

IN THE COURT OF THE I ADDITIONAL DISTRICT MUNSIF, NAGERCOIL

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

I Additional District Munsif, Nagercoil

Tuesday, on the 29th day of April 2025

I.A. No. 3 of 2025

in

O.S. No. 4 of 2025

(CNR No: TNKK04-000001-2025)

1. Madathi,

wife of Subbaiah,

2. Narayanavadivoo Subbiah,

wife of Muthaiah,

3. Manoharan Subbiah,

son of Subbiah,

4. Ganthiammal Subbiah,

wife of Kalaivannan.

...Petitioners/Plaintiffs

-VS-

1. Mrs. Kanaka,

wife of Anthony,

2. Mrs. Thirumani,

wife of Soundara Pandian,

.....Respondents/Defendants

This Petition came before this Court on 01.04.2025 for final hearing in the presence of Mr A.Gnanasekar, Advocate for the Petitioner/Plaintiff, Mr. R.Ganapathy,

Advocate for Respondents/Defendants 1 & 2. Upon hearing both sides and upon Perusing the case records, having stood over till date for consideration this Court hereby delivers the following:

ORDER

1. The Petitioners have filed the above Petition Under Order XXXIX Rule 1 & 2 and Section 151 Code of Civil Procedure, seeking an order to Temporary Injunction restraining the Respondents 1 & 2, from interfering with the Peaceful Possession and enjoyment of the Petitioners over the Petition Schedule Properties or from forcibly dispossessing the Petitioners' therefrom.

2. The Petitioners have stated that Nineteen Cents of land, Comprised in Old Sy. No. 3708, R.S.No. 966/7 Kanyakumari Village, now bifurcated at Anjugramam Village, described as Plaint 'A' & 'B' Schedule Properties. Originally belonged to the 1st Plaintiff's Husband and 2nd to 4th Plaintiffs' father late Subbiah, who purchased 9.5 cents of land, same under Sale Deed dated 04.12.1965 bearing Doc. No. 3164 of 1965 from Ganapathy and Purchased 9.5 cents of land, same under Sale Deed dated 23.06.1966 bearing Doc. No. 1956 of 1966 Kottaram Sub-Registrar Office, from Gopala Krishnan. The said Subbiah had got Revenue Records mutated in his name and was in possession and enjoyment of that Properties. The said Subbiah had died intestate on 1.08.2018, leaving behind his wife the 1st Petitioner herein and daughters the 2nd and 4th Petitioners herein and son the 3rd Petitioner herein. As such the Petition Schedule Properties devolved on the Petitioners herein.

3. Further on 4.12.2021, the Respondents, unlawfully trespassed into the Petition Schedule Properties and illegally measured the Properties. The same was timely thwarted by the 3rd Petitioner. Subsequently the Respondents have created encumbrance over the Petition Schedule Properties i.e. the 1st Respondent executed Release Deed bearing Doc. No. 1725 of 2021 dated 07.04.2021, in favour of the 2nd Respondent. The Petitioners came to know about the said Release Deed only on 24.12.2021. The said Release Deed, do not create any Right over the Petition

Schedule Properties. On 27.12.2021, the 3rd Petitioner, gave Complaint against the Respondents before the District Crime Branch, Nagercoil. Hence F.I.R. in Crime No. 29 of 2023 was registered on 26.04.2023. The Police have also filed Final Report on 13.07.2023 before Judicial Magistrar No. I, Nagercoil.

4. On 18.12.2024, the Respondents attempted to dispossess the Petitioners from the Petition Schedule Properties. The unlawful attempts of Respondents 1 & 2 was prevented. The Respondents may at any time, enter the Petition Schedule Property unlawfully and commit Mischief and dispossess the Petitioners by Vandalism and Manpower. The Petitioners have stated that they have Prima Facie Case, Balance of Convenience, is in their favour and also stated that, if Interim Injunction is not granted, they will be put to irreparable Injury.

5. The Respondents have filed Counter, stating that the Petition is not maintainable as per Law and Facts. The Property described in the Petition and the Property stated to have been purchased by the Petitioners' Kartha are different. The Petitioners have claimed that the Property purchased by their Kartha is Nineteen Cents. However in Sy. No. 956/7, Anjugramam Village, an extent of 22.23 cents is available as Per Patta No. 12569. The Petition Property belongs to the 1st Respondent alone. The Property Description in the documents, standing in the name of Petitioners' Kartha and the 1st Respondent's Property, do not tally with extent, linear measurements, as well as boundary.

