

IN THE COURT OF THE DISTRICT MUNSIF, SULUR.Present : **Tmt.N.Renuga**, B.A., B.L.,

District Munsif, Sulur

Wednesday, the 9th day of April 2025**I.A.No.2/2024****in****O.S.No.135/2024**

1. Sri.K.Durairaj

2. Smt.D.Saraswathi

...Petitioners / Plaintiffs

/ Vs /

Sri.D.Loganathan

...Respondent/ Defendant

This petition is coming on 05.04.2025 for final hearing before me in the presence of Ms.R.Krishnaveni, Advocate for the Petitioners and Mr.N.Sivakumar, Advocate for the Respondent and upon perusing the records and having stood over for consideration till this day this Court delivered the following :

ORDER

Petition filed by the petitioners under Order 39 rule 1 and 2 and section 151 of CPC to an order of temporary injunction, pending disposal of the suit, restraining the respondent, his men, agents, subordinates, servants, assigns, family members, relatives and others claiming under them from in anyway interfering with the petitioner's possession and enjoyment of the properties described in the petition.

1. The brief averments of the petition affidavit filed by the Petitioner as follows:-

1.1. The suit Item No.1 of the property originally belongs to Nachammal, she settled property in favour of the 1st petitioner and his two minor daughters on 23.12.2002 and after that the Pavithra and Parameshwari who settled their 2/3rd share in favour of 1st petitioner on 31.03.2023. Hence, the 1st petitioner become absolute entitled the Item No.1 of the suit property.

1.2. The suit Item No.2 is belongs to the petitioners parents namely

Krishnasamy ad Nachammal. Both has jointly executed settlement deed in favour of 1st petitioner on 27.01.2010. The Item No.3 of the property is belongs to Nachammal she executed WILL in favour of 1st petitioner on 02.03.2016 and the Nachammal on 16.08.2020. After that the death of Nachammal, the 1st petitioner becomes absolute owner of the property. Further the Item No.4 property also belongs to Krishnasamy gounder he settled the property in favour of the 1st petitioner on 21.03.1999. The suit Item No.5 of the property is belongs to 2nd petitioner through the settlement deed executed by 1st petitioner on 28.04.2023 hence, suit Item No.1 to 5 are in absolute possession and ownership of the plaintiffs.

1.3. Further the plaintiffs have jointly constructed poultry shed and 100 Coconut trees in the suit properties. The defendant is the son of 1st petitioner through his 1st wife Parameshwari and as per the decree passed in HMOP No.7/1995 the marriage between 1st petitioner and Parameshwari got dissolved. Further the Parameshwari have executed release deed in favour of defendant and received Rs.20,000/- as permanent alimony. The defendant also executed release deed on 09.05.2005 and received sum of Rs.83,000/- in respect of the property belongs to the 1st petitioner it in the respect of Item No.4 of the suit property.

1.4. The said properties all are self acquired properties of Krishnasamy gounder and Nachammal. The respondent have no right over the suit property and making repeated disturbance in enjoying the property. Hence, the petitioners field the main suit for permanent injunction and this petition for temporary injunction.

2. The brief avernments of Counter statement filed by the Respondent as follows:-

2.1. The respondent admitted the relationship of parties. This paternal grandparents had vast extent of agricultural properties ancestrali in Kinathukadavu Taluk and Sulur Taluk under from the agricultural income derived from the said ancestral properties the suit Item No.1 to 5 were purchased in the name of the Krishnasamy gounder and Nachammal and 1st petitioner name. The said properties are purchased out of ancestral nucleus and the suit properties are also ancestral properties in which this respondent is having 1/ 5th share by birth he is in joint

common enjoyment with the suit properties and other properties along with his father namely 1st petitioner and his sister namely Parameshwari and Pavithra.

2.2. Due to separation between mother and father the 1st petitioner the grandparent have created false sham nominal documents in respect of the ancestral properties. After the birth of this respondent if any document executed it will affect the respondent's 1/ 5th share it will not bind the this respondent. No temporary injunction can be granted as against the co-parceners of the undivided properties. Mere protection of Revenue records will not pertain the right of the respondent in the suit properties.

