

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

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

**Tuesday, this 21st day of April, 2026
CMA. No. 13/2017
(CNR. No. TNCG13-000560-2017)**

D. Sharmila ...Appellant/Petitioner/Plaintiff
.Vs.
S. Govindarajulu ... Respondent/Respondent/Defendant

On appeal against Fair and Decretal Order paased in I.A.No. 1908/2016 in O.S.No. 190/2016 dated 22.09.2017 on the file of District Munsif Court, Madurantakam.

District Munsif Court, Madurantakam.

I.A No. 1908/2016

in

O.S No. 190/2016

Sharmila ...Petitioner/Plaintiff
..Vs..
S. Govindarajulu ... Respondent/Defendant

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 Appellant and M/s.Aruna Munusamy, S.Prem Kumar and V.Ramalingam, learned counsels for the Respondent, 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

Appellant is Petitioner/Plaintiff and Respondent is Respondent/Respondent in I.A.No.1908/2016 filed before trial court. Petitioner/Plaintiff filed the said application in I.A 1908/2016 for temporary injunction restraining the respondent/defendant, their men agents, from any way interfering with her peaceful possession and enjoyment of the suit property till the disposal of the suit. Appellant/Petitioner is unsuccessful in getting order, which prompted her to prefer this appeal against the fair and decreetal order dated 22.09.2017 passed by the learned District Munsiff, Madurantakam in I.A.No. 1908/2016 in O.S.No. 190/2016.

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

2. Averments of the petitioner:

Petitioner is the absolute and exclusive owner of suit properties, having got the same under a registered settlement deed dated 01.10.2012 executed by her father. Petitioner accepted the same, acted upon and is in possession and enjoyment of the suit properties by paying kist. Before that the father of the petitioner was in possession and enjoyment for more than 30 years and thereby prescribed title by adverse possession also. The suit properties were owned by Raghavan as ancestral property. He has executed a registered will on 20.10.1975 in favour of father of the petitioner namely, Dayalan. But possession has been handed over to Dhayalan in 1975 itself. Raghavan died in 1985. From then on words Dayalan was in exclusive possession as owner of the suit properties. Nobody objected or claimed any interest over the suit properties including the respondent's husband Krishna.

It seems that the said Krishna fabricated a false document by using Raghavan's name on 17.01.1978 under the name and style of settlement deed. The alleged settlement deed is null and void. He has not executed any settlement deed and it is

rank forged. It has never seen the light of the day. The alleged settlement deed never acted upon and possession has never been handed over to Krishna. In any event the petitioner and her father has been, in and continuous possession and enjoyment of the suit properties for more than statutory period and prescribed title by adverse possession also.

Legal heirs of the said Krishna never came near the suit property. Petitioner have raised Casurina crops in the suit properties. Petitioner paying kist and prior to her, Petitioner's father has paid kist. The respondents/defendants seem to have created another document dated 01.10.2012 alleged to be a sale deed in favour of 1st respondent/defendant. The alleged document never seen the light of the day. He has not taken possession of suit properties. But he has attempted to trespass into the suit properties on 12.09.2016 and the same has been successfully averted. The 1st respondent/defendant is powerful in men and money and he may renew his attempt in future. Further the Government has not given proper extent for S.No.150/3 and 150/5.

Respondent/1st defendant has no manner of right title over the suit property and he is not in possession of the suit property. Now the respondent/defendant is busily attempting to grab the suit property from petitioner and he made one such attempt to trespass into the suit property on 12.09.2016 and the same has been successfully prevented by petitioner with great difficulty. The respondent/defendant is very powerful in men and money and having very many henchmen in the suit village and he may renew his attempt to trespass at any point of time.

Hence the petitioner files this application for grant an order of temporary injunction restraining the respondent, his men, agents, from any way interfering with her peaceful possession and enjoyment of the suit property till the disposal of the suit.

