

IN THE COURT OF ADDITIONAL DISTRICT MUNSIF, KULITHALAI

Present : Selvi.A.Yughathymariya, B.Com, L.L.B.(Hons.,)

Additional District Munsif, Kulithalai.

Dated Monday, the 06th day of April 2026

I.A No.14/2025 in O.S No.62/2012

1) Maimoon Bibi **(Died)**

2) Sulaiman

3) Muhamed Hanibha

4) Muhamed Asen

5) Kathija Bibi

6) Subaitha Bibi

7) Aayisha Bibi

8) Jimlath Begam

9) Faritha Begam

10) Mabu @ Mabukhan

11) Sarbuthin

12) Shajahan

13) Navas

14) Renish

15) Rasithabegam

16) Rajiyabegam @ Banumathi

...Petitioners/1 to 4 and 8 to 19 Defendants

- Vs -

1) Jaiboon bibi **(Died)**

2) Parvin

3) A.M.Rabik Bhasha

4) Ammu

5) Momala

...1 to 5 Respondents/Plaintiffs

6) Indian Bank, Bank Manager, Kulithalai

7) Regional Manager, Indian Bank, Trichy.

8) Sub-Register, Kulithalai

9) Pathrun @ Banu

..6 to 9 Respondents/5, 6, 7 and 20 Defendants

This petition has come up for final hearing on 24.03.2026 before this Court in the presence of Mr.B.Malarkannan, the Learned Counsel appearing for the Petitioners, and Respondent No.1 died and Respondents No.6,7 and 9 were called absent and set ex parte and in the presence of Mr.RM.Sivakumar, the Learned Counsel appearing for the Respondents No.2 to 5 and in the presence of the Government Pleader Mr.K.S.M.Sakhul Hameed, the Learned Counsel appearing for Respondent No.8 and upon perusal of material records and having stood over for consideration till this day, this court delivers the following:

ORDER

This petition is filed by the Petitioners/Defendants No.1 to 4 and 8 to 19 under Order 26, Rule 10 (A) r/w section 151 of CPC seeking permission of this Court to appoint an advocate commissioner to compare the admitted and disputed signature of the 1st Plaintiff in the above suit in the admitted and disputed documents with the help of hand writing and signature expert and to get the hand writing/signature expert opinion and to produce the same before this Court.

2) Despite sufficient opportunities given to the 9th Respondent, she did not turn up before this Court for filing counter and hence she was set ex parte by this Court.

Brief averments in the affidavit:

3) The Petitioner is the 2nd Defendant in the above suit and this petition has been filed on behalf of the Defendants No.3, 4 and 8 to 19th Defendants. The above suit had been filed by the Plaintiff against the Defendants for the relief of Permanent Injunction in respect of the suit property. This apart, these defendants had also filed a

counter claim in the above suit. Pending the above suit, the 1st Plaintiff and the mother of the 1st Defendant were died. The above suit had now been posted for further Defendants side evidence.

4) In the above counter claim filed by the Defendants, it has been contended that the 1st Plaintiff and the mother of the 1st Defendant had entered into an agreement dated 04.05.2000 in respect of a common wall. The parties to the above said agreement had also signed the said agreement. The above said unregistered agreement dated 04.05.2000 executed between the 1st Plaintiff and the mother of the 1st Defendant in respect of the common wall was filed on the side of the Defendants as Ex.B11. In the Ex.B11 document, the Petitioner herein had signed as a 2nd witness. The 1st witness namely A.Mohamed Ghous is also no more and the summons which was sent to him by this Court was returned as the said person died.

5) This apart during the pendency of the above suit, the 1st Plaintiff had executed a registered settlement deed in respect of the suit property dated 11.12.2017 and thereby transferred the rights and interest over the suit property to the 3rd Plaintiff. The above registered settlement deed was not intentionally filed by the Plaintiffs in the above suit. The Plaintiffs are bound to produce the above said registered settlement deed before this Court. However, the Petitioner herein had managed to obtain the certified copy of the above said settlement deed and the same was also marked on the side of the Defendants in the above suit as Ex.B25.

