

**IN THE COURT OF THE PRINCIPAL DISTRICT MUNSIF,
NAGERCOIL.**

Present : Tmt. M.Alima, B.A., L.L.M.,

Principal District Munsif, Nagercoil

Wednesday, on the 16th day of April, 2025

I.A. No.2 of 2023

in

O.S. No. 93 of 2023

M. Rajesh Petitioner/Plaintiff

-VS-

T. Thangamurugan Respondent / Defendant

This petition came before me on 09.04.2025 for a final hearing in the presence of Thiru. C. Aahakesan, Advocate for the Petitioner/Plaintiff and Thiru. M. Timitilal for the Respondent / Defendant and upon hearing both sides and upon perusing the case records and having stood over for consideration, till this day, this Court delivers the following:

ORDER

The petitioner had filed the above petition under Order XXXIX Rule 1 and 2 and Section 151 of the Code of Civil Procedure, seeking to ad-interim injunction restraining the respondent / defendant, his men or agents from demolishing the building in the petition schedule property and disturbing the

peaceful possession and enjoyment of the petitioner/plaintiff over the petition schedule property till the disposal of the suit.

2) Gist of Averments in the Petitioner's Petitions:

The petitioner is the plaintiff in the above suit. The petitioner/plaintiff had filed the suit for permanent injunction. The petition schedule property and other adjacent properties in Re.Sy.No.Q1/88 of Nagercoil North Village having an extent of 1.250 cents of property with building originally belonged to one Mr. Thankappan, who is the petitioner's grandfather. The said Thankappan had four sons namely T. Rajan, T. Murugan, T. Krishnan and T. Maharajan. On 08.12.2006, the said Thankappan executed a settlement in favour of his four sons and equally divided the whole property as 136 square feet each for his four sons. After that the four sons of the said Thankappan were in possession and enjoyment over their respective share without any hindrance. The said property of 1.250 cents were divided into four and the northern portion of 136 sq. feet was allotted to T. Maharajan, next portion of 136 sq.feet. allotted to T. Krishnan, next to that of 136 sq. feet allotted to T. Murugan and the southern plot was allotted to T. Rajan. On the eastern side of the entire property a pathway of 3 feet width was put up till the portion of T. Maharajan. On 08.09.2010, T. Rajan one of the sons of Thankappan sold his share (southern portion) to his brother T. Krishnan. Subsequently, the said T. Krishnan sold the

said share purchased by him to his brother T. Murugan i.e. petitioner's father on 18.08.2014. The said T. Murugan took possession over the property and he was in exclusive possession and enjoyment of the said property. Subsequently, on 06.10.2020, the above said T. Krishnan sold his property of 136 square feet of share allotted by his father Thankappan as per a settlement to petitioner for valid consideration. That property is the petition schedule property. After that petitioner took possession over the petition schedule property and enjoying the property and the building therein bearing NMC.No.32 by paying Municipal Tax, Electricity Bill and Water supply to the Government. The petitioner/plaintiff's father T. Murugan also transferred his rights over the adjacent properties to the petitioner on 13.02.2021, under a settlement. Now, the petitioner was in absolute possession and enjoyment over the petition schedule property as well as the other properties. The defendant is an unknown person and not related to petitioner. The defendant purchased northern side of the property adjacent to the petition schedule property from T. Maharajan. S/o. Thankappan. The defendant who has no semblance of right over the petition schedule property interferes with petitioner's peaceful possession and enjoyment over the petition schedule property. During the month of May 2023, the defendant demolished the building in his property for construction. The defendant purposely damaged the eastern portion of petitioner's house at the time of petitioner absence. Further, on 30.05.2023, the defendant illegally enter into the petition schedule

property and tried to damage the gate available in the petition schedule property and it was thwarted by the petitioner timely intervention. Subsequently, petitioner presented a complaint before the Kottar Police station on 01.06.2023 and it was ended in vain by the tactics of the defendant. Now, petitioner apprehended that the defendant may at any time demolish the entire building and disturb petitioner's peaceful possession and enjoyment of the plaintiff over the petition schedule property. Under the above stated circumstances, petitioner have no other way other than to beg before this court for an order of interim injunction restraining the respondent / defendant or his men or agents from demolishing the building in the petition schedule property and disturbing the peaceful possession and enjoyment of petitioner over the plaint schedule property till the disposal of the suit. Hence, the petition is to be allowed.

