the alleged date, which are evidenced by records and photographs already produced, and that, on the contrary, the 1st Defendant, out of malice, damaged the structures and cut trees on 19.11.2014, necessitating a police complaint by the Plaintiff's wife. The Plaintiff further alleges that the 2nd Defendant is acting at the instance of the 1st Defendant under the guise of public welfare and has no authority to interfere with the Plaintiff's private property or to claim declaration in favour of the Government based on a void document, and that the plea regarding non-joinder of the Plaintiff's sisters is untenable in view of the Plaintiff's lawful title and possession. Hence, the Plaintiff prays that the counter-claim, being devoid of merits and based on false and suppressed facts, is liable to be dismissed with costs.

**6. On the basis of the plaint, counterclaim, reply statement and documents on record, the following issues were framed.**

1. Whether the suit 2<sup>nd</sup> schedule property belongs to the Plaintiff?
2. Whether the property described as the 1st schedule in the counter-claim is a public pathway belonging to the 3rd Defendant, as contended by the 2nd Defendant?
3. Whether the 2nd schedule property of the counter-claim forms an integral part of the 1st schedule property of the counter-claim?
4. Whether the Plaintiff is entitled to the reliefs of declaration and permanent injunction as prayed for in the suit?
5. Whether the 2nd Defendant is entitled to the reliefs of declaration, permanent injunction, and mandatory injunction as prayed for in the counter-claim?
6. To what other reliefs the parties are entitled to?

7. In the present case, on the side of the Plaintiffs, PW1 was examined and Ex.A1 to Ex.A11 were marked. On the side of Defendants, DW1 was examined and Ex.B1 & Ex.B2 were marked.

**8. Answer to Issues No.1&4:-**

i) The contention of the learned counsel for the Plaintiff that the suit schedule properties originally belonged to the Plaintiff's father, Thirumalai Vellar, rests entirely upon Ex.A1, the alleged Partition Deed dated 06.11.1981. However, this Court finds that the said document is nothing but a bare photocopy, and the Plaintiff

has made no earnest attempt to produce the original or to lay the foundational facts required for the reception of secondary evidence under the Indian Evidence Act. It is a settled and inviolable principle of law that primary evidence is the best evidence, and secondary evidence is an exception which can be invoked only upon strict and scrupulous compliance with statutory requirements. In the present case, such foundational requirements are conspicuously absent.

ii) More importantly, when the very existence, execution, and contents of a document are in serious dispute, the law mandates strict proof thereof. Mere marking of a document as an exhibit does not, by any stretch of imagination, amount to its proof. As rightly held by the Hon'ble Bombay High Court in *Om Prakash Berlia v. Unit Trust of India reported in AIR1983BOM1*, secondary evidence, even if admissible, only proves the contents of the document and not the truth or correctness thereof. The Plaintiff has utterly failed to cross even this minimal threshold.

iii) The evidence of PW1 further demolishes the Plaintiff's case. The Plaintiff has candidly admitted his complete ignorance of the contents of Ex.A1, thereby rendering his testimony wholly valueless for the purpose of proving either the execution or the contents of the document. He is, in effect, a witness without knowledge, and his deposition inspires no confidence whatsoever. Significantly, no attesting witness, no scribe, nor any person acquainted with the execution of the document has been examined. This glaring omission strikes at the very root of the Plaintiff's claim.

iv) To compound matters, this Court detects a patent and suspicious alteration in Ex.A1 at page No.5, line 6, where the northern boundary originally described as “Street” appears to have been deliberately struck off and substituted with “Shanmuga Konar.” In the absence of the original document, this Court is deprived of the opportunity to verify the authenticity of such alteration, thereby giving rise to a serious and unavoidable suspicion of manipulation. Such a tainted and dubious document cannot be the foundation of any legal right.

v) In view of the aforesaid infirmities, this Court has no hesitation in holding that Ex.A1 has not been proved in the manner known to law and is wholly unreliable, untrustworthy, and devoid of any evidentiary value. The Plaintiff’s attempt to base his claim upon such a defective and suspicious document is thoroughly misconceived and deserves to be rejected in limine.

vi) The Plaintiff’s reliance on Ex.A9, the Settlement Deed dated 15.12.2014, is no better than his earlier attempt and is equally unsustainable. Though the document admittedly predates the institution of the suit on 23.12.2014, it is conspicuously absent from the plaint. This omission is not a mere irregularity but a fatal defect, for it is a cardinal principle of civil jurisprudence that pleadings form the very foundation of a case, and no evidence can be looked into on facts not pleaded. The Plaintiff, having chosen to suppress this document in his pleadings, cannot now be permitted to spring a surprise by relying upon it at the stage of evidence.