6) As the Ex.B11 agreement was denied by the Plaintiffs in the above suit and they had also denied as to the execution of the Ex.B11 agreement by the 1st Plaintiff, it is necessary to prove the above Ex.B11 document in order to prove the case of the Defendants in the above suit as they have sought for counter claim in respect of the suit property as well. Therefore, in order to prove the disputed document in Ex.B11 and the signature of the 1st Plaintiff in Ex.B11, it is just and necessary to issue a commission for comparison and getting opinion of the hand writing/signature experts

by way of appointing a commissioner of this Court by taking the documents which contains the admitted signatures of the 1st Plaintiff such as the vakalath, the pleadings and the Ex.B25 certified copy of the registered settlement deed executed by the 1st Plaintiff in favour of the 3rd Plaintiff which was marked on the side of the Defendants in the above suit and to compare the above said documents with the disputed signature and document in Ex.B11 dated 04.05.2000. Balance of convenience and prima facie case are existing in favour of this Petitioners only. Even this petition is allowed, the Respondents will no way get prejudiced. Rather, if this petition is not allowed, the Petitioners will be put to irreparable loss and hardships. Hence, this petition.

Brief averments in the counter filed by the 3rd Respondent and adopted by the Respondents No. 2, 4 and 5:

7) All the allegations arised in the petition are denied as false, frivolous, vexatious and mischievous. The Petitioners are put to strict proof of each and every allegations except that has been specifically admitted by the Respondents. At the outset, it is submitted that DW1 has admitted in his cross examination conducted on 2nd of September 2025 that he is thorough with the case. Further, in the reply statement and during the cross examination of DW1, it has been suggested that Ex.B11 is unsustainable in law. The Petitioner did not take any steps at the previous stage for scientific examination.

8) This case relates to the year of 2012. The Hon'ble High Court has given clear directions that civil cases which are more than 5 years old involving the senior citizens, women and children shall be completed on top priority basis. Here, the 2nd Respondent is the senior citizen and is also an unmarried women. Upon perusal of the petition, it is clear that even though Ex.B11 is alleged to have been created between the 1st Plaintiff and the 1st Defendant, the Respondents No.6 to 9, who are no way connected to the issue raised in the petition has been added as respondents and

this is only to prolong the trial with the hidden motive, the petitioners are filing petition after petitions and are managing to gain time on one pretext or other.

9) This apart, even on admitted facts and in accordance with Evidence Act and Transfer of Property Act, Ex.B11 will not have any legal validity as it relates to transfer of right of immovable property worth more than Rs.100. Thus legally and factually, the Petitioners who are well aware that their contentions will not sustain, have come up with the present petition only to frustrate proceedings. It is mentioned that this suit is for injunction and is pending for several years.

10) DW1 was cross examined in full on 23rd January 2025 by the Plaintiffs' counsel. Thereafter the case was posted for further Defendants side witnesses on 27th January 2025 and on several subsequent dates till 3rd March 2025. On 3rd March 2025, the Petitioners herein had filed an application under Order 18, Rule 1 of CPC which was returned and the case was again posted for Defendants side witnesses.

11) Again on 10th March 2025, the above said applications were represented and numbered as I.A.no.11/2025 and I.A.No.12/2025 and in the both the above petitions, the Defendants in the main suit did not take notice to the correct address of the 9th Respondent. As such many times the notice was sent to the 9th Respondent through Court and Post and was returned for want of correct address. In this way, the Petitioner has managed to prolong the case for considerable hearings.

12) Finally, the 9th Respondent herself appeared before this Hon'ble Court voluntarily and sought time to change her counsel. The 9th Respondent even though changed her counsel did not turn up and ultimately remained *exparte*. Obviously a person present to remain *exparte*, the Petitioners have given wrong address and have also taken adjournments that they will take notice through court and post and also privately. The cumulative effect is nothing has been put forward by the 9th

Respondent against the petitioners in the above interim application and it is the Petitioners who have benefitted by seeking time.

13) At the end, I.A.No.12/2025 was dismissed by this Court and the case was posted for further examination of Defendants side witnesses. Again the Defendant filed I.A.No.13/2025 praying to recall PW1 for further examination and that was allowed by this Court and after that, considerable adjournments were taken. On 2nd of December 2025, this Respondent cross examined in full. When the case was posted for further evidence on the side of the Defendants, the petitioners have come up with this present petition already certain parties on both sides have passed away still the case remain in the Court. Therefore, it is prayed that this petition may be dismissed with costs in the interest of justice.

