

THE COURT OF DISTRICT MUNSIF, GUDIYATTAM,
VELLORE DISTRICT.

Present: Tr.K.Karthick Asath, B.A.,B.L.,(Hons),LLM.,
District Munsif,
Gudiyattam.

Monday, this the 09th day of March 2026

O.S.No.25/2021
(CNR.No.TNVL10-000004-2021)

B. Rajarathinam Plaintiff

// Versus //

S. Selvam Defendant

This suit came up before this court on 02.03.2026 for final hearing in the presence of Thiru.J.Arumugam, Advocate for the plaintiff and Thiru.K.M.Boopathi, Advocate for the defendant and upon perusing the case records and having stood over for consideration till this day, this court delivered the following.

JUDGMENT

Suit filed Under Order 7, Rule 1 & 2 and Section 26 of Code of Civil Procedure to a mandatory injunction directing the defendant to remove the constructed by it and vacate the encroachment in suit schedule property more fully described and deliver vacant possession of the same to the plaintiff, failing which to permit the plaintiff to have the same carried out through process of Court and recover the costs thereof from the defendant and for relief to the suit schedule property building West side vacant place comprising in Town survey No.12/5A to New Town Survey No.792 extension 1320 square feet (122.63 square meter) in this West side

vacant place 66 square feet more fully described encroachment of the schedule of this suit, against the defendant the injunctions to be permanently restrained from obstructing or interfering with possession of plaintiff and against the defendant with cost.

1. The Brief averments of the plaint :-

The plaintiff submit that the suit property purchased by the plaintiff on 27.01.2020 and its parent Doc.No.3608/1991 and grand parent Doc.No.2176/1982. The patta also transferred in the name of the plaintiff. The defendant encroached plaintiff property on the western side portion from June 2020 and he extended the encroachment total area 66 sq.ft of the plaintiffs property. On that on 20.07.2020 the plaintiff given police complaint against the defendant but the defendant not stopped to trespass in the plaintiff property and encroached the plaintiff property hence the plaintiff filed suit for mandatory injunction and delivery of vacant possession and for permanent injunction not to interfere with the plaintiffs possession.

2. The Brief Averments of Written Statement:-

The defendant submit that the plaintiff has no right or title over the extent of east west 22 feet in the suit property. The S.No.12/5 to an extent of east west 10 feet and north to south 60 feet was sold by the Govindaraj, Chandrammal and Sugunammal to one Loganayagi by way of sale deed. Due to mistake in the sale deed Doc.No.4088/1985 rectification deed Doc.No.1490/1989 was executed. Subsequently she sold the property to one T.C.Velan on 03.10.1989. From him the defendant mother Vasantha

purchased property on 18.02.1991. Subsequently defendant mother executed settlement deed infavour of the defendant on 04.05.2015. Apart from that on 17.12.1998 the said Govindaraj, Chandrammal and Sugunammal sold east west southern side 3-1/2 feet, Northern side 0 feet and North to South side 60 feet infavour of the defendants mother Vasantha. Since the date of purchase defendants mother Vasantha has been in possession and enjoyment of the same accordingly defendant and his mother absolute owner of the property to the extent east west 13-1/2 feet north side 10 feet and north to south 60 feet. The plaintiffs filed self suit with serving documents and obtained patta fraudulently. The plaintiff title is specifically denied hence without relief of declaration mandatory injunction not maintainable. Hence prayed to dismiss the suit.

3. Issues:-

On the basis of plaint and written statement filed by both parties the following issues were framed on 16.12.2021.

- i) Is the suit maintainable without the prayer of declaration ?
- ii) Is the description of the suit property correct or not ?
- iii) Whether the plaintiff is in possession of the suit property on the date of filing of the suit ?
- iv) Whether the plaintiff is entitled for the suit reliefs as prayed for the suit ?
- v) To what other relief plaintiffs is entitled for ?

4. Evidence :-

On plaintiff side the plaintiff Rajarathinam examined himself as PW1 and marked Ex.A1 to Ex.A11 marked and one Yogaraj examined as PW2 and marked Ex.X1 to Ex.X8. On defendant side defendant Selvam examined himself as DW1 and marked Ex.B1 to Ex.B7 and one Gaanthan examined as DW2.

5. Arguments:-

5.1. Plaintiff side Argument:-

Plaintiff side counsel filed written argument and the same was considered.

