

**IN THE COURT OF THE SUBORDINATE JUDGE,
MADURANTAKAM.**

**Present: Mr. T.Ganesh, B.A., B.L.,
Subordinate Judge,
Maduranthakam.**

**Wednesday, this 03rd day of June, 2026
O.S.No. 17/2018
(CNR.No. TNCG13-000063-2018)**

Nagammal

...Plaintiff

//Vs//

1. Mohan

2. Chellammal

3. Jothi

4. Janaki

...Defendants

This suit coming before this court for final hearing on 16.04.2026 in the presence of Mr.V.Agoram, Counsel for plaintiff and Mr.S.Subramnian, counsel for Defendants 2 to 4 and the 1st defendant was called absent and set exparte and after hearing the arguments submitted on behalf of both sides, having perusing the records, having stood over for the consideration of this court till date, this court delivered the following;

JUDGMENT

Plaintiff files the suit for permanent injunction by restraining the defendants, their men, agents, servants, legal representatives and heirs from in any way interfering with her peaceful possession and enjoyment of the suit properties and for cost.

2. Amended Complaint in brief:

1st Defendant is brother of the Plaintiff. 2nd Defendant is the wife of the 1st Defendant and other defendants are the children of the defendants 1 and 2. Plaintiff got the suit property by way of decree in O.S.No. 158/1998 on the file of this Court on 28.07.1998. The final decree was also passed based upon the preliminary decree. The suit properties had been allotted to the plaintiff. Plaintiff is doing all acts of ownership. Plaintiff is in possession and enjoyment of the suit properties by constructing a tiled house and residing there.

Defendants are no way connected with the suit properties. Without any right the defendants are attempting to interfere with the peaceful possession and enjoyment of the suit properties on 17.04.2017 and the same was successfully prevented by the plaintiff. Defendants created some illegal documents and on the strength of the same they have attempted to throw the plaintiff out of possession of the suit properties. Defendants are powerful in men and money. Again the defendants have made an attempt to interfere with the peaceful possession of the plaintiff over the suit property on 10.02.2018 and the same was successfully prevented. At any time the defendants may renew their attempts.

Hence the plaintiff files this suit for permanent injunction by restraining the defendants, their men, agents, servants, legal representatives and heirs from in any way interfering with her peaceful possession and enjoyment of the suit properties and for cost.

3. In spite of service of summon, the 1st defendant failed to appear and hence he was called absent and set exparte.

4. Written Statement filed by the 2nd defendant and adopted by defendants 3 and 4 in brief:

The defendants denies the allegations set out in the plaint. The relationship between the parties is admitted. In any event the defendants 2 to 4 are not parties to the suit and hence it is not binding upon them. Defendants 2 to 4 have already got the

suit property by delivery through court on 14.07.2017. Hence this suit is not maintainable. It is only an abuse of process of court.

Plaintiff has already filed claim application No. 499/1996 in E.P No. 44/1997 in O.S No. 180/1994 on the file of District Munsiff Court Madurantakam stating that he has filed O.S No. 158/1998 for partition and hence and the same is dismissed on 27.07.2004. She has filed C.M.A No. 1/2005 and the same also dismissed. Hence the plaintiff cannot file this suit. The suit is barred under principle of Resjudicata. Plaintiff suppressed the earlier order in claim application and filed the suit to drag on the matter. There is no merit in the suit. Hence the suit is dismissed with cost.

5. On the basis of the pleadings both in the Plaint and written statement of defendant this court has framed the following issues on 02.07.2019:

1. Whether the suit is barred by the res – judicata?
2. Whether the plaintiff is in possession and enjoyment of the suit property on the date of filing?
3. Whether the plaintiff is entitled to get the permanent injunction as prayed in the plaint?
4. To what relief the plaintiff are entitled?

6. Evidence and Exhibits:

The plaintiff examined herself as Pw1, and through him Exhibits A1 to A6 marked. He also examined Elumalai and N.A.Subramani as Pw2 and Pw3, respectively and no documentary evidence marked through them. On the other hand the 2nd defendant examined as Dw1 and no documentary evidence marked through her. In spite of sufficient opportunities, Dw1 not subject herself for cross examination.

7. Heard both sides, perused the documents and evidences placed before this court.

8. Issue wise findings:

9. Issue Nos.1:

“ Whether the suit is barred by the res – judicata?”

It is the case of plaintiff that the suit property belonged to her as per final decree passed in O.S 158/1998. On the other hand the defendants 2 to 4 defend that the plaintiff already filed a claim application in E.A 499/1996 in E.P. 44/1997 in O.S 180/1994 and the same was dismissed. Further the defendants 2 to 4 defend that the appeal in CMA 1/2005 filed by the plaintiff also came to be dismissed. Hence the defendants 2 to 4 defend that the suit is barred by the principle of Resjudicata.

At the outset there is no specific pleadings that how the suit is barred by the principle of resjudicata. There is no pleadings that for what property E.P. 44/1997 was filed and for what property the plaintiff has filed the claim petition in E.A 499/1996. Further there is no pleading who are all the parties to the said Execution petition and claim petition. Even there is no recitals in the evidence of Dw1 about the said Execution petition muchless documents relating to the said claim petition was filed in evidence. Further the Dw1 also didn't subject herself to cross examination. On this ground itself it cannot be concluded that the suit is barred under the principles of Res Judicata.

Next it is the case of defendants 2 to 4 that the claim petition was filed and numbered as E.A 499/1996 in E.P. 44/1997. Claim petition can be filed only after filing of execution petition. Here as per case of defendants 2 to 4, the execution petition was of the year 1997, but the claim petition was filed in the year 1996 itself. It is impossible to file claim petition before the execution petition was filed. Apart from that there is no document was produced in respect of the said execution petition and claim petition by the defendants 2 to 4. On this timeline itself the claim of Res judicata by the defendants 2 to 4 cannot withstand.