3) Gist of the Averments in the Respondent / defendant Counter:

The Respondent / defendant had filed a counter stating that the petition is not maintainable in law and on facts. Para 3 of the petition affidavit with regard to the date of execution of settlement deed by plaintiff's grandfather Thankappan is to be proved by the plaintiff. After the demise of the said Thangappan, his four sons namely T. Rajan, T. Murugan. T. Krishnan, T. Maharajan would succeed the property and were in enjoyment till they transferred their share to other persons. Para 4 of the petition affidavit is

admitted. Para 5 of the petition affidavit with regard to Thangappan's eldest son T. Rajan, sold his share to T. Krishnan. Subsequently, the said T. Krishnan sold the share he purchased from T. Rajan to his brother T. Murugan are admitted. So the T. Rajan has no share left. The rest are need to be proved by the petitioner. The true fact is that on 20.11.2014, the T. Krishnan sold his share to one Thenkarai Maharajan. So, the T. Krishnan and T. Rajan have no share left, Further, the youngest son of Thangappan namely T. Maharajan sold away his northern share to the Respondent/Defendant's wife Rajeswari on 20.10.2016. So, the T. Krishnan, T. Rajan and T. Maharajan have no share left. Thereafter, the said purchaser Thenkarai Maharaj sold away the same property to the respondent/defendant on 17.06.2015. On 29.09.2016, the Thangappan's another son T. Murugan, i.e., petitioner / plaintiff's father entered an agreement with respondent / defendant's wife Rajeswari to sell away his share as well as the share he purchased from T. Krishnan (T. Rajan sold to T. Krishnan) for the value of Rs.12,00,000/- On that agreement Rs.2,50,000/ paid on 29.09.2016, Rs.50,000/- was paid on 03.11.2016, Rs.2,00,000/- paid on 27.02.2017. Rs.4,00,000/- paid on 26.10.2017 and finally Rs.3,00,000/- paid on 30.10.2017 and get sale deed from the T. Murugan, the father of the petitioner / plaintiff. So, now children of late. Thangappan i.e. T. Murugan, T. Krishnan, T. Rajan and T. Maharajan have no share left in their father's property in R.S.No.Q1/88 of Nagercoil North Village. Now, the respondent/defendant and his wife Rajeswari

are the owners of the 1.250 cents property on R.S.No.Q1/88 of Nagercoil North Village. The said T. Krishnan sold his share of property to one Thenkarai Maharajan on 20.11.2014. Further, the Thenkarai Maharajan sold the same property to the respondent /defendant on 17.06.2015. In these circumstances the sale deed dated 06.10.2020 enclosed as Sl.No.1 in the list of documents is a manufactured one and no doubt it is a handy work of the petitioner / plaintiff. Further the T. Krishnan is not a party to the petition as well as the suit. To ascertain the real things about the Plaint Schedule Property as well as the documents manufactured by the petitioner / plaintiff, the said T. Krishnan and his buyer Thenkarai Maharajan are a necessary and unavoidable party to this petition as well as the suit. Without adding the said T. Krishnan and Thenkarai Maharajan as a party in the petition as well as the suit, there cannot be proper adjudication. Since, the petitioner /plaintiff's father T. Murugan entered an agreement with respondent / defendant's wife Rajeswari to sell away his share as well as the share he purchased from T. Krishnan (T. Rajan sold to T. Krishnan) for the value of Rs.12,00,000/- on 29.09.2016. Finally on 30.10.2017 he executed sale deed in favour of respondent/defendant's wife Rajeswari after receiving full payment. Therefore, the said T. Murugan is also a necessary party to dispose the petition fairly. Since the respondent / defendant and his wife Rajeswari are the absolute owners in possession over the entire 1.250 cents of property in R.S.No.Q1/88 of Nagercoil North Village, the present

petitioner / plaintiff has no right to seek interim injunction against this respondent / defendant. On 30.05.2023, the respondent / defendant while doing maintenance in the property, the petitioner / plaintiff along with some evil men assaulted and threatened the respondent defendant and demanded money. The respondent defendant filed a complaint before the Kottar Police Station. Only to escape from the criminal actions, the petitioner / plaintiff filed this false and frivolous suit. The petition is liable to be dismissed with cost.

4. The point for consideration is whether the above petition has to be allowed or not?

5. Point:

Petitioner side enquiry heard, the respondent side enquiry has been closed by this court on 09.04.2025. No documents were marked.

6) The original suit was filed by the petitioner for permanent injunction restraining the defendant from disturbing the peaceful possession and enjoyment of the plaintiff over the plaint schedule property in any manner and directing the defendant to pay a compensation of Rs.50,000/- for the damage caused to the plaintiff and cost of the suit.

7) Admittedly, the petition schedule property and other adjacent properties in Re.Sy.No.Q1/88 of Nagercoil North Village having an extent of 1.250 cents of property with building originally belonged to one Mr.

