

**IN THE COURT OF THE I ADDITIONAL DISTRICT MUNSIF,  
NAGERCOIL.**

**Present:** Thiru. R. Sundara Kamesh Marthandan, M.L.,

I Additional District Munsif, Nagercoil.

Thursday, on the 20<sup>th</sup> day of February 2025

**I.A. No. 6 of 2023**

**in**

**O.S. No. 108 of 2020**

**CNR.No.TNKK04-000106-2020**

K. Mathan Raja

... Petitioner/Defendant

-vs-

R. Shivani (Minor) (Amended as per order  
dated 24.11.2023 in memo dated 24.08.2023)

... Respondent/Plaintiff

This Petition came before this Court on 20.12.2024 for final hearing in the presence of, Mr. A. Sivathanu, Advocate for the Petitioner, Mr. A.Subramania Pillai, Advocate for the Respondent. Upon hearing both side Counsel and upon perusing the case records, having stood over for consideration, till this date, this Court hereby delivers the following:

**ORDER**

1. The Petitioner had filed the above Petition under Order VII Rule 11 Code of Civil Procedure and Section 7,12(2), 37 and 37(2) of Tamil Nadu Court Fees and

Suits Valuations Act 14 of 1955, seeking an order to reject the Plaintiff from the file of this Court.

2. The Petitioner had stated that the Plaintiff had filed the above suit for Mandatory Injunction, directing the Defendant to vacate, from the Plaintiff schedule properties and to put the Plaintiff in vacant possession of the same and for Permanent Injunction restraining the Defendant, from causing or committing any damage or waste or altering the physical features of the Plaintiff schedule properties, in any manner or whatsoever. The Respondent/Plaintiff had claimed right over the Plaintiff schedule property under registered Will Deed dated 27.05.2005 bearing Doc. No. 73 of 2005, executed by her maternal grandfather late V. Krishnan.

3. The Plaintiff's mother Parvathi @ Parkavi and the Defendant are the children of the said Testator V. Krishnan. The said Will was created by exercising coercion, fraud and undue influence. The Respondent/Plaintiff has to prove the genuineness of the said Will. The same is not a valid one. It is liable to be declared as null and void. The same do not bind the Petitioner/Defendant, in any manner, over his right title and ownership and possession over the Plaintiff schedule properties. The Plaintiff schedule item No.1, belong to the Petitioner/Defendant's father V.Krishnan who died on 17.03.2008. The Petitioner/Defendant's father is not the owner of Plaintiff schedule item No.2 property.

4. The Respondent/Plaintiff had falsely stated as if the Petitioner/Defendant's father late. V. Krishnan had permitted the Petitioner/Defendant to reside in item No.2 of the Plaintiff schedule property and had entrusted possession of the Plaintiff schedule

item No.1 property and as if, except the said permission, the Petitioner/Defendant has no manner of any specific legal right or title or interest over the Plaintiff schedule properties. No children, needs permission of their own parents, to reside along with them. The Petitioner/Defendant had been residing in the Plaintiff schedule item No. 2 property for the past 22 years and doing business therein. All along the Petitioner/Defendant is also doing Textile business in item No.1 Plaintiff schedule property, along with his father, during his lifetime. After his father's death, he continues the same, without any interruption by anybody.

5. The Petitioner/Defendant has become the absolute owner of the Plaintiff schedule item No. 1 and 2 properties. No demand to quit the Plaintiff schedule properties, by the Petitioner/Defendant was made either by the Respondent's Parents or through anybody else, because they are aware of the Petitioner/Defendant's title over item No. 1 and 2 properties. Even if the Respondent/Plaintiff claims any right over the Plaintiff schedule properties, the same is lost by Adverse Possession. The Respondent/Plaintiff's right over the Plaintiff schedule properties are ousted. The Respondent/Plaintiff's parents attempted to take possession of the Plaintiff schedule properties, illegally and forcibly, from the Petitioner/Defendant and the same ended in failure.

