

**IN THE COURT OF THE SUBORDINATE JUDGE OF MELUR.**

Present: Thiru. S. GANESAN, B.Sc., M.A., B.L.,  
**Subordinate Judge, Melur,**

Monday, the 25<sup>th</sup> day of April 2022

**I.A.No.1/2021**

**in**

**O.S.No.315/2021**

S.Gnanasakthi

.....

Petitioner/Plaintiff

Vs.

1. S.Sakthi mohan
2. S.Pandikannu
3. S.Saran
4. Minor.S.Sanjay

.....

Respondents/Defendants

The minor 4th defendant  
represented through his natural  
Guardian and father 1<sup>st</sup> defendant  
herein

This petition coming for final hearing before me on 11.04.2022 in the presence of Thiru.M.Jeyaraman, Dr.K.Ravichandran and Thiru.S.Nallathambi, Advocates for the petitioner/plaintiff and of Thiru.C.Rajarajan and Thiru.M.Kannan, Advocates for the respondents/defendants and upon hearing the arguments on both sides, on perusal of the records and having stood over for consideration till this day, this court delivers the following:-

**ORDER**

1. This is a petition filed under Order 39 Rules 1 and 2 and section 151 of Code of Civil Procedure to pass an order of temporary injunction restraining the respondents/defendants their men and agents from in any way interfering the peaceful possession and enjoyment in the suit properties til the disposal of the suit and for costs.

2. **The petition averments are that** the petitioner herein is the plaintiff in the main suit. The petitioner has filed the suit for declaration and injunction as against the defendants.

3. The 1st item of the suit properties originally belonged to one Santhosa Uthaman, who is father of the petitioner/plaintiff and respondent/1st defendant. The said Santhosa Uthaman had partitioned his family properties along with this plaintiff and 1<sup>st</sup> defendant a registered partition deed dated 16.3.2005. In which, the "A" schedule properties had been allotted to the share of Santhosa Uthaman, "B" schedule properties had been allotted to the share of 1st defendant and "C" schedule properties had been allotted to the share of petitioner and the "D" schedule properties had been allotted jointly to petitioner and the 1st defendant.

4. The petitioner/plaintiff after the partition deed dated 16.3.2005, the 1st respondent/1st defendant and the said Santhosa Uthaman had enjoyed the partition deed mentioned as their separate properties after mutating the revenue records in their name and they had enjoyed the same as their separate property without any interference from anybody else.

5. The said Santhosa Uthaman enjoying the properties, which had been allotted in the 16.3.2005 partition deed. In which he had sold an extent of 74 cents from the total extent of 1 acre 2 cents in survey no.221/1 and an extent 3 acres in survey no.224.1B to the petitioner for the valuable consideration. Which is shown as 1st item in the suit property. After purchase of the 1st item of the suit properties, the petitioner/plaintiff is in possession and enjoyment of the same after mutating the revenue records in his name and enjoying the same as his absolute properties without interference from anybody else.

6. The 2nd item of the suit property originally belonged to one Rajeswari, who is mother of petitioner and the same had been purchased by her through a registered sale deed dated 12.9.1990 from One Sakthivel Ambalam for a valuable consideration. After purchase, the said Rajeswari has been possession and enjoyment of the same without interference from anybody else after

mutating revenue records in her name. Thereafter said Rajeswari had executed a registered settlement deed on 15.9.2020 in favour of the plaintiff regarding the 2nd item property due to love and affection on him and delivered the same to the petitioner. The petitioner/plaintiff got the property by way of settlement deed executed by his mother and he is in possession and enjoyment of the same by doing agriculture work without interference from anybody else.

7. The petitioner/plaintiff is in peaceful possession and enjoyment of the same by cultivating paddy crops and coconut trees in the suit properties. The cultivation in the suit properties clearly depicted in the revenue records such as adangal. Hence, the petitioner/plaintiff clearly established that he is in possession and enjoyment in the suit properties.

8. On 30.9.2021 at about 10 am when the petitioner/plaintiff had doing the agriculture work in the suit properties, the respondents / defendants came to the suit properties and asked him to vacate from the suit properties alleging that they had some rights over the suit properties. The same was thwarted with help of neighbours and while leaving the suit properties the defendants sternly warned to come again to the suit properties to vacate him. The illegal activities of the respondents/ defendants has to be curbed by an order of injunction, otherwise the petitioner/plaintiff will be put into irreparable loss and injury.

