

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

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

I Additional District Munsif, Nagercoil.

Wednesday on the 14th day of August, 2024.

I.A. No. 1 of 2022 in O.S. No. 156 of 2022

Mrs. Meena Lakshmi

...Petitioner/plaintiff

-vs-

Mr.G.Swaminathan

... Respondent/Defendant

This petition came before this court on 13.08.2024 for a final hearing in the presence of Mr. M.S.Moorthy, Advocate for the Petitioners/Plaintiffs, and Mr. N.Nallasivan Pillai, Advocate for the Respondent, and petitioner side enquiry heard, respondent was not present for enquiry; hence respondent side enquiry closed on 13.08.2024 and perusing of the case records. Having stood over for consideration till this day, this court hereby delivers the following:

ORDER

The petitioner had filed the above petition under Order 39 Rule 1 and 2 and Section 151 of CPC seeking an order of ad interim injunction restraining the defendant or his men or agent or anybody claiming under him from committing waste or damage to the plaint schedule property or put up any sorts of construction therein till effecting actual partition by metes and bounds with separate possession

in any manner till the disposal of the suit on merits and thus rendering justice.

1. Gist of Averments in the Petition :

The petitioner/plaintiff had stated that the petitioner has filed this suit for declaration, permanent injunction, and other reliefs. The plaint schedule property originally belonged to one Meenakshi Sundaram Pillai S/o Subbiah Pillai of Eraviputhoor, and he was in possession and enjoyment of the plaint schedule property. The patta chitta and other government records stand in his name. The said Meenakshi Sundaram Pillai and his wife Meenakshi died intestate, leaving behind their 3 sons, namely Hariharan, Arumugan and Murugesan, and 2 daughters, namely Chitra and Kandhimathi, as their legal heirs. The above said 5 legal heirs of deceased Meenakshi Sundaram Pillai and Meenakshi had jointly inherited and derived the title, possession, and enjoyment of the plaint schedule property as co-sharers and co-owners. Each legal heir was equally entitled to get 1/5th share over the plaint schedule property, but they jointly possessed and enjoyed the property without any partition or demarcation by metes and bounds and had separate possession over the property. Subsequently on 27.10.2010, the defendant had purchased undivided 2/5th share over the plaint schedule from 2 of the legal heirs of deceased Meenakshi Sundaram Pillai, namely Chitra and Hariharan, by virtue of Registered Sale deed No.4408/2010 dated 27.10.2010. The Defendant had purchased only an undivided 2/5th share out of 5 share from the legal heirs and rest of 3/5th share has been with the other 3 legal heirs. As such the defendant became the co-owner of the plaint schedule undivided property with

other 3 legal heirs, with joint possession and enjoyment over the same. While so on 24.01.2022 petitioner purchased rest of the undivided 3/5th share from the other 3 legal heirs namely Kandhimathi, Arumugam and Murugesan by virtue of the sale deed No. 337/2022 dated 24.01.2022 before the Edalakudy Sub Registrar's Office. In pursuance of the sale, petitioner effected mutation and obtained patta in my favour and also effected name transfer in respect of the house building bearing No.4/28 of Eraviputhoor Panchayat. The patta, chitta, other revenue records, Panchayath records are stands in the name of me in respect of her 3/5th undivided share over the land and buildings. The plaint schedule is bounded on the east of my another property is situated on the west and defendant's another property is situated on the East. So they purchased their respective portion from the legal heirs of Meenakshi Sundaram Pillai with the intention to merge their property for their better and beneficial enjoyments. As such, my 3/5th share can be merged with the petitioner's property on the west, and the defendant's 2/5th share can be merged with his property on the east amicably with metes and bounds. The defendant being the paternal uncle of the plaintiff's husband, petitioner and my husband informed the matter to the defendant before and after sale and requested to effect metes and bounds as per the sale deed of both parties. But the defendant acted indifferently and got on enimical terms with the plaintiff and her husband. Immediately on the next day on 25.01.2022 the defendant lodged the police complaint against me, but on enquiry the police warned the defendant for his false