5.2. Defendant side Argument:-

The defendant counsel argued that the plaintiff filed suit for mandatory injunction and delivery of possession against the defendant but the court fee paid by the plaintiff is not correct. The plaintiff failed to pleaded when the defendant encroached his property. In the plaint also the plaintiff failed to separately scheduled the alleged encroached portion and failed to clearly described the property in the schedule. For proving the plaintiff case the plaintiff even failed to examine the civil engineer Prabu on his side. The plaintiff failed to file the plaint with clear details. In plaint para No.5 plaintiff stated that the defendant encroached the plaintiff property in the month of July 2020 but at the time of cross examination admitted that even before his purchase the defendant constructed the house and in possession of the alleged encroached portion. Hence the cause of action shown in the plaint is false. While the defendant given reply notice

to the plaintiff notice and denied the plaintiffs title itself but the plaintiff failed to pray for declaration of title. The plaintiff himself admitted in his cross examination that the extension on east west 22 feet in the Ex.A2 was corrected on that the plaintiff title itself is not correct. He further argued that the defendants mother subsequently purchased 105 sq.ft between the plaintiff and defendants property by way of Ex.B4 sale deed after constructing part of the property they left some of the land in a triangle shape on eastern side of their property for grabbing those property the plaintiff filed the false suit against the defendant. While the defendant clearly the denied the title of plaintiff by producing documents but the plaintiff even failed to pray for declaration subsequently. The evidence of PW1 in cross examination is contradictory to the case of the plaintiff. The plaintiff as per plaint should prove declaration and possession over the suit property but the plaintiff failed to pray and prove the title over the suit property. At the time of argument the defendant counsel highlighted number of citations and prayed to dismiss the suit.

6. Discussion:-

This court after considering the argument of both sides and perusing the pertinent records this court proceed to delineate the findings based on the following discussion.

Issue No.1:- Is the suit maintainable without the prayer of declaration ?

6.1. The case of the plaintiff is that he purchased the suit property on 27.01.2020 by way of registered sale deed Doc.No.620/2020. The defendant is adjacent land owner started illegal construction from July

2020 on that police complaint also given. Complaint given to assistant engineer state highway to remove the encroachment done by the defendant on that September 2020 encroachment removed by the State Highway Authority. He further stated that from the Month of June 2020 beginning the defendant encroached 40 sq.ft then extended encroachment total area 66 sq.ft of the plaintiff property west side portion. Hence he filed suit against the defendant for mandatory injunction and delivery of possession and for permanent injunction. The defendant filed written statement and submitted by denying the plaint averments and stated that the defendants mother purchased property on 18.02.1991 and executed settlement deed infavour of the defendant on 04.05.2015 and apart from that in S.No.12/5 east to west southern side 3-1/2 feet, northern side 0 feet and north to south 60 feet was purchased by her mother hence they are absolute owners of the property. And they constructed east west southern side 12 feet north side 10 feet and north to south side 60 feet by lefting east west 1-1/2 feet north side 0 feet vacant by put up compound. In order to grab the leftout property the plaintiff filed this false suit. He further submit that the plaintiff without claiming relief of declaration and possession regarding alleged encroached property plaint is not maintainable. The valuation of suit under Section 27(a) of TNCF Act is also not correct and plaintiff given wrong description of the property hence prayed to dismiss the suit.

6.2. For deciding the present issue on perusal before filing the suit the plaintiff sent legal notice to the defendant on 27.07.2020 which was marked as Ex.A8. In that notice the plaintiff stated that the defendant encroached north side 1 feet width south side width 2 feet for the extent of

40 sq.ft. For that the defendant sent reply notice on 03.08.2020 (Ex.A10) and he denied the plaintiff statement and stated that the defendant is the absolute owner of the property and the plaintiff has no right over the same. Further submits that in the suit the defendant filed written statement and denying the title of plaintiff by stating that the plaintiff vendor as no title to sole extent of east to west 22 feet to the plaintiff and further stated that apart from the purchase of property in S.No.12/5 the defendant mother purchased east west south side 3-1/2 feet, north side 0 feet and north to south 60 feet sold by the Govindaraj, Chandrammal and Sugunammal infavour of the defendants mother Vasantha by way of registered sale deed dated 17.12.1998. On that claiming east west southern side 13-1/2 feet north side 10 feet and north to south 60 feet by the defendant. For that the defendant marked the sale deed dated 17.12.1988 as Ex.B4. It is a registered sale deed vide Doc.No.5517/1998. On perusing those document it is stated that as per the written statement extent of 105 sq.feet the property is sold to Vasantha which is situated on the western side of plaintiff property and eastern side of defendant property. On perusing the Ex.A6 layout map filed by the plaintiff, the plaintiff property is situated on the eastern side of defendant property and in the layout in defendant property on the west to east southern side extent is shown as 3.8 meter which is more than 12-1/2 feet on that the defendants had more than 10 feet on the southern side. Hence the case of the defendant is sustainable. While the defendant denying the title over the property which was claimed as encroached by filing the Ex.B4 sale deed but the plaintiff side failed to seek for declaration of title. The defendant filed written statement on