9. The 1st respondent / 1st defendant being the brother of the petitioner and the respondents / defendants 2 to 4 are wife and children of the 1st defendant. The respondents / defendants are no way connected with the suit properties and they have no iota of rights or interest over the suit properties and they were unnecessarily causing trouble to the petitioner during the cultivation in the suit properties.

10. The prima facie case is also made out in his favour and the balance of convenience is also in favour of the petitioner / plaintiff and if the injunction is not granted, the petitioner / plaintiff will be put into irreparable loss and injury and if the injunction is granted no prejudice will be caused to the

respondents/defendants. Hence prayed to grant temporary injunction till the disposal of the suit.

11. **The respondents/defendants filed counter statement refuting the averments of the petition affidavit :-**

12. The petition is false, frivolous, vexatious and not maintainable according to the law and on facts. The respondents admitted averments hereunder, all the other averments are denied and the petitioner put to strict proof of the same.

13. It is false to alleged that the 1<sup>st</sup> item two properties are not belonged to Santhoshauthaman. The 1 and 2 item properties are joint family properties belonging to the joint family of plaintiff and defendants. The partition deed 16.3.2005 properties are not the self acquired properties of Santhoshauthaman. The petitioner suppressed the material facts happened at the time of partition. It is also false to allege that after partition, Santhoshauthaman enjoyed the properties separately. The sale deed dated 20.7.2020 in respect of the S.No.222/1, 74 cents in 1 acre 2 cents and 3 acres in 224/1B to the petitioner is not a valid sale deed and fabricated one. The sale deed dated 12.9.1990 from Santhivelambalam in the name of mother Rajeswari, not a separate property. It is purchased from the joint family funds as name sake document in the name of Rajeswari. Moreover, mother cannot execute the settlement deed only in favour of one son. The averments regarding 30.9.2021 are totally wrong. The petitioner did not approached with clean hands and filed suit suppressing material facts. The grandfather Sakthivelambalm has got 4 wives. The Santhoshauthaman is born to 3<sup>rd</sup> wife sigappi. The Santhoshauthaman has got sisters and brothers. At the time of partition the plaintiff's and 1<sup>st</sup> defendant's father santhoshauthaman has been allotted with 12 acres of land. The same was enjoyed by the Santhoshauthaman, the elder son 1<sup>st</sup> defendant and the plaintiff jointly. At this juncture, on 9.12.2004 Santhoshauthaman sold the joint family properties situated in Keelaiyur village S.No.50/4A, and S.No.50/4B1, comprising 2 acre 69 cents for mining granite stones for 1 crore rupees. After

knowing the same, when the 1<sup>st</sup> defendant stated to take steps against the granite company, the plaintiff's father being an advocate having name in the society and if action taken his name will be spoiled in the society. Thereby, a compromise has been made before the mediators belonging to Mathayanai ambalam and vivekananthan of Kottakudi village. In which, it is agreed that, the sale amount was given to the daughter as share for the joint family property. Further, 2 plots were purchased in Uthangudi village in the name of the wife Rajeswari and remaining family properties were partitioned as a temporary arrangement to the plaintiff and the 5 acre 8 cents in 222/7, 222/1, 224/20, and 9 cents in 396/5 will be retained as share of the father and after his demise without any encumbrance, it will be divided equally, among plaintiff and 1<sup>st</sup> defendant and recited in the 16.3.2005 sale deed. Thereafter, the plaintiff father did not execute any partition deed and dragging on the same. After 6 months viewed the documents, it is founded that, the mediation wordings are not found in the partition deed. The same was revealed to the same to the mediators. When asked by the mediators, the plaintiff's father stated that if the sons would cheat the father in future that's why the wordings were erased in the document. Further assured that the paddy produce will be given from the properties and as per the mediators arrangements from 1 and 2 item properties in S.No.224/1B, having 4 lots with the 1<sup>st</sup> defendant possession and S.No.222/7 1 acre 6 cents, 222/1 1 acre 2 cents about 5 lots and total 2 acre 8 cents with the plaintiff possession for the purpose of cultivation. Thereby, the defendants are giving 15 bags of paddy and plaintiff is giving 10 bags of paddy from 2006. Thereby the S.No.224/3B purchased in the name of mother of 52 cents were orally partitioned as east west and western side along with 20 coconut trees were enjoyed by the defendants and eastern side property along with 20 coconut trees were enjoyed by the plaintiff. The same was known to the village people and relatives. As per the compromise, there is no house built in the plot in Uthangudi to the defendant and the plaintiff's father obtained settlement deed from the Rajeswari and sold one plot and the sale proceeds of selling the ancestral property to granite company for building house in the