6. With regard to the averment, regarding GWOP No. 147 of 2019 the Petitioner/Defendant is not a party to the said proceedings and as such, any such proceedings will not bind the Petitioner/Defendant. The order in GWOP No. 147 of 2019 was obtained fraudulently. The Respondent/Plaintiff's father M. Rajaram had

filed a false affidavit, suppressing the Truth and True facts. Hence the said order is liable to be declared as null and void. The Petitioner/Defendant is taking steps to file Petition before the Hon'ble Family Court, Nagercoil, to declare the said order as null and void. Further mere mutation in Revenue and Municipal records and paying taxes would not create any title and ownership over the Plaint schedule properties. The Petitioner/Defendant's possession over the Plaint schedule property are not through the Respondent/Plaintiff or her parents.

7. Unless and until the Respondent/Plaintiff proves her title and ownership over the Plaint schedule properties, the question of revocation of permission and demand of vacant possession, does not arise. Further O.S. No. 324 of 2015, filed by the legal heirs of the vendors to late. V.Krishnan, relating to Plaint schedule property item No. 1, is pending before the Hon'ble II Additional Sub Court. The Petitioner/Defendant had cleared many loans, of his deceased father V.Krishnan, payable to third parties. The suit is not properly framed and valued. No proper relief is sought by the Respondent/Plaintiff in the suit. The suit is undervalued, to suit the convenience of the Respondent/Plaintiff. Since the Respondent/Plaintiff had admitted Petitioner's/Defendant's possession, she ought to have sought for recovery of possession.

8. Since the suit is undervalued and not properly framed, this Court has no jurisdiction to try this suit. Only in order to evade payment of Court Fee, the Respondent/Plaintiff, improperly framed the suit and undervalued this suit. The Respondent/Plaintiff had not sought for declaration to declare the Will Deed dated 27.05.2005 bearing Doc. No. 73 of 2005 as valid and binding on the

Petitioner/Defendant, as the Petitioner/Defendant questioned its genuineness, in his reply notice dated 18.02.2020 and 05.02.2020. Hence preliminary issue, relating to the Jurisdiction of this Court, to try this suit, is to be heard and decided first. Objection with regard to payment of Court Fee, should also be tried as Preliminary issue. Hence the above Petition.

9. The Respondent had filed counter stating that the Will dated 27.05.2005 is not obtained by exercising coercion, fraud and undue influence. The said Will is genuine, true and valid one. The Respondent/Plaintiff is ready to prove the Will's genuineness at appropriate time and appropriate stage in the suit. The Petitioner/Defendant has no title or ownership over the Plaint schedule properties. Hence he is not entitled to question the validity of the said Will. The Plaint schedule item No.1 and 2 properties, belongs to late.V. Krishnan and he executed Will Deed in favour of the Respondent/Plaintiff, in respect of both the properties. The said late. V. Krishnan being the Petitioner/Defendant's father had permitted the Defendant to reside in item No. 2 of Plaint schedule property and also entrusted item No. 1 of Plaint schedule property.

10. The Petitioner/Defendant was residing along with his wife and children, upon the permission given by his father. The Petitioner/Defendant's father was not residing along with the Petitioner/Defendant. As such the Petitioner/Defendant's claim that, no children needs permission, from their own parents, to reside with them, is not proper. The Petitioner/Defendant's claim that he became absolute owner of the Plaint schedule properties is false. All revenue records and municipal records in

respect of Plaint schedule properties, stands in the name of late. V. Krishnan and thereafter in the name of the Respondent/Plaintiff. The Petitioner/Defendant's claim of adverse possession and ouster are false and also amusive. The Petitioner/Defendant has no right to question GWOP. No. 147 of 2019 and it's connected proceedings. The Respondent/Plaintiff had got absolute right over Plaint schedule properties, as per the Will executed by late. V. Krishnan. The Petitioner/Defendant is only, in permissive possession and he cannot claim adverse possession or ouster, against the lawful owner.

