

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

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

**Tuesday, this 21<sup>st</sup> day of April, 2026  
CMA. No. 15/2018  
(CNR. No. TNCG13-000491-2018)**

1. R. Dhayalan @ Dhayala Reddiar  
2. D. Sharmila ...Appellants/Respondents 1 and 2  
..Vs..  
1. S. Govindarajulu ...Respondent/Plaintiff  
2. Kala  
Rep.by her Agent Andal. ... Respondent/3<sup>rd</sup> Defendant

On appeal against Fair and Decretal Order passed in  
I.A.No.1383/2016 in O.S.No.143/2016 dated 22.09.2017 on the file of  
District Munsif Court, Madurantakam.

**District Munsif Court, Madurantakam.**

**I.A No. 1383/2016**

**in**

**O.S No. 143/2016**

- S. Govindarajulu ...Petitioner/Plaintiff  
..Vs..  
1. R. Dhayalan @ Dhayala Reddiar  
2. D. Sharmila  
3. Kala  
Rep.by her Agent Andal. ... Respondent/Defendants

This civil miscellaneous appeal coming up before me on 23.02.2026 for final hearing in the presence of Mr.R.S.Renganathan, learned counsel for Appellants and M/s.Aruna Munusamy, S.Prem Kumar and V.Ramalingam, learned counsel for the Respondents in C.M.A No.15/2018, after hearing arguments on both sides, upon perusing the case records and appeal memorandum; having stood over till this day for considerations, this court delivered the following:

### **ORDER**

Appellants are Respondents 1 and 2/Defendants 1 and 2 and the 1<sup>st</sup> respondent is Petitioner/Plaintiff in I.A.No.1383/2016 filed before trial court in the petition. Petitioner/Plaintiff filed the said application for temporary injunction restraining the Respondents 1 and 2/defendants 1 and 2, their men, servants or agents from anyway interfering with his peaceful possession and enjoyment of the suit property till the disposal of the suit. The 1<sup>st</sup> respondent/Petitioner is successful in getting an order, which prompted Respondents 1 and 2/Defendants 1 and 2 to prefer this appeal against the fair and decretal order dated 22.09.2017 passed by the learned District Munsif, Madurantakam in I.A.No.1383/2016 in O.S.No.143/2016.

Parties will be for sake of convenience referred to hereinafter according to their original rank in the suit.

#### **2. Averments of the petitioner:**

Suit properties originally belonged to Ragavan. He settled the same in faovur of his son-in-law namely Krishna under the registered settlement deed dated 17.01.1978 and delivered possession of the same. Krishna had been in actual possession and enjoyment of the suit properties till his death. Patta also in the name of Ragavan, thereafter in the name of Krishna and also in favour of one Thangadurai.

Krishna died intestate on 13.07.2000 leaving behind his wife Andal and his children Dhanasekar, Raja, Ramesh, Ambika, Suseela and Kala, as his legal heirs. The above said persons, except Kala, sold the same to the petitioner under the registered sale deed dated 01.10.2012. Unfortunately, the original settlement deed

dated 17.01.1978 handed over to the petitioner by petitioner's vendors was misplaced by the plaintiff in the Sub-Registrar Office, Uthiramerur, during registration on 01.10.2012. Despite sincere efforts by petitioner, it couldn't be found till now. In fact, petitioner submitted a police complaint in this regard on 01.10.2012 itself. But it ended in vain.

Another heir Kala has been residing in Abroad and she entered into an oral sale agreement on 01-10-2012 with petitioner in respect of her 1/7th undivided share in the suit properties and received the sale consideration of 1,39,850/ through her mother and agent Andal and delivered possession thereof to the petitioner. In fact, the said Kala promised to execute the sale deed in respect of her 1/7th undivided share of the schedule of property while she comes to India. The receipt issued by the said Andal evidencing the sale consideration of Rs. 1,39,850/- on behalf of her daughter Kala is filed herewith. Further, there is no dispute between petitioner and the said Kala. Therefore, no relief is sought for as against the said Kala, since she is a proper party, she has been added as 3<sup>rd</sup> defendant in the above suit.

