

IN THE COURT OF DISTRICT MUNSIF, SHENCOTTAI.

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

District Munsif, Shencottai.

Thursday, the 30th day of April 2026

ORIGINAL SUIT No.69/2020

(CNR.No.TNTS11-001355-2020)

Habib Nisha

.. Plaintiff

/Vs/

J. Rahimal Begam

.. Defendant

This suit came before me for final hearing on 28.04.2026 in the presence of Thiru.M.Mohamed Sherbudeen, Advocate for the Plaintiff and Thiru.R.Jegadeesan, Advocate for the Defendant and after hearing both sides and on perusal of records and having stood over for consideration till this date and this court delivers the following:

JUDGMENT

The Plaintiff has filed this suit for a decree of Declaration that the suit property is a common passage belonging jointly to the parties; for a Mandatory Injunction to remove the unauthorized encroachments and restore vacant possession to the Plaintiff, failing which the same be executed through the Court Ameenah; and for a Permanent Injunction restraining the Defendant and her agents from interfering with the Plaintiff's peaceful enjoyment of the suit property, along with costs.

2. Plaintiff Case in a Nutshell:-

The Plaintiff's case, in brief, is that the suit property measuring 70 sq.ft situated in Natham Survey No.88 (New R.S.No.688/2) is a common passage jointly owned and unpartitioned between the Plaintiff and the Defendant, who are sisters, and that the title originates from their father, Mr. A.B.M. Peer Ismail, under Partition Deed dated 26.04.2001 (Doc No.541/2001), subsequently settled upon their mother, Mrs. Fathima Beevi, under Gift Settlement Deed dated 27.04.2001 (Doc No.554/2001), who in turn executed Settlement Deeds dated 24.06.2010 in favour of both daughters, whereby under Settlement Deed No.1099/2010 the Plaintiff was allotted specific house and shop properties while the 70 sq.ft suit passage was expressly reserved and earmarked as a common pathway for joint use of both parties, and under the reciprocal settlement deed No.1100/2010 similar arrangements were made in favour of the Defendant, with the intention of ensuring mutual access, harmony, and uninterrupted ingress and egress to Mee.Ka Street; it is further contended that the Plaintiff has been using the said passage as her only access and has maintained revenue records including patta and tax assessment in her name, but the cause of action arose on 29.02.2020 when the Defendant, taking advantage of the Plaintiff's husband's absence abroad, attempted to encroach upon the common passage and proceeded with illegal construction despite complaints to the police and intervention attempts by revenue authorities, including an inspection dated 02.03.2020 and a petition before the District Collector on 05.10.2020, and that the Defendant, exercising undue influence and obstructing lawful inspection, has

unlawfully blocked the passage marked as CDEL in the plaint plan, thereby forcing the Plaintiff to demolish part of her shop to create an alternative entry, and consequently the Plaintiff seeks declaration of her right over the common passage, recovery of the encroached portion, and permanent injunction restraining further interference by the Defendant, along with interim protection on the ground of balance of convenience and irreparable injury.

3. Defendant's case in Nutshell including additional written statement:-

The case of the Defendant, in brief, is that while admitting certain foundational facts regarding the family and earlier transactions, she asserts an independent and prior title over the disputed property by virtue of a Settlement Deed dated 12.12.2008 executed by her mother, Mrs. Fathima Beevi, whereby an extent of 4.33 cents in Natham Survey No.88, R.S. No.688/2 was absolutely conveyed to her, and ever since she has been in exclusive possession and enjoyment thereof. It is her specific contention that the so-called "common passage" now claimed by the Plaintiff does not form part of any joint or shared property, but lies entirely within the extent already settled in her favour in 2008, and therefore, the subsequent settlement deeds dated 24.06.2010 could not and did not validly create any common passage over the said property, as the settlor had no subsisting right therein. The Defendant further states that even otherwise, the Plaintiff has never used the alleged passage and has constructed her house with access from a different side, thereby abandoning any such right, while the Defendant alone has been using the said pathway as the only means of ingress and egress. She denies any encroachment or unlawful construction and

maintains that her construction is strictly within her own property. The Defendant also raises the plea of limitation, contending that the Plaintiff, having been aware of the position since 2008 and having remained silent, cannot now agitate the claim. Additionally, it is contended that the suit is not maintainable in the absence of a prayer for declaration of title or right over the alleged common passage, and that the Plaintiff has approached the Court with suppressed material facts and ulterior motive to interfere with the Defendant's peaceful possession. Tracing the title further, the Defendant submits that the property originally belonged to their grandfather, thereafter devolved through successive settlements to their mother, who validly conveyed a substantial portion to the Defendant in 2008, and that a subsequent revenue survey also confirms that the disputed passage lies within the Defendant's property. On these grounds, the Defendant characterizes the suit as vexatious and liable to be dismissed in limine with costs.