11. The Petitioner/Defendant had not cleared any loans of late. V. Krishnan. The Respondent/Plaintiff's father, had cleared the loan and got the original documents from Handloom Society and Bank, who have also gave, no objection to the Plaintiff's father. The suit in O.S. No. 324 of 2015 was already dismissed. By notice dated 18.02.2020, the Respondent/Plaintiff had revoked, the permission granted to the Petitioner/Defendant, to occupy the Plaint Schedule properties and called upon him to hand over vacant possession. After revocation of the permission, given to him, the Petitioner/Defendant is squatting in the Plaint schedule properties, without any manner of right. As per the decisions of Hon'ble Supreme Court and Hon'ble High Court, the Plaint prayer is legal and correct. There is no necessity to value the suit for market value and seek recovery of possession, from the Petitioner/Defendant.

12. The provisions namely Order VII Rule 10 or Order VII Rule 11 Code of Civil Procedure are not applicable to the facts of this case. The above suit is not bad

under Order VII Rule 10 and 11 of Code of Civil Procedure. The Court fee is correct and proper. The provisions namely Sections 7, 12(2), 37 and 37(2) of Tamil Nadu Court Fee and Suit Valuation Act, 14 of 1955 are not applicable. The Plaintiff had already filed proof affidavit, along with the documents, as early as 07.12.2021. Only thereafter, the present Petition has been filed, with intent to drag on the case, forever without any basis. Hence the Respondent/Plaintiff prayed for dismissal of the above Petition.

13. The point for consideration is Whether the above Petition has to be allowed or not ?

14. The Petitioner had exhibited Ex. P1 & P2. The Respondent had exhibited Ex. R1 to Ex.R27. The Petitioner's contention is that the property namely Plaint schedule item No. 1, property belonged to the Petitioner/Defendant's father V. Krishnan and that the Will under, which the Respondent/Plaintiff, who is the Grand daughter of late. V. Krishnan and niece of the Petitioner/Defendant, claims right was obtained by exerting coercion, undue influence over the said V.Krishnan. As such the said Will Deed is not genuine. The Petitioner/Defendant had further contended that his father V.Krishnan owned only Plaint schedule item No. 1 property and that he has no right to execute Will, in respect of the Plaint schedule item No.2 property.

15. The Petitioner/Defendant had further contended that, as his son the Petitioner/Defendant needs no permission to reside along with his parents. The Petitioner had further claimed that for past 22 years, he is residing in Petition schedule item No. 2 property and he also claimed that he is doing Textile business in

Plaint schedule item No.1 property, along with his deceased father V.Krishnan, until his lifetime and continues the same business, even thereafter. The Petitioner/Defendant had further stated that, if at all the Respondent/Plaintiff has any right over the Plaint schedule property, she is ousted and the Petitioner/Defendant's Title, is perfected, by adverse possession. The pivotal question for consideration in the above Interlocutory Application, is whether the suit has been undervalued, whether the suit prayer has not been properly framed, which warrants, Rejection of the Plaint.

16. In the Plaint the Plaintiff had sought for Mandatory Injunction directing the Petitioner/Defendant to quit and vacate from the Plaint schedule properties and to put the Respondent/Plaintiff in vacant possession of the same and for Permanent Injunction against the Petitioner/Defendant, from causing or committing any damage or waste or alerting the Physical features of the Plaint Schedule Properties in any manner whatsoever. With regard to the said suit prayer the Petitioner/Defendant had contended that as the Respondent/Plaintiff herself had admitted the Petitioner/Defendant's possession over the Plaint schedule property, the Respondent/Plaintiff, ought to have filed the above suit, for recovery of Possession, by valuing the suit property at Market Rate and ought to have paid requisite Court Fee.

