

**IN THE COURT OF THE I ADDITIONAL SUBORDINATE JUDGE,
ERODE.**

PRESENT: THIRU. G. ASHOK PRASATH, B.A., B.L., M.S.E.N.,
I ADDITIONAL SUBORDINATE JUDGE, ERODE.

On Friday, the 11th day of July 2025

On Thiruvalluvar Varudam 2056, Tamil Visuvavasu Year, Aani Thingal 27th day

E.A.No.1/2019

in

EP.No.45/2013

Kandasamy

...Petitioner/Claimant

/vs/

1. Suresh

2. S.M.Govindasamy

3. S.Jayachandran

...Respondents/Decree Holder/J.D/3rd Party

This petition has come up on 09.07.2025 for final hearing before this court in the presence of Thiru.C.Devarajan, learned advocate for the petitioner, Thiru.A.C.Muthusamy, learned advocate for 1st Respondent, Respondents 2 and 3 remains exparte, upon hearing both sides, on perusal of available materials on record and having stood over for consideration till this day, this court delivers the following:-

ORDER

This Petition has been filed Under Order 21 Rule 58 and Section 151 of CPC to allow the claim petition as mentioned in this petition.

2. The Brief Averments of the Petition are as follows:-

3. One Appichi Gounder of Sottaiyampalayam had 2 sons namely Periakaruppana Gounder and Chinnakaruppana Gounder. Periakaruppana gounder had 2 sons namely Nallgounder and Marappagounder. The 2nd son Chinnakaruppanan has one son namely the petitioner and 3 daughters namely Pavayammal, Kolanthayal and Sigamani. The family of Appachigounder owned lands in Suriampalayam "A" Village. The suit property is a part of aforesaid lands. The suit

property is described in the schedule of property. Those lands are not yet partition between the heirs of Appachigounder. The petitioner, as plaintiff, had filed a suit for permanent injunction against nataraj and Mohanasundaram, in O.S.No207/2012, on the file of District Munsif of Erode who are the legal heirs of Nallagounder, on 07.02.2015 the district Munsif of Erode which confirmed the fact that all the properties include the suit property are without any partition. Apart from it the 1st daughter of Chinnakaruppana gounder namely Pavayammal filed a Partition suit in O.S.No.16/2018 on the file of the 1st Additional District Judge of Erode for partition and separate possession against all the legal heirs of Chinnakaruppana Gounder and Periakaruppana Gounder.

4. The petition mentioned property bearing R.S.No.432/1B is also an undivided land among the heirs till date. But Nallgounder Son of Periakaruppana gounder sold an extent of 6343 Sq.feet(15 cents) infavour of the 2nd defendant under a registered sale deed on 07.03.1991. The 2nd defendant entered into a sale agreement with the 3rd respondent herein. Hence the 3rd respondent filed a suit in O.S.No.43/2007 on the file of the 1st Additional District Judge Court for specific performance of regarding the petition mentioned property against the 2nd respondent and the same seems to have decreed. Subsequently a registered sale deed dated 09.07.2008 executed by the court infavour of 2nd respondent in the execution proceedings.

5. The 2nd respondent sold an extent of 3459 1/2 sq.feet vacant land in R.S.No.432/1B to the 1st respondent on 12.12.2007 with specific boundaries. The petitioner submits that the sale deed dated 12.12.2007 and the sale deed dated 09.07.2008 were executed with specific boundaries which all against law. The respondents 1 and 3 are not derived title under the sale deeds executed from the 2nd respondent. The said survey number 432/1B also a subject matter in O.S.No16/2018 pending before the 1st Additional District Judge Erode. The petitioner always objected for the sale made by Nall Gounder for the specific boundaries.

6. Now on 13.07.2019 the petitioner came to know that the 1st respondent had E.A.No.1 of 2019 in EP.No.45 of 2013

I ASJ Court, Erode.

filed a suit for specific performance of contract against the 2nd respondent and obtained a decree against him in O.S.No343/2010 on the file of 1st additional Sub Court Erode. Apart from it the 1st respondent filed an execution petition in E.P.R.No.45/2013 on the file in E.P.R.No.45/2013 on the file of the 1st Additional Sub Court, Erode and the same stands posted on 22.07.2019 for cross examination of the respondent. The petitioner and the other legal heirs of the Chinnakaruppana Gounder will loss heavily as their right over the suit property is much affected. It is needless to say that Nall Gounder has no right to sell land with specific boundaries. The said land is more valuable and situates the Sottaiyampalayam main road. Hence this court may allow the claim application in favour of the petitioner. Otherwise the petitioners will be put to irreparable loss and great hardship. Hence the Petition.

