

**THE COURT OF THE III ADDITIONAL DISTRICT MUNSIF,
TIRUCHIRAPPALLI**

**Present: D.Gowthaman, B.Sc., L.L.B.(Hons)
III Additional District Munsif,
Tiruchirappalli.**

Monday, the 27th day of October 2025

Original Suit No. 375/2017

(CNR NO:TNTP05-000554-2017)

Deivanai

...Plaintiff

/Vs./

Gurumoorthy

...Defendant

This suit came before me on 17.10.2025 in the presence of Mr. J.R.Rajan, Advocate for Plaintiff and Mr. Navaneethakrishnan, Advocate for Defendant, upon perusal of the available records and upon hearing both sides arguments and having stood over for consideration till this day, this court delivers the following:

JUDGMENT

The plaintiff has filed the suit for the relief of permanent injunction restraining the defendant, their men, servants and agent or anybody claiming under them with the plaintiff's peaceful possession and enjoyment of the suit property and its adjacent lane and not to disturb by either by dispossessing her or by trespass upon the suit property or making any obstacles in the pathway unless due process of law and award costs of the suit.

2. Brief averments in the plaint are as follows:-

2.1. The plaintiff states that actually the property was enjoyed by the father-in-law of the plaintiff late P. Shanmugam by his hereditary rights in his family by generation by generation. By the virtue of his possessory rights, the State Government has issued an order of submission of house site to the occupier on 19.01.1982. According to the order of the Government the late P. Shanmugam built a thatched house at the suit property. As per the order of the state Government the Trichy Town Survey department also issued Adangal on 01.12.2016 for the suit property along with Town Survey Sketch. The father-in-law of the plaintiff lived at the suit property with his family till his life time.

2.2. The plaintiff further states that Under the order of the Government the deceased P. Shanmugam has built a thatched house with in the stipulated period of 6 months. It is therefore since 1982 a house was there at the suit property under the possession and enjoyment of the plaintiff's father-in-law family. Further as directed by the order, there should be proper space for every side of the suit property. It is proved that in between plaintiff and defendant's house North South lane of 3½ feet (each 1% feet free land provided for side wall maintenance and pathway) open pathway for the two houses maintenance. In the Town survey records the pathway in between two house are noted as "Lane". The Extract and sketch issued by the Town

Survey department for the suit property would prove the actual existence of pathway in the suit property.

2.3. The plaintiff is a widower living with her two minor children along with her window mother-in-law aged 82 years at the suit property the tiled house. The suit property was inherited by the husband of the plaintiff Late.S.Murugan vide a registered settlement deed made by his father late P.Shanmugam in deed No.1282/2011 registered with the Woraiyur Sub-Registrar's Office, Trichy on 11.09.2011. At this juncture the husband of the plaintiff Mr.Murugan died on 25.07.2012. After the demise of Mr. Murugan the husband of the plaintiff the father-in-law Mr.P. Shanmugam also died on 25.10.2013. It is therefore the plaintiff and her mother-in-law alone having and acquired the suit property the dwelling house. After the demise of her husband and father-in-law the plaintiff changed the entire revenue records on her name for easy accesses of tax payment. At this juncture the defendant demolished their tiled house and started to construct a pacca RCC house. But they started construction as encroaching in the North-South path way lane also. That is one and only path way for the Southern side dwellers behind the suit property.

2.4. When the plaintiff stated her objections along with other dwellers who all are dwelling behind her house, the defendant used filthy language against her and their hench men tried to assaulted her. The plaintiff is living alone with her age old 82

years old mother-in-law and two minor children without any male member in her family hence she could not restrained them since they are physically and economically, politically sound. But to safe guard their life she prepared a police complaint before the G.H. Police, which was enquired by them and referred the plaintiff to seek the relief in Civil Court. Hence the suit.

3. Brief averments of written statement of defendants:

3.1. The defendant states that all the averments made in the plaint except those that are admitted in the written statement are specifically denied as false, frivolous and vexatious one. The suit as framed is not maintainable either in law or on facts. While, the plaintiff's pleading in the plaint are speaks some unfounded right with regard to an unidentifiable suit lane between the plaintiff and defendant house but the prayer sought for in the plaint and description of property are speaks with regard to her own house alone. As such the plaint pleading are misleading and confusing one and the same would show that cause of action pleaded in the plaint itself is wrong hence, this suit is bad for non-disclosure of cause of action and contradictory pleadings.