Thankappan, who is the petitioner's grandfather. The said Thankappan had four sons namely T. Rajan, T. Murugan, T. Krishnan and T. Maharajan. The said property of 1.250 cents were divided into four and the northern portion of 136 sq. feet was allotted to T. Maharajan, next portion of 136 sq. feet. allotted to T. Krishnan, next to that of 136 sq. feet allotted to T. Murugan and the southern plot was allotted to T. Rajan. Thangappan's elderest son T. Rajan, sold his share to T. Krishnan. Subsequently, the said T. Krishnan sold the share he purchased from T. Rajan to his brother T. Murugan.

8) The main contention of the respondent is that the respondent/defendant and his wife Rajeswari are the owners of the 1.250 cents property on R.S.No.Q1/88 of Nagercoil North Village. The said T. Krishnan sold his share of property to one Thenkarai Maharajan on 20.11.2014. Further, the Thenkarai Maharajan sold the same property to the respondent /defendant on 17.06.2015. In these circumstances the sale deed dated 06.10.2020 enclosed as Sl.No.1 in the list of documents is a manufactured one and no doubt it is a handy work of the petitioner / plaintiff. Further the T. Krishnan is not a party to the petition as well as the suit. To ascertain the real things about the Plaint Schedule Property as well as the documents manufactured by the petitioner / plaintiff, the said T. Krishnan and his buyer Thenkarai Maharajan are a necessary and unavoidable party to this petition as well as the suit. Without adding the said T. Krishnan and Thenkarai Maharajan as a party in the petition as well as the suit,

there cannot be proper adjudication. Since, the petitioner /plaintiff's father T. Murugan entered an agreement with respondent / defendant's wife Rajeswari to sell away his share as well as the share he purchased from T. Krishnan (T. Rajan sold to T. Krishnan) for the value of Rs.12,00,000/- on 29.09.2016. Finally on 30.10.2017 he executed sale deed in favour of respondent/defendant's wife Rajeswari after receiving full payment. Therefore, the said T. Murugan is also a necessary party to dispose the petition fairly. Since the respondent / defendant and his wife Rajeswari are the absolute owners in possession over the entire 1.250 cents of property in R.S.No.Q1/88 of Nagercoil North Village, the present petitioner / plaintiff has no right to seek interim injunction against this respondent /defendant.

9) Since the respondent/defendant did not appear for enquiry despite being given sufficient opportunity, the respondent's enquiry has been closed by this court on 09.04.2025.

10) After the completion of the trial, this court will decide:

- i) Whether on 08.12.2006, Thankappan executed a settlement in favor of his four sons?
- ii) Whether on 06.10.2020, T. Krishnan sold his property share of 136 square feet (allotted by his father

Thankappan as per settlement) to the petitioner for valid consideration?

- iii) Whether T. Murugan also transferred his rights over the adjacent properties to the petitioner on 13.02.2021 under a settlement?
- iv) Whether the petitioner was in absolute possession and enjoyment of the petition schedule property as well as the other properties?
- v) Whether the defendant purposely damaged the eastern portion of petitioner's house during the petitioner's absence?
- vi) Whether Thenkarai Maharajan sold the property to the respondent/defendant on 17.06.2015?
- vii) Whether on 30.10.2017, T. Murugan executed sale deed in favour of respondent/defendant's wife Rajeswari after receiving full payment?
- viii) Whether T. Krishnan, Thenkarai Maharajan and T. Murugan are necessary parties in this suit?

- ix) Whether the respondent/defendant and his wife Rajeswari are the absolute owners in possession of the entire 1.250 cents of property in R.S.No.Q1/88?
- x) Whether the plaintiff has no cause of action to file the suit?

11) The suit is in its preliminary stages. The petitioner and respondent have the option of proving their case at the time of evidence.

12) Granting the relief sought in the petition to the petitioner at this early stage, when no decision has been made as to the above-mentioned issues, would cause great hardship and loss to the respondent/defendant. The petitioner/plaintiff has failed to prove his prima facie case.

13) Moreover, the petitioner/plaintiff is not entitled to seek the main relief as interim relief in this petition. In these circumstances, the petitioner is not entitled to get any relief in this petition. Hence, this court is inclined to dismiss this petition.

14) As a result, this petition is dismissed without cost.

Dictated to the Typist, and typed by her directly in the Computer,
corrected and pronounced by me, in open court this, the 16th day of April 2025.

Principal District Munsif,
Nagercoil

Petitioner side witnesses and documents : Nil.

Respondent side witnesses and documents : Nil.

Principal District Munsif,
Nagercoil.

Fair/ Draft Order
I.A.No.2 of 2023 in
O.S.No.93 of 2023
Date: 16.04.2025.
PDM, Nagercoil.