

In the Court of the Principal District Judge,
Principal District Court , Kancheepuram.

PRESENT: Thiru.Pa.U.Chemmal,M.A.,LL.M.,
Principal District Judge,
Principal District Court,
Kancheepuram.

Thursday, the 13th day of June 2025

IA.No.6/2024 in O.S.21/2015

S. Meganathan

--- Petitioner/Plaintiff.

//vs//

1. S. Agalyabai
2. Anandhi
3. Premavathi
4. Shanthi
5. S. Yuvaraj

--- Respondents/Defendants.

This petition is coming on this day 06.06.2025 for final hearing before me in the presence of M/s. V. Mohan, R. Kameshwari, P. Gowtham, counsels appearing for the petitioner / Plaintiff, and Mr. V.Tamilarasu, V. Thulasi, J. Karpagam, V. Praveen, M.K. Archana, R. Kamesh, V. Srisaran, A. Sarathkumar, T.Siddharth, Counsels appearing for the 1st Respondent/Defendant and the 5th respondent appeared party in person and respondent 2 to 4 being called absent set ex parte and upon hearing the arguments of both side and upon perusal of

records and having stood over for my consideration till this day, this court delivered the following

ORDER

This petition is filed by the petitioner under Sec.151 of CPC. directing the 1st and 5th defendants to refund by court deposit of monthly rent and advance amount collected by them from tenants towards suit property premises totally sum of Rs.15,75,600/- and including collecting any rent after this application along with interest at rate of 24% p.a. and also directing the defendants not to disturb or intervene in advocate receiver duties for collecting rent, maintenance of suit premises etc.

2) **The averments found in the affidavit of the petitioner in brief are as follows:**

The petitioner is the plaintiff in the suit. The petitioner filed suit against the defendant for partition in respect of the suit property. The suit properties are ancestrally inherited by his father N. Subramani Mudaliar. The 1st defendant are constituted Hindu Joint family and jointly enjoying the property. As such the petitioner and defendants are having equal share over the suit properties.

The petitioner father Subramani Mudaliar originally had inherited ancestral lands viz. an extent of 44 cents in S.No.64/6 and 18 cents in S.NO.64/3 of No.54, Mugalivakkam Village and an extent 1840 Sq.ft. land with house thereon in Easwaran Koil Street of No.54, Mugalivakkam Village comprised in

Old R.S.No.44/1 New.No.90/22 in Mugalivakkam Village and another extent of 2058 Sq.ft Gramanatham house site at Door No.1/79 Padasalai Street, Mugalivakkam Village comprised in old R.S.No.44/1 New No.86/24 in Mugalivakkam Village. The petitioner father N. Subramani Mudaliar along with his family members viz sons and daughters were enjoyed the said properties as joint family properties still his life time which were situate within the jurisdiction of this court. All the above landed properties are ancestral properties and his father late N. Subramani Mudaliar being Kartha of the Hindu Joint family was making the same and was enjoying the income from the properties along with his sons and daughters. The properties at Mugalivakkam Village, measuring 44 cents and 18 cents an extent of 1840 Sq.ft. house site with house and another extent of 2058 Sq.ft. of house site were ancestral properties as stated above and have not been purchased by his father from and out of any his earnings. Since it was ancestral properties and had been the same all along himself and the respondents 2 to 5 became entitled to a share in the same by consequence of their birth through late N.Subaramni Mudaliar and the 1st defendant herein.

After demise of his father the petitioner and defendants are jointly enjoying the property without effect of partition. In said circumstances the 1st and 5th defendants are trying to cheat his legitimate share over the property and evading giving his share from income getting from suit property premises. Therefore the petitioner filed the suit for partition before this court. The

defendants were present but they following delaying tactics by let the suit for exparte evidence. There is three times exparte order set aside by this court. Further even after lengthiest cross examination his side evidence and case posted for defendants side evidence. But they filed various application with intend to delaying to pass decree of partition. In afore said circumstances the petitioner have no other option filed petition for appointment of receiver to collect the rent from suit property premises and maintaining the properties on behalf of court. The said receiver application allowed by this court and appointed Mr. Rajkumar, Advocate as Court Receiver and directs him to collect rent from tenants who are residing in the suit property.