7. The Brief Averments of the Counter statement filed by the 1st respondent are as follows:-

8. The petition is false, frivolous, vexatious and not maintainable either in law or on facts. This respondent does not admit any of the averments made in the petition except those that are expressly admitted by him and puts the petitioner to strict proof of such averments.

9. This respondent state that the petitioner has no manner or right what so ever over the petition mentioned property. This respondent states Appachigounder died long back leaving two sons namely Periyakaruppana Gounder and Chinna Karuppana Gounder. Both of them orally divided the properties they inherited from their father long back and they were enjoying their respective shares as absolute owners.

10. This respondent is not aware of the suit filed by the petitioner in O.S.No.207 of 2012, District Munsif Court, Erode for permanent injunction against Nataraj and Mohanasundaram, the grandson and great grandson of Periyakaruppana Gounder and its result thereof. It must be a collusive suit. If the intention of the petitioner is genuine he ought to have filed a suit for partition and prayed for an efficacious relief of partition and separate possession. In any event the said decree is

not binding on this respondent as he is not a party to it and for the reasons given below.

11. This respondent states that the aforesaid Nalla Gounder the son of Periyakaruppana gounder and father of Natarajan sold the petition mentioned vacant site as early as on 07.03.1991 infavour of the 2nd respondent herein within boundaries. The 2nd respondent subsequent to the suit put up an RCC as well tiled house immediately after purchase in one portion and enclosed the remaining portion with compound wall without any objection either from the petitioner or from others to their knowledge. The petitioner therefore is estopped from claiming any share in the petition mentioned property.

12. This respondent submits he and the 2nd respondent entered into a sale agreement as regards the house property on 12.12.2007. on his failure the suit for specific performance in O.S.No.343 of 2010 obtained decree and levied the present execution petition. In sofaras the vacant site is concerned the 2nd respondent executed a registered sale deed on 12.12.2007 infavour of this respondent. The petitioner is well aware of the aforesaid facts. He was a sailent spectator as he has no interest and title in the aforesaid property.

13. In any event this respondent and his vendor are in possession and enjoyment of the petition mentioned property by putting up constructions openly, continuously, uninterruptedly since 07.03.1991 with necessary animus to the knowledge of the petitioner and others without any objection from them and thereby this respondent has perfected his right and title over the petition mentioned vacant site by adverse possession.

14. This respondent is totally unaware of the partition suit said to have been filed by pavayaeammal who is none else than the own sister of the petitioner in O.S.No.16 of 2018 on the file of the 2nd Additional District Judge, Erode for partition and separate possession. The 2nd respondent was not made a party to the said suit though he purchased the petition mentioned property as vacant site as early as on

07.03.1991. This respondent purchased a partition of the petition mentioned property on 12.12.2007 and entered into a sale agreement on 12.12.2007 respecting the portion in which a building is constructed. This respondent was also not made a party to the said suit.

15. This respondent further submits that the suit in O.S.No.43 of 2007 for specific performance on the basis of a sale agreement said to have been executed by the 2nd respondent and the decree dated 09.07.2008 is collusive and aimed at defrauding the legitimate right of this respondent over the petition mentioned property.

16. This respondent submits the sale deed dated 07.03.1991 infavour of the 2nd respondent and the sale deed by the 2nd respondent infavour of this respondent dated 12.12.2007 and the decree in OS.No.343 of 2010 on the file of 2nd Additional Subordinate Judge, Erode are true, for valid consideration and unassailable at the hands of the petitioner. The description of the property given in the petition is misleading and incorrect. Nalla gounder unquestionably sold only vacant site infavour of the 2nd respondent on 07.03.1991 over which he alone build the super structure. The petitioner therefore cannot claim any right over the same in the present petition.

17. It is utterly false to say that the petitioner became aware of the specific performance suti filed by this respondent in O.S.No.343 of 2010 only on 13.07.2019. He infact is aware of the entire proceedings right form the inception.