6. In the Sale Deed of the year 1965, the Eastern Boundary is mentioned as the remaining Property retained by the Vendor. However in the Sale Deed of the year 1966, the property purchased therein, is said to be bounded on the East of the Property Purchased in the 1965 year Sale Deed document. The Vendors in both the Sale Deeds are not the same. The Village described in the Petition is not mentioned in those Sale Deeds. In the Petitioners' title deed, it is recited that the Survey Number 3708 consist of 5 Acre and 67 Cents. Old Sy. No. 3708 now Co-Relates to Sy. Nos. 955 & 956. The Petitioners have filed the above suit, in view of Previous Enmity against the Respondents. The Petitioners have not filed Patta, in favour of their

Kartha. Even as per Petitioners' document, they are estopped from claiming the suit relief.

7. The Petition Schedule Property belongs to the 1st Respondent's father Ganapathy Vathiyar. Upon his demise, it devolved on his Legal Heirs. As per Release Deed, the Petition Schedule Properties and other Properties, absolutely belonged to the 1st Respondent. Since the Petitioners' have not permitted the 1st Respondent's father, to live in the village, he migrated to Thirunelveli District, Radhapuram Taluk, during the year 1964 and was living there, until his demise. The 1st Respondent had applied to the Revenue Authorities, to find out the Survey Number, of the Property belonging to her and attempted to measure the land.

8. The Petitioners having apprehended that the 1st Respondent will sell away the Property, had prevented measuring the Property. The 1st Respondent filed Writ Petition and came to measure the Property, through Surveyor with Police help. The 3rd Petitioner prevented the same. The Hon'ble High Court had passed detailed order. The Petitioners' Review Petition was dismissed. The Petitioners have suppressed the Writ Petition and the Tahsildar Enquiry and filed the above suit, with unclean hands. The alleged incident dated 04.12.2021 is false. As per the Correlation Certificate filed by the Petitioners, the Old Sy. No. 3708, do not Correlate to Re.Sy. No. 956/7. In the Encumbrance Certificate, pertaining to the Period Covering from 1963 to 1974, the Petitioners' Title deed is not reflected.

9. The above suit, without seeking Declaratory Relief is not maintainable. The 3rd and 4th Defendants are not necessary Parties to the suit. If Interim Injunction is granted, the Respondents will be put to irreparable injury. The above suit has been filed with malafide intent of grabbing the 1st Respondent's Property. Hence the Respondents' Prayed for dismissal of the above Petition.

10. The Point for Consideration is whether the above Petition is liable to be allowed or not ?

11. The Petitioner exhibited Ex. P1 to P11. The Respondents exhibited Ex. R1 to R16. The Petitioners have exhibited the Certified Copies of the Sale Deeds in

favour of Subbaiah. Kist Receipt in favour of Subbaiah. The Death Certificate and Legalheirship Certificate of Subbaiah. The Complaint given against the Respondent and the FIR registered in pursuant to it and the Final Report filed therein, after Investigation, as well as the Encumbrance Certificate. In Ex. R7, the Hon'ble Madras High Court, Madurai Bench by Oder dated 22.07.2024 made in W.P.(MD). No. 16458 of 2024, had held that the said Order was passed in the Admission Stage itself . The Hon'ble High Court had held that the objector could move the Civil Court and obtain Injunction. That apart, after Completion of Survey, only Survey Stone Could be installed. However the survey and demarcation undertaken, pursuant to the direction passed therein, can never result, in dispossession of any Party. As such Prima Case of the Petitioners' could be independently adjudicated in the above Petition.

12. Though Ex. P1, P2 Sale Deeds are of the year 1965 and 1966, the Petitioners have not produced it's Original to claim the legal presumption eligible for thirty years old documents. With regards to the Death Certificate, Legalheirship Certificate and Enjoyment Certificate Appended with Ex P7 Release Deed, in favour of the 1st Respondent, the Petitioners have lodged Ex. P8 Complaint, Ex. P9 FIR has been registered and Ex. P11 Final Report has been filed. Even in Ex. R10 Order, the Tahsildar had recorded the Petitioners' objection to the Respondents' Release Deed on that ground. The Respondents have not exhibited their Release Deed. That apart the Respondent have pleaded that, in order to trace out the property, which they are entitled to, they have applied for Survey. The same gives inference that the Respondents are not in possession of the Petition Schedule Property. The Respondents further pleadings that the Respondents' Ancestor Ganapathy Vathiyaar was not allowed to reside in that village and that he migrated to Radhapuram Taluk and lived there, until his last breath from the year 1964, also gives Prima Facie Inference that the Respondents or their ancestors are not in possession of the Petition Schedule Properties.

