

IN THE HON'BLE DISTRICT MUNSIFF COURT AT POONAMALLEE

O.S. No. OF 2010

Mr. N. S. Gnanavel,
Son of Sivakolunthu,
C/O. V.O. Office,
Door No.3,
Mariamman Kovil Street,
Mangadu,
Chennai - 602 101

...Plaintiff

Vs.

Mr. Manickam,
Door No.4,
Mariamman Kovil Street,
Mangadu,
Chennai - 602 101

...Defendant

**PLAINT FILED UNDER ORDER VII RULE 1 READ WITH SECTION 151
OF CIVIL PROCEDURE CODE**

1. The Plaintiff is Mr. N. S. Gnanavel, son of Sivakolunthu, aged about 67 years, residing at C/O. V.O. Office, Door No.3, Mariamman Kovil Street, Mangadu, Chennai - 602

The address of the Plaintiff for service of all notices and other processes is that of its counsel M/s. S.D. Padmapriya, I. Stalin Selvamani & Sudarshan, Advocates, having office at Old No.69, New No.36, Hospital Road, V.G.P. Salai, Saidapet, Chennai - 600 015.

2. The Defendant is Mr. Manickam, age not known to the Plaintiff, residing at Door No.4, Mariamman Kovil Street, Mangadu, Chennai - 602 101

The address of the Defendant for the issue of summons, notices and other processes is as stated above.

3. The Plaintiff submits that he is the absolute and present owner of the schedule mentioned property and he has been residing in the said property for several years from the date of its purchase.

4. The Plaintiff submits that he has purchased the said property vide two Sale Deeds dated 04/01/2007, registered as Doc. Nos.125 of 2007 and 126 of 2007 by investing his hard earned money. The Plaintiff then clubbed the two properties in the above said Sale Deeds into a single one and constructed a house type building in the said property. From the date of its purchase, the Plaintiff is in peaceful possession and quite enjoyment for several years living with his wife and children in the said property and has also constructed a compound wall around his property.

5. The Plaintiff further submits that the adjacent land belongs to the Defendant and he has started some kind of construction in the said adjacent lands. At initial stage the Defendant started to dig a huge pit near to the Plaintiff's compound wall and when the Plaintiff inquired about the construction the Defendant orally promised that the construction in his building will be in accordance to equity and law and the Defendant further assured that he will not cause any detriment to the Plaintiff's compound wall or to the Plaintiff's property. Later the Defendant slowly started to use the Plaintiff's compound wall as part of his building and for which the Defendant has brought jelly, sand, cement and proceeded to put basement exactly on Plaintiff's compound wall without even leaving a inch feet gap from the Plaintiff's compound wall which is totally against law and equity. The Defendant have literally intended to use the Plaintiff's compound wall as part of his building by which the Defendant has intended to committ trespass the Defendant is trying to gain unjust enrichment by utilizing Plaintiff's compound wall.

6. The Plaintiff has questioned the Defendant regarding the deviations and damage to his compound wall and also advised the Defendant not to proceed with such unauthorized construction causing damage to the Plaintiff's compound wall, the Defendant started to use filthy, unparliamentary and abusive language towards the Plaintiff and further

informed that he will make the construction in detriment to the Plaintiff's compound wall and building and will not abide by law. The ill motive and malafide intention of the Defendant to utilize the Plaintiff's compound and to damage it is evident from the photographs produced along with this Plaint. The Plaintiff further states that the building which the Defendant proposed to construct is an unapproved one and it is causing hinderance to the Plaintiff's property.

7. The Plaintiff submits that he has invested a huge amount in constructing the said compound wall and it is constructed for the betterment of the properties between the Plaintiff and Defendant and to demarcate their respective boundaries. Thus the Defendant cannot utilize the same for his own benefits and he is legally not entitled to build any type of construction, building, balcony or hut etc., whatsoever leaning on the said compound wall causing prejudice, damage, harm, loss and hardship to the Plaintiff and thereby hindering Plaintiff's peaceful possession and enjoyment of his property.