08.09.2021 by clearly claiming title in para No.12 and denying the plaintiff title but the plaintiff failed to pray for declaration of title subsequently.

6.3. It is further submit that the plaintiff valid the suit under Section 27(a) of Tamil Nadu Court Fees Act. The Section 27(a) applicable only where the plaintiff title is denied. But in this case the plaintiff paid court fee under Section 27(a) but failed to pray for declaration of title. In this case the plaintiff stated that only in the month of July 2020 the defendant encroached the property but in the cross examination the PW1 himself admitted before his purchase itself the defendant constructed house and before his purchase itself the alleged portion of the property is in the possession of the defendant. While the plaintiff himself admitting the possession of the defendant in the property before his purchase then the plaintiff has duty bound to claim for declaration of title and recovery of possession from the defendant. The relevant portion of the PW1 deposition is extracted here below,

"நான் கிரயம் பெறுவதற்கு முன்பே பிரதிவாதி அவரது இடத்தில் கட்டிடம் கட்டி இருந்தார் என்றால் சரிதான். நான் வழக்கில் உரிமை கோருகின்ற இடம் நான் கிரயம் பெறுவதற்கு முன்பே செல்வம் இடம் தான் இருந்தது என்றால் சரிதான். வா.சா.ஆ.2 கிரயப்பத்திரத்தில் சொத்து விவரத்தில் கிழக்கு மேற்கு 22 என்பது திருத்தப்பட்டுள்ளது என்றால் சரிதான். அதில் அழிந்துவிட்டதால் மேலே எழுதப்பட்டுள்ளது. எண்ணிடம் அசல் ஆவணம் உள்ளது அதை நீதிமன்றத்தில் தாக்கல் செய்கிறேன். பிரதிவாதி வாங்கிய கிரய அளவு தவறு என்றும் அவருடைய ஆவணங்கள் தவறு என்றும் நான் மறுக்கிறேன் என்று சாட்சியம் அளிக்கிறேன் என்றால் அவர் வாங்கிய சொத்தின் அளவு 11 அடிக்கு 60 அடி அகலம் அவரின் சொத்தில் அவர் வீடு கட்டியுள்ளார். பக்கத்தில் உள்ள சந்து என்னுடையது. பிரச்சினைக்குரிய இடம் முக்கோண வடிவில் உள்ளது என்றால் சரிதான். பிரச்சினைக்குரிய இடத்தின் வடக்குபக்கம் 0 என்றால் சரிதான். என்னுடைய பத்திரத்தில் உள்ள அளவுகள் தவறானவை என்றால் சரியல்ல."

On considering the cross examination of PW1 he admits that the defendant purchased property for the extent of 11 X 60 and constructed house prior to the plaintiff purchase and the alleged portion of property also with the defendant before the plaintiffs purchase. While the defendant stated previously he purchase 10 feet on the east west southern side and subsequently purchased 3-1/2 feet through Ex.B4 on the east west southern side and constructed house for the extent of 12 feet in his property. Now the PW1 himself admitted the defendant purchased more than 10 feet and constructed house in the property and admitted the defendant possession also. While the plaintiff himself admitted the purchase of defendant and his possession before 27.01.2020 then the plaintiff is liable to seek for declaration of title over the alleged portion of the property before seeking mandatory injunction and delivery of possession. While the plaintiff pleaded that the defendant encroached 66 sq.ft on western side of his property based on the Ex.A11 map prepared by Civil engineer Prabhu. But he failed to examine him to prove the encroachment as per Ex.A11. Mere filing of map will not enough to prove the encroachment.