3. Counter of respondent in brief:

The respondent denies the allegation set out in the affidavit. Ac 2.00 out of Ac. 7.97 Acres in Theetalam Village jointly comprised in S.No. 150/3, S.No. 150/4 and

S.No. 150/8 are contiguous lands. Further, the said Ac 2.00 Acres and the agricultural lands in Theetalam Village covering 4 cents (1/3rd undivided share of 12 cents in S.No.150/5 and 5 cents (1/3rd undivided share of 15 cents) in S.No.122/3C including the 1/3rd share in the well, 5 H.P. motor pumpset and its electricity S.No.61 (besides its deposit) existing S.No.122/3C, originally belonged to Ragavan S/o. Mannar. Moreover, with slight modifications, the above properties have been shown as suit property in the above suit by the petitioner/plaintiff herein.

Ragavan settled the above said-properties to his son-in-law namely Krishna under the registered settlement deed dated 17.01.1978. and delivered possession of the same. Since then the said Krishna had been in actual possession and enjoyment of the above said properties as its exclusive owner till his death. Further, patta also issued in favour of the said Krishna under patta number 292. Another patta in patta number 433 for S.No. 122/3C was jointly issued in favour of the said Krishna and one Thangadurai. Krishna died intestate on 13.07.2000 leaving behind his wife Andal and his children namely Dhanasekar, Raja, Ramesh, Ambika, Suseela and Kala as his only legal heirs and they are in joint possession and enjoyment of the suit properties till 01.10.2012.

Though the settlement deed dated 17.01.1978 mentions 2.00 Acres (out of 7.97 Acres) of contiguous land are jointly comprised in S.No. 150/3, S.No. 150/4 and S.No. 150/8, the actual extent available state on ground is not 2.00 Acres but only 1.82 acres. In fact, the topography of the above said 1.82 acres is such that it is nearly 2 ft. height than all adjacent lands existing on its four boundaries. The total extent available on ground in item nos.1 to 5 of the schedule of property is 1.91 acres, which belonged to 7 co-owners (i.e., the legal heirs of the said Krishna).

On 01.10.2012 the respondent purchased 1.64 acres, i.e., 6/7th undivided share out of 1.91 acres mentioned above, morefully described as the schedule of property, from 6 legal heirs of the said Krishna, as per the registered sale deed dated

01.10.2012. Unfortunately, the original settlement deed dated 17.01.1978 handed over to him by his vendors was misplaced by the respondent in the Sub-Registrar Office, Uthiramerur, during registration on 01.10.2012 and despite sincere efforts by the respondent, it couldn't be found till now. Respondent also preferred a police complaint in this regard on 01.10.2012 itself. But, the Uthiramerur Police refused to entertain such complaint stating that they were directed by the Superintendent of Police, Kancheepuram, not to entertain such complaints.

The remaining legal heir namely Kala has been residing in Abroad and she entered into an oral sale agreement on 01.10.2012 with the respondent in respect of her 1/7th undivided share, and received the sale consideration of Rs.1,39,850/- through her mother and agent Andal and delivered possession thereof to the respondent. 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 evidence the sale consideration of Rs.1,39,850/- on behalf of her daughter Kala. Further, there is no dispute between the respondent and the said Kala. Ever since the date of purchase, the respondent has been in peaceful possession and enjoyment of the suit property as an absolute owner thereof. Further the kist receipts dated 01.10.2012 were paid by the respondent's vendors and the kist receipt dated 23.08.2016 is paid by the respondent. The sale deed of the respondent kept pending and the respondent by way of order of Hon'ble High Court received the same.

Only from the order of Hon'ble High Court, the respondent was put it knowledge of the settlement deed dated 01.10.2012 executed by the petitioner/plaintiff's father Dayalan in favour of petitioner. In the said deed, the will bearing document no.32/1975, on the file of Sub-Registrar Office, Uthiramerur, executed by Ragavan in favour of the petitioner's father Dhayalan @ Dhayala. In fact, the said-testator Ragavan died on 11.08.1985. The 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 automatically revoked.

Here though Ragavan executed will in 1975, he settled the same in favour of Krishna on 17.01.1978. Therefore, the will executed in the year 1975 in favour of the petitioner's father became void and non-est and as such, the settlement deed dated 01.10.2012 executed by the petitioner/plaintiff's father in favour of the petitioner/plaintiff is also void and non-est in the eye of law. The petitioner has no prima facie right over the suit property. But, based on the void and non-est settlement deed dated 01.10.2012 the petitioner/plaintiff at the instigation of the petitioner/plaintiff's father, by her men, on 25.08.2016 attempted to destroy the casurina trees aged about 2^{1/2} years planted in the suit property by the plaintiff, which was successfully thwarted by the respondent. In fact, when the respondent submitted a police complaint in this regard, the Uthiramerur police advised him to move the court of law.