Ever since the date of purchase referred above, petitioner has been in peaceful possession and enjoyment of the schedule of property as an absolute owner. The computerised patta dated 19.08.2016 bearing no.292 for the above properties covering larger extent issued in favour of Ragavan and the computerised patta dated 19.08.2016 bearing no. 433 for S.No. 122/3C jointly issued in favour of the said Krishna and one Thangadurai. Petitioner's sale deed dated 01.10.2012, though registered on 01.10.2012, it was kept pending and the same was released by obtaining order from Hon'ble High court. From the order of Hon'ble High Court the petitioner came to know about the settlement deed in favour of the respondents. The said-settlement deed dated 01.10.2012, recites about the will of the year 1975 executed by Ragavan in favour of Dayalan. Ragavan died on 11-08-1985.

Will shall come into effect only on the death of the testator and during his life time, the testator has got every right to deal with his property as he likes. Thus, if

such property covered under the will is transferred [either by the settlement, sale, exchange etc.] to another person [other than the legatee], the will already executed by the testator shall become impliedly revoked, void and non-est in the eye of law.

2<sup>nd</sup> defendant has no prima facie right over the schedule of property. But, based on the void and non-est settlement deed dated 01.10.2012, the 2<sup>nd</sup> defendant, at the instigation of the 1<sup>st</sup> defendant, by her men, on 25.08.2016 attempted to destroy the casurina trees aged about 2<sup>1/2</sup> years planted in the schedule of property by the petitioners, which was successfully thwarted. In fact, when petitioner submitted a police complaint in this regard, the Uthiramerur police advised him to move the court of law.

The defendants 1 and 2 are powerful persons with men and money and petitioner, being a law-abiding citizen, apprehends that he may not be able to prevent the defendants 1 and 2 without an order of injunction. Thus, left with no other option, petitioner has filed the above suit for permanent injunction and declaration. Petitioner has got prima facie case and the balance of convenience in granting temporary injunction lies only in his favour. Hence, petitioner filed this petition to grant an order of temporary injunction.

### **3. Counter of respondents 1 and 2 in brief:**

The respondents deny the allegation set out in the affidavit. Raghavan has not executed any settlement deed to Krishna and it is rank forged document. Raghavan was with his son Dhayalan. He has not gone to Chennai and there is no necessity to execute any document. The alleged witnesses are unknown persons to Raghavan. If Raghavan intended to execute any document to Krishna, he ought to have executed in the local limits of Theetalam (i.e) Uttiramerur Sub-Registrar office. The alleged settlement deed never seen the light of day. The said Krishna has not taken possession of the suit property. Whereas Raghavan has executed a will in favour of Dhayalan, his son on 20.10.1875 bequeathing the suit properties and other properties. Raghavan has handed over possession of suit properties to Dhayalan. The said Raghavan if

wants to settle the suit properties to his son-in-law, he would have cancelled the same.

Raghavan died on 11.08.1985. From then onwards 1<sup>st</sup> respondent was in exclusive possession and enjoyment of properties as right full owner without any let or hindrance from anybody including Krishna or his legal heirs. Krishna never took possession of suit properties. He has not whispered anything about the execution of settlement even at the time of death Raghavan or even thereafter the 1<sup>st</sup> respondent was in possession and enjoyment and raising crop, paying kist and doing all acts of ownership. The 1<sup>st</sup> respondent has executed a settlement deed on 01.10.2012 to 2<sup>nd</sup> respondent. The settlement deed is accepted and acted upon. In pursuance of Settlement deed the 2<sup>nd</sup> respondent took possession of suit properties and now raised Casurina crops in the suit properties except in Natham properties. The 2<sup>nd</sup> respondent continued to be in possession and enjoyment. Prior the father of the 1<sup>st</sup> respondent has been in possession and enjoyment of the suit properties for more than statutory period (i.e) from 1985 onwards till today and prescribed title by adverse possession also. Petitioner/plaintiff has no manner of right, title or interest. His vendors have no title to convey. The alleged sale deed is fabricated false document. The petitioner is always enimical towards the respondent and attempting to grab the suit properties from the 2<sup>nd</sup> respondent. The description of suit property is wrong. This shows that the petitioner was not in possession of the suit properties.

Petitioner/plaintiff is not entitled to interim injunction. By using the exparte order of injunction, the petitioner is attempting to take possession. Balance of convenience lies in vacating the exparte order of injunction. Otherwise the respondents will be put to irreparable loss and hardship. Hence the respondents pray for dismissal of the petition.