6.4. It is further submit that in the written argument filed by the plaintiff counsel he highlighted the judgment of Hon'ble Supreme Court of India in Anathula Sudhakar Vs. P.Buchi reddy (2008)(4) SCC 594 and stated that where the plaintiff title is not seriously disputed and the dispute is about interference or encroachment a suit for injunction is maintainable without seeking declaration. On considering the above submission in this case the plaintiff directly stated that the defendant encroached 66 feet on the western side of plaintiff property hence claimed mandatory injunction

and delivery of possession. But on defendant side they produced the Ex.B4 sale deed dated 17.02.1998 for the purchase of 105 sq.ft land which is situated on the western side of the plaintiff property by that they denied the title of plaintiffs claim of 66 sq.ft. Even the PW1 himself admitted that the defendant possession of the alleged 66 sq.ft before his purchase on 27.01.2020. In this circumstances the plaintiffs title over the property is clearly denied by the defendant. But the plaintiff failed to pray for declaration of title over the suit property as directed by the same precedent of Hon'ble Apex Court.

6.5. At the time of argument the defendant counsel highlighted judgment passed by our Hon'ble High Court of Madras in Venkatachalam and another Vs. Nalla Thambi 2013(4) CTC 45 and argued that while the plaintiff title is disputed then the suit would be bad for want of prayer for declaration of title but in this case defendants seriously disputed the title of plaintiff but the plaintiff failed to pray for declaration hence prayed to dismiss the suit. On considering the highlighted judgment this court accepting the defendant case and the suit without claim of declaration is not maintainable.

6.6. On defendant side they examined one Gaanthan as DW2 and in his deposition he deposed about the defendants title for the extent of west to east 13-1/2 of feet on the southern side. For proving plaintiff case plaintiff examined one Yogaraj Assistant Engineer as PW2 and marked Ex.X1 to Ex.X8. On perusing his evidence he only deposed about the encroachment done by the defendant on the northern side of the defendants

property and PW2 admitted at the time of cross examination that he does not measured whether the defendant encroached the plaintiff property or not. On perusal the evidence of PW2 and the Ex.X1 to Ex.X8 are not pour water to the plaintiff case. On plaintiff side for proving his case no other witness is examined.

6.7. It is further submit that in the plaint the plaintiff stated that he purchased the suit property on 27.01.2020 and in the month of July 2020 the defendant encroached the alleged 66 sq.ft of the plaintiff property which is also shown as cause of action for the suit. But at the time of cross examination the PW1 himself admitted that before his purchase on 27.01.2020 itself the plaintiff had possession of the alleged portion. On that the plaintiff stated false cause of action in the suit and he failed to approach the court with clean hands. At the time of argument the defendant counsel highlighted judgment passed by our Hon'ble High Court of Madras in Subramanian and others Vs. Ponnusamy and others 2006 (1) MLJ 710 and argued that prohibitory injunction or mandatory injunction is purely equitable relief and plaintiff who has putforth a false case would not be entitled to the relief of mandatory injunction. As per the discussion already made in this case the plaintiff submitted false case and as per the above judgment he was not entitled for the relief claimed.

6.8. As already discussed by this court the plaintiff failed to pray for declaration of title while his title over the proposed portion of encroachment is clearly denied by the defendant by filing documents and evidence. Even the plaintiff subsequently failed to amend the relief of

declaration. While the plaintiff failed to pray for declaration the present suit for mandatory injunction and delivery of possession is not maintainable. The plaintiff also failed to approach this court with clean hands. Accordingly this issue is decided.

7. Issue No.2:- Is the description of the suit property correct or not ?

7.1. For deciding the issue while on perusing the plaint the plaintiff failed to mentioned the alleged encroached property as a separate schedule. On perusing the description of property mentioned in the plaint only based on the Ex.A11 map the plaintiff stated the description. On perusing the description the plaintiff stated that the defendant encroached the area is highlighted in between points A, B, C, D in the map. But the plaintiff failed to specify the extent between the points A to D. On perusal in point C only he stated that C located on 1 feet 4 inches from the point B but the plaintiff failed to mentioned about the clear extent between A and B. As per the map the plaintiff stated that the defendant encroached the specify portion of 1 feet 4 inches on the northern side. But at the time of cross examination the plaintiff stated that on north side 0 sq.ft is the extent. For that the relevant portion of the PW1 deposition is extracted here below,

"பிரச்சினைக்குரிய இடம் முக்கோண வடிவில் உள்ளது என்றால் சரிதான். பிரச்சினைக்குரிய இடத்தின் வடக்குபக்கம் 0 என்றால் சரிதான். என்னுடைய பத்திரத்தில் உள்ள அளவுகள் தவறானவை என்றால் சரியல்ல."

