



**IN THE COURT OF THE DISTRICT MUNSIF OF UDHAGAMANDALAM,  
THE NILGIRIS**

Present: **Thiru. L. PRAKASH, B.Sc., B.L.,**  
DISTRICT MUNSIF, UDHAGAMANDALAM.

**Thursday, the 09<sup>th</sup> day of July 2026**

**O.S. No. 85 of 2021**  
(C.N.R. No. TNNS030 - 00112 - 2021)

N. J. Chandran

... Plaintiff

**/Vs/**

1. N.J. Subramani

2. N.J. Sivalingam

3. The Executive Officer  
Nanjanadu Panchayat

... Defendants

This suit came on 06.07.2026 for final hearing before me in the presence of Mr. K. Jaichandran, learned Counsel for the Plaintiff and of Mr. Pon Ramachandran, learned Counsel appearing for the Defendant No. 2 and the Defendants No. 1 and 3 remains exparte in this suit, upon hearing both sides and upon having stood over till this day for consideration, and this court delivered the following:

**JUDGMENT**

**1.** This suit has been filed by the plaintiff seeking the relief of permanent injunction restraining the defendants No.1 and 2, their men, agents, servants, subordinates and all those claiming through them or under them from altering the



nature of the suit schedule property or putting up any further construction thereon and from interfering with the plaintiff's alleged peaceful possession and enjoyment of the suit schedule property and for costs.

**Gist of Complaint:**

2. The plaintiff states that, the defendants 1 and 2 are his brothers, the suit property measuring an extent of 0.02 acres of land in old S. No. 401/2, new S. No. 490/2 of Nanjanadu-I village together with residential building bearing old Door No. 9, new Door No. 22 originally belonged to his paternal grandmother, Saveniammal, who purchased it under a Sale Deed dated 09.09.1982, registered as Doc. No. 587 of 1982 before the Joint II Sub-Registrar at Udhagamandalam. Since then the plaintiff's paternal grandmother remained in peaceful possession and enjoyment without any hindrances. Saveniammal had three sons namely, 1. Joghee, father of the plaintiff and the defendants 1 and 2, 2. Raman and 3. Krishnan. After the death of Joghee in 1979 and Saveniammal in 1992, her legal heirs, including the plaintiff, and the defendants 1 and 2, inherited the family properties as joint owners.

3. The plaintiff further submits that a family partition dated 19.07.1998, divided the family properties, including the suit property, among the plaintiff, defendants 1 and 2, Raman and Krishnan. Following the Partition, the plaintiff and the defendants 1 and 2 remained in joint possession of the properties allotted to them, including the suit schedule property. Although a family partition took place in 1998, no partition has been effected among the plaintiff and the defendants 1 and 2 regarding their allotted share in the suit property. The plaintiff claims entitlement to a 1/3rd share in the suit property, alleges that, while he was residing at Coimbatore and during COVID-19 lockdown, the defendants 1 and 2 took advantage of his absence and attempted to alter the nature of the property by illegally demolishing the existing



house and commencing unauthorized construction without any partition.

4. On 04.06.2021, the plaintiff lodged a complaint with the E-1 Police Station and the President of Nanjanadu Panchayat, although the Panchayat President warned the second defendant to stop the illegal activities, the second defendant allegedly demolished the house and continued construction, thereby encroaching upon the plaintiff's claimed 1/3rd share despite his objections. Accordingly, the plaintiff has filed the present suit seeking a permanent injunction restraining the defendants 1 and 2 from altering the nature of the suit property, carrying out further construction, or interfering with his peaceful possession and enjoyment of the property, while reserving his right to file a separate suit for partition, claiming his 1/3rd share against the defendants 1 and 2 in respect of the suit schedule property.

**Gist of Written Statement filed by the 2<sup>nd</sup> defendant:**

5. The 2<sup>nd</sup> defendant in his written statement denied the plaint averments and contended that the suit is false and not maintainable. According to him, while admitting that Saveniammal purchased the suit property, and was in absolute possession of the same, he asserts that Saveniammal subsequently executed a deed in his favour, giving the property exclusively to him and after her death in 1992, the 2<sup>nd</sup> defendant, his wife and children have remained in continuous, and uninterrupted possession of the suit property, excluding the plaintiff and the 1<sup>st</sup> defendant. The 2<sup>nd</sup> defendant further claims to have perfected his title by adverse possession. It is also contended that the plaintiff and the 1<sup>st</sup> defendant were fully aware of his exclusive possession, and the 2<sup>nd</sup> defendant relies on the deed executed by Saveniammal in September 1982 and submits that property taxes have been continuously paid by him since Saveniammal's death.



