

IN THE COURT OF DISTRICT MUNSIF CUM JUDICIAL MAGISTRATE,
CHEY YUR

Present: Tmt. V.Devapriya, B. Sc., M.L.
District Munsif-cum-Judicial Magistrate, Cheyyur (FAC)

Monday, the 27th day of January, 2025

I.A.No.226/2023

in

O.S.No.11/2022

1. Santhakumar
2. Babu
3. Ravichandran
4. Arulmozhidevi
5. Pandian
6. Elavarasan
7. Mahendran
8. Vadivazhagan

...Petitioners/Defendants

-Vs-

1. Ravichandran
2. Jayanthi
3. Ramesh

...Respondents/Plaintiffs

This petition coming up before me on 02.01.2025 for final hearing in the presence of, Thiru.A.Abdul Hayath, counsel for the Petitioners/Defendants and Thiru.S.Subramanian, counsel for Respondents/Plaintiffs and after hearing the arguments on both sides and upon perusing the materials placed on record, and having stood over for consideration till this day, this court delivers the following,

ORDER

This petition has been filed by the Petitioners/Defendants under Order XXXIX Rule 1 and 2 and Section 151 of Code of Civil Procedure, for temporary injunction restraining the Respondents/Plaintiffs, his men and agents, from in any way interfering with the Petitioner/Defendant's possession and enjoyment of the suit property, till the disposal of the suit.

2.The averments stated in the petition, in brief :

The suit property was originally owned by one Dhandapani, Sundaram, Dharmasivam, Sargurunathan and Sivakumar. During oral partition among them, Sivakumar was allotted an extent of Ac 0.33 cents and remaining Ac 0.11 cents was in possession of said Dhandapani and Sargurunathan. The Petitioners/Defendants' mother namely Raniammal had purchased an extent of Ac 0.05 1/2 cents from Dhandapani under sale deed dated 12.09.1983 and an extent of Ac 0.11 cents, which is 1/4th share in the total extent of Ac 0.44 cents, from Sargurunathan and his legal heir one Chandrasekar under sale deed dated 16.03.1981. Since then, the said Raniammal was in possession and enjoyment of the suit property.

3. The patta no.98 for the total extent of Ac 0.16 1/2 cents is in favour of said Raniammal. Presently, the Petitioners/Defendants are in possession and enjoyment of the suit property and patta also granted in their favour. The Respondents/Plaintiffs has no right and title over the suit property and they attempted to trespass into the suit

property on 24.02.2023 and the same was resisted by the Petitioners/Defendants. Hence the petition.

4. The averments stated in the counter filed by the 1st Respondent/1st Plaintiff and adopted by Respondents 2 and 3/Plaintiffs 2 and 3, in brief:

This petition is not maintainable in law and facts. The averments in the affidavit, are false. The Petitioners/Defendants has no right and title over the suit property and they are not in possession of the same. The suit property was not properly described. The suit property was originally belonged to one Sivakumar and he had obtained the same through oral partition among his pangalis namely Dhandapani, Sundaram, Dharmasivam and Sargurunathan in the year 1970. Since then, the said Sivakumar was in possession and enjoyment of the suit property. The Respondents/Plaintiffs' father namely Ramasamy Naicker had purchased the suit property and other properties from the said Sivakumar under sale deed dated 18.05.1977 and since then, he was in possession and enjoyment of the same.

5. The said Sivakumar had executed a mortgage deed on 29.09.1973 in respect of suit property and another property in favour of Ramasamy Naicker. Since the said Sivakumar could not settle the debts, he had sold the property to the said Ramasamy Naicker and same was mentioned in the sale deed dated 18.02.1977. After the death of said Ramasamy, the Respondents/Plaintiffs are in possession of the suit property and had applied for patta.

6. The said Raniammal purchased property from the pangali of Sivakumar and the suit property was not allotted to the vendor of the said Raniammal. The said Ramasamy purchased the suit property in the year 1977 prior to said Raniammal and without perusing the encumbrance, she had created false documents dated 16.03.1981 and 12.09.1983 and the same has to be declared null and void.

7. The Petitioners/Defendants had not come to the suit property. On 06.01.2022, the Petitioners/Defendants attempted to interfere Respondents/Plaintiffs' possession in the suit property and the same was successfully resisted by the Respondents/Plaintiffs. The Petitioners/Defendants are attempting to grab the suit property. There is no merits in this petition. Hence, this petition is liable to be dismissed with costs.

8. The point for determination is whether this petition is to be allowed or not?

9. On the side of Petitioners/Defendants, Exhibits P-1 to P-4 were marked and on the side of the Respondents/Plaintiffs, no Exhibits were marked and no witnesses were examined on both sides.

10. Heard both sides and perused the records.

11. The Petitioners/Defendants had filed this petition for temporary injunction restraining the Respondents/Plaintiffs from interfering their possession in the petition mentioned property, till the disposal of the above suit. The Respondents/Plaintiffs resisted the petition stating that the petition mentioned property belongs to them and that the Petitioners/Defendants have no right and title over the same.

12. The Petitioners/Defendants had stated that the petition mentioned property belonged to one Dhandapani, Sundaram, Dharmasivam, Sargurunathan and Sivakumar and that during oral partition among them, Sivakumar was allotted an extent of Ac 0.33 cents in petition mentioned property survey number and the said Dhandapani and Sargurunathan was allotted an extent of Ac 0.11 cents in the petition mentioned property survey number. The Petitioners/Defendants further stated that their mother namely Raniammal had purchased the 1/4th share in the total extent of Ac 0.44 cents in petition mentioned survey number from Sargurunathan and his legal heir one Chandrasekar under sale deed dated 16.03.1981 and an extent of Ac 0.05 1/2 cents from Dhandapani under sale deed dated 12.09.1983.

13. The Exhibit P-1 shows that the said Raniammal had purchased 1/4th share in the petition mentioned survey number and Exhibit P-2 shows that the said Raniammal had purchased an extent of Ac 0.05 1/2 cents in the petition mentioned survey number. But in both sale deeds, the boundaries of the property were not mentioned. The Respondents/Plaintiffs claim that the petition mentioned property was purchased by their ancestor namely Ramasamy, even before the said Raniammal. The Exhibit P-4 also shows that the said Ramasamy had purchased the total extent of petition mentioned survey number.

14. Admittedly, both parties' vendor had obtained the property through oral family partition. The facts of said oral partition and the properties allotted to each sharer can be decided only through oral evidence. The Petitioners/Defendants had not filed any

document to show their possession in the petition mentioned property, within the specific boundaries. Hence, this court comes to the conclusion that the Petitioners/Defendants had not shown any prima facie case and the balance of convenience in their favour and the irreparable loss. Hence, this court is not inclined to allow this petition.

15. In the result, this petition is dismissed. No costs.

Typed by me in my laptop, corrected and pronounced by me in open court on this the 27th day of January, 2025

District Munsif cum
Judicial Magistrate
Cheyyur (FAC)

Petitioner side witnesses:

NIL

Petitioner side documents:

Ex P1 - Certified copy of sale deed dated 16.03.1981
Ex P2 - Certified copy of sale deed dated 12.09.1983
Ex P3 - Online patta dated 12.12.2021
Ex P4 - Encumbrance certificate dated 30.04.2022

Respondent side witnesses & documents:

NIL

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Judicial Magistrate
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