and fraudulent police complaint. Subsequently on 04.02.2022, the defendant filed a false and frivolous suit as O.S.No.30/2022 on the file of 1st Additional District Munsiff Court, Nagercoil, against the petitioner and petitioner's vendors, seeking relief of specific performance of contract and also to declare the sale deed of the plaintiff is null and void. Petitioner also filed a petition to reject the plaint in O.S.No.30/2022. The copy of plaint and the copy of the petition rejecting the plaint are produced herewith. The plaint schedule property was originally belonged to Meenakshi Sundaram Pillai and he died intestate leaving behind 5 legal heirs which is admitted by the both the parties. The defendant purchased undivided 2/5th share and the petitioner purchased undivided 3/5th share are also admitted facts. As such, petitioner and defendant are co-owners and co-sharers, and properties are not divided by metes and bounds partitioned by me and defendant or their vendors. Hence the property is liable to be partitioned by metes and bounds with separate possession. All the efforts taken by me for amicable partition by metes and bounds and separate possession went in vain. Petitioner is entitled to get partition of her 3/5th share over the plaint schedule land with buildings by metes and bounds with separate possession. The defendant is doing all sorts of nuisance to me and also committing waste and damage to the plaint scheduled property. Further making arrangements to put up construction of building within the plaint schedule property without effecting actual partition. The defendant has no manner of right to commit waste or damage to the plaint

schedule property or put up any sorts of construction therein still effecting partition by metes and bounds. But the defendant is a political man having money and muscle power and may do any sorts of illegal attempts at any point of time. Hence the defendant shall be restrained by a decree of permanent injunction imperatively. In the above circumstances, it is most humbly prayed that this Honourable Court may be pleased to grant a decree for partition and separate possession of my 3/5th share over the plaint schedule property by metes and bounds. Further decree for permanent injunction restraining the defendant or his men or agent or anybody claiming under him from committing waste or damage to the plaint schedule property or put up any sorts of construction therein till effecting actual partition by metes and bounds with separate possession. Under the above stated circumstances, it is highly necessary and proper that an order of injunction has to be granted by this court restraining the respondent/defendant or his men or agent or anybody claiming under him from committing waste or damage to the plaint schedule property or put up any sorts of construction therein till effecting actual partition by metes and bounds with separate possession, till the disposal of the suit. A petition for the said relief of injunction is filed herewith and that may be allowed in the interest of justice, equity, and good conscience. If an injunction is not granted, the petitioner will be put to irreparable loss and damage, and my rights will be seriously prejudiced. Petitioner have a prima facie case in my favour and the balance of convenience is also in favour of granting the injunction order. Hence the petitioner prays that to allow this petition.

2. Gist of Averments in the counter filed by the Respondent :

The respondent/defendant adopted the written statement in the main suit as counter to this I.A.No.1 of 2022. The respondent/defendant had stated that the averments made in Paragraph 1 of the plaint are not fully correct and thereby denied by this defendant. There was no document in the name of late. Meenakshi Sundaram Pillai. Patta alone is available in the name of late. Meenakshi Sundaram Pillai. As per the patta, he had remitted revenue tax and house tax in his name upto 09.06.1995. After the demise of late. Meenakshi Sundaram Pillai his wife Meenakshi also expired on 08.12.2009. So all the legal heirs of late. Meenakshi Sundaram Pillai including the husband of Mrs. Karpagam had handed over the possession of 1 ¼ cents of land with this defendant and this defendant is in actual enjoyment and possession of over the land in Re.Survey No. 430/15 of Eraviputhoor Village in Agastheeswaram Taluk. There after this defendant had remitted the revenue tax and house tax in the name of late. Meenakshi Sundaram Pillai. The averment made in para 2 of the plaint is strictly to be proved by the plaintiff. No mutations were made in the name of the legal heirs of late. Meenakshi Sundaram Pillai. They never enjoyed the property after the demise of late. Meenakshi. This defendant is enjoying the property immediately after the demise of late. Meenakshi after the legal heirs of late. Meenakshi Sundaram Pillai had handed over to the property by rearing cattles in the debriessed mud house bearing door number 4/28 of Eraviputhoor Village Panchayat. The averment made in para 3 of the plaint is not fully correct and there by denied by this