4. On the basis of the plaint, written statement and documents on record, the following issues were framed.

1. Whether the suit property is the common pathway of the plaintiff and Defendant?
2. Whether the suit is barred by limitation as alleged by Defendant?
3. Whether the Plaintiff abandoned her right over the suit property from 2008 without waiting it as alleged by defendant?
4. Whether the defendant made any construction over the suit property?

5. Whether the plaintiff is entitled for the relief of declaration, recovery of possession and injunction as prayed for?
6. To what other reliefs?

5. In the present case, on the side of the plaintiff, PW1 was examined and Ex.A1 to Ex.A12 were marked. On the side of the Defendant, DW1 & DW2 were examined and Ex.B1 to Ex.B3 were marked.

6. Answer to Issues No.1 :-

i) This court carefully considered the arguments of either side and perused the records produced.

ii) It is the case of the Plaintiff that the suit schedule property is a common pathway measuring East–West 5 feet and North–South 14 feet, said to have been created under the settlement deeds executed by the mother of the parties. It is not in dispute that the property originally belonged to the father of the parties, who conveyed the same in favour of his wife under Ex.A1, and thereafter, the said Fathima Beevi executed settlement deeds in favour of the Plaintiff and the Defendant under Exs.A2 and A3.

iii) The learned counsel for the Plaintiff relied upon Ex.A2, particularly the recital at page No.7, to contend that the existence of a common pathway on the western side of the Defendant’s vacant site is clearly recognized. It is also not in dispute that the said vacant site belongs to the Defendant, having been settled earlier under Ex.B1. However, a careful perusal of Ex.A2, especially at page No.5, reveals

that the settlor had already settled a specific extent of property measuring 17 feet East–West and 40.50 feet North–South in favour of the Plaintiff, wherein the eastern boundary is described as the Defendant’s vacant site, and significantly, there is no mention of any common pathway at that stage. Thus, the earlier portion of the document clearly delineates the property without reserving or carving out any pathway.

iv) In this context, the Hon’ble Supreme Court in *Ramkishorelal v. Kamal Narayan*, 1963 Supp (2) SCR 417 : AIR 1963 SC 890, has laid down the golden rule of construction as follows:

“12. The golden Rule of construction, it has been said, is to ascertain the intention of the parties to the instrument after considering all the words, in their ordinary, natural sense. To ascertain this intention the Court had to consider the relevant portion of the document as a whole and also to take into account the circumstances under which the particular words were used. Very often the status and the training of the parties using the words have to be taken into consideration. It has to be borne in mind that very many words are used in more than one sense and that sense differs in different circumstances. Again, even where a particular word has to a trained conveyancer a clear and definite significance and one can be sure about the sense in which such conveyancer would use it, it may not be reasonable and proper to give the same strict interpretation of the word when used by one who is not so equally skilled in the

art of convincing. It is clear, however, that an attempt should always be made to read the two parts of the document harmoniously, if possible; it is only when this is not possible, e.g., where an absolute title is given in clear and unambiguous terms and the later provisions trench on the same, that the later provisions have to be held to be void.”

v) The above dictum makes it clear that every effort must be made to harmonise the clauses of a document by reading it as a whole and giving effect to the intention of the executant. Only when such reconciliation is impossible, and where an earlier clause clearly creates an absolute and unambiguous right while a later clause trenches upon the same, can the later inconsistent provision be disregarded to the extent of repugnancy.

vi) Applying the said principle, Ex.A2 having already conveyed a definite extent with clear boundaries in favour of the Defendant, any subsequent recital in Ex.A3 purporting to treat the same area as a “common pathway” cannot override or dilute the earlier absolute grant. Once title and possession had already passed under Ex.A2, the settlor had no subsisting right to reserve or create any inconsistent right thereafter. Therefore, to the extent Ex.A3 is inconsistent with Ex.A2, the same is inoperative and incapable of conferring any enforceable right on the Plaintiff.