3. Point for Consideration:-

Whether the petition under Order 39 rule 1 and 2 and section 151 of CPC to an order of temporary injunction is to be allowed?

4. Points:-

4.1. Heard learned counsels for both the parties and records perused.

4.2. On perusal of records, the 1st petitioner is the father, the 2nd petitioner is the 2nd wife of 1st petitioner and the respondent/ defendant is the son of 1st petitioner through his 1st wife namely Parameshwari. The petitioner pleaded that, the suit property Item No.1 to 5 have purchased under various documents by his parents namely Nachammal and Krishnasamy gounder and settled in favour of 1st petitioner through the settlement deed and WILL by Nachammal and Krishnasamy.

4.3. The petitioner have divorced his 1st wife through the decree of court in HMOP No.7/1995 and married the 2nd petitioner. The 1st petitioner pleaded that, the property being self acquired property of Nachammal and Krishnasamy they both executed settlement deed and WILL in favour of 1st petitioner and presently the suit property is in possession and enjoyment of the petitioners.

4.4. On the side of respondent/ defendant, he admitted the purchase of property in the name of Nachammal and Krishnasamy gounder. But the respondent pleaded that the said properties are ancestral properties of Krishnasamy and

Nachammal and the said properties are purchased by the Nachammal and Krishnasamy gounder from and out of income derived from the ancestral properties. The respondent contented that in respect of joint family properties, the respondent being co-parcener the petitioner can't get any order of temporary injunction.

4.5. But on perusal of documents Ex.P.1 to P.11 the properties being purchased in the name of Nachammal and Krishnasamy gounder, they executed sale deed and settlement deeds in favour of 1st petitioner, on the basis of the same the petitioners is in possession and enjoyment of the properties. In the present case the respondent alone having burden to prove the facts that the Item No.1 to 5 are purchased from and out of the income derived from the ancestral nucleus. Hence, this court finds the respondent is not co-parcener or co-owner of the suit properties until he proves the fact that the suit properties are purchased from and out of the ancestral nucleus. Hence, till then the petitioners is entitled to protect their possession with an order of temporary injunction.

In the result, this petition is allowed by granting temporary injunction, restraining the respondent, his men, agents, subordinates, servants, assigns, family members, relatives and others claiming under them from in anyway interfering with the petitioner's possession and enjoyment of the properties described in the petition till the disposal of the suit. No cost.

Dictated to the Steno-typist and directly typed by her in computer, corrected and pronounced by me in open court this the 9th day of April 2025.

Sd/N.Renuga
District Munsif,
Sulur.

List of witnesses on petitioners side:-

Nil

List of Documents on Petitioners side :-

Ex.P.1	23.12.2002	Settlement deed	Certified copy
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Ex.P.2	31.03.2023	Settlement deed	Certified copy
Ex.P.3	27.01.2010	Settlement deed	Certified copy
Ex.P.4	02.03.2016	WILL deed	Certified copy
Ex.P.5	04.09.2020	Death certificate of Nachammal	Online copy
Ex.P.6	21.05.1999	Settlement deed	Certified copy
Ex.P.7	28.04.2023	Settlement deed	Certified copy
Ex.P.8	28.01.2024	Patta in the name of petitioners	Online copy
Ex.P.9	28.08.1996	Release deed	Certified copy
Ex.P.10	09.05.2005	Release deed	Certified copy
Ex.P.11	21.08.2024	Adangal extract in the name of petitioners	True copy
Ex.P.12	21.08.2024	Ownership certificate by VAO of Poorandampalayam village in the name of the petitioners	original

List of witnesses on Respondent side :-

Nil

List of documents on Respondent side:-

Nil

Sd/N.Renuga
District Munsif,
Sulur.

Draft/ Fair Order

I.A.No.2/2024

O.S.No.135/2024

Dated : 09.04.2025

DMC, Sulur.