Brief averments in the counter objection filed on behalf of the Respondent No.8:

14) This petition is unsustainable either in law or on facts. The Petitioners are not entitled to the relieves sought for by them. Except the allegations which were expressly admitted by the Respondents herein, all other allegations contained in the affidavit are all false and denied. The Petitioners are liable to prove them very strictly. The allegations contained in Para No.3 to 5 of the petition are all false. The fact that the suit property was transferred by the 1st Plaintiff in favour of the 3rd Plaintiff by way of the registered settlement deed dated 11.12.2017 and the reasons stated by the petitioners to appoint a commissioner for sending the disputed and admitted signatures of the 1st Plaintiff for signature expert seeking examination and to obtain expert opinion are all not justifiable and they are unsustainable. This petition had been filed by the Petitioners only to divert the case proceedings and prolong the cases proceedings of the above suit. In order to prove the signature of the 1st Plaintiff in the disputed document, it is sufficient enough to examine the witnesses who had signed in the above documents. Without any prima facie and without any reasons this

petition has been filed by the Petitioners and hence, the same is liable to be dismissed with costs.

Point for consideration:

15) Whether this petition is entitled to be allowed or not?

Evidence:

16) There is no oral and documentary evidence adduced on either side.

Discussion:

17) Heard both sides. Perused records. Upon perusal of records, it is seen that the above suit has been filed by the Plaintiffs/Respondents No.1 to 5 against the Petitioners herein for the relief of Permanent Injunction thereby restraining the Defendants from interfering with the possession of the Plaintiffs' over the suit "A" schedule property and for a Mandatory Injunction thereby directing the Defendants to remove the constructions put up by them in the "B" schedule property and to deliver the possession of the same to the Plaintiffs. It is the case of the Plaintiffs in the above suit that the suit "A" schedule property was originally belonged to the father of the 1st Plaintiff namely Abdhul Rahim Sayabu. After the demise of the father of the 1st Plaintiff, the 1st Plaintiff and her family members have been in the possession and enjoyment of the suit "A" schedule property by way of constructing a brick house therein.

18) The Plaintiffs further contended that the Defendants are having land on the eastern side of the suit "A" schedule property and the Plaintiffs are using the 3 $\frac{1}{2}$ feet East-West pathway which is situated to the north of the Defendants' land in order to reach their property in "A" schedule. It was the further case of the Plaintiffs that the Defendants have encroached the land of the Plaintiffs over the southern portion of the

“A” schedule property to an extent of East-West 5 feet and South-North 10 feet by way of constructing a building therein. The said encroachment was shown by the Plaintiffs as “B” schedule property.

19) It was the further case of the Plaintiffs that in respect of the “A” schedule property, instead of 31 feet in the East-West, Patta has been given to an extent of 27 feet and the Plaintiffs have come to know about the same before filing the above suit only. The Plaintiffs also contended that the Defendants, with the above fraudulent Patta have attempted to construct and encroach the suit “A” schedule property. Hence, the above suit has been filed.

20) Per contra, in the counter claim filed by the Defendants in the above suit, they have contended that they have not made any such encroachment over the Plaintiffs’ property and have denied the plaint averments. It was the further case in the counter claim that the said 3 $\frac{1}{2}$ feet breadth East-West pathway belongs to the Defendants and the Plaintiffs have no right over the same. They have also contended that the said 3 $\frac{1}{2}$ feet pathway has not at all been shown by the Plaintiffs in the description of property. The Defendants further contended that the 1st Defendant had purchased a property to an extent of East-West 38 feet and South-North 39 feet vacant site within the four boundaries specified, by way of a sale deed dated 10.06.1971 for a valuable sale consideration. The 1st Defendant has also been in the enjoyment of the Government poramboke land which is situated to the east of the property purchased by her and has been in the enjoyment of the same by way of constructing a mud house with thatched roof over the same. The Defendants also contended that they had also obtained Patta for the said land and the 1st Defendant had obtained proper permission from the Kulithalai Town Panchayat for constructing a brick house over the said land during the year of 1979 and had constructed a house above the basement which was earlier put up by her vendor Akbar.

21) To the north of the 1st Defendants land, there is a 3feet South-North vacant land which was left by the 1st Defendant in order to maintain the wall constructed in her property. This apart, within her land, the 1st Defendant in the northern corner had leftout a vacant land to an extent of 5 feet from the East-West as a pathway in order to reach her house from the Panchayat Road which is situated in the east of the same.