17. On the other hand, the Respondent/Plaintiff's contention is that though the Petitioner/Defendant is the son of late V.Krishnan, he had been residing in Plaint schedule item No. 2 property, along with his wife and children and that he was not

residing along with his father namely V. Krishnan. As such the Petitioner's/Defendant's contention, that no children requires, permission of their Parents, to reside with them, is not legally tenable. In the Reject the Plaint application, the Plaint pleadings are alone Germane. As such, the exhibits marked on the either side need not be taken into consideration, while deciding the above Interlocutory Application.

18. With regard to the suit prayer of Mandatory Injunction the Respondent/Plaintiff had contended that the Petitioner/Defendant is only the permissive occupant and that the possession of the Petitioner/Defendant could not be construed as independent that of the Respondent/Plaintiff and her predecessors-in-title, namely late. V.Krishnan and as such the Respondent/Plaintiff need not ask for recovery of possession. A mere prayer for Mandatory Injunction would suffice. In support of her contention, the Learned Counsel for the Respondent/Plaintiff relied on the Judgement of the Hon'ble Supreme Court in 1) Joseph severance & Ors -vs- Benny Mathew & Ors reported in 2005(3) Civil Court Cases 781, 2) Bharat Bhushan Gupta -vs- Pratap Narayan Verma & Ors reported in 2023(1) Civil Court Cases 144 SC and the the Judgement of the Hon'ble Madras High Court in 3) P.D. Sivaji -vs- P.D. Balaji reported in 2022(1) MW Civil 589 and argued the the suit prayer for Mandatory Injunction would suffice. The Hon'ble Supreme Court had enumerated various categories of possession.

19. In the case on hand, the relationship between the parties and the relationship between the parties and the deceased are not in dispute. Since it is stated

that the Petitioner/Defendant is the son of late. V. Krishnan and the Petitioner/Defendant himself had admitted that the Plaint schedule item No.1 property belongs to the deceased V. Krishnan and with regard to Plaint schedule item No.2 property, the Petitioner/Defendant had not produced any documents and that in the Plaint, there is no material pleadings to show, as if the Plaint schedule item No.2 property, do not belong to the Respondent/Plaintiff.

20. While deciding the above application, it cannot be held or construed, as if the Plaint schedule item No.2 property, do not belong to the Respondent/Plaintiff. Further the possession of the Petitioner/Defendant over the Plaint schedule property, prima facie, appears to be permissive possession. The other contentions made by the Petitioner/Defendant are disputable question of facts, which requires letting in evidence, prior to adjudication. In view of the law declared by the Hon'ble Supreme Court and the Prima Facie case that the Petitioner/Defendant is Permissive Occupant, this Court is of the considered view, the suit prayer namely Mandatory Injunction, Prima Facie Appears proper and the Court Fee Paid also Prima Facie appears proper. In view of the discussions, made, the Plaint is not liable to be rejected, on the ground of improper prayer or undervaluation or non payment of Court fee.

21. Further with regard to the Petitioner/Defendant's claim of Adverse possession, the basis condition for raising Plea of Adverse Possession, is that, the person seeking Adverse Possession, should admit the title of his Adversary. The period from which, the adverse possession starts have all to be elaborately pleaded and then decided after letting in evidence. In the case on hand, insofar as Plaint

schedule item No. 2 property, the Petitioner/Defendant had denied the title of V. Krishnan. Such being the case, the question of adverse possession will not arise. More over, as the Petitioner had contented that the Petitioner/Defendant is the son of V. Krishnan and he is entitled to reside, in his father's property along with him, the question of possession, adverse to that of V. Krishnan or his legatee does not arise. Insofar as the above Petition, is concerned the Petitioner/Defendant's claim of Right based on Adverse Possession, could not be adjudicated, in the above Interlocutory Application. The Complaint cannot be rejected on the Defendant's Claim of Adverse Possession. The same could be left open and decided, while adjudicating the main suit. In view of the discussions made above, at the present stage, this Court is of the considered view that framing of the suit prayer is supported, by the dictum of the Hon'ble Supreme Court and that of the Hon'ble Madras High Court. As such the same is proper. The valuation of the suit schedule properties are also proper. The payment of Court Fee, on such valuation is also proper. As such, this Court is of the considered view that the Complaint need not be rejected, on the grounds alleged by the Petitioner/Defendant. The Petitioner/Defendant is not entitled for the Petition relief.