18. As stated above a comprehensive frivolous partition suit by the daughter of Chinna Karuppana Gounder who is the younger brother of Periya Karuppana Gounder in O.S.No.16 of 2018 on the file of 2nd Additional District Judge, Erode is pending. In a partition suit every one is a plaintiff. If the claim of the petitioner is really true she ought to have impleaded this respondent as a party to the said suit and sought an adjudication whether this respondent is the owner of the petition mentioned property or not. This respondent prays to dismiss the petition with costs.

19. Heard both sides. Written Arguments filed by the Petitioner side and the same were perused. No oral and documentary evidence was adduced on the Petitioner side and the 2nd Respondent side, and the RW1 was examined, and Ex.R1 and Ex.R2 were marked on the 1st Respondent side. Whether the petition deserve to be allowable or not?

On Point:-

20. The petitioner side contended that one Appichi gounder had 2 sons, namely Periakaruppanna gounder and Chinnakaruppannan gounder. Further, Periakaruppanna gounder has 2 sons, namely Nalla gounder and Marappa gounder. The 2nd son, Chinnakaruppannan, has one, namely the petitioner and 3 daughters, Pavayammal, Kolanthayal and Sigamani, and the same was reflected in the genealogical tree as mentioned in the petition.

21. Further, in the instant matter, the above-mentioned Appichi gounder had lands in Suriampalayam A Village, and the suit property is part of the aforesaid lands. Those lands are not yet partitioned between the heirs of Appichi gounder, the petitioner, as plaintiff, filed the suit for permanent injunction against Nataraj and Mohanasundaram in OS.No:207/2012 on the file of the District Munsif Court, Erode, which confirmed the fact that all the properties, including the suit property, are without partition. Apart from the 1st daughter of Chinnakaruppanna gounder, namely Pavayammal, filed a suit for partition in OS.No:16/2018 on the file of the Honourable 1st Additional District Judge of Erode for partition and separate possession against all the legal heirs of Chinnakaruppanna gounder and Periakaruppanna gounder.

22. Now, further in the instant matter, the petition mentioned property bearing RS. No:432/1B is also an undivided land among the heirs till date, but Nallagounder sold an extent of 6343 Sq mts, which is 15 cents, in favour of the 2nd defendant under a registered sale deed on 7.3.1991. The 2nd defendant entered into a sale agreement with the 3rd respondent, and the 3rd respondent filed OS.No:43/2007 on the file of the Honourable 1st Additional District Judge for specific performance regarding the E.A.No.1 of 2019 in EP.No.45 of 2013

petition mentioned property against the 2nd respondent and the same was decreed. Subsequently, a registered sale deed dated 9.7.2008 was executed by the court in favour of the 2nd respondent in the execution proceedings.

23. Further, the 2nd respondent sold an extent of 3459 ½ sq feet of vacant land in RS.No: 432/1b to the 1st respondent on 12.12.2007. The 1st and 3rd respondents are not derived title under the sale deeds executed by the 2nd respondent. The SF.No:432/1B is subject matter in OS.No:16/2018 pending before the Honourable 1ST Additional District Judge Erode.

24. In addition to the above grounds, the petitioner side contended that on 13.7.2019 came to know that the 1st respondent had filed the suit for specific performance against the 2nd respondent and obtained a decree against him in OS.No:345/2010 on the file of 1st Additional Sub Court Erode. Apart from it, the 1st respondent filed an execution petition in EP.No:45/2013 on the file of the Ist Additional Sub Court Erode and the same stands posted for the respondent cross cross-examination on 22.7.2019. Whereas the 1st respondent side contended that Appichi gounder died long back, leaving two sons, Periyakarppanna gounder and Chinna gounder, both of them orally divided the properties and they inherited from their father long back, and they enjoyed their shares as absolute owners. Further, the 1st respondent side argued that OS.No:207/2012 was a collusive suit, and if the intention of the petition is genuine, he ought to file the suit for partition. This respondent was not a party to the above suit, and the same was not binding.