6. The 2<sup>nd</sup> defendant further states that he has been taking care of his 90-year old mother and carried out only necessary alterations to the toilet, rooms and drainage system for her convenience after applying to the panchayat. He contends that the suit property is a Natham land and that, after Saveniammal's death, patta was issued in his favour (Patta No. 770) and he has been paying electricity charges. The 2<sup>nd</sup> defendant denies the plaintiff's allegations of joint ownership, joint possession, the alleged 1998 family partition, and the plaintiff's claim of an electricity connection in his name. He asserts that he alone has been in exclusive possession and enjoyment of the suit property since Saveniammal's death.

7. The 2<sup>nd</sup> defendant also denies the plaintiff's claim to a 1/3rd share in the suit property, while admitting that the plaintiff lodged a police complaint, he states that no action was taken because the police enquiry found that he alone was in possession and ownership of the property. There is no cause of action for this suit and the plaintiff has not come to the Court with clean hands. The suit for permanent injunction against the 2<sup>nd</sup> defendant is unsustainable in law. The balance of convenience and the possession is with the 2<sup>nd</sup> defendant and the suit has framed is not maintainable in law. Hence, the 2<sup>nd</sup> defendant prays that the suit be dismissed with cost.

8. Though summons were duly served on defendants 1 and 3 through Court and also by registered post, they failed to appear before this Court. Hence, defendants 1 and 3 were set ex parte and they remained ex parte till the completion of the trial.

**Issues framed:**

9. On consideration of the pleadings of both sides this court framed the following issues

(i) *Whether the suit for permanent injunction maintainable without*



*seeking the relief of partition?*

- (ii) Whether the plaintiff is in possession of the suit schedule property?*
- (iii) Whether the plaintiff is entitled to permanent injunction as prayed for?*
- (iv) To what other relief?*

**Plaintiff's side evidence:**

10. On the side of the plaintiff, the plaintiff, **Mr. N.J. Chandran**, examined himself as **Pw-1**, through him **Ex. A-1 to Ex. A-7** were marked. Further on the plaintiff's side, one **Mr. Chandra Rajan**, examined as **Pw-2** through him no exhibits were marked. The Pw-1 and Pw-2 were cross examined by the 2<sup>nd</sup> defendant's side in full. The evidence of the plaintiff's side is closed with Pw-2.

**2<sup>nd</sup> Defendant's side evidence:**

11. On the side of the 2<sup>nd</sup> defendant, the 2<sup>nd</sup> defendant, **Mr. N.J. Sivalingam**, examined himself as **Dw-1**, through him **Ex. B-1 to B-7** were marked. The Dw-1 was cross examined by the plaintiff's side in full and during the cross examination of Dw-1, **Ex. A-8** was marked on the plaintiff's side. The evidence of the 2<sup>nd</sup> defendant's side is closed with Dw-1. Hence the case was posted for both side arguments.

**Arguments on the plaintiff's side:**

12. The learned counsel appearing for the plaintiff submitted that the suit property admittedly belonged to Saveniammal and that the family partition dated 19.07.1998 clearly establishes that the plaintiff and defendants 1 and 2 became co-owners of the suit property. Since there has been no partition among them thereafter, every co-owner is deemed to be in joint possession. The unilateral demolition of the old house and construction undertaken by the second defendant amount to interference with the plaintiff's possessory rights. It is therefore argued that the



plaintiff is entitled to protect the property by way of permanent injunction even without seeking partition. The learned counsel further contended that Ex.B4, the unregistered agreement relied upon by the second defendant, neither conveys title nor creates any legal interest in the immovable property and therefore cannot defeat the plaintiff's rights.