defendant. It is true that this defendant has purchased 2 shares from the daughter of Meenakshi Sundaram Pillai by name Chitra and also the son of late. Meenakshi Sundaram Pillai by name Hariharan, after obtaining the sale consideration through Edalakudy Sub Register Office vide document number 4408 dated 27.10.2010 bounded with கிழக்கு-தாங்கள் சொத்து, தெற்கு-முடுக்கு, மேற்கு-தாணப்பன் சொத்து, வடக்கு இளங்கோவன் சொத்து, so as per the sale deed also this defendant is in actual possession and enjoyment of ½ cents along with the 1 ¼ cents of land is Re-survey number 430/15 of Eraviputhoor Village. The other legal heirs were not in possession and enjoyment of the property as stated by the plaintiff. Immediately after the purchase of undivided shares of property from Chitra and Hariharan, the other legal heirs of late. Meenakshi Sundaram Pillai made their willingness to execute the sale deed with this defendant. As per their willingness, Mr. Ramalingam Pillai, the husband of R. Kanthimathi, came over to Eraviputhoor on 29.11.2010 and agreed to sell the rest of the property with the defendant for a total sum of Rs.21,000/- (Twenty One Thousand). So out of the total sale consideration of Rs.21,000/- (Twenty One Thousand) the husband of Mrs. Kanthimathi by name Mr. Ramalingam Pillai, had received a sum of Rs. 10,000/- (Ten Thousand) as advance amount from this defendant at the Milk Society Marungoor in front of one Chithambaram son of Ganesan (residing at 107, New State Bank Colony, Nagercoil) and assured that the sale deed will be executed within six months after receiving the balance sale consideration of Rs.

11,000/- from this defendant by Kanthimathi, Arumugam and Murugesen, Immediately after the oral sale agreement on 29.11.2010 this defendant contacted Ramalingam Pillai the husband of Kanthimathi for the execution of sale deed in favour of this defendant the same was postponed because the Murugesan became mentally retarded. Further he assured that the sale deed executed immediately Murugesan recovered from his illness. In the meantime the old dilapidated and debrished mud building and also the southern wall of 1 ¼ cents of property in Re.sy.No. 430/15 fell down due to rain. So as per the oral sale agreement made on 29.11.2010 and also on the strength of ½ cents of land purchased from Chitra and Hariharan and also the actual possession and enjoyment of the property this defendant constructed the fallen down southern wall of the land and also laid flooring and painting valuable trees enjoying the property without interruption by any body. Further the oral sale agreement was renewed periodically and finally it was renewed on 29.10.2021. Even today the entire property of 1 ¼ cents of land is in actual possession and enjoyment of this defendant. Regarding the averment made in para 4 of the plaint is concerned this defendant had already filed a suit as O.S.No.30 of 2022 on 04.02.2022 to declare the sale deed in favour of the plaintiff as null and void with other reliefs. In which this plaintiff is the 4th defendant in that suit. The other legal heirs of late. Meenakshi Sundaram Pillai had no tight to execute the sale deed with respect to 3/5 shares because already the oral sale agreement was made and an advance money of Rs. 10,000/- (Ten Thousand) was