In summation there is no evidence to prove that the claim petition filed by the plaintiff was in respect of the suit property that too between the same parties and that

the issues herein were already decided. Hence it is unsafe to conclude that the suit is barred by the principle of Res Judicata and this issue is decided accordingly.

10. Issue No. 2:

“Whether the plaintiff is in possession and enjoyment of the suit property on the date of filing?”

Plaintiff files the suit for bare injunction as such she is in possession and enjoyment of the suit properties. Plaintiff claims that as per final decree in O.S 158/1998 the suit properties allotted to her share and that she is in possession and enjoyment of the same. Plaintiff filed the suit register of O.S 158/1998 as Ex A1, which shows that the plaintiff herein filed the suit against her own brother namely Gopal for partition and separate possession of her 1/2 share in the suit properties and the preliminary decree was passed followed by final decree. But it is pertinent to note that the entire suit properties mentioned in Ex A1 was described as suit properties here in the suit with a caption that the plaintiff is entitled to half share in the suit properties. If it so, how the plaintiff can claim that she is in exclusive possession and enjoyment of the entire suit properties. It is the case of plaintiff that she is entitled to half share in properties mentioned in O.S. 158/1998. But the same properties with full extent was mentioned herein as suit properties. So, the plaintiff cannot claim that she is in possession of the suit properties as per final decree. On this ground itself it is unsafe to conclude that the plaintiff is in exclusive possession and enjoyment of the suit properties.

Next Ex A2, the preliminary decree would not show that the plaintiff is in exclusive possession and enjoyment of the suit properties. Ex A3 and Ex A4 the final decree and report of the commissioner respectively would show that the portion shown as FDC in the plan was allotted to the plaintiff in the suit properties described herein. But the plaintiff has not mentioned the said FDC portion as suit properties in this suit for the reasons best known to her. Apart from that there is no document

produced to show that the plaintiff has obtained delivery of the said FDC portion by way of separate application. On this short ground also it is unsafe to conclude that the plaintiff is in possession and enjoyment of the suit properties.

Next the plaintiff has produced the patta extract for item no.1 of the suit properties as Ex A5. On perusal of Ex A5, the patta for item no.1 of the suit properties jointly stands in the name of Gopal and Venu sons of Kottaian. 1st defendant is none else than the son of said Gopal. So, Ex A5 would not show that the plaintiff is in exclusive possession and enjoyment of the suit properties. Next the plaintiff has produced house tax receipts as Ex A6. But on perusal of Ex A6 there is nothing stated that they were paid in respect of house in the suit properties. So, Ex A6 would not show that the plaintiff is in possession and enjoyment of the suit properties. Further there is no document produced in respect of possession of item no.2 of the suit properties. So, the available documents would not show that the plaintiff is in possession and enjoyment of the suit properties.

In summation the plaintiff who filed the suit for bare injunction should at least prove that she is in possession and enjoyment of the suit properties by way of cogent and acceptable evidence. Even the independent witnesses namely Pw2 and Pw3 evidence also would not show that the plaintiff is in possession and enjoyment of the suit properties. Here the available evidence would not prove that plaintiff is in possession and enjoyment of the suit properties. At this juncture it is unsafe to conclude that the plaintiff is in possession and enjoyment of the suit properties. Hence this issue is decided accordingly.

11. Issue No.3:

“Whether the plaintiff is entitled to get the permanent injunction as prayed in the plaint?”

As discussed in issue no.2, there is no doubt that the plaintiff himself claims that she had 1/2 share in the suit properties by way of note mentioned beneath the

description of properties. Further as held in issue no.2, the plaintiff miserably failed to prove that she is in possession and enjoyment of the suit properties. At this juncture the plaintiff is not entitled to the relief of permanent injunction restraining the defendants from interfering with his possession and enjoyment of the suit properties. Hence this issue is decided accordingly.

12. Issue No.4:

“To what relief the plaintiff are entitled?”

As the plaintiff himself not entitled to the relief of permanent injunction, he is not entitled to any other relief including cost of the suit. Hence this issue is decided accordingly.

13. Result:

In the result, the suit is dismissed as devoid of merits. No costs.

Directly typed in my lap-top, corrected and pronounced by me in the open court, this 03rd day of June, 2026.

Subordinate Judge,
Madurantakam.

Plaintiff side Witnesses:-

PW1: Nagammal (Plaintiff).

PW2: Elumalai.

PW3: N. A. Subramani.

Plaintiff side Exhibits:-

Ex A1		Final Decree in O.S 158/1998.	Certified Court Copy.
Ex A2	28.07.1998	Decree in O.S 158/1998.	Certified Court Copy.
Ex A3	13.01.2005	Decreetal Order in I.A No. 1834/1999 in O.S No. 158/1998.	Certified Court Copy.
Ex A4		Advocate Commissioner Report and Plan in I.A No. 1834/1999 in O.S 158/1998.	Certified Court Copy.

Ex A5	01.09.2023	Patta Extract.	Certified Court Copy.
Ex A6		House Tax Receipts (3 Counts).	Original.

Defendant's side Witnesses:-

DW1 : Chellammal (2nd Defendant).

Defendant's side Exhibits:-

NIL

Subordinate Judge,
Madurantakam.

TNCG130000632018



Fair / Draft Judgment

OS No. 17/2018

D.D: 03.06.2026

**Sub Court,
Madurantakam.**