8. The Defendant is legally obligated to obey the rules and regulations with respect to the easementary rights and compound walls erected by the Plaintiff and a strict adherence of the same is required without any alterations. It is pertinent to note that the law states that when an easementary right or peaceful possession and enjoyment is created and established, it cannot be altered without the due procedure of law and such alteration causing prejudice to the beneficial owner will not at all be allowed in the eyes of law and the Defendant does not have any rights whatsoever to interfere and to cause damage in the said compound wall according to his own whims and fancy

9. The Plaintiff most humbly submits that the constructions that have made or intending to be made or proposed to be made by the Defendant leaning on the said common wall or supporting or causing damage or

detriment to the said Compound wall is illegal and unauthorized and causing severe prejudice to the Plaintiff's property and it will cause huge monetary loss for the Plaintiff leading to litigation and disputes at the time of selling the property in the future and the said compound wall cannot be used for the sole beneficial purpose of the Defendant.

9. The Defendant being the legal owner for the lands purchased by him owes a duty to follow the covenants and rights regarding the compound wall. The building proposed by the Defendant is completely erroneous and will definitely cause damage to the Plaintiff's compound wall. The Defendant without rectifying the mistakes started his construction and hence the Plaintiff has no other alternative then to approach this Hon'ble Court for upholding the Justice and to safeguard the Plaintiff's Compound wall and property from damage. The Plaintiff is entitled to file this suit against the Defendant claiming not to construct any building or construction whatsoever causing damage to the Compound Wall and to maintain the Compound wall as it is because the Plaintiff is greatly prejudiced by the acts and constructions carried out by the Defendant.

10. The Plaintiff submits that he has suffered damages in the compound wall due to the unauthorized usage of it by the Defendant for which the Plaintiff is entitled to recover a certain sum of damages from the Defendant and further agrees to pay such court fee as may be required at the time of awarding damages.

11. The Cause of Action for the suit arose at Chennai, wholly within the Jurisdiction of this Hon'ble Court when the subject matter of property is purchased by the Plaintiff in 1976; and when the Plaintiff inducted the Defendant as tenant in his house; and when the Defendant purchased an adjacent land; and when the Defendant started constructing building in the common pathway hindering its usage; and when the Plaintiff issued a lawyer notice dated 08.04.2009 to the Defendant; and when the Defendant without adhering to the legal notice started constructing even second floor elevated into the common area and thus there has been total default and illegal construction on the part of the Defendant; and the Plaintiff, who is greatly prejudiced by the said illegal construction is entitled to

claim the Defendant to restore the common pathway as it was and also for damages and costs of the suit, within the Jurisdiction of this Hon'ble Court.

12. The Plaintiff values this suit for the purpose of Court Fee and Jurisdiction at Rs.2,000/- and pays Court Fee of Rs.151/- as per the Memo of Valuation set out hereunder:

MEMO OF VALUATION

Sl. No	Prayer	Value	Court Fee	Provision under T.N. Court Fee Act
1.	For a Mandatory Injunction directing the Defendant	Rs.1,000/-	Rs.75.50/-	Section 25(d) of TNCF&V Act
2	For a Permanent Injunction restraining the Defendant	Rs.1,000/-	Rs.75.50	Section 27(c) of TNCF&V Act
3	For a sum of damages	As awarded by this Hon'ble Court	Undertake to pay at the time of award	Section 22 of TNCF&V Act

14. The Plaintiff undertakes to pay the court fee as he is bound by the terms of the decree that may be passed.

15. In the above circumstances the Plaintiff therefore prays for a Judgment and Decree:-

- a) For a Mandatory Injunction directing the Defendant their men, agents or servants, representatives or his heirs to remove and demolish the constructions or elevated portions, more fully described under the head Encroachment in the Common Schedule hereunder which is put up by the Defendant in the common pathway area disturbing the peaceful enjoyment, usage and possession of the Plaintiff over the common pathway areas.
- b) For a Permanent Injunction restraining the Defendant their men, agents or servants from constructing any kind of construction or building whatsoever interfering and disturbing the peaceful enjoyment, usage and possession of the common pathway areas in any manner.
- c) For a sum of damages as the court deems fit in this case to be awarded.

d) For costs of the suit and pass such further or other order as this Hon'ble Court may deem fit in this circumstances and thus render justice.