received from this defendant. Further one Karpagam had signed the sale deed as curator on behalf of Murugesan the mentally retarded person, the son of late. Meenakshi Sundaram Pillai. No valid certificate was obtained by Mrs. Karpagam through the court of law having jurisdiction to dispose the property of mentally retarded person Murugesan. So without a valid any legal permission from the Honourable Principal District Court Kanniyakumari at Nagercoil the sale deed executed by the other legal heirs vide document No. 337 of 2022 dated 24.01.2022 is a void document. So as per the void document the mutations if any made by influencing the Revenue officials by the plaintiff was not bind this defendant also. Further there was no building now available in Re.Sy.No. 430/15 of Eraviputhoor Village. The plaintiff influenced the Panchayat President and fraudulently obtained the House Tax receipt without the building in existance. Having known the fact of fraudulent house tax receipt after the filing of this suit, this defendant sent notice to the Panchayat President Eraviputhoor Village Panchayat on 22.12.2022 to cancel the tax receipt in the name of the plaintiff. The Copy of notice and the acknowledgement card with postal receipt are also filed along with the respondent/defendant adopted the written statement in the main suit as counter to this I.A.No.1 of 2022. The respondent/defendant had stated that the averments made in Paragraph 1 of the plaint are not fully correct and thereby denied by this defendant. There was no document in the name of late. Meenakshi Sundaram Pillai. Patta alone is available in the name of late. Meenakshi Sundaram Pillai. As per the patta, he had remitted revenue tax and house tax in his name upto

09.06.1995. After the demise of late. Meenakshi Sundaram Pillai his wife Meenakshi also expired on 08.12.2009. So all the legal heirs of late. Meenakshi Sundaram Pillai including the husband of Mrs. Karpagam had handed over the possession of 1 ¼ cents of land with this defendant and this defendant is in actual enjoyment and possession of over the land in Re.Survey No. 430/15 of Eraviputhoor Village in Agastheeswaram Taluk. There after this defendant had remitted the revenue tax and house tax in the name of late. Meenakshi Sundaram Pillai. The averment made in para 2 of the plaint is strictly to be proved by the plaintiff. No mutations were made in the name of the legal heirs of late. Meenakshi Sundaram Pillai. They never enjoyed the property after the demise of late. Meenakshi. This defendant is enjoying the property immediately after the demise of late. Meenakshi after the legal heirs of late. Meenakshi Sundaram Pillai had handed over to the property by rearing cattles in the debriessed mud house bearing door number 4/28 of Eraviputhoor Village Panchayath. The averment made in para 3 of the plaint is not fully correct and there by denied by this defendant. It is true that this defendant has purchased 2 shares from the daughter of Meenakshi Sundaram Pillai by name Chitra and also the son of late. Meenakshi Sundaram Pillai by name Hariharan, after obtaining the sale consideration through Edalakudy Sub Register Office vide document number 4408 dated 27.10.2010 bounded with கிழக்கு-தாங்கள் சொத்து, தெற்கு-முடுக்கு, மேற்கு-தாணப்பன் சொத்து, வடக்கு இளங்கோவன் சொத்து, so as per the sale deed

also this defendant is in actual possession and enjoyment of $\frac{1}{2}$ cents along with the $1\frac{1}{4}$ cents of land is Re-survey number 430/15 of Eraviputhoor Village. The other legal heirs were not in possession and enjoyment of the property as stated by the plaintiff. Immediately after the purchase of undivided shares of property from Chithra and Hariharan, the other legal heirs of late. Meenakshi Sundaram Pillai made their willingness to execute the sale deed with this defendant. As per their willingness, Mr. Ramalingam Pillai, the husband of R. Kanthimathi, came over to Eraviputhoor on 29.11.2010 and agreed to sell the rest of the property with the defendant for a total sum of Rs.21,000/- (Twenty One Thousand). So out of the total sale consideration of Rs.21,000/- (Twenty One Thousand) the husband of Mrs. Kanthimathi by name Mr.Ramalingam Pillai, had received a sum of Rs. 10,000/- (Ten Thousand) as advance amount from this defendant at the Milk Society Marungoor in front of one Chithambaram son of Ganesan (residing at 107, New State Bank Colony, Nagercoil) and assured that the sale deed will be executed within six months after receiving the balance sale consideration of Rs. 11,000/- from this defendant by Kanthimathi, Arumugam and Murugesan, Immediately after the oral sale agreement on 29.11.2010 this defendant contacted Ramalingam Pillai the husband of Kanthimathi for the execution of sale deed in favour of this defendant the same was postponed because the Murugesan became mentally retarded. Further he assured that the sale deed executed immediately Murugesan recovered from his illness. In the meantime the old dilapidated and debris mud building and also the southern wall of $1\frac{1}{4}$ cents of property in