Vii) In this context, it is a settled principle of law that in non-testamentary instruments, where there is inconsistency between two clauses, the earlier clause prevails over the later clause, particularly when the earlier clause is clear and

unambiguous and the later clause introduces inconsistency. Such instruments operate to create present and definite rights, and once a right is conveyed, the settlor cannot subsequently derogate from the same by introducing inconsistent recitals. In this regard, reliance is placed on the judgment of the Hon'ble Delhi High Court in *Sunil Kumar Chandra v. M/s Spire Techpark Pvt. Ltd.*, reported in 2023 LiveLaw (Del) 160, wherein it was held that where there is inconsistency between clauses of the same instrument, the earlier clear and operative clause prevails over a later inconsistent or ambiguous clause, particularly when rights have already crystallized.

Viii) Further, in *Madhuri Ghosh v. Debobroto Dutta*, (2016) 10 SCC 805, the Hon'ble Supreme Court reaffirmed that once an absolute bequest is created in favour of a legatee, any subsequent inconsistent or repugnant disposition in the same instrument cannot take away or dilute the absolute interest already created.

ix) Applying the said principles, this Court is of the considered view that once the settlor had already conveyed the property with definite boundaries, she could not have subsequently created or reserved a common pathway over the very same property, especially when such reservation is inconsistent with the earlier clear recital.

x) Even upon careful perusal of the Surveyor's Sketch, it is seen that the Surveyor has measured the entire properties comprised in Schedules 1 to 3 under Ex.A2. The extent of the 2nd schedule property on the East–West axis is shown as 11 feet, and the 1st schedule property measures 17 feet East–West, which together

correspond to 8.2 meters. It is not in dispute that these properties belong to the Defendant. The Advocate Commissioner has also identified the 3rd schedule property (alleged common passage) within the said total extent of 8.2 meters.

xi) The mere mention of the suit property as a “common pathway” in the Plaintiff’s title deed, i.e., Ex.A3, by itself does not create any right, title or interest in favour of the Plaintiff. It is a settled principle of law that a transferor can convey only such right, title and interest as she lawfully possesses on the date of conveyance. The maxim *nemo dat quod non habet* squarely applies. Therefore, the predecessor-in-title must have subsisting title over the property sought to be conveyed.

Xii) In the present case, it is the Defendant’s consistent case that the Plaintiff’s mother had already conveyed the entire extent measuring 8.2 metres in favour of the Defendant under Ex.A2, particularly as reflected in pages 5 and 6 thereof, and the Defendant has been in possession and enjoyment of the same since the date of such conveyance. If the said portion had already been validly alienated, the settlor ceased to have any right, title or interest over the same thereafter. Consequently, any subsequent recital in Ex.A3 describing the same area as a “common pathway” cannot override or nullify a prior valid conveyance. A settlor cannot derogate from her own grant, nor can she convey what she does not legally possess. Hence, to the extent Ex.A3 purports to recognise or create a common pathway over property already settled in favour of the Defendant under Ex.A2, such recital is inoperative and does not confer any enforceable right on the Plaintiff.

Xiii) Thus, it becomes evident that the so-called 3rd schedule property is carved out within the very same extent already conveyed in favour of the Defendant. As already discussed, once the settlor has conveyed a definite extent of property with specific boundaries, she cannot subsequently carve out or convey any portion from out of the same property under the guise of creating a common pathway. Such subsequent recitals cannot override the earlier valid conveyance. Therefore, the alleged common pathway, as claimed by the Plaintiff, cannot be held to have been validly created, and the contention of the Defendant that the said portion forms part of her property deserves acceptance.