Dated at Chennai on this the 27th day of April, 2009

Counsel for Plaintiff

Plaintiff

VERIFICATION

I, Mr. M.Chandrasekaran, son of K.Murugesu Mudaliar, the Plaintiff above named do hereby declare that what is stated in the above paragraphs are true to the best of my knowledge and belief.

Verified at Chennai on this the 27th day of April, 2009

Plaintiff

COMMON SCHEDULE OF THE PROPERTY

All that piece and parcel of land situated within the Registration District of North Chennai and Sub-Registration District of Purasawalkam, Namazhvarpettai, Subburayan 5th Street, Door No.34, which is bounded on the

North	:	Survey No.2921/1 consisting of Main Road
East	:	4 feet Common Pathway for ingress and egress
West	:	Survey No.2914/1
South	:	Survey No.2922 owned by Corporation of Chennai

Within which land comprising of 19 feet East-West wards and 112 feet North-South wards totaling 2,128 sq.ft. of land having Old Survey No.650 to 653 and 688/A and New Survey No.2914/9 Part as per Patta.

Encroachments:

- 1) The steps in the ground floor in Block No.2914/15 are elevated into the Common Pathway area. These steps are the passage from the ground to first floor for the Defendant
- 2) The balcony which is constructed by the Defendant is elevated outside his premises and it has covered almost 2 feet of the common pathway area causing hindrance of its usage.
- 3) The Second Floor constructed by the Defendant is also elevated into the common pathway area causing hindrance of its usage.

These are the encroachments in the common pathway which needs to be removed.

Dated at Chennai on this the 27th day of April, 2009

Counsel for Plaintiff

Plaintiff

**LIST OF DOCUMENTS FILED ALONG WITH PLAINT UNDER ORDER VII
RULE 14 (1) OF CIVIL PROCEDURE CODE**

S.No	Date	Description of the Document	Nature
1.	20.05.1976	Sale Deed in favour of the Plaintiff	Copy
2.	22.09.1977	Patta issued by Thasildhar, Purasawalkam, infavour of the Plaintiff	Copy
3.	22.09.1977	Patta issued by Thasildhar, Purasawalkam, infavour of the Plaintiff and 2 others for common pathway area.	Copy
4.	02.04.2009	Property Tax Receipt issued by Corporation of Chennai to the Plaintiff	Copy
5.	08.04.2009	Legal Notice issued by the Plaintiff along with Acknowledgment Card	Original

**LIST OF DOCUMENT FILED UNDER ORDER VII RULE 14 (2) OF CIVIL
PROCEDURE CODE**

-Nil at Present-

Dated at Chennai on this the 27th day of April, 2009

Counsel for the Plaintiff

STATEMENT OF ADDRESSES UNDER ORDER VI RULE 14-A C.P.C:

Plaintiff: Mr. M.Chandrasekaran,
Son of K.Murugesu Mudaliar,
New No.77, Old No.34,
Subburayan 5th Street,
Namazhvarpettai,
Chennai – 600 012

Defendant: Mr. Ezhil,
New No.77, Old No.34,
Subburayan 5th Street,
Namazhvarpettai,
Chennai – 600 012

VERIFICATION

I, Mr. M.Chandrasekaran, son of K.Murugesu Mudaliar, the Plaintiff above named do hereby declare that what is stated in the above paragraphs are true to the best of my knowledge and belief.

Verified at Chennai on this the 27th day of April, 2009

Counsel for Plaintiff

Plaintiff