Re.sy.No. 430/15 fell down due to rain. So as per the oral sale agreement made on 29.11.2010 and also on the strength of $\frac{1}{2}$ cents of land purchased from Chithra and Hariharan and also the actual possession and enjoyment of the property this defendant constructed the fallen down southern wall of the land and also laid flooring and painting valuable trees enjoying the property without interruption by any body. Further the oral sale agreement was renewed periodically and finally it was renewed on 29.10.2021. Even today the entire property of $1\frac{1}{4}$ cents of land is in actual possession and enjoyment of this defendant. Regarding the averment made in para 4 of the plaint is concerned this defendant had already filed a suit as O.S.No. 30 of 2022 on 04.02.2022 to declare the sale deed in favour of the plaintiff as null and void with other reliefs. In which this plaintiff is the 4th defendant in that suit. The other legal heirs of late. Meenakshi Sundaram Pillai had no right to execute the sale deed with respect to $\frac{3}{5}$ shares because already the oral sale agreement was made and an advance money of Rs. 10,000/- (Ten Thousand) was received from this defendant. Further one Karpagam had signed the sale deed as curator on behalf of Murugesan the mentally retarded person, the son of late. Meenakshi Sundaram Pillai. No valid certificate was obtained by Mrs. Karpagam through the court of law having jurisdiction to dispose the property of mentally retarded person Murugesan. So without a valid any legal permission from the Honourable Principal District Court Kanniyakumari at Nagercoil the sale deed executed by the other legal heirs vide document No. 337 of 2022 dated 24.01.2022 is a void document. So as per the void document the mutations if any made by

influencing the Revenue officials by the plaintiff was not bind this defendant also. Further there was no building now available in Re.Sy.No. 430/15 of Eraviputhoor Village. The plaintiff influenced the Panchayath President and fraudulently obtained the House Tax receipt without the building in existence. Having known the fact of fraudulent house tax receipt after the filing of this suit, this defendant sent notice to the Panchayat President Eraviputhoor Village Panchayat on 22.12.2022 to cancel the tax receipt in the name of the plaintiff. The Copy of notice and the acknowledgment card with postal receipt are also filed along with this Written Statement. The averment made in para 5 of the plaint is strictly to be proved by the plaintiff. The plaintiff's husband is one of the persons listed as "இன்னான்று நிரூபித்தவர்" in the sale deed number 4408 of 2010 of Edalakudy Sub Register Office in the name of this defendant. So the plaintiff by fully aware of the sale deed of this defendant and also possession and enjoyment is with this defendant purposely in order to harass and make hardship wantonly obtained the void sale deed in her favour. It is false frivolous and vexatious that 3/5 share is merged with her property. On the other hand the entire 1 ¼ cents land is lying adjacent to the defendant's eastern land. Since the possession is with the defendant the plaintiff admits the possession of the entire 1 ¼ cents and that is why she filed the suit for partition against this defendant. The averment made in para 6 of the plaint is not fully correct and there by denied by the defendant. It is true that the plaintiff's husband Ganesh is the son of this defendant's brother Bagavathy. Having known the fact that this defendant is in actual possession and