22) The Defendants further contended that on the requisition made by the 1st Plaintiff in order to use the above 5 feet East-West pathway to reach her land, the 1st Defendant had accepted the same and on 04.05.2000, an agreement was entered into between 1st Plaintiff and the 1st Defendant for constructing a wall by constructing the same in both the lands of the 1st Plaintiff and the 1st Defendant as well. The Wall which has been shown in the suit "B" schedule property was claimed by the Defendants to have been equally belonged to the 1st Plaintiff and the 1st Defendant.

23) This being so, this petition has been filed by the Petitioners seeking this Court to appoint an advocate commissioner thereby taking the disputed signature of the 1st Plaintiff along with the admitted signatures of the 1st Plaintiff in the documents for comparison with the help of the handwriting and signature expert and to obtain opinion from the expert and to produce the same before this Court in order to render complete justice.

24) The major contention that has been raised on the side of the Petitioners are that as the Petitioners/Defendants had filed a counter claim in the above suit in respect of the suit property, it is just and necessary to prove the Ex.B11 document which is an unregistered agreement executed between the 1st Plaintiff and the mother of the 1st Defendant in respect of the common wall in the suit property and as the above Ex.B11 document was denied by the Plaintiffs and the execution of the same by the 1st Plaintiff was also denied in the above suit, the petitioners had sought that it is necessary in the interest of justice to prove the above document by way of sending the same to the hand writing and signature expert for comparison of the same with the

admitted signatures of the 1st plaintiff in which are found in her vakalath, pleadings and also in Ex.B25 registered settlement deed dated 11.12.2017 and thereby appointing an advocate commissioner for the same, thereby producing the report along with the opinion of the above said expert before this Court. Therefore, the Petitioners sought this Court to allow this petition.

25) Per contra, the major objections that had been raised on the side of the Respondents No.2 to 5 are that the Petitioners herein had been prolonging the above suit by filing petitions after petitions without any prima facie and also alleged that the document in Ex.B11 is not at all admissible in evidence as it is being an unregistered document and hence sought this Court to dismiss this petition. Another objection that has been raised on the side of the 8th Respondent is also that in order to prove the Ex.B11 document, it is sufficient enough to examine the attesting witnesses of the same and there is no need to send for the disputed document for comparison before the hand writing and signature expert and therefore the 8th Respondent had also sought this Court to dismiss this petition with costs.

26) Upon considering the contentions of both sides and upon considering the submissions made by the Counsels of both parties, this Court is of the view that as the Ex.B11 document is relied on by the Defendants/Petitioners herein in the above suit which was alleged to have been executed by the 1st Plaintiff and by the mother of the 1st Defendant, in order to prove their case in the counter claim. However, the Ex.B11 document and it's execution and the signature of the 1st plaintiff as found therein are all denied by the Plaintiffs in the above suit. It is also seen that in order to prove the above Ex.B11 document, the Petitioners herein had also filed an application to summon one of the attesting witnesses to the same. However, the summons was not served at one of the attesting witnesses namely Muhamed Ghous as it was returned as the witness died. It is further seen that subsequently this petitioners had also recalled the Defendants side witnesses who is yet another attesting witnesses to

the above said Ex.B11 document and his examination was completed in the above suit. Further, to prove the Ex.B11 document as the execution of the same and the signature of the 1st Plaintiff therein was vehemently and strongly objected and denied by the Plaintiffs of the above suit, this petition has been filed to prove the signature of 1st Plaintiff by way of scientific examination.

27) This being so, this Court is of the view that upon considering the nature of dispute existing between the parties, without going into the validity and admissibility of the Ex.B11, to arrive at a fair and complete binding adjudication of disputes which are existing between the parties in the above suit, it is just and necessary to send for the Ex.B11 document for scientific examination to the hand writing and signature expert with the help of an advocate commissioner. The reasons stated by the Respondents No.2 to 5 herein that the Petitioners had been filing petitions one after the other thereby dragging on and prolonging the above suit is not justifiable. As the Petitioners are having every right to prove their case, opportunities must be given to them to prove the document in Ex.B11 as they relied upon the same in the above suit in their counter claim.

28) This Court is also of the view that though this case has been pending for several years, by not allowing this petition would not result in rendering complete justice by this Court without giving opportunities to the parties to the suit to prove their cases. Therefore, in the interest of justice and on merits this Court is inclined to allow this petition, to arrive at a proper decision as to the disputes existing between the parties.

