

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

**Present: Mr. T. GANESH, B.A., B.L.,
Subordinate Judge,
Madurantakam.**

**Monday, this 20th day of April, 2026
I.A.No. 3/2025
in
O.S.No. 140/2025
(CNR.No.TNCG13 – 000409-2025)**

1. Kanniga

2. Lakshmi

3. Kumar

...Petitioners/Plaintiffs

..Vs..

Kannappan

...Respondent/1st Defendant

This petition coming up for final hearing on 17.02.2026 in the presence of Mr.G.Pachaiyappan, counsel for petitioners/plaintiffs, Mr.B.Rajesh, Counsel for the respondent/1st defendant, and having heard the arguments on both sides and having perused the records, having stood over for the consideration of this court till date, this court delivered the following;

ORDER

This petition is filed by the petitioner under Order XXXIX Rule 1 and 2 of Civil Procedure Code to grant an order to temporary injunction restraining the Respondent/ 1st Defendant, his men, Agents, servants, legal representatives and heirs from in any way putting up any construction in the suit properties till the disposal of the suit.

2. Petition in brief:

Petitioners filed the above original suit for Partition. Petitioners are the legal heirs of deceased Neelamegam and Saroja. Defendants are the legal heirs of deceased Dharmapillai and Muthammal. The said Dharmapillai and Neelamegam are own brothers. The schedule mentioned properties are the ancestral properties of the petitioners and the Defendants. The other pangalis are given share in the different place. The Dharmapillai and Neelamegam alone are entitled to the schedule mentioned properties. The Petitioners/Plaintiffs are the legal heirs of Neelamegam and the Defendants are the legal heirs of Dharma pillai. They are entitled equal share in the schedule mentioned properties.

The patta No.159 was granted for S.No. 790/14 of Koovathur village in the name of the 3rd defendant and the patta No. 114 was granted for S.No. 790/13 in the name of Kannappan, the respondent, instead of granting patta abutting the road to both parties. The enjoyment of the Petitioners/Plaintiffs and the Defendants is common. There is a joint family house was situated in the schedule mentioned properties. There are shops in S.No. 790/13 and in the enjoyment of the petitioners and the Defendants. House and shops are in dilapidated condition. Now the 5th Defendant is attempted to demolish the joint family house and attempting to start new construction in the suit properties. Petitioners and the Defendants are in joint possession and enjoyment of the suit properties. Both they and the defendants are entitled equal share in the properties and house situated in the suit properties. The house was situated in both survey numbers i.e. S.No.790/13 and 790/14. The survey Number 790/17 is gramanatham vacant site is also in the enjoyment of them.

In the last item to an extent of Ac.0.20 cents out of A.0.27 cents belonged to the Petitioners/Plaintiffs and the Defendants family. The joint patta No.721 stands in the name of Petitioners/Plaintiffs' mother Saroja and 5th Defendant. Hence, both are entitled to equal shares in the suit properties i.e. Item Nos.1 to 3. Petitioners and defendants are entitled each half share of the suit properties.

During December 2024, the Petitioners/Plaintiffs demanded partition orally, the Defendants postponed the same. But, the 5th Defendant attempted to make a construction illegally in the schedule mentioned properties. The schedule mentioned properties are not partitioned between the Petitioners/Plaintiffs and the Defendants. The 5th Defendant is also attempted to demolish the house of the joint family and attempted to make construction in the schedule mentioned properties on 05.07.2025 and the same was successfully prevented by the Petitioners/Plaintiffs. At any the Defendants may renew their attempt. Unless the respondent is restrained by an order of temporary injunction he will be put to great loss and hardship. The balance of convenience lies in his favour in granting injunction. No prejudice will be caused to other side.

Hence the petitioners file this application for temporary injunction restraining the Respondent /1st Defendant, his men, Agents, servants, legal representatives and heirs from in any way putting up any construction in the suit properties till the disposal of the suit.

3.Counter of respondent/1st Defendant in brief:

The defendants deny the allegations and averments contained in the plaint. During the lifetime of father of the respondent/1stdefendant namely, deceased Dharmapillai had alone possessed and enjoyed the item No.1 of the suit property and had acquired the item No.3 of the suit property from his vendors under the registered sale deed dated 13.02.1957 for valid consideration. Likewise the deceased Neelamegam had possessed and enjoyed the item No.2 of the suit property during his lifetime. While so item No.1 and item No.3 of the suit properties were originally owned by deceased Dharmapillai and likewise item No.2 of the suit property was owned by deceased Neelamegam. On 17.10.1980 deceased Dharmapillai was died intestate leaving behind the respondent/defendants as his Class - I legal heirs to succeed to his estates namely, item No.1 and 3 of the suit properties. After the demise of deceased Dharmapillai and mother of the respondent/1st defendant Muthammal in