enjoyment of 1 ¼ cents of land in Re.Sy.No.430/15 as per the sale deed and as well as the oral sale agreement with the other legal heirs wantonly with some ulterior bad motive made the void sale deed in her favour of his wife that is the plaintiff in this case. It is false frivolous and vexatious that the plaintiff and her husband had informed the same with this defendant. This defendant had filed the suit as O.S.No. 30/2022 after the refusal made by Mr. Ramalingam Pillai on 20.01.2022 after the notices were sent on 25.01.2022 and 28.01.2022. Regarding the averment made in plaint para 7 as concerned, the plaintiff has to strictly prove the same. The plaintiff is not a co-owner, as stated by the plaintiff. The plaintiff cannot seek any relief as per the bogus and void document. The suit as framed is not proper. Without demarcation and recovery of possession, the plaintiff has no right to file the present suit also. The suit is highly vexatious and frivolous one. The averment made in paragraph 8 of the plaint is false and thereby denied by this defendant. The plaintiff is not entitled to get partition over the land. There is no building in existence from a long period. Already the debrished and dilapidated mud building fell down due to heavy rain. Regarding the other averments made in plaint para 8 to 10 as far as the defendant is concerned, the defendant has been in actual possession and enjoyment over the property for more than 15 years, no nuisances were made by this defendant, On the other hand, the plaintiff, along with her husband and his goondas, try to enter the plaint schedule property. For which police complaints were also lodged with Anjugramam Police Station due to the influence meted out by the plaintiff's husband and also due to civil nature, the

police have not taken any proper action against the plaintiff and her husband. It is false and frivolous that the defendant is a political man having influence over the police. This defendant is a retired Milk society employee. The plaintiff is having no cause of action to file the suit. The suit as framed is not proper. The court fee paid is also not proper. The suit is not maintainable in law and on facts. It lacks bonafides also. The plaintiff is not entitled to get any of the reliefs. Hence it is most humbly prayed that this Honourable Court be pleased to accept the counter and petition may be with cost and thus render justice. The averment made in para 5 of the plaint is strictly to be proved by the plaintiff. The plaintiff's husband is one of the persons listed as "இண்ணான்று நிரூபித்தவர்" in the sale deed number 4408 of 2010 of Edalakudy Sub Register Office in the name of this defendant. So the plaintiff by fully aware of the sale deed of this defendant and also possession and enjoyment is with this defendant purposely in order to harass and make hardship wantonly obtained the void sale deed in her favour. It is false frivolous and vexatious that 3/5 share is merged with her property. On the other hand the entire 1 ¼ cents land is lying adjacent to the defendant's eastern land. Since the possession is with the defendant the plaintiff admits the possession of the entire 1 ¼ cents and that is why she filed the suit for partition against this defendant. The averment made in para 6 of the plaint is not fully correct and there by denied by the defendant. It is true that the plaintiff's husband Ganesh is the son of this defendant's brother Bagavathy. Having known the fact that this defendant is in actual possession and enjoyment of 1 ¼ cents of land in Re.Sy.No.430/15 as per

the sale deed and as well as the oral sale agreement with the other legal heirs wantonly with some ulterior bad motive made the void sale deed in her favour of his wife that is the plaintiff in this case. It is false frivolous and vexatious that the plaintiff and her husband had informed the same with this defendant. This defendant had filed the suit as O.S.No. 30/2022 after the refusal made by Mr. Ramalingam Pillai on 20.01.2022 after the notices were sent on 25.01.2022 and 28.01.2022. Regarding the averment made in plaint para 7 as concerned, the plaintiff has to strictly prove the same. The plaintiff is not a co-owner, as stated by the plaintiff. The plaintiff cannot seek any relief as per the bogus and void document. The suit as framed is not proper. Without demarcation and recovery of possession, the plaintiff has no right to file the present suit also. The suit is highly vexatious and frivolous one. The averment made in paragraph 8 of the plaint is false and thereby denied by this defendant. The plaintiff is not entitled to get partition over the land. There is no building in existence from a long period. Already the debrished and dilapidated mud building fell down due to heavy rain. Regarding the other averments made in plaint para 8 to 10 as far as the defendant is concerned, the defendant has been in actual possession and enjoyment over the property for more than 15 years, no nuisances were made by this defendant, On the other hand, the plaintiff, along with her husband and his goondas, try to enter the plaint schedule property. For which police complaints were also lodged with Anjugramam Police Station due to the influence meted out by the plaintiff's husband and also due to civil nature, the police have not taken any proper action

against the plaintiff and her husband. It is false and frivolous that the defendant is a political man having influence over the police. This defendant is a retired Milk society employee. The plaintiff is having no cause of action to file the suit. The suit as framed is not proper. The court fee paid is also not proper. The suit is not maintainable in law and on facts. It lacks bonafide also. The plaintiff is not entitled to get any of the reliefs. Hence it is most humbly prayed that this Honourable Court be pleased to accept the counter and petition may be with cost and thus render justice.