13. Though the Respondents have filed the Settlement 'A' Register Extract and Patta, Field Measurement Sketch, since the Petitioner had Prima Facie established

that the Petitioner their Predecessor Subbaiah had got Sale Deed in his favour even during the year 1965 and 1966 and that the mutation in favour of the Respondents are recent one and that the Respondents' pleadings as to migration about six decades, corroborates the Petitioners' case of enjoyment and possession over the Petition Schedule property. The Respondents' further contention is that the extent of the property, as per Revenue Records, is more than the Petitioners' claim of nineteen cents. It is needless to mention that Patta is a document, denoting the Person, who is liable to pay Kist. As such, in so far as, the above suit is concerned, this Court has to be adjudicate, whether the Petitioner is entitled for the Petition Relief, in respect of Petition Schedule Property. As the Respondents are not even aware of the lie of the property, over which they claim right, if interim injunction, is granted, they won't be made to suffer any loss. Hence Balance of Convenience is also in favour of the Petitioners.

14. Since the Respondents' act of surveying the Property should not amount to dispossessing the Petitioners, who are in possession of the Petition Schedule Property, as observed by the Hon'ble High Court, if the Respondents dispossess the Petitioners by indulging in Vandalism, the loss, hardship and inconvenience to which the Petitioners would be put to could not be compensated in terms of money. Hence this Court is of the Opinion that the Petitioners have made out Prima Facie Case, Balance of Convenience and Irreparable Injury and that the Petitioner is entitled for the Petition Relief.

In the Result, the above Petition is allowed.

The Respondents shall pay the Petitioners' Cost.

Dictated to the Typist, and typed by him, corrected and pronounced by me, in Open Court this, the 29th day of April, 2025.

I Additional District Munsif,
Nagercoil.

Petitioner side witnesses : Nil

Petitioner side documents :

Ex.No	Date	Nature of document
Ex.P1	04.12.1965	Sale Deed bearing Doc. No. 3164 of 1965
Ex.P2	23.06.1966	Sale Deed bearing Doc. No.1956 of 1966
Ex.P3	14.11.2000	Kist Receipt for Fasali 1410 infavour of Subbiah Vadhirri
Ex.P4	01.08.2018	Death Certificate of Subbiah
Ex.P5	03.11.2024	Legal Heirs Certificate of Subbiah
Ex.P6	02.12.2024	Correlation Certificate
Ex.P7	07.04.2021	Release Deed bearing Doc. No. 1725 of 2021 in executed by 1 st Respondent in favour of 2 nd Respondent
Ex.P8	27.12.2021	3 rd Petitioner Complaint to Superintendent of Police
Ex.P9	26.04.2023	FIR in Crime No.29 of 2023 DCB, Kanyakumari
Ex.P10	13.07.2023	Final Report FR-80/2023
Ex.P11	01.01.2021 to 20.08.2021	Encumbrance Certificate

Respondent side witnesses : Nil

Respondent side documents :

Ex.No	Date	Nature of document
Ex.R1	01.01.1960 to 31.12.1974	Encumbrance Certificate
Ex.R2	16.05.2024	Kist Receipt for Pasaly 1433
Ex.R3	17.05.2024	Correlation Certificate

Ex.R4	18.05.2024	Acknowledgement for demarcation Application
Ex.R5	27.06.2024	Affidavit & Petition in writ Petition
Ex.R6	-	Settlement 'A' Register Extract
Ex.R7	22.07.2024	Order in WP(MD).No.16458 of 2024
Ex.R8	21.08.2024	Acknowledgement for demarcation Application
Ex.R9	23.09.2024	Notice issued by Tahsildar, Agastheeswaram
Ex.R10	11.11.2024	Communication by Tahsildar, Agastheeswaram
Ex.R11	24.02.2025	Kist Receipt for Fasali 1434
Ex.R12	-	Field Measurement Sketch, pertaining to Survey No.955
Ex.R13	-	Field Measurement Sketch pertaining to Survey No.956
Ex.R14	-	10(1) Patta 12569 in the name of 2 nd Petitioner
Ex.R15	-	10(1) Patta 1529 in the name of 2 nd Petitioner
Ex.R16	18.09.2024	Review Application filed by the Petitioner

I Additional District Munsif,
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Draft/Fair Order
I.A.No.3/2025 in
O.S.No.4/2025
Date: 29.04.2025
I ADM, Nagercoil