another plot. Further, it is also stated by the Santhoshauthaman that ground floor given to the plaintiff and 1<sup>st</sup> floor will be given to the defendants after his lifetime. As per the oral arrangement this defendants has cultivated Jaiganesh paddy crops in 3 acres land and usufructs the 20 coconut trees produce. On the western side S.No.224/3A situated and the ancestral house and well situated in it. This defendant is living in one side of the house. The suit properties are situated in and around the S.No.224/3A and there is a southern side pathway on the south of 2<sup>nd</sup> item property. Further there is a civil suit pending in respect of the pathway between the Legal heirs of 4 wives. They did not let in use of pathway by this defendants. The defendants are using the 2<sup>nd</sup> item property to access their houses. If the temporary injunction is granted against the co-owners, the defendants could not able to ingress or egress from the house. The 1<sup>st</sup> defendant father without treating the both sons equally as utilised the legal process and created documents. Thereby committed prejudice to the 1<sup>st</sup> defendant. The sale deed to Krishnan in respect of S.No.222/7, S.No.222/1, are name side documents. The plaintiff is enjoying the suit property along with the 1<sup>st</sup> item property. Still now, Krishnan is not enjoying the suit property. In the 1<sup>st</sup> item and 2<sup>nd</sup> lot property in S.No.224/1B having extent of 3 acres has been enjoyed by the drawing water from S.No.224/3A by the defendant and their plaintiff. By suppresing the material facts, this suit has been filed by creating encumbrance by the plaintiff so as to, vacate the defendants and their family from the suit property. This defendants intended to take steps to against the granite company and the plots in Uthangudi as per law. Since the usufructs of 20 cocoonut trees are in possession of the this defendants, if this petition is allowed the defendant will be put into heavy irreparable loss and hardship. Further, this defendant could not able to cultivate the paddy crops or the harvest the crops. Moreover, this defendants could not able to access the house in and out. Hence, he prays to dismiss the petition.

14. The point for consideration aroused is that

***Whether the petition has to be allowed or not?***

15. Point.

16. Heard. Perused records. Upon perusal of records. The suit is filed for declaration and injunction by the plaintiff. The relationships of the parties are admitted. The Petitioner/Plaintiff has marked Ex.P1 to Ex.P14. On the side of the respondents Ex.R1 to Ex.R4 marked. The Ex.P1 is the partition deed executed between the plaintiff's and 1<sup>st</sup> defendant's father Santhoshuthaman. On 16.3.2005, in which the plaintiff has been allotted with "C" schedule property. Thereafter, in the page 4 of the partition deed there are deleting of one para found place. It is pertinent to note that the "C" schedule property mentioned properties are not the suit properties cited in the plaint. Further, the Ex.P2 is the registered sale deed executed by Santhoshauthaman to the plaintiff on 20.7.2020. The description of properties mentioned in the Ex.P2 are stated in the schedule of property as item no.1 and 2. The Ex.P3 is the sale deed in the name of Rajeswari. The Ex.P3 is pertaining to S.No.224/3 which is settled by by the Rajeswari by way of gift deed through Ex.P4. It is mentioned as 3<sup>rd</sup> item property in the plaint. Ex.P5 is the patta no.2260 for the 2<sup>nd</sup> item property. Ex.P6 is the patta no.2287 for the 1<sup>st</sup> item property. Ex.P7 is the patta no.2282 for the 3<sup>rd</sup> item property. The adangal for the suit properties are stands in the name of the plaintiff as per Ex.P8. Ex.P9 is the guideline value of the property. EX.P10 is the sale deed in favour of the Sheela by the 1<sup>st</sup> defendant, 3 and 4 defendants along with Uthaman on 2.4.2008. The Ex.P11 is the sale deed executed by in favour of the Uma by the 1<sup>st</sup> defendant, 3 and 4 defendants along with Santhoshauthaman on 4.8.2010. Ex.P12 is the sale deed executed in favour of the K.Uma by the 1<sup>st</sup> defendant, 3 and 4 defendants along with Santhoshauthaman on 2.4.2008. Ex.P13 is the copy of complaint given by the plaintiff to the Keelavalavu police. Ex.P14 is the complaint receipt CSR No.5/22.