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

4) Point:

Heard and perused the suit records.

5) The petitioners filed the original suit seeking a preliminary decree for partition and separate possession of plaintiff's 3/5th share over the plaint schedule property by metes and bounds. A decree for permanent injunction restraining the defendant or his men or agent or anybody claiming under him from committing waste or damage to the plaint schedule property or put up any sorts of construction therein till effecting actual partition by metes and bounds with separate possession in any manner.

6) It is an admitted fact that, the plaint schedule property originally belonged to one Meenakshi Sundaram Pillai S/o Subbiah Pillai of Eraviputhoor, and he was in possession and enjoyment of the plaint schedule property. The patta

stand in his name. The said Meenakshi Sundaram Pillai and his wife Meenakshi died intestate, leaving behind their 3 sons, namely Hariharan, Arumugan and Murugesan, and 2 daughters, namely Chitra and Kandhimathi, as their legal heirs. On 27.10.2010, this defendant had purchased undivided 2/5th share over the plaint schedule from 2 of the legal heirs of deceased Meenakshi Sundaram Pillai, namely Chitra and Hariharan, by virtue of Registered Sale deed No.4408/2010 dated 27.10.2010. This defendant had purchased only an undivided 2/5th share out of 5 share from the legal heirs. On 24.01.2022 petitioner purchased rest of the undivided 3/5th share from the other 3 legal heirs namely Kandhimathi, Arumugam and Murugesan by virtue of the sale deed No. 337/2022 dated 24.01.2022 before the Edalakydy Sub Registrar's Office. The defendant filed a suit as O.S.No.30/2022 on the file of 1st Additional District Munsiff Court, Nagercoil, against the petitioner and petitioner's vendors, seeking relief of specific performance of contract and also to declare the sale deed of the plaintiff is null and void. This petitioner also filed a petition to reject the plaint in O.S.No.30/2022.

7) The main contention of the petitioner is that the petitioner and respondent are co-owners and co-sharers, and properties are not divided by metes and bounds partitioned by me and defendant or their vendors. Hence the property is liable to be partitioned by metes and bounds with separate possession. Petitioner is entitled to get partition of her 3/5th share over the plaint schedule land with buildings by metes and bounds with separate possession. The defendant is doing all sorts of

nuisance to me and also committing waste and damage to the plaint scheduled property. Further making arrangements to put up construction of building within the plaint schedule property without effecting actual partition. The defendant has no manner of right to commit waste or damage to the plaint schedule property or put up any sorts of construction therein still effecting partition by metes and bounds. But the defendant is a political man having money and muscle power and may do any sorts of illegal attempts at any point of time. Hence, this petition is to be allowed.

8) The main contention of respondent is that as per the sale deed stands in the name of respondent and he is in actual possession and enjoyment of $\frac{1}{2}$ cents along with the $1\frac{1}{4}$ cents of land is Re-survey number 430/15 of Eraviputhoor Village. The other legal heirs were not in possession and enjoyment of the property as stated by the plaintiff. Immediately after the purchase of undivided shares of property from Chithra and Hariharan, the other legal heirs of late. Meenakshi Sundaram Pillai made their willingness to execute the sale deed with this defendant. As per their willingness, Mr. Ramalingam Pillai, the husband of R. Kanthimathi, came over to Eraviputhoor on 29.11.2010 and agreed to sell the rest of the property with the defendant for a total sum of Rs.21,000/- (Twenty One Thousand). So out of the total sale consideration of Rs.21,000/- (Twenty One Thousand) the husband of Mrs. Kanthimathi by name Mr.Ramalingam Pillai, had received a sum of Rs. 10,000/- (Ten Thousand) as advance amount from this defendant at the Milk Society Marungoor in front of one Chithambaram son of