25. The 2nd respondent, subsequent to the suit, put up an RCC as well tiled house immediately after purchase in one portion and enclosed the remaining portion with a compound wall without any objection either from the petitioner or from others to their knowledge, therefore the petitioner is estopped from claiming any share in the petition mentioned property. The 1st and 2nd respondents entered into the sale agreement on 12.12.2007 regarding the house property. This 2nd respondent executed the registered sale deed dated 12.12.2007 in favour of this respondent. This

respondent was not a party to the proceedings in OS.No:16/2018. Moreover, the OS.No:43/2007 in which a decree was passed on 9.7.2008, which is a collusive and aimed at defrauding the legitimate right of this respondent over the petition-mentioned property. The decree was passed in OS.No:343/2007 of the IInd Additional Sub Judge, Erode, is true for valid consideration and unassailable in the hands of the petitioner.

26. This respondent further raised his contention that the description of the property mentioned in the petition is misleading and incorrect. The said Nalla gounder unquestionably sold any vacant site in favour of the 2nd respondent on 7.3.1991, over which super superstructure was built. Therefore, the petitioner cannot claim any right over the same in the present petition. If the claim of the petitioner is true, she ought to have impleaded this respondent as a party to the suit and sought adjudication whether this respondent is the owner of the petition mentioned property or not. This petition is barred by limitation. This claim petition is unsustainable without seeking a declaration that the sale deed dated 7.3.1991 is null and void and not binding on the petitioner. So this petition is a gross abuse of the process of law. There is no cause of action, and the same is not maintainable.

27. In light of the above aspect of grounds, the petitioner filed this petition to claim the petition mentioned property, for which there is no proof of records and evidence established by the petitioner side. Further, the respondent side stated that the petition mentioned property is not properly mentioned, for which no explanation from the petitioner side. Moreover, the petitioner side has been stating that the above suits, but the details of the same were not procured to prove his stand of version, and in addition, no documents were procured to prove the petitioner side version in respect of the core issue of the matter. At this juncture, this Court relied upon the following decision rendered by our Honourable High Court in Rahatunnisa vs. Md. Saber Ali Khan, 2008(5) ALD 615. It was observed that the claim petition is to be tried like a suit, and the burden of proof lies on the claimant to lead evidence. If the

claim petitioner fails to lead evidence in support of his claim, the Court cannot be found fault with, especially after the original and appellate Court have also confirmed the dismissal. The burden to prove the title to the property in question squarely upon the petitioner/claimant.

28. In Dr. M.Parvathi and Others vs. Penumatcha Satyanarayana Raju and Others, 2013 (5) ALT 184 (D.B.), wherein the Honourable High Court held that, as in the case of a suit for declaration of title, in the claim petition also, the extent to which a title must be established is always relative.

29. In further more in the instant matter, the 1st respondent side had taken the Chief of RW1 as reflected in his chief affidavit, and the ExR1 and ExR2 marked, whereas the petitioner side has not come forward to cross-examine the RW2, which itself shows that admitting the 1st respondent stand of version because the petitioner side has not come forward to depose the let in evidence and no proof of records and documents were adduced to prove the core issue of the petition which cannot be denied by the petitioner side. Further, the 1st respondent side has marked the ExR1, which is a registered sale deed, in which one is a xerox copy and another one is the same above-mentioned registered sale deed, which is an online copy generated from the electronic device. So, at this juncture, this court relied upon the following decision rendered by our Honourable Apex Court in Arjun Panditrao Khotkar V. Kailash Kushanrao Gorantyal And Others 2020 SCC ONLINE SC 571 Wherein Our Honourable Apex Court held that Any documentary evidence by way of an electronic record under the Evidence Act, in view of Sections 59 and 65- A, can be proved only in accordance with the procedure prescribed under Section 65-B. Section 65-B deals with the admissibility of the electronic record. The purpose of these provisions is to sanctify secondary evidence in electronic form, generated by a computer. It may be noted that the section starts with a non obstante clause. Thus, notwithstanding anything contained in the Evidence Act, any information contained in an electronic record which is printed on a paper, stored, recorded or copied in optical or magnetic