17. On the other hand, the defendants produced Ex.R1 downloaded FMB sketch in which marked green as the 2<sup>nd</sup> and 3<sup>rd</sup> item properties are in possession and enjoyment of the respondents. But the Ex.R1 is the plain FMB sketch computer copy, in which the defendant shaded with colour

pencil. The Ex.R2 is the complaint given to the Keelavalavu police station against the plaintiff and his father. Ex.R3 is the complaint receipt CSR No.7/22. The Ex.R4 is the discharge summary of Melur G.H. in respect of 2<sup>nd</sup> defendant.

18. The counter averments and the documents of the respondents did not prove that they are in possession and enjoyment of the suit properties. For the possession and enjoyment of the suit property, the defendants did not file any documents in support of the contentions to substantiate their defense version. Moreover, the plaintiff has prima facie proved the alleged partition of the suit properties by Santhoshuthaman. In which, the Santhoshuthaman only sold the properties allotted under partition among the plaintiff, 1<sup>st</sup> defendant as per Ex.P1. In the recital of Ex.P1 the Santhoshuthaman has allotted with "A" schedule item properties. In which, the plaint schedule item properties 1 and 2 are mentioned as 2<sup>nd</sup> and 3<sup>rd</sup> item properties in the recital of the Ex.P1 and in Ex.P2. Therefore, the partition deed executed in the year 2005 and there is no dispute raised upon the partition deed for more than the statutory period. Moreover, based upon the partition deed, the plaintiff and 1<sup>st</sup> defendant has been allotted with the separate properties. Which are not in dispute. Only the properties which are sold by the Santhoshuthaman father of the plaintiff and 1<sup>st</sup> defendant to the plaintiff and the property settled by the plaintiff's mother to the plaintiff. From the documents available on record prima facie shows that the plaintiff got the property as per Ex.P2 and Ex.P4. Based upon the settlement and sale deeds, the plaintiff has got the prima facie title over the suit properties. Thereby, the plaintiff has mutated the revenue records in his name which is revealed through the Ex.P5 to Ex.P7, which are the computerised chitta for the suit properties. Based upon the documents, the plaintiff has mutated all the revenue records in his name. Further, the Ex.P9 is the adangal extract issued by V.A.O. for the fasli no.1430 which stands in the name of the plaintiff. It shows that the field was cultivated with paddy crops. Moreover, the defendants contended that as per oral arrangements the suit properties are 1<sup>st</sup> item property in S.No.224/1B is with the 1<sup>st</sup> defendant and 222/7 and 222/1 are enjoyed by the

plaintiff and paying 15 bags of paddy and 10 bags are given to the Santhoshauthaman by the 1<sup>st</sup> defendant and the plaintiff respectively. For which, the defendants did not adduce oral as well as documentary evidence. Moreover, the plaintiff has proved his contentions through documentary evidence. On the other hand, the defendants failed to do so. So that it is presumed from the affidavit averments and the documentary evidence, that the balance of convenience in respect of the suit property is in favour of the plaintiff. If the temporary injunction is not granted, the petitioner will be put into heavy and irreparable loss and hardship than that of the respondents/defendants. Moreover, the defendants contented that they are co-owners in the property. For that contention, there is no proof has been submitted by the respondents. Considering the same as the partition already been effected 17 years ago and the suit property has been sold and gifted by the plaintiff's father and mother as separate properties the defendants cannot function the same.