Vii) What is more damaging is that the Plaintiff’s own pleadings stand in

direct and irreconcilable conflict with Ex.A9. While the plaint sets up a case of title flowing from an alleged oral release by his sisters after the demise of his mother on 06.02.2012, Ex.A9, on its very face, discloses that even as on 15.12.2014, the Plaintiff and his sisters continued to remain in joint possession of the property. This is not a minor inconsistency but a glaring contradiction that completely demolishes the Plaintiff's version. The Plaintiff appears to be shifting his stand with convenient elasticity—pleading one case and proving another—thereby exposing the hollowness of his claim. Such mutually destructive pleas cannot coexist and only serve to erode the credibility of the Plaintiff beyond repair.

Viii) The law on this aspect is too well settled to admit of any deviation. The Hon'ble Supreme Court in *Biraji @ Brijraji & Anr. v. Surya Pratap & Ors reported in AIR ONLINE 2020 SC 806* has unequivocally held that pleadings are the backbone of a case, and parties cannot be permitted to travel beyond them. Failure to plead material facts, especially those within the exclusive knowledge of a party, is fatal, and any belated attempt to introduce them through evidence is impermissible. The Plaintiff's attempt to rely on Ex.A9, in the teeth of his own pleadings, is thus legally untenable and deserves outright rejection.

ix) Equally telling is the confusion surrounding the identity of the suit property. While Ex.A9 confines itself to Survey Nos. 443/7B and 443/8B, the plaint, with no explanation whatsoever, ambitiously expands the property to include Survey No. 443/7C. This unexplained embellishment raises a serious cloud over the very

identity of the property. It is not the duty of the Court to guess or reconstruct the Plaintiff's case from such vague and shifting descriptions.

x) Adding to this, the Plaintiff, despite having sought the appointment of an Advocate Commissioner under Order XXVI Rule 9 CPC to establish the physical features and identity of the property, has failed to extend any meaningful cooperation for inspection or submission of a report. This conduct speaks volumes. A party who withholds the best available evidence cannot later complain of lack of proof; rather, an adverse inference necessarily follows.

xi) In sum, the Plaintiff has approached this Court with a case built on contradictions, omissions, and unproved documents. He seeks the equitable relief of declaration, yet his conduct falls far short of the standards expected of a litigant invoking such jurisdiction. It is trite that a Plaintiff must succeed on the strength of his own title and not on the supposed weakness of the Defendant's case. Here, the Plaintiff has failed, rather spectacularly, to establish any semblance of a lawful title.

Xii) Accordingly, this Court has no hesitation in holding that the Plaintiff has miserably failed to prove that the suit 2nd schedule property belongs to him, and his claim stands exposed as a precarious edifice built on shifting sands, wholly unworthy of acceptance by this Court. The above issues are answered against the Plaintiff.

### **9. Answer to Issue No.2,3 and 5:-**

i) The issues relating to the counter-claim are taken up together as they are interconnected. The entire case of the 2nd Defendant rests upon Ex.B1, the alleged

gift deed said to have been executed by the 1st Defendant and others in favour of the 3<sup>rd</sup> Defendant for the purpose of forming a public pathway. However, a careful scrutiny of the evidence completely demolishes this claim. Though, in law, a gift of immovable property is complete upon execution, registration and acceptance, such completion necessarily presupposes that the donor had a valid and lawful title to convey. In the present case, the 2nd Defendant has utterly failed to establish this basic and essential requirement.