29) It is also seen clear that the disputed document in Ex.B11 is dated 04.05.2000. However, the admitted documents in the vakalath filed by the 1st Plaintiff, the pleadings are all made only at the time of filing of this suit which is after 2012 and yet another admitted signature of the 1st Plaintiff in the document in Ex.B25 is made on 11.12.2017 and it is also after the filing of this suit only. It is also seen clear that

the pleadings of the plaintiff and vakalath as well as the registered settlement deed executed by the 1st plaintiff in favour of the 3rd Plaintiff dated 11.12.2017 were all admitted by the Plaintiffs in the above suit in their pleadings as well. Hence, the above documents are considered to be the admitted documents by the Plaintiffs, which contain the admitted signatures of the 1st Plaintiff namely Jaiboon BiBi. This Court would also like to rely upon the decision of the Hon'ble High Court in **E.Murugambal Vs. S.Subbaiya dated 14.06.2018 in C.R.P.(MD) (P.D) No.339 of 2015** which was relied on by the learned counsel for the petitioners herein, in which the Hon'ble Madras High Court, Madurai Bench had observed that there may be cases where admitted signatures may not be available near to the year of disputed signatures and in those cases, the right of the parties cannot be defeated on account of technical approach. But the Court can have the report of expert for coming to a fair, reasonable and substantial conclusion about the signature. Therefore, the Court has to keep in mind that it is not an expert of comparing the signatures, thus instead of dismissing this application, the signatures of the available period can be sent to the expert for opinion. It is further observed therein that it is a settled law that everything shall be done in a manner provided under law and not otherwise. When there is no provision, the Court has to consider viability of way to find out the reasonable and justifiable solution. While doing so, the Court has to keep in mind that if there is any prohibition under law, the same shall not be overlooked. At the same time, when there is no prohibition to do something under law, it can be done to meet out the situation like the present one.

30) Therefore, this Court is inclined to rely upon the above case for applying to the present case on hand for allowing this petition. Even though the disputed signature in Ex.B11 and the admitted signatures of the 1st Plaintiff in the vakalath, pleadings and the Ex.B25 settlement deed are not near to the years, as this Court has found that in order to arrive at a reasonable and substantial conclusion about the signature and in order to decide the dispute existing between the parties in the above suit, it is just and

necessary to send for the above disputed and admitted signatures of the 1st Plaintiff in the above documents for scientific examination in the interest of justice. Therefore, this Court is inclined to send the disputed documents in Ex.B11 dated 04.05.2000 and the admitted documents which contain the signature of the 1st Plaintiff in vakalath of the 1st Plaintiff, the pleadings of the 1st Plaintiff filed in this Court in this suit and the certified copy of the registered settlement deed executed by the 1st Plaintiff in favour of the 3rd Plaintiff in Ex.B25 document, for comparison of the signatures of the 1st Plaintiff in the disputed and as well as the admitted documents to the hand writing and signature expert by way of appointing an advocate commissioner by this Court to get the opinion from the expert and to submit the report along with the opinion before this Court.

Result:

In the result, with the above observations, this petition is allowed. Advocate Mrs.A. Gowri is hereby appointed as the Advocate Commissioner. The advocate commissioner is directed to take the Ex.B11 unregistered agreement which is the disputed document along with the admitted documents such as the vakalath and the original plaint filed by the 1st Plaintiff and the Ex.B25 certified copy of the registered settlement deed executed by the 1st Plaintiff in favour of the 3rd Plaintiff dated 11.12.2017 in a proper sealed cover and take it to the Document Division, Regional Forensic Science Laboratory, Madurai and submit the above documents for comparison and to opinion. It is further directed to the advocate commissioner that after examination of the same by the expert, the commissioner is directed to get back the above said documents and the opinion of the expert within the sealed cover and to produce the same before this Court without the opening the same in a sealed cover thereby ensuring the proper chain of custody along with the commissioner report. The advocate commissioner's initial remuneration is fixed as Rs.8,000/-. The Petitioners are hereby directed to pay the initial remuneration to the advocate commissioner directly on or before 14.04.2026.

Dictated to my steno-typist, taken down by her in short hand and typed by her in the Computer, corrected by me and pronounced by me in the open court on this the 06th day of April 2026.

**Additional District Munsif,
Kulithalai.**

Petitioners side witness and documents - Nil.
Respondents side witness and documents - Nil.

**Additional District Munsif,
Kulithalai.**