4. Before the trial court, the petitioner exhibited Ex.P1 to P17 and the respondent exhibited Ex.R1 to R6 were marked. No oral evidence adduced by both parties.

5. While deciding the interlocutor application the trial court has allowed the application filed by the petitioner by granting the temporary injunction in favour of him, as such the petitioner has made out prima facie case and that the balance of convenience is also in favour of him.

6. Aggrieved by the said fair and Decretal order, the Appellants/respondents 1 and 2/Defendants 1 and 2 have filed the present appeal by way of following grounds.

**7. Grounds of appeal:**

1. The order and decretal order of trial court in I.A.No. 1383/2016 is against the law, weight of evidence and probability of case.

2. The trial court ought to held that the respondents/defendants has established prima-facie title to suit property.

3. The trial court ought to believed Ex P1 to ExP6 and held that the respondent/defendants have got title to suit property.

4. The trial court ought to have held that the respondents/defendants has been, in and continues to be in possession and enjoyment of suit property.

5. The trial court ought to have held that the petitioner has not produced any document for proving title nor possession.

6. The trial court ought to held that the respondents has got prima-facie title and possession and ought to have granted interim injunction.

Hence the appellants file this appeal to set aside the order of trial court in I.A 1383/2016 and dismiss the said application.

8. Heard both sides. In trial court the petitioner has filed the interlocutory application for temporary injunction. Considering the same, pleadings in the appeal this court has framed the points for determination, to appreciate the entire facts and evidence of both parties in the interlocutory applications.

**9. Points for Determination:**

1. Whether the petitioner/plaintiff is in possession and enjoyment of the suit properties?

2. Whether the petitioner/plaintiff has prima facie case and the balance of convenience is in his favour?

3. Whether this Civil Miscellaneous Appeals can be allowed or not?

**10. Point. 1:**

***“Whether the Petitioner/plaintiff is in possession and enjoyment of the suit properties?”***

Both the parties delve into the title of suit properties, where both produced documents in their favour which are marked as exhibits. Forgetting that this application is only for temporary injunction both parties pleaded elaborately by attacking the title. Main dispute is that whether Ragavan settled the suit properties in favour of Krishna, after bequeathing the same in favour Dayalan, would be valid or not. If the respondents proves that the settlement in favour of Krishna as per law, then the petitioner has no case. Likewise if the petitioner fails to prove the settlement deed in favour of Krishna, then the respondents succeed title. But the question of title based upon the will and settlement deeds cannot be decided at this stage as this application confined only in respect of possession. Forgetting that the learned counsel for the petitioner has produced heap of citations in respect of alienation of properties after execution of will by testator. Anyhow the said dispute in respect of title can be decided only after adducing evidence and not at this preliminary stage.

Now it has to be seen whether the petitioner has proved that he is in possession and enjoyment of the suit properties. Ex P1 is the settlement deed executed by Ragavan in favour of Krishna. Ex P2, P3, Ex P12 and P13 are the pattas issued in favour of Ragavan. Ex P4 and P5 are the death certificate and legal heir certificate of Krishna. Ex P6 is the sale deed in favour of the petitioner. Ex P7 the copy of complaint preferred by the petitioner. Ex P8, the sale receipt issued by Kala in favour of the petitioner. Here Ex P1 to P8, P12 and P13 would not show that the petitioner/plaintiff is in possession and enjoyment of the suit properties. As already

stated the above said documents are title documents, where the title can be substantiate during trial.

