

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

Present: **Thiru. R.Sundara Kamesh Marthandan, M.L.,**  
Principal District Munsif, (FAC) Nagercoil.

Monday, on this the 5<sup>th</sup> day of June 2023

**I.A. No. 4 of 2022**  
**in**  
**O.S. No. 209 of 2022**

K.Venkatesh

... Petitioner/Plaintiff

-vs-

1. Krishna Pillai

2. Malathi Maheswari

...Respondents/Defendants

This Petition came up before this Court on 15.02.2023 in the presence of Thiru.Padmasanan, Advocate for the Petitioner/Plaintiff and the Respondents/Defendants were set exparte and upon hearing the Petitioner's Counsel and upon perusing the case records and having stood over till date for Consideration, this Court delivers the following:

**ORDER**

1. The Plaintiff had filed the above petition under Order XXXIX Rule 1 and 2 CPC and Section 151 C.P.C.

2. The petitioner had stated that the Petitioner and Defendants 3 and 4 are the children of the 1<sup>st</sup> and 2<sup>nd</sup> Defendants. Further the Petitioner's grandfather Sivathanu Pillai had purchased the plaint schedule properties in the name of his wife Nagammal, as per the custom prevailing in Nanjil Nadu Makkavazhi

Vellala Community, under document dated 15.12.1955 bearing No. 3040 and 21.12.1955 bearing No. 3145.

3. Further after the demise of the said Nagammal the Plaintiff's grandfather Sivathanu Pillai was in enjoyment of the property as his family property. The said Sivathanu Pillai died on 01.12.1996. The Plaintiff was born on 15.06.1967. Nagammal was died on 12.07.1987. As such the plaint schedule properties are the ancestral properties of the Plaintiff and Defendants 1, 3 and 4. After the demise of Sivathanu Pillai, the same was succeeded by the Plaintiff and Defendants 1, 3 and 4 and they became jointly entitled to the plaint scheduled properties.

4. The other sons of Sivathanu Pillai relinquished their right. As such no partition was effected among themselves. The schedule properties are jointly enjoyed by the Plaintiff and Defendants 1, 3 and 4. As joint ownership and possession is not convenient, it does become necessary for partitioning the schedule properties. Further the 1<sup>st</sup> Defendant has no right to execute settlement in favour of the 2<sup>nd</sup> Defendant. If any such document, is executed, the same will not bind the Plaintiff.

5. The 1<sup>st</sup> and 2<sup>nd</sup> Defendants are trying to alienate the entire plaint schedule properties to defeat the Plaintiff's right. The Plaintiff is entitled for  $\frac{1}{4}$  share in the plaint schedule properties. The Plaintiff made oral demand on 09.08.2022. However the Defendants evaded partition. Hence the Petitioner had come up with the about petition seeking injunction.

6. In spite of serving notice on the Respondents, the Respondents have not appeared before this Court. Hence they were set exparte.

7. On perusal of the affidavit filed in support of the above petition, the Petitioner himself had admitted that the schedule property was purchased in the name of Nagammal, wife of Shivathanu Pillai under registered Sale Deed. The Petitioner had claimed that the said Shivathanu Pillai had purchased the said property in the name of his wife Nagammal. Further the Petitioner had sought for interim injunction against the 1<sup>st</sup> and 2<sup>nd</sup> Respondents, who are the parents and that the 1<sup>st</sup> Respondent is the son of Nagammal and Sivathanu Pillai.

8. As such the Petitioner by mentioning his date of birth and by mentioning the date of death of Nagammal and Sivathanu Pillai wanted to establish that during the life time of Nagammal and Sivathanu Pillai, he born and that he is entitled for share in the scheduled property, stating that it is ancestral property. The claim of the Petitioner is inconsistent to each other. One hand, he had pleaded that the property was purchased by Nagammal. On the other hand, he pleaded that the property is the ancestral property. In view of the said inconsistency, this Court is of the considered view that the Petitioner had not made out prima facie case.

9. In such circumstances the other requirements as to balance of convenience and irreparable injury need not be ascertained in the above petition. Further it is also not made clear as to, how the Petitioner could inherit the property directly from Nagammal, when the Petitioner's father namely the

1<sup>st</sup> Defendant is alive. Hence this Court is of the constrained view that the Petitioner is not entitled for interim injunction.

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

Dictated to the Steno Typist, and typed by her directly in computer, corrected and pronounced by me, in Open Court this, the 5<sup>th</sup> day of June, 2023.

Principal District Munsif,(FAC)  
Nagercoil.

Petitioner side witnesses and documents : Nil

Respondents side witnesses and documents : Nil

Principal District Munsif,(FAC)  
Nagercoil.

I.A. No.4 of 2022  
in  
O.S. No.209 of 2022  
Draft/Fair Order  
Date: 05.06.2023.  
PDM, Nagercoil.