**Arguments on the 2<sup>nd</sup> defendant's side:**

13. The learned counsel appearing for the second defendant, on the other hand, contended that the plaintiff himself has admitted during cross-examination that the second defendant has been paying property tax, electricity charges and has obtained patta in his own name. The plaintiff has also admitted that he has not filed any suit for partition till date. According to the learned counsel, the plaintiff is admittedly out of possession and has approached the Court only with a bare suit for injunction without seeking either declaration or partition. Such a suit is not maintainable in view of the settled principles laid down by the Hon'ble Supreme Court. It is further argued that the evidence on record overwhelmingly establishes the exclusive possession of the second defendant for several decades and therefore the plaintiff is not entitled to the discretionary relief of injunction.

**Points for consideration:**

14. This Court has carefully considered the submission advanced by the learned counsel appearing on either side. The pleadings set out in the plaint and written statement, as well as the oral and documentary evidence adduced by both sides, have been meticulously examined. The core question that arises for determination in this suit is whether the plaintiff is entitled to the relief of permanent injunction as prayed for. For the purpose of deciding the said question, this Court framed the issues stated above. The discussion and findings on each of those issues are set out in the succeeding paragraphs.

**Discussion on Issue No. 1:**

**15.** Issue No.1 is that, Whether the suit for permanent injunction is maintainable without seeking the relief of partition? The learned counsel appearing for the plaintiff would contend that the title of the plaintiff over the suit property is not in dispute. According to him, the suit property originally belonged to the plaintiff's paternal grandmother Saveniammal under Ex.A1 Sale Deed dated 09.09.1982. It is his further contention that after the death of Saveniammal in the year 1992, the legal heirs inherited the property and thereafter, under the family partition dated 19.07.1998 marked as Ex.A8 during the cross-examination of D.W.1, the suit property was allotted jointly to the plaintiff and defendants 1 and 2. Therefore, according to the plaintiff, he continues to be a co-owner in joint possession and one co-owner is entitled to seek an injunction restraining another co-owner from altering the nature of the common property pending partition.

**16.** Per contra, the learned counsel appearing for the second defendant would submit that the plaintiff himself has admitted that the second defendant has been in exclusive possession of the property for several years, that patta stands in the name of the second defendant, that house tax and electricity charges have continuously been paid by him and that no partition suit has been instituted till date. According to him, when the plaintiff himself admits that the property has not been partitioned and also admits the exclusive possession of the second defendant, the present suit for bare injunction is not maintainable.

**17.** Before advertng to the evidence on record, it is necessary to examine the settled legal principles governing the maintainability of a suit for bare injunction. The Hon'ble Supreme Court in *Anathula Sudhakar, reported in (2008) 4 SCC 594*, after exhaustively considering the law relating to suits for injunction, laid down the



following principles:

- (a) Where there is a simple interference with lawful possession and the title is not disputed, a suit for bare injunction is maintainable.*
- (b) Where the title is under a cloud or seriously disputed, the plaintiff should seek the relief of declaration along with consequential injunction.*
- (c) Where the plaintiff is not in possession of the property, the appropriate remedy is to seek recovery of possession and consequential reliefs, and a mere suit for injunction is not maintainable.*

**18.** The Hon'ble Supreme Court further held that where complicated questions relating to title and possession arise, such disputes cannot ordinarily be decided in a simple suit for injunction. The above principles have been consistently followed in subsequent decisions of the Hon'ble Supreme Court and various High Courts.

**19.** In the present case, admittedly the plaintiff has not sought partition of the suit property. Though he claims one-third share in the plaint, he has specifically reserved his right to institute a separate suit for partition in future. Therefore, the plaintiff himself acknowledges that no partition has yet taken place among himself and defendants 1 and 2.

**20.** The plaintiff has also not sought declaration regarding his title or regarding the alleged invalidity of the agreement relied upon by the second defendant namely Ex.B4. The entire defence of the second defendant proceeds on the footing that Saveniammal had exclusively entrusted the property to him under Ex.B4 and thereafter he alone has been in uninterrupted possession. Thus, the parties are not merely disputing an act of interference. They are seriously disputing the very nature





of possession and the rights flowing from the respective documents.

**21.** The plaintiff has relied upon Ex.A8 Family Partition dated 19.07.1998. The second defendant, while admitting his signature in Ex.A8, has simultaneously relied upon Ex.B4 dated September 1982 and has pleaded that he alone has been in exclusive possession from the lifetime of Saveniammal. He has also relied upon Ex.B1 Patta, Ex.B2 House Tax Receipts and Ex.B3 Electricity Receipts. Thus, the very foundation of the plaintiff's claim is disputed.