respect of the item No.1 of the suit property the Natham Patta No. 114 issued in the name of the respondent/1st defendant since he was eldest male member of the family. Suit property which put into common possession and enjoyment to the defendants 1 and 2 by the respondent/1st defendant because of the defendants 3 to 5 had orally relinquished their right over the item No.1 and 3 of the suit property to the respondent and 2nd defendant. After the item No.1 of the suit property put into the common possession and enjoyment of the respondent/1st defendant and 2nd defendant were in joint possession and enjoyment over the same by residing in the house situated in the item No.1 of the suit property as their shelter. The respondent/1st defendant and 2nd defendant were jointly possessing and enjoying the house situated in the item No.1 of the suit property the house tax receipts and E.B. service connection Nos. 09-531-002-396 and 09-531-002-531 assessed and granted in the name of the respondent/1st defendant under Gramanatham Patta No. 114.

House situated in the item No.2 of the suit property was in dilapidated condition which was demolished by the respondent/1st defendant and 2nd defendant during the year 2016. Afterwards that on 11.11.2016 the respondent/1st defendant and 2nd defendant had entered into registered partition deed in which 1/2 share over the item No. 1 of the suit property had been allotted to the respondent/1st defendant as the 'A' schedule property and remaining 1/2 share over the same had been allotted to the 2nd defendant as the 'B' schedule property. Likewise item No.3 of the suit property also had been divided equally between this respondent/1st defendant 2nd defendant as the 'A' and 'B' schedule properties in the registered partition deed 11.11.2016. After effected the registered partition deed dated 11.11.2016 this respondent/1st defendant and the 2nd defendant are possessing and enjoying their respective A' and 'B' schedule properties that the same is described in the plaint schedule as the suit properties item Nos. 1 and 2.

Likewise in respect of item No.2 of the suit property Gramanatham Patta No.159 has been issued in the name of the 3rd petitioner/3rd plaintiff herein and he is

also in possession and enjoyment over the same so far. Petitioners/plaintiffs have no any right, title, share and interest over the item No.1 and 3 of the suit property even they never possessed and enjoyed the same at any point of time. Item No.2 of the suit property is the adjacent property to the item No. 1 and which situates on the Eastern side of the item No.1 of the suit property. While so by taking undue advantage of the relationship and adjacent property the 3rd petitioner/3rd plaintiff had high handedly, unlawfully had made an unsuccessful attempt on the 3rd week of this month, 2025 to trespass over the item No.1 of the suit property to prevent this respondent/1st defendant the 2nd defendant from the construction work. It was successfully averted by this respondent/1st defendant and 2nd defendant with great difficulty. In fact the item Nos. 1 and 3 of the suit property are no way connected with the petitioners/plaintiffs.

Hence the respondent prays for dismissal of this application.

4. Petitioner Exhibited P1 to P7. Respondent Exhibited R1 to R3. No oral evidence adduced by both parties.

5. Heard both sides and perused the records.

6. Point:

“Whether this application can be allowed?”

In nutshell the case of the petitioners is that the suit properties are ancestral in nature and that the petitioners and the defendants, being the legal heirs of two brothers namely Neelamegam and Dharman, are in joint possession and enjoyment of the same and entitled to equal share. It is their further contention that taking advantage of the absence of partition, the 5th defendant is attempting to demolish the joint family house and put up new construction in the suit properties, which necessitated filing of the present application.

Per contra, it is the specific defence of the respondent/1st defendant that item Nos.1 and 3 of the suit properties were the absolute properties of deceased Dharman, having been acquired and enjoyed by him exclusively and thereafter devolved upon

the defendants. It is further contended that a registered partition deed dated 11.11.2016 was entered into between the defendants 1 and 2, by which the said properties were divided and they are in exclusive possession and enjoyment of their respective shares. It is also the stand of the respondent that the petitioners have no right, title or possession over item Nos.1 and 3 of the suit properties and that the claim of joint possession is false.

At the outset, the petitioners who seek the relief of temporary injunction must establish a prima facie case and that the balance of convenience lies in their favour. The primary contention of the petitioners is that the suit properties are ancestral and jointly enjoyed by both parties. There is no dispute raised in respect of item nos 2 of the suit properties by the respondent and it was even pleaded that it was absolutely belonged to the petitioners. Now it has to be seen whether the petitioners proved their contentions in respect of item nos 1 and 3. In support of their claim, the petitioners have produced patta extracts as Ex P1 to P3. Ex P1 is in respect of item no.1, which stands in the name of 1st respondent. Ex P2 is in respect of item no.2 which stands in the name of 3rd petitioner, where there is no dispute. Ex P3 is in respect of item no.3 stands jointly in the name of mother of petitioners. It is specific case of respondent that item nos.1 and 3 belonged to the respondent family alone. There is no document produced by the petitioner to show that item no.1 and 3 are the ancestral properties of Dharman and Neelamegam. Particularly there is no single scrap of document was produced to show that item no.1 owned jointly by Dharman and Neelamagam. Though Ex P3 jointly stands in the name of mother of petitioner and the respondent, it itself would not show that it was ancestral property of Dharman and Neelamegam. Ex P4, the legal heir certificate and Ex P5 the guideline value would not prove the contention of the petitioners in respect of properties in ancestral character. Ex P6 and P7, the white meter card and the electric consumption receipts would not show that the properties are the ancestral properties of Dharman and Neelamagam. At this