It is only on 19.08.2016 when the certified copy of the registered settlement deed dated 01-10-2012 was obtained, he got knowledge of the registered will bearing document No.32/1975. Petitioner/plaintiff has alleged difference in extent of S.No. 150/3 and S.No. 150/5 contrary to her own document. Krishna himself has filed a suit for declaration with other reliefs in O.S.No. 116/1978, on the file of the District Munsif Court, Chengalpattu, against this respondent's father in respect of the suit property, i.e., covered under the settlement deed dated 17.01.1978 and obtained decree and judgment in his favour. Either the petitioner or her father Dhayalan ever possessed or enjoyed the suit property and they are utter strangers to the same and as such, the allegations of adverse possession is false.

The suit in O.S.No. 143/2016 filed by this respondent against the petitioner herein 2nd defendant in O.S.No. 143/2016 and her father Dhayalan 1st defendant in O.S.No. 143/2016 in respect of the suit property herein. After receipt of notice of ad-interim injunction, having filed their vakkalat and counter on 21.09.2016 itself. Further, application seeking copy of the original will dated 20.10.1975 and the settlement alleged to have been executed in favour of the petitioner by her father Dhayalan was given to her counsel and subsequently served by post to the petitioner's father and the petitioner herein refused to receive the registered post sent to her. But, they have not given any copy of the same to this respondent. The suit and interim application in O.S 143/2016 was suppressed by both the petitioner and her counsel who has been appearing for her in both the above suits O.S.No.143/2016 and O.S.No. 190/2016.

Petitioner/plaintiff has no prima facie case and the balance of convenience lies only in favour of this respondent/defendant and if the injunction is granted, this respondent alone shall suffer irreparable loss and hardship. There is no merits or bona fides in the above injunction application. Hence this petition is liable to be dismissed with exemplary cost.

4. Before the trial court, the petitioner exhibited Ex.P1 to P6 and the respondent exhibited Ex.R1 to R3. No oral evidence adduced by both sides.

5. While deciding the interlocutory application in I.A No. 1908/2016 in O.S No. 190/2016 the trial court has dismissed and not inclined to grant the temporary injunction in favour of the petitioner, as such the petitioner has not made out prima facie case and that the balance of convenience is also not in favour of the petitioner.

6. Aggrieved by the said fair and decretal order, the Appellant/Petitioner/Plaintiff 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. 1908/2016 is against the law, weight of evidence and probability of case.

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

3. The trial court ought to believed Ex.P1 to Ex.P6 and held that the petitioner/plaintiff have got title to suit property.

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

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

6. When the injunction application in both the case taken up question of suppressing the other case does not merit.

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

Hence the appeal to set aside order of the trial court and to grant temporary injunction.

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 is in possession and enjoyment of the suit properties?
2. Whether the petitioner has prima facie case and the balance of convenience is in her favour?
3. Whether this Civil Miscellaneous Appeals can be allowed or not?

10. Point. 1:

“Whether the petitioner is in possession and enjoyment of the suit properties?”

Both the parties delve into the title of parties, where both produce 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. In fact the counter averments of the respondent was replication of certain facts twice. 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 petitioner proves that the settlement in favour of Krishna as per law, then the petitioner has no case. Likewise if the respondent fails to prove the settlement deed in favour of Krishna, then the petitioner succeeds her 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 respondent has produced heap of citations in respect of alienation of properties after execution of will by testator. Those decisions can be looked into only at the time of trial. Anyhow the said dispute in respect of title can be decided only after adducing evidence and that it cannot be delve into at this stage.