7. Answer to Issues No.2 & 3 :-

i) These two issues being interrelated are taken up together for consideration. The Defendant's case is that the Plaintiff, having knowledge of the alleged exclusive possession and enjoyment of the suit pathway by the Defendant from the date of Ex.A3 settlement dated 24.06.2010, neither asserted her alleged right nor took any legal action within the prescribed period, thereby rendering the suit barred by limitation and also evidencing abandonment of her alleged right.

ii) On a careful appreciation of the materials on record, this Court finds that the Plaintiff has not established any continuous user, enjoyment, or assertion of right over the alleged common pathway after the execution of Ex.A3 dated 24.06.2010. There is also no credible evidence to show that the Plaintiff took any immediate or timely steps to enforce her alleged right despite alleged interference by the

Defendant. On the contrary, the conduct of the Plaintiff in remaining silent for several years, coupled with the Defendant's established possession and enjoyment, clearly indicates acquiescence.

iii) In such circumstances, this Court is of the considered view that the Plaintiff's prolonged inaction from 2010 onwards amounts to clear abandonment of any alleged right over the suit property. Consequently, the Plaintiff is also disentitled from seeking relief after such long lapse of time, and the suit is held to be barred by limitation. Accordingly, both Issues 2 and 3 are answered in favour of the Defendant.

8. Answer to Issue No.4:-

This court has already determined that the property itself belongs to the defendant. Hence, even if she has constructed it is only lawful construction. Therefore, this issue has become immaterial and answered against the Plaintiff.

9. Answer to Issue No.5:-

i) In view of the findings rendered on the earlier issues, this Court holds that the Plaintiff is not entitled to any of the reliefs sought for. The Plaintiff claims declaration of right over the alleged common pathway, recovery of possession, and consequential permanent injunction. However, it has been already found that the suit schedule property forms part of the extent already validly conveyed in favour of the Defendant under Ex.A2, wherein clear boundaries have been demarcated and possession has been continuously enjoyed by the Defendant. The so-called "common pathway" described in Ex.A3 does not create any independent right in favour of the

Plaintiff, particularly when the predecessor-in-title had already divested her title in respect of the said portion in favour of the Defendant.

ii) It is a settled principle of law that a relief of declaration cannot be granted when the Plaintiff fails to establish subsisting title or legal right over the property in question. Equally, a consequential relief of recovery of possession presupposes a lawful entitlement to possession, which is absent in the present case. Insofar as the relief of injunction is concerned, the Plaintiff must prove a clear legal right and actual interference or threat thereto, which also stands unsubstantiated on facts.

iii) In the present case, the documentary evidence, including Exs.A2 and B1 along with the Commissioner's report and Surveyor's sketch, clearly establish that the disputed portion lies within the Defendant's property and that the Plaintiff's claim is contrary to the earlier valid conveyance. Once it is held that the Plaintiff has no title or right over the suit property, the question of declaration, recovery of possession, or injunction does not arise.

iv) Accordingly, this Court holds that the Plaintiff is not entitled to the relief of declaration, recovery of possession, or permanent injunction as prayed for, and the issue is answered against the Plaintiff.

10. Answer to Issue No.6:-

The parties are not entitled to any other relief.

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

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

**District Munsif,
Shencottai.**

Plaintiff Side Witnesses:

PW1 – Habib Nisha (Plaintiff)

Plaintiff Side Documents:-

Ex.A1	27.04.2001	Certified copy of Settlement deed.
Ex.A2	24.06.2010	Certified copy of Settlement deed.
Ex.A3	24.06.2010	Certified copy of Settlement deed.
Ex.A4	28.01.2020	House tax receipt.
Ex.A5	11.06.2020	Chitta.
Ex.A6	22.10.2020	Electricity Bill.
Ex.A7	29.02.2020	Complaint receipt.
Ex.A8	02.03.2020	Payment receipt.
Ex.A9	--	Photos.
Ex.A10	27.08.2020	Complaint receipt.
Ex.A11	05.10.2020	Copy of the complaint petition submitted to the District Collector.
Ex.A12	05.10.2020	Acknowledgment receipt.

Defendant side Witnesses:

- 1. DW1- Rahimal Begam (Defendant)**
- 2. DW2- Beer Ismail**

Defendant Side Documents:

Ex.B1	12.12.2008	Certified copy of Settlement deed.
Ex.B2	--	House tax receipts (Nos.3)
Ex.B3	--	Photos (Nos.7)

**District Munsif,
Shencottai.**

DM Court, Shencottai,
O.S.No.69/2020
Draft/Fair Judgment
Dated. 30.04.2026