The advocate receiver after get court warrant issued notice to concern parties and inspect the suit property premises and informed to tenant that they should pay rent to him as per court direction. But Subsequently the 1st and 5th defendants were threatening the tenants they should not pay rent to advocate receiver. Since 5th defendant threatens the tenants are refused to pay monthly rent to advocate receiver. Therefore Advocate Receiver has filed memo before this court for assisting police help. After memo of Advocate Receiver this court has direct the police official to co operate to advocate receiver. Even after said court direction the police official has not take any steps to execute warrant. Again the advocate receiver has filed another memo seeking direction from this court to issue letter to higher police official. Therefore this court has sent letter

to Commissioner of Police, Avadi Division. Thereafter only Mangadu Police and Iyyappanthangal Police were assisted to Advocate Receiver and on 02.02.2024 came to suit property premises and informed to all tenant stating that they should pay rent to Advocate Receiver alone. The tenants were agreed to pay rent to Advocate Receiver.

After police direction, the Advocate Commissioner visited to suit property premises on 11.02.2024 and requested the tenant to pay monthly rent for month of Jan 2024, but the tenants were misbehaved with Advocate Receiver some of them told that 5th defendant Yuvaraj has collected rent and he said there is no suit , no advocate receiver appointed, the advocate come to the premises along with duplicate police, therefore they should not pay rent to advocate receiver, further he also threaten that if tenant pay rent to advocate receiver then they could not get return back advance payment from him. On instigation of 5th defendatns the tenants were rudely behaved with Advocate Receiver. Some of tenants were written letter stating that they are giving rent to 5th defendant Yuvaraj. After rudely behaviour of some tenants the advocate receiver has feared and left premises. The Advocate Receiver has lodge complaint before the Iyyappanthangal Police Station (SRMC) on the same day, but police official refused to receive complaint further they stated that they only help to assist to Advocate Receiver alone not take any action against 5th defendant. The advocate receiver explained atrocity of 5th defendant and requested the police to enquiry

the 5th defendant Yuvaraj. But police official refused to enquire the 5th defendant. In this regards advocate received has informed aforesaid incident to petitioner and also gave copy of letter given by tenants.

In afore said circumstances the 5th defendant is very cunningly acted before this court by let him as exparte order against him and back and behind in the name of 1st defendant he is collecting rents from the tenants and he only enjoying the entire income from the suit property premises. The details of rents are as follows:

1.Suit property premises situated at Ambal Nagar

There is 7 residential portion rent collecting every month sum of Rs.8,300/- per portion and also received advance amount sum of Rs.40,000/-.

2. Suit property premises situated at Vanniyar Street

There is 6 portion of house rent collecting every month sum of Rs.3,200/- form each portion tenant and also received advance amount sum of Rs.15,000/-.

3. Suit property premises situated at Padasalai Street

There is 8 portion of house collecting rent from one portion is Rs.2,500 and other portion is Rs.2000/- and Advance amount received sum of Rs.10,000/-. Aforesaid rental amount is collecting by 5th defendant alone and he has not give any shares to other shares. The 5th defendant is well knowing that this court has appointed Advocate receiver to collect rent and maintain the suit property premiss but he is not ready to oblige the court proceedings and illegally collect

rent from the tenants and also further made false propaganda stating that there is no suit pending and no advocate receiver appointed and further he also threaten the tenants they should pay rent to him alone otherwise they will lot their advance payment. The 5th defendant has presented every hearing before this court waiting out of court hall after noted the court proceedings he went away. Till this date the 5th defendant has not take steps to set aside the exparte order passed against him.

The said residential building tenants are refused to pay rent to advocate receiver due to threatening of 5th defendant. After appointment of advocate receiver the 5th defendant has no right to collect rent from tenants and further it is duty cost upon him to deposit advance amount received by him from tenants. In afore narrated circumstances it is warranting to file this petition before this court to pass direction by direct the 5th defendant to deposit the rents collected by him from tenant from month of March 2023 to till this date along with advance payment received from tenants. The particular of calculation rent amount collected by 5th defendant from the date of appointment of advocate receiver given hereunder as follows

a) Rent from Ambal Nagar house portions:

From March 2023 to Feb 2024 i.e., 12 months rents

7 portion of tenants X Rs.8,300 per month - total amount of Rs.58,100/-

12 months rents collected by 5th defendant - $12 \times 58,100 =$ Rs.6,97,200/-

Advance amount of Rs.40,000/- X 7 portion = Rs.2,80,000/-

Total amount payable and to be deposit by 5th defendant = Rs.9,77,200/-

b) Rent from Vanniyar Street House portion

From March 2023 to Feb 2024 i.e., 12 months rents

6 portion of tenants X Rs.3,200/- per month - total amount Rs.19,200/-

12 months rents collected by 5th defendant -12 X 19,200/- = Rs.2,30,400/-

Advance amount of Rs.15,000/- X 6 portion = Rs.90,000/-

Total amount payable and to be deposit by 5th defendant = Rs. 3,20,400/-

c) Rent from Padasalai Street house portion

From March 2023 to Feb 2024 i.e., 12 months rents

7 portion of tenants X Rs.2000 per month - total amount Rs.14,000/-

1 portion of tenant X Rs. 2,500/- per month - total amount Rs.2,500/-

12 months rents collected by 5th defendant - 12X 14,000 = Rs. 1,68,000/-

12 months rents collected by 5th defendant - 12X 2,500 = Rs.30,000/-

Advance amount of Rs.10,000 X 8portion = Rs.80,000/-

Total amount payable and to be deposit by 5th defendant = Rs.2,78,000/-

From afore said calculation total amount sum of Rs.15,75,600/- is payable by the 5th defendant before this court. The 5th defendant is illegally collecting rent and misusing for his personal benefits. The petitioner and other shares having equally rights over afore said rental income from the suit property premises. The 5th defendant is liable to pay afore said amount sum of Rs.15,75,600/- with

interest at the rate of 24% p.a. and liable to be deposited before this court. The afore said rent are using by the 5th defendant for his business purpose and also give it hand loan for higher rate of interest. Therefore he has to refund afore said total rent amount with interest at rate of 24% p.a. Hence, petition may be allowed as prayed for.

3) Brief averments in the counter filed by the 5th respondent/defendant which has been adopted by the 1st respondent are as follows:

This respondent denies all the allegations in the affidavit of the petitioner except those that are admitted herein.

The petition itself is not maintainable and that the petitioner must prove the nature and income of the property. The respondent asserts that the property situated in Mugalivakkam is ancestral property, but the property at No.6A, Mullai Street, Ambal Nagar, was purchased by his father using his own income and settled in favour of the first respondent. Therefore the said property is the self acquired property of the first respondent and the petitioner and the respondents 2 to 5 have no right or title to it. Hence, the petition seeking collection of rent is not maintainable.

The property situated at Easwaran Koil Street, Mugalivakkam, originally belonged to his father, N.Subramania Mudaliar. Therefore, the petitioner has no right to that property. Another property situated at Padasalai Street, Mugalivakkam, originally belonged to the 1st respondent who executed a

registered settlement deed in favor of this respondent in 2013. As a result, the petitioner and other sharers have no claim to this property. The first respondent collects rent of only Rs.12,000/- from the property situated at Vanniar Street, which is a small portion and this amount is insufficient to maintain the property. Moreover, the petitioner has not provided any support to maintain the first respondent, who is the mother of the petitioner, and the fourth respondent has been solely responsible for her maintenance under great difficulty.

The petitioner has been threatening tenants to vacate the properties, leading to their vacating the suit property. When questioned by the first respondent, the petitioner assaulted her, prompting the first respondent to file a complaint against the petitioner, which is pending before the police station. The claim that the first respondent collects Rs.1,00,000/- per month as rent is purely imaginary and fabricated. This respondent never received any amount from the tenant on behalf of the other sharer. " The petitioner's claim of Rs.15,75,600/- towards rent is purely imaginary. This respondent has never collected rent from the tenants at any point in time. " The petitioner has not entitled to get the interim injunction against the co owner. The petitioner has no bona fide reason to file this petition and has provided no documentary evidence to prove the income of the property. The petitioner's intention is to harass the first respondent, seize her income, and grab the property. Therefore, the petition

is liable to be dismissed in limine. All other allegations are hereby denied. Hence, petition may be dismissed with costs.

4. On perusal of Affidavit, Petition and counter, the point for determination that arose for consideration is

Whether the application to direct the 1st and 5th defendants to refund by court deposit of monthly rent and advance amount collected by them from tenants as prayed for in the application?

5. On Point:

Heard both sides. The claim and entitlement of the petitioner is to be decided only after fulfilled trial. This is a suit filed for the relief of partition. In the circumstances, considering the relief sought for in the plaint and the fact that directing the 1st and 5th defendants to refund the advance amount would indirectly affect the trial proceedings. Therefore, this application seems to be pre mature. Any decision on merits will definitely affect the case since the case is already in a part heard stage. In the circumstances, the case to be disposed as early as possible. At this juncture, this application is liable to be dismissed without costs. The point is answered accordingly.

6. In the result this petition is dismissed without costs.

//This order has been dictated by me to the Stenographer, taken down, transcribed and typed by her in the computer, corrected and pronounced by me in the open Court on this the Friday, the 13th day of June 2025//

Sd./-Pa.U.Chemmal
Principal District Judge,
Principal District Court,
Kancheepuram.

Exhibits and Witnesses on both side: NIL

Sd./-Pa.U.Chemmal
Principal District Judge,
Principal District Court,
Kancheepuram.

Draft/Fair Order
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