Now it has to be seen whether the petitioner has shown that she is in possession and enjoyment of the suit properties. Ex P1 and P2 the will and settlement, will not show that the petitioner is in possession and enjoyment of the suit properties. Ex P3 the patta extracts would show that the patta for item no 1 to 4 stands in the name of Ragavan. Ex P4 the patta would show that item no. 5 alone stands in the name of Dayalan, the father of the petitioner. Ex P5 the kist receipts would show that the said Dayalan has paid kist to the item nos 1 to 5 of the suit properties in the year 1990, 1996 to 1998 and 2000. Those kist receipts would not show that the petitioner is in possession and enjoyment of the suit properties from 2000 to 2016, till filing of the

suit. Apart from a kist receipt dated 03.11.2014 also forms part of the said Ex P5, where it shows that Ragavan has paid kist to the suit properties. But the said Ragavan was no more on the said date and it would create a suspicious over the alleged kist receipt. It is the case of petitioner that her father was in possession and enjoyment of the suit property ever since the date of execution of will by Ragavan i.e from 1975. But no documents produced to show that the petitioner's father was in continuous possession and enjoyment of the suit properties from 1975 till execution of settlement in favour of the petitioner. It is the case of petitioner that her father settled the suit properties and that she is in possession and enjoyment of the same. But no kist receipts in the name of petitioner was filed to prove the same. So, Ex P5 would not show that the petitioner is in possession and enjoyment of the suit properties.

Next the petitioner has filed Ex P6 the adangal extracts for fasli 1381, 1411, 1412, 1414, 1416 to 1420 which shows that the suit properties were possessed by Ragavan. Both parties claim right and possession from Ragavan. So, the said document would not show that the petitioner is in possession and enjoyment of the suit properties. No doubt that the adangal extracts are the best documents to prove the possession. But there is no single document muchless adangal extracts in the name of petitioner to show that she is in possession and enjoyment of the suit properties. On the other hand the respondent also didn't file any documents to show that he is in possession and enjoyment of the suit properties. Though the counter runs for several pages alleging that the respondent is in possession of the suit properties and larger extent, there is no document produced to show that respondent is in possession and enjoyment of the suit properties. Anyhow the petitioner who approaches the court has not shown that she is in possession and enjoyment of the suit properties and this court concludes that the petitioner failed to prove that she is in possession and enjoyment of the suit properties. Hence this point is decided accordingly.

11. Point No.2:

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

As discussed in above said point, the petitioner miserably failed to prove that she 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 her favour. Hence this point is decided accordingly.

12. Point No.3:

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

On perusal of trial court order, there is no detail discussion 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 and only in two lines in bottom of page 13 and 14 came to the conclusion that the petitioner has no prima facie case and the balance of convenience is also not in favour of the petitioner. In order of trial court,

“At present while considering the arguments advanced by the both the counsel and also the perusal of documents, this court comes to the conclusion that the petitioner herein had not made out prima facie case about the alleged trespass attempt made by the Respondent/Defendant. Further more the balance of convenience is also not lies in favour of the petitioner and no irreparable loss and hardship would caused to the petitioner in view of not granting the Injunction against the Respondent till the disposal of the suit”.

Here the learned trial court just summarizing the arguments putforth by both parties came to the conclusion that the petitioner has no prima facie case and the balance of convenience is not favour of the petitioner. There is no detail discussions that why the trial court refused to grant injunction. Anyhow this court being the first

appellate court has discussed about the possession of the suit properties and came to the conclusion that the petitioner is not entitled to the relief of temporary injunction.

Though the trial court has no detailed discussion in respect of possession of suit properties, ultimately it came to the conclusion that the petitioner is not entitled to the relief of temporary injunction, which needs no interference. Hence this point is decided accordingly.

13. Result:

In the result, this Civil Miscellaneous Appeal is dismissed and the fair and Decretal order passed in I.A.No.1908/2016 O.S.No.190/2016 dated 22.09.2017 by the learned District Munsif, Madurantakam is hereby confirmed. No cost.

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

Subordinate Judge,
Madurantakam.

Appellant/Petitioner side witness and Exhibits: - NIL

Respondent/Respondnet side witness and Exhibits:- NIL

Subordinate Judge,
Madurantakam.

Copy to:

**District Munsif
District Munsif Court,
Madurantakam.**

TNCG130005602017



FAIR/DRAFT ORDER
C.M.A No. 13/2017
D.O.D: 21.04.2026
SUB JUDGE,
MADURANTAKAM