juncture it cannot held that the suit properties are ancestral properties of Dharman and Neelamagam.

Next it is the specific case of petitioners that they are in joint possession of the suit properties and that there is a house in both item nos 1 and 2 and that both parties enjoyed jointly. There is no document produced to show the alleged joint possession of suit properties, muchless existence of joint house in both the item of suit properties. Adangal extracts are the best document to prove possession over the suit properties. Particularly, when the petitioners claim the possession over the alleged house in item nos 1 and 2, then they can very well produce the Natham Adangal extracts, which show their joint possession. For the reasons best known to the petitioners the said Natham Adangal extracts not produced into court. Hence at this juncture it cannot held that the petitioners are in joint possession of the suit properties.

Next it is pertinent to note that the petitioners seeks injunction as against the 1st defendant alone. But in all along the affidavit filed in support of the petition, the petitioners contend that the 5th defendant alone trying to demolish the house in the suit properties. In affidavit para 2,

“Now the 5th Defendant is attempted to demolish the joint family house and attempting to start new construction in the schedule mentioned properties”.

Again in para 4,

“The 5th Defendant is also attempted to demolish the house of the joint family and attempted to make construction in the schedule mentioned properties on 05.07.2025 and the same was successfully prevented by the petitioners/plaintiffs”.

There is no specific allegations as against the respondent herein who is 1st defendant. But for the reasons best known to the petitioners the said 5th defendant was not added as party to this application and no relief was sought against her. But the

application was filed as against the 1st defendant alone, for the reasons best known to the petitioners. On this context also this application is liable to be dismissed.

At the outset it is pertinent to note that this court has returned the plaint itself, while it was filed at first, to produce any documents to show the ancestral character of the suit properties. But the petitioners resubmit the plaint as such they will produce the same later. Hence this court has took the plaint into file on caption subject to maintainability. But till date no document was produced by the petitioners to show that the suit properties are the ancestral properties of Dharaman and Neelamagam. Apart from that as discussed above, there is no document to prove the joint possession of the suit properties. So, there is no prima facie case in favour of the petitioners. Respondent alleged that they already demolished the house in the Item no.1 of the suit properties and they are now constructing new house in the same. If an order of injunction was given, then there is no doubt that the respondent alone put to heavy loss and hardship. Since, even if the house was constructed, the petitioners entitled to share in the same, if the suit decreed. Then ultimately no loss or prejudice will cause to the petitioners, if the relief of temporary injunction was refused. So, the balance of convenience is also not in favour of the petitioners. Hence, the petitioners are not entitled to the relief of temporary injunction and this point is decided accordingly.

7. Result:

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

Directly typed in my personal lap-top, corrected and pronounced by me in the open court, this 20th day of April, 2026.

Subordinate Judge,
Madurantakam.

I. Petitioner side evidence:

NIL

II. Petitioner side Exhibits :

Ex.P.1	08.07.2025	Patta Extract.	E-Certificate
Ex.P2	13.03.2024	Patta Extract.	E-Certificate
Ex.P3	10.07.2025	Patta Extract.	E-Certificate
Ex.P4	08.02.2025	Legal Heir Certificate.	E-Certificate
Ex.P5	-	Guide Line Value.	Web Copy.
Ex.P6	-	E.B White Card.	Original.
Ex.P7	-	E.B Bill, Notice of Demand for House Tax, House Tax Receipts.	Original.

III. Respondent side Evidence :**Nil****IV. Respondent side Exhibits :**

Ex.R.1	13.02.1957	Registration copy of Sale Deed executed by Dharmapillai in favour of Vedagiri Power Agent Kannammal.	Xerox Copy.
Ex.R.2	11.11.2026	Registration Copy of Partition Deed between D.Kannappan and D.Arumugham.	Certified Court Copy.
Ex.R.3	06.10.2025	Patta Extract.	E-Certificate.

Subordinate Judge,
Madurantakam.

Fair / Draft order
IA No. 3/2025
in
OS No. 140/2025
D.D: 20.04.2026
Subcourt,
Madurantakam