In the result, the above Petition is dismissed. No cost.

Dictated to the Steno-Typist, transcribed and typed by her, corrected and pronounced by me, in open court this, the 20<sup>th</sup> day of February 2025.

I Additional District Munsif,  
Nagercoil.

**Petitioner's side witnesses : Nil.****Petitioner's side documents :**

Ex.P1	-----	Guideline Value of Plaintiff Schedule Item No. 1 Property
Ex.P2	-----	Guideline Value of Plaintiff Schedule Item No. 1 Property

**Respondent's side witnesses : Nil.****Respondent's side documents :**

Ex.R1	27.05.2005	Will Deed executed by Krishnan infavour of the Respondent bearing Doc. No. 73/2005.
Ex.R2	03.04.2008	Death Certificate of V. Krishnan.
Ex.R3	05.07.2005	Birth Certificate of the Respondent.
Ex.R4	27.02.2020	Kist receipt in the name of the Respondent for fasali 1429.
Ex.R5	-----	Property tax receipt in the name of the Respondent.
Ex.R6	26.08.2019	Order in GWOP 147 of 2019on the file of Family Court, Nagercoil.
Ex.R7	05.02.2020	Legal Notice issued by the Petitioner to Rajaram and Sivarajan.
Ex.R8	18.02.2020	Reply notice issued by Rajaram.
Ex.R9	18.02.2020	Legal Notice issued by the Respondent to the Petitioner.
Ex.R10	19.02.2020	Acknowledgement Card.
Ex.R11	-----	Acknowledgement Card.
Ex.R12	05.03.2020	Legal notice issued by the Petitioner's Advocate to Respondent's Advocate.
Ex.R13	05.07.2005	Birth Certificate (Translated version) of the Respondent.
Ex.R14	30.06.1983	Sale Deed executed by Krishnan Asari and Sathappan Asari infavour of Kulathooran.
Ex.R15	12.12.1979	Sale Deed executed by Kulathooran infavour of Krishnan

		bearing Doc. No. 4614/1979.
Ex.R16	12.12.1979	Sale Deed executed by Kulathooran infavour of Ramakrishnan Asari bearing Doc. No. 4613/1979.
Ex.R17	10.02.1983	Sale Deed executed by Ramakrishnan Asari infavour of Krishnan bearing Doc. No. 280/1983.
Ex.R18	-----	Application for Electricity Connection by Krishnan.
Ex.R19	18.12.1989	Property tax receipt in the name of Krishnan.
Ex.R20	-----	Cash deposit receipts of Canara Bank.
Ex.R21	19.08.2014	Application to the Bank Manager, Canara Bank, Meenakshipuram Branch by Rajaram.
Ex.R22	21.11.2019	Application to amilnadu Handloom Development Corporation Ltd., Chennai by the Petitioner.
Ex.R23	26.02.2019	Receipt of the Tamilnadu Handloom Development Corporation Ltd.,
Ex.R24	12.02.2013	Chitta in the name of the Respondent.
Ex.R25	03.04.2008	Death certificate of V. Krishnan.
Ex.R26	21.08.2023	Letter from Registration Department to the Petitioner.
Ex.R27	22.08.2023	Letter from Registration Department to the Petitioner.

I Additional District Munsif,  
Nagercoil.

I ADM, Nagercoil  
Draft/Fair Order  
I.A.No. 6/2023 in  
O.S.No.108/2020.  
Date: 20.02.2025.