Ganesan (residing at 107, New State Bank Colony, Nagercoil) and assured that the sale deed will be executed within six months after receiving the balance sale consideration of Rs. 11,000/- from this defendant by Kanthimathi, Arumugam and Murugesen, Immediately after the oral sale agreement on 29.11.2010 this defendant contacted Ramalingam Pillai the husband of Kanthimathi for the execution of sale deed in favour of this defendant the same was postponed because the Murugesan became mentally retarded. Further he assured that the sale deed executed immediately Murugesan recovered from his illness. In the meantime the old dilapidated and debris mud building and also the southern wall of 1 ¼ cents of property in Re.sy.No. 430/15 fell down due to rain. So as per the oral sale agreement made on 29.11.2010 and also on the strength of ½ cents of land purchased from Chitra and Hariharan and also the actual possession and enjoyment of the property this defendant constructed the fallen down southern wall of the land and also laid flooring and painting valuable trees enjoying the property without interruption by any body. Further the oral sale agreement was renewed periodically and finally it was renewed on 29.10.2021. Even today the entire property of 1 ¼ cents of land is in actual possession and enjoyment of this defendant. the plaintiff by fully aware of the sale deed of this defendant and also possession and enjoyment is with this defendant purposely in order to harass and make hardship wantonly obtained the void sale deed in her favour. It is false frivolous and vexatious that 3/5 share is merged with her property. On the other hand the entire 1 ¼ cents land is lying adjacent to the defendant's eastern land.

Since the possession is with the defendant the plaintiff admits the possession of the entire 1 ¼ cents and that is why she filed the suit for partition against this defendant. The plaintiff is not entitled to get any of the reliefs. Hence, the petition is to be dismissed.

9) After the completion of the trial, only this court will decide,

- i. Whether the petitioner is a co-owner?
- ii. Whether the plaintiff has no cause of action to file this suit. The alleged cause of action stated by the plaintiff is illusory?
- iii. Whether the other legal heirs of Late. Meenaskshi sundaram and Ramalingam Pillai husband of Kandhimathi, made their willingness to execute the sale deed with their undivided 3 shares of property with this respondent?
- iv. Whether the husband of Kandhimathi, came over to Eraviputhoor on 29.11.2010 and sale talk was made with this respondent, and thereby they agreed to sell and the rest of the undivided shares of property to this respondent for a total sale consideration of Rs.21,000/-?
- v. Whether the husband of Kandhimathi, had received a sum of Rs.10,000/- as an advance amount for the rest of 3 shares of land on 29.11.2010 from this respondent?
- vi. Periodically, the earlier oral sale agreement was renewed, and finally it was renewed on 29.10.2021?
- vii. Whether the respondent has been ready and willing to perform their part of the oral contract, and whether they are still ready and willing to perform his part as mentioned in the oral contract?

viii. Whether the respondent is in lawful possession over the plaint schedule property?

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

11) 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. The petitioner/plaintiff failed to prove his prima facie case.

12) In light of the above discussions and findings, this Court is of the considered view that the Petitioner has failed to establish that it has a prima facie case, the balance of convenience is in favour of the Petitioner, or that irreparable loss and hardship would be caused to the Petitioner. Hence, this Court is inclined to dismiss this petition without cost.

13) 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 14th day of August, 2024.

I Additional District Munsif,
Nagercoil.

Petitioner side witnesses and documents : Nil.

Respondent side witnesses and documents : Nil.

I Additional District Munsif,
Nagercoil.

I ADM Court, Nagercoil.
Draft/Fair Order in
I.A.No. 1/2022 in
O.S.No.156/2022
Date: 14.08.2024