While the plaintiff relying upon Ex.A11 map for proving his case but adduced evidence against the extent mentioned in the map. Even the PW1

stated that the alleged portion is in a triangle shape but on perusing the Ex.A11 it is not mentioned as that.

7.2. It is further submit that the description of the suit property mentioned by the plaintiff only based on the Ex.A11 map prepared by one V.Prabu Civil Engineer. But the said person was also not examined by the plaintiff to prove the extent and encroached portion as pleaded by the plaintiff. On considering the above discussion the plaintiff failed to prove that the discription of suit property is correct. Accordingly this issue is decided.

8. Issue No.3:- Whether the plaintiff is in possession of the suit property on the date of filing of the suit ?

The plaintiff also seeking relief for permanent injunction inrespect of 66 sq.ft described as encroached property in the plaint. As already discussed and decided the issue No.1 regarding the non claiming of declaration of title by the plaintiff. On that this issue regarding the possession of suit property for the relief of permanent injunction will not be discussed and decided.

9. Issue No.4:- Whether the plaintiff is entitled for the suit reliefs as prayed for the suit ?

As already discussed and decided by this court in issue No.1 and issue No.3 the plaintiff is not entitled for the reliefs as prayed in the suit.

10. Issue No.5:- To what other relief plaintiffs is entitled for ?

While this court already discussed and decided the issues 1 to 4 against the plaintiff on considering the nature of the suit the plaintiff is not entitled for any other relief.

11. Result :-

As a result, this suit is dismissed without cost.

Dictated to Steno typist directly, typed by him in the desktop, corrected and pronounced by me in the open Court on this the 09th day of March 2026.

**District Munsif,
Gudiyattam.**

Plaintiff side Witnesses :-

PW1 Rajarathinam
PW2 Yogaraj

Plaintiff side Exhibits :-

Ex.A1	27.01.2020	Certified copy of Registered sale deed infavour of plaintiff.
Ex.A2	04.09.1991	Certified copy of Parent document
Ex.A3	09.06.1982	Certified copy of Grantparent document
Ex.A4	14.05.2020	Original patta infavour of plaintiff
Ex.A5	20.12.2019	Original patta in favour of predecessors
Ex.A6	08.06.2020	Original Layout map of the suit property

Ex.A7	20.06.2020	Office copy of the Police complaint
Ex.A8	27.07.2020	Office copy of the Legal notice
Ex.A9	29.07.2020	Reply letter by the AE State High Way Gudiyattam Original
Ex.A10	03.08.2020	Reply by the defendants counsel Original
Ex.A11	21.12.2020	Map encroach area location of the property as per registered sale deed No.622/2020 TS No.792

Defendant side witnesses:-

DW1	S.Selvam
DW2	Gaanthan

Defendant side Exhibits :-

Ex.B1	03.10.1989	Certified copy of registered sale deed (Doc.No.3718/1989)
Ex.B2	18.02.1991	Certified copy of the sale deed (Doc.No.648/1991)
Ex.B3	04.05.2015	Certified copy of settlement deed (Doc.No.3857/2015)
Ex.B4	17.12.1998	Certified copy of registered sale deed (Doc.No.5517/1998)
Ex.B5	-	Original Business Tax receipts
Ex.B6	-	Original Water Tax receipt
Ex.B7	-	Original Property Tax receipt

Other Documents:-

Ex.X1	28.07.2020	True copy of Letter by AE to Tahsildhar, Gudiyattam
Ex.X2	18.08.2020	True copy of Letter by AE to Tahsildhar, Gudiyattam.
Ex.X3	19.08.2020	True copy of Letter by AE to ADE, Gudiyattam.
Ex.X4	26.09.2020	True copy of Letter by AE to Tahsildhar, Gudiyattam.
Ex.X5	09.10.2020	True copy of Letter by AE to Tahsildhar, Gudiyattam.
Ex.X6	09.11.2020	True copy of Letter by AE to Tahsildhar, Gudiyattam.
Ex.X7	12.07.2022	True copy of Letter by AE to Tahsildhar, Gudiyattam.
Ex.X8	11.08.2022	True copy of Letter by AE to Tahsildhar, Gudiyattam.

**District Munsif,
Gudiyattam.**