3.2. Further states that the plaintiff who pleaded that unless, permanent injunction granted to the plaintiff and other dwellers behind her would loose their only pathway and easementary rights, neither filed the suit in representative capacity under order I rule VIII of Civil Procedure Code nor arrayed them as parties to this suit would be

fatal to her case. This suit is liable to be dismissed as the plaintiff claim over the unidentifiable suit lane laid both mutually contradictory right of personal right and easementary right. Without prejudice to the above said contentions it is submitted that the plaintiff had no right to any inch over the suit lane as claimed by her in the plaint as the same is exclusively belongs to this defendant and his brother alone. Neither the plaintiff nor the father in law of the plaintiff used this suit lane as pathway to reach their house. Likewise neither the plaintiff nor the father in law of the plaintiff used this suit lane as pathway for maintenance work of their house at any point of time without the previous permission of this plaintiff and his brother.

3.3. In fact the defendant constructed his concrete house well within his four boundaries even without giving any hindrance to his neighbors. The defendant who is admittedly don't know the very "Boosthuthi" of the suit property and having misunderstood the "Boosthuthi" of suit property attempting to intervene in the construction works of the defendant unlawfully and come with this suit without any basis. The documents produced with the plaint or irrelevant to the suit lane and they did not conveys any right to the plaintiff on the suit lane as claimed in the plaint. The suit for mere injunction without asking for the relief of declaration is also very bad in the eye of law as the plaintiff did not have any title to the suit lane. The suit is bad for non-joinder and mis-joinder of necessary parties. Hence, defendant prayed to dismiss the suit.

4. Based on the aforesaid averments in plaint and written statement following issues are framed.

1. Whether the plaintiff is entitled for the relief of permanent injunction as prayed for?
2. To what other relief?

5. In order to establish the case of the plaintiff both the oral and documentary evidence was adduced the plaintiff examined herself as PW.1 through her Ex.A.1 to Ex.A.13 documents were marked. One Janaki examined as PW.1 through her Ex.A.14 document marked and PW.3 Manokar examined as PW.3. Defendant examined himself as DW.1 and no document was adduced on the side of plaintiff.

Decision and discussion

6. Issue No.1:

6.1. At the outset, this Court considers it necessary to recall the settled legal maxim “*Actori incumbit onus probandi*”—the burden of proof lies on the person who asserts the court to give judgment in his favour. This doctrine is enshrined in **Section 101 of the Indian Evidence Act, 1872**, which casts the initial duty on the party asserting the existence of facts to substantiate the same. Hence, the onus to prove entitlement to the reliefs claimed in the present suit, squarely rests on the plaintiff..

6.2. In discharge of the said burden, the plaintiff adduced oral and documentary evidence. The plaintiff examined himself as PW1 and marked Ex.A.1 to Ex.A.13 and One Janaki examined as PW.2 through her Ex.A.14 document marked, One Manohar examined as PW.3 no documents marked through him. Ex.A.1 is the HSD Patta, Ex.A.2 is the Town Survey Adangal and Sketch, Ex.A.3 is the Settlement deed, Ex.A.4 is the Death certificate of P.Shanmugam, Ex.A5 is the Legal heir certificate of Late Murugan, Ex.A.6 is the Property Tax Receipt, Ex.A.7 is the Water Tax receipt, Ex.A.8 EB receipt, Ex.A.9 The Town survey filed survey for pathway extract, Ex.A10 Aadhar card of plaintiff, Ex.A.11 Police complaint receipt. Ex.A.12. Photos, EX.A.13 Rough Sketch, Ex.A.14 Aadhar card of PW2. In the interest of justice and for effective adjudication this court Sue moto marked the commissioner report and plan as Ex.C.1 and photographs filed along with commissioner report as Ex.C.2.

6.3. The primary question to be determined is whether the defendant has encroached upon or interfered with the plaintiff's possession of the suit property or the alleged north-south lane adjoining it, and whether the plaintiff has proved a lawful right to prevent such interference through a permanent injunction. It is not in dispute that the suit property itself stands in the name of the plaintiff, derived under a registered settlement ie EX A3. However, the subject matter of the dispute pertains to the *north-south lane* running on the western side of the plaintiff's property, which the plaintiff

claims as a common passage for the dwellers of the southern side of the suit property, whereas the defendant asserts that the same forms part of his property and is not a common lane.