Ex P9 the kist receipt in the name of Ragavan. Ex P10 the kist receipt in the name of Varadhan, Dayalan and Krishna. Ex P11 the kist receipt in the name of Ragavan. None of the kist receipts would show that the petitioner is in possession and enjoyment of the suit properties. As both parties claim title from Ragavan, the kist receipts, patta etc, in the name of Ragavan would not help the petitioner to prove his possession over the suit properties. Ex P14 the copy of settlement deed in favour of the 2<sup>nd</sup> defendant, Ex P15 the death certificate of Ragavan and Ex P16 the copy of petition submitted to police station would not prove the possession of the petitioner. Ex P17 the decree and judgment in O.S 116/78 also would not prove that the petitioner is in possession and enjoyment of the suit properties, where the respondents are not parties to the said suit. So, none of the documents produced by the petitioner would show that he is in possession and enjoyment of the suit properties. No single document in the name of petitioner was produced to prove his possession. Apart from that the best document to prove possession is adangal extracts and kist receipts. Here the petitioner, for the reasons best known to him, failed to produce the adangal extracts. Kist receipts which are produced by the petitioner would not bear the name of his and it stands in the name of Ragavan, from whom both parties claim title to the suit properties. So, the available documents would not show that the petitioner is in possession and enjoyment of the suit properties. Even the Adangal extracts, Ex R6, filed by the respondents also would not show that the respondents are in possession and enjoyment of the suit properties. Anyhow the petitioner/plaintiff has failed to establish his possession and enjoyment over the suit properties. Mere producing title documents and patta extracts would not prove the possession of the suit properties. Hence this court conclude that the petitioner has failed to prove his possession and enjoyment of the suit properties and this point is decided accordingly.

**11. Point No.2:**

***“Whether the petitioner has prima facie case and the balance of convenience is in his favour?”***

As discussed in above said point, the petitioner miserably failed to prove that he is in possession and enjoyment of the suit properties. Title also under dispute and cloud. At this juncture it cannot be held that the petitioner has prima facie case and that the balance of convenience is also in his favour. Hence this point is decided accordingly.

**12. Point No.3:**

***“Whether this Civil Miscellaneous Appeals can be allowed or not?”***

On perusal of order of learned trial court, there is no detail discussions made in respect of possession of the suit properties. Learned trial court has reproduce the averments stated by the petitioner and the respondent in their affidavit and counter respectively. There is no detail discussion in the order about the alleged possession of the petitioner. Learned trial court just decided the title incidentally and came to the conclusion that the petitioner has prima facie case. In fact the petitioner himself pleaded that she raised casurina trees in the suit properties. If it so, the petitioner can very well produce adangal extracts in her name to prove her possession. But he failed to do so. Learned trial court has failed to look into that the petitioner has not produced any single document in his name to prove that he is in possession and enjoyment of the suit properties. It is unable to fathom upon the order of the trial court, that how it comes to the conclusion that the petitioner has shown prima facie case and the balance of convenience is also in his favour. There is no detail discussions that how the petitioner will suffer serious loss and hardship, if the injunction was denied. Learned trial court just discussed about the documents of respondents and came to the conclusion that the petitioner has prima facie title. Trial court has failed to look into the fact that no documents has been filed by the petitioner to show his possession over the suit properties.

On perusal of order of trial court there is no detail discussions about the documents filed by both parties in proper and prospective manner and that the trial court failed to see that the petitioner has not made out prima facie case and that there is no balance of convenience lean in favour of the petitioner.

In summation of above said discussions there is no doubt that the trial court failed to consider the defence of the respondents/appellants in proper and prospective manner and that it has wrongly fixed burden upon the appellants/ respondents in an application for temporary injunction filed by the respondent/plaintiff herein. Trial court failed to see that the respondent/plaintiff has not shown that he had prima facie case and that the balance of convenience is in his favour. At this juncture it is just and necessary that the order of the trial court ought to be set aside and that the application for injunction should be dismissed. Hence this point is decided accordingly.

### **13. Result**

In the result, this Civil Miscellaneous Appeal is allowed and the fair and Decretal order passed in I.A.No.1383/2016 O.S.No.143/216 dated 22.09.2017 by the learned District Munsif, Madurantakam is hereby set aside and that the I.A 1383/2016 is dismissed as devoid of merits. No cost.

Directly typed in my Lap-top, corrected and pronounced by me in open court, this 21<sup>st</sup> day of April, 2026.

Subordinate Judge,  
Madurantakam.

**Appellant/Petitioner side witness and Exhibits: - NIL**

**Respondent/Respondent side witness and Exhibits:- NIL**

Subordinate Judge,  
Madurantakam.

**Copy to:**  
**District Munsif**  
**District Munsif Court,**  
**Madurantakam.**

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**FAIR/DRAFT ORDER**  
**C.M.A No. 15/2018**  
**D.O.D: 21.04.2026**  
**SUB JUDGE,**  
**MADURANTAKAM**