**22.** The plaintiff further seeks to restrain the defendants 1 and 2 from altering the nature or putting up any further construction in the suit property and from interfering with the plaintiff's peaceful possession and enjoyment of the suit property. If such an injunction is granted, it would necessarily amount to recognizing the plaintiff's alleged possessory rights over the entire property without adjudicating whether the second defendant has been in exclusive possession for decades as pleaded by him. The Court cannot indirectly decide the rights of the parties in a suit framed merely for injunction when substantial questions regarding possession, co-ownership and exclusive enjoyment are seriously in issue.

**23.** Another important circumstance is that the plaintiff himself has pleaded that although the family partition took place in the year 1998, no partition has taken place among the plaintiff and defendants 1 and 2. Therefore, according to the plaintiff's own case, the exact extent, location and identification of his alleged one-third share are yet to be determined. Unless the property is partitioned by metes and bounds, this Court cannot determine which specific portion belongs to the plaintiff and consequently whether the alleged construction is within the plaintiff's share or within the portion claimed by the second defendant.



**24.** The relief sought in the plaint would virtually require this Court to preserve the entire property as if every inch thereof is under the plaintiff's exclusive possession. Such a relief cannot be granted in the absence of adjudication of the inter se rights of the co-sharers.

**25.** The learned counsel for the plaintiff argued that every co-owner is deemed to be in possession of every inch of the joint property. There cannot be any quarrel with the said proposition. However, the said principle applies only where the joint possession itself is admitted or established. In the present case, the second defendant has specifically pleaded exclusive possession from the year 1992 onwards, has denied joint possession and has produced documentary evidence in support thereof. Therefore, the question whether the plaintiff continues to be in joint possession itself becomes a disputed question of fact requiring adjudication.

**26.** Further, the second defendant has pleaded adverse possession and exclusive enjoyment. Whether such plea ultimately succeeds or not is a matter to be decided in an appropriate comprehensive suit. The existence of such rival claims itself demonstrates that the controversy extends far beyond a mere act of interference. This Court is therefore of the considered view that the present suit has not been properly framed.

**27.** When the plaintiff himself claims one-third share in the property, admits that no partition has taken place, disputes the exclusive possession pleaded by the second defendant and seeks to restrain construction over the common property, the appropriate remedy available to him is to institute a comprehensive suit for partition together with all consequential reliefs, including injunction. The plaintiff has consciously omitted to seek such relief.



28. This view also finds support from a recent judgment of the Hon'ble Punjab and Haryana High Court in ***Dalbir vs. M/s. Cloud Build Con Private Limited and others, C.R. No.1928 of 2026 (O&M), decided on 01.07.2026.*** In the said case, the plaintiff claimed to have purchased about one kanal of land from the daughters of the original owner. On the strength of such purchase, he filed a suit for permanent injunction restraining the defendants from raising construction over the property. The defendants resisted the suit contending that they were already in possession under earlier registered sale deeds, that the plaintiff was never in possession, and that the plaintiff had neither sought declaration of title nor possession nor challenged the earlier sale deeds or the Change of Land Use (CLU) permission granted in favour of the defendants.

29. Before the Hon'ble High Court, the defendants specifically contended that a mere suit for injunction without seeking declaration or possession was not maintainable, that the plaintiff was never in possession of the property, that the proper remedy was to challenge the sale deeds or seek appropriate declaratory relief, and that the plaintiff was virtually seeking the final relief at the interlocutory stage itself. It was further contended that mere construction by one co-owner does not amount to ouster and that a co-owner cannot ordinarily seek injunction against another co-owner.

30. After considering the rival submissions, the Hon'ble High Court found that although the plaintiff might claim to have become a co-owner by virtue of the sale deed in his favour, the defendants had already been in possession of the property much earlier and had obtained necessary permissions. The Court observed that mere raising of construction by a co-owner does not amount to ouster of the other co-owner.



31. The Hon'ble High Court thereafter reiterated the settled principle that ***no injunction can ordinarily be obtained by one co-owner against another co-owner and that the normal remedy available to a co-owner is to institute a suit for partition.*** The Court further noticed that the plaintiff had failed to establish possession over any part of the suit property and had filed