6.4. In this context, it is necessary to refer to Section 38 of the Specific Relief Act, 1963, which provides as follows:

Section 38 of Specific Relief Act

“(1) Subject to the other provisions contained in or referred to by this Chapter, a perpetual injunction may be granted to the plaintiff to prevent the breach of an obligation existing in his favour, whether expressly or by implication.

(2) When any such obligation arises from contract, the court shall be guided by the rules and provisions contained in Chapter II.

(3) When the defendant invades or threatens to invade the plaintiffs right to, or enjoyment of, property, the court may grant a perpetual injunction in the following cases, namely:--

(a) where the defendant is trustee of the property for the plaintiff;

(b) where there exists no standard for ascertaining the actual damage caused, or likely to be caused, by the invasion;

(c) where the invasion is such that compensation in money would not afford adequate relief;

(d) where the injunction is necessary to prevent a multiplicity of judicial proceedings.”

Form the above provision it is found that to grant permanent injunction the plaintiff must prove that there is a legal right existing in the suit property ,that right has been interfered with or threatened by the defendant. The claim of plaintiff is that North-South lane situated on the west of the suit property was encroached by the defendant ,the contention of the defendant is the common lane situated in the west of the suit property is not belongs to plaintiff. It is the common lane only belongs to defendants and it is the only pathway for the defendant house.

6.6. To ascertain the factual position, this Court appointed an Advocate Commissioner, who, with the assistance of a Government Surveyor, conducted a local inspection and submitted a detailed Report and Plan. Although the report was not marked by either party, in the interest of justice and for complete adjudication, this Court marked the Report and plan as Ex.C.1 and the photographs annexed thereto as Ex.C.2.

6.7. On perusal of Ex.C.1 the advocate commissioner report it is found that the lane found on western side of the suit property is having separate survey number bears survey No.63 and while the plaintiff’s property is recorded as Survey No.64. As per old survey records, S.No.63 is classified as a “lane” measuring 0.8 meters, whereas in

the current revenue records, it continues to be shown as a “lane” but with a reduced width of 0.5 metres (east-west), further on perusal of Ex.C.2 the photograph filed along with the advocate commissioner report it is found that there is no encroachment made further the North-south lane by the defendant.

6.8. Considering the totality of circumstances, this Court finds that the plaintiff has failed to discharge the burden of proof placed upon her under Section 101 of the Evidence Act. She has neither proved continuous possession nor established any legal right over the alleged north-south lane. While the Commissioner’s report indicates no physical encroachment in the area, there is no clear evidence to show that such encroachment was over the plaintiff’s property or that it infringed any lawful right vested in her. Accordingly this issue is answered against plaintiff.

7. Issue.2:

By considering the facts and circumstances of the case, this court is not inclined to grant any other relief to the plaintiff and defendant.

8. In the result this suit is dismissed. No Cost.

Dictated to the Stenographer, transcribed by her, corrected and pronounced by me in open court, this the 27th day of October, 2025.

**III Additional District Munsif,
Tiruchirappalli.**

Plaintiff's side witnesses:

P.W.1. Deivanai (Plaintiff)

P.W.2. Janaki

PW.3. Manohar

Plaintiff's side documents:

Doc. No.	Date	Particulars of the documents	Remarks
Ex.A1	19.01.1982	HSD patta	Original
Ex.A2	01.12.2016	Town Survey Adangal and Sketch	Original
Ex.A3	11.02.2011	Settlement deed	Certified copy
Ex.A4	04.12.2014	Death certificate of P.Shanmugam	Original
Ex.A5	07.09.2012	Legal heir certificate of Late Murugan	Original
Ex.A6	07.03.2017	Property Tax Receipt	Original
Ex.A7	07.03.2017	Water Tax receipt	Original
Ex.A8	05.05.2016	EB receipt	Online receipt
Ex.A9	06.12.2016	The Town survey filed survey for pathway extract	True copy
Ex.A10	--	Aadhar card of plaintiff	xerox
Ex.A11	--	Police complaint receipt	Original
Ex.A12	--	Photos and CD	Original
Ex.A13	--	Rough Sketch	Original
Ex.A14	--	Aadhar card of PW2	xerox

Defendant's side witnesses:

DW.1 Gurumoorthy

Defendant's side documents: NIL**Court document:**

Ex.C1	-	Advocate commissioner Report and Plan	--
Ex.C2	-	Photographs filed along with commissioner report	--

**III Additional District Munsif,
Tiruchirappalli**