ii) Significantly, DW1, the Executive Officer of the Panchayat, has clearly admitted that neither Panchayat nor the 3<sup>rd</sup> Defendant has not taken possession of the property covered under Ex.B1 till date, thereby rendering the alleged gift a mere paper transaction without any practical effect. More importantly, Ex.B1 is completely silent as to how the donors derived title to the property. Though there is a vague reference to certain prior documents, none of those documents have been produced before this Court. Not even a single revenue record has been filed to substantiate the alleged title of the donors. Thus, the source of their title, the extent of their respective shares, and their competence to convey the property remain wholly unproved. The vague reference to Survey No. 443/6A, without any supporting title documents or correlation, is wholly insufficient. When the Plaintiff has specifically denied the title of the donors, the burden squarely lies on the 2nd Defendant to prove the same with clear and convincing evidence, which he has failed to do. The absence of proof regarding the donors' title and their respective shares strikes at the root of Ex.B1 and renders it unreliable.

iii) Further, though the 2nd Defendant has sought the relief of declaration along with consequential reliefs including recovery of possession and injunction, even for a suit for declaration, it is essential to prove a clear and valid chain of title. A party seeking declaration must trace ownership through previous title holders and establish how the property lawfully vested with him. In the present case, no material has been produced to show how the donors under Ex.B1 derived title or how such title validly passed to the Panchayat. Merely placing reliance on the registered document without producing any previous document will not make the document valid. The person who conveys the property shall have valid title to transfer the same. Mere registration of document by itself will not convey title it is only an acknowledgment of transaction.

iv) Further, the Plaintiff has categorically disputed the title of the donors and has set up a rival claim over the property. Thus, a serious cloud is cast over the title claimed by the 2nd Defendant. In such circumstances, unless the 2nd Defendant clearly establishes his title by proving a complete and lawful chain of ownership, no declaration can be granted.

v) In the present case, the 2nd Defendant has failed to prove the title of the donors, failed to establish any valid transfer in his favour, and failed to prove lawful vesting of the property. Once the relief of declaration itself fails, the consequential reliefs of recovery of possession and permanent injunction automatically fail.

vi) Accordingly, this Court holds that the 2nd Defendant is not entitled to any

of the reliefs sought in the counter-claim, and the same is liable to be dismissed. The above issues are answered against the 2<sup>nd</sup> Defendant.

**10. Answer to Issue No.6:-**

The parties are not entitled to any other reliefs.

**In the result, both the suit and the counter-claim fail in their entirety and are hereby dismissed. In view of the wholly unsubstantiated claims and lack of credible evidence on either side, the parties shall bear their own costs.**

Dictated to the Steno-typist directly and typed by him in computer, corrected and pronounced by me in open court, this the **30<sup>th</sup> day of March 2026.**

**District Munsif,  
Shencottai.**

**Plaintiff Side Witnesses:**

**PW1 – Sudalaiyandi ( Plaintiff)**

**Plaintiff Side Documents:-**

**Ex.A1**      06.11.1981    Copy of Partition (Yadast).

**Ex.A2**      --            Rough Plan.

**Ex.A3**      --            House tax receipts (Nos.2)

**Ex.A4**      25.09.2014    Electricity Bill.

**Ex.A5**      --            Photos (Nos.2)

- Ex.A6** -- Copy of the petition submitted by the 1st Defendant before the Legal Services Authority.
- Ex.A7** -- Complaint petition submitted by Kanagavalli, the wife of the Plaintiff, before the Courtallam Police Station.
- Ex.A8** -- Genealogy Table.
- Ex.A9** 19.12.2014 Certified copy of Settlement deed in favour of Plaintiff.
- Ex.A10** -- Photograph showing the suit 2nd schedule property.
- Ex.A11** -- The erstwhile photograph showing the Suit 2nd Schedule Property.

**Defendants side Witnesses:**

**DW1-** Kumar Pandian (2<sup>nd</sup> Defendant)

**Defendants Side Documents:**

- Ex.B1** 02.07.2014 Original Gift deed.
- Ex.B2** -- Computer pattas bearing No.995 & 1579.

**District Munsif,  
Shencottai.**

DM Court, Shencottai,  
O.S.No.118/2014  
Draft/Fair Judgment (counter claim)  
Dated. 30.03.2026