19. Injunction is an equitable remedy as well as it is governed by law. Therefore, equitable principles are of very much importance in granting or rejecting injunction. Equitable principle is that, he who seeks equity must come with clean hands. The respondents alleged that the petitioner suppressed material facts. But the material facts has to be proved by the defendants on their part. Moreover, the plaintiff has got concluding right over the suit properties by virtue of Ex.P1 to Ex.P9.

20. It is indisputable that temporary injunction is granted during the pendency of the proceeding so that while granting final relief, the court is not faced with a situation that the relief becomes infructuous or that during the pendency of the proceeding an unfair advantage is not taken by the party in default or against whom temporary injunction is sought. But power to grant temporary injunction was conferred in aid or as auxiliary to the final relief that may be granted. If the final relief cannot be granted in terms as prayed for, temporary relief in the same terms can hardly if ever be granted. This court, therefore, of the opinion that in such cases it would be imprudent to grant

interim relief. Hence, by appraising all the pleadings and documents, the prima facie title has rest in favour of the Petitioner/plaintiff, the balance of convenience and irreparable loss and hardship are also in his favour. As per Ex.P10, EX.P11, EX.P12, the 1<sup>st</sup> defendant has sold the properties which is allotted to 3<sup>rd</sup> parties. While so, the plaintiff is having the property as a whole. That is why the defendants are getting grudges upon the plaintiff. Thereby the averment regarding the alleged complaint during the pendency of the suit on 4.1.2022 has been revealed through Ex.P13 and EX.P14. So that, it will be just and necessary in the circumstances of this case, this court is inclined to grant temporary injunction till the disposal of the suit.

21. **In the result, this petition is hereby allowed with costs.**

22. Dictated to the Steno typist, typed directly by him into the Computer, corrected and pronounced by me in the open court on this the 25th day of April 2022.

Sd/-  
Sub Judge  
Melur.

**Petitioner's side Exhibits :-**

Ex.A.1	16.3.2005	Registered Partition deed in between S.Santhosa uthaman 2) S.Sakthimohan S.Gnanasakthi	1) Certified 3) copy
Ex.A.2	27.7.2020	Registered sale deed executed by Santhosauthaman in favour of Gnanasakthi	Certified copy
Ex.A3	12.9.1990	Registered sale deed executed by Santhivel ambalam in favour of S.Rajeswari	Certified copy
Ex.A4	15.9.2020	Settlement deed executed by Rajeswari in favour of Gnanasakthi	Certified copy
Ex.A5	25.9.2021	Patta standing in the name of Gnanasakthi in patta no.2260.	Online copy
Ex.A6	15.6.2021	Patta standing in the name of Gnanasakthi in patta no.2287.	Online copy
Ex.A7	15.6.2021	Patta standing in the name of Gnanasakthi in patta no.2282.	Online copy
Ex.A8	19.3.2021	Adangal standing in the name of Gnanasakthi in fasli no.430.	certified copy

Ex.A9	2.10.2021	Adangal standing in the name of Attapatti village	Online copy
Ex.A10	2.4.2008	Registered sale deed executed by S.Sakthimohan in favour of P.Sheela	Certified copy
Ex.A11	4.8.2010	Registered sale deed executed by S.Sakthimohan in favour of K.Uma	Certified copy
Ex.A12	27.11.2019	Registered sale deed executed by S.Sakthimohan in favour of K.Uma	Certified copy
Ex.A13	4.1.2022	Complaint letter from S.Gnanasakthi to the Inspector, Keelavalavu police station	Photostat copy
Ex.A14	5.1.2022	Complaint receipt in Keelavalavu police station, petition no.5/2022.	Photostat copy

**Petitioner's side witnesses :- Nil**

**Respondent's side Exhibits :-**

Ex.R1	9.12.2021	FMB sketch	Photostat copy
Ex.R2	8.1.2022	Complaint letter from Sakthi mohan to the Sub Inspector of police, Keelavalavu police station.	Photostat copy
Ex.R3	8.1.2022	Complaint receipt in Keelavalavu police station in petition no.7/2022.	Photostat copy
Ex.P4	15.1.2022	Discharge summary in Melur government hospital	Original.

**Respondent's side witnesses:-- Nil**

Sd/-  
Sub Judge  
Melur

Draft/Fair Order  
I.A.No.1/2021  
in  
O.S.No.315/2021  
Dated : 25.04.2022  
SJ,Mr.