media produced by a computer shall be deemed to be a document only if the conditions mentioned under sub-section (2) are satisfied, without further proof or production of the original. The very admissibility of such a document i.e. electronic record which is called as computer output, depends on the satisfaction of the four conditions under Section 65-B(2). Following are the specified conditions under Section 65-B(2) of the Evidence Act: (i) The electronic record containing the information should have been produced by the computer during the period over which the same was regularly used to store or process information for the purpose of any activity regularly carried on over that period by the person having lawful control over the use of that computer; (ii) The information of the kind contained in electronic record or of the kind from which the information is derived was regularly fed into the computer in the ordinary course of the said activity; (iii) During the material part of the said period, the computer was operating properly and that even if it was not operating properly for some time, the break or breaks had not affected either the record or the accuracy of its contents; and (iv) The information contained in the record should be a reproduction or derivation from the information fed into the computer in the ordinary course of the said activity. 15. Under Section 65-B(4) of the Evidence Act, if it is desired to give a statement in any proceedings pertaining to an electronic record, it is permissible provided the following conditions are satisfied: (a) There must be a certificate which identifies the electronic record containing the statement; (b) The certificate must describe the manner in which the electronic record was produced; (c) The certificate must furnish the particulars of the device involved in the production of that record; (d) The certificate must deal with the applicable conditions mentioned under Section 65- B(2) of the Evidence Act; and (e) The certificate must be signed by a person occupying a responsible official position in relation to the operation of the relevant device. 16. It is further clarified that the person needs only to state in the certificate that the same is to the best of his knowledge and belief. Most importantly, such a certificate must accompany the

electronic record like computer printout, compact disc (CD), video compact disc (VCD), pen drive, etc. pertaining to which a statement is sought to be given in evidence when the same is produced in evidence. All these safeguards are taken to ensure the source and authenticity, which are the two hallmarks pertaining to electronic record sought to be used as evidence. Electronic records being more susceptible to tampering, alteration, transposition, excision, etc. without such safeguards, the whole trial.

30. Another decision rendered by our Honourable High Court of Madras held in Accudyne Industries India Private Limited Represented by its Authorised Signatory Mr.Sridhar Jawahar No.4, Rajarajan Street, Visalakshi Nagar, Ekkaduthangal, Chennai – 600 097 Vs M/s.R.P.Rajarajan Enterprises Vs. Represented by its Managing Partner R.Parthiban S/o. K.A.Rishikesavam Having its office at No.39, Habibullah Road, T.Nagar, Chennai – 600 017 OSA (CAD) NOS.150 AND 154 OF 2021 AND CMP NO.21109 OF 2021 IN OSA (CAD) NO.150 OF 2021 AND CMP NO.21249 OF 2021 IN OSA (CAD) NO.154 OF 2021 DATED 14/03/2024 Wherein Our Honourable Madras High Court held that Notably, the Hon'ble Supreme Court in Arjun Panditrao Khotkar v. Kailash Kushanrao Gorantyal., reported in (2020) 7 SCC 1 has held that certificate under sub-section (4) of section 65B is mandatory and a condition precedent to admit any electronic record as secondary evidence.

31. It is therefore the ExR1 is a xerox copy that cannot be entertained as per the Indian Evidence Act, and the ExR2 is an online-generated copy, which cannot be entertained because the 1st respondent failed to adhere to section 65(B)(4) of the Indian Evidence Act because the 1st respondent has failed to furnish the Mandatory certificate and the same is condition precedent to admit any electronic record as secondary evidence as delivered in the above precedents.

32. From the above aspect of the grounds, the burden of proof rests upon the claimant/petitioner to prove the claim over the petition mentioned property, but the E.A.No.1 of 2019 in EP.No.45 of 2013

petitioner failed to prove his claim to the property, which was mentioned in the petition and the same was discussed above. It is therefore, the petitioner filed this petition to drag on the proceedings and thereby to stall the execution proceedings, which is not entertainable. Given the above aspect of the reasons, this petition stands dismissed and no cost.

As a result, this Petition stands dismissed and No cost.

Dictated to the Steno-typist and typed by him directly in the computer, corrected and pronounced by me in open court, on this the 11th day of July 2025.

I Additional Subordinate Judge,
Erode.

Petitioner side Witnesses:

-Nil-

Respondents side Witnesses:

RW1 - Suresh (1st Respondent)

Petitioner side Exhibits:

-Nil-

Respondents side Witnesses:

Ex.R1	07.03.1992	Title Deed	Xerox Copy
Ex.R2	07.03.1991	Sale Deed	Xerox Copy

I Additional Subordinate Judge,
Erode.

Draft/Fair Order

EA.No.1/2019 in

EP.No.45/2013

Dated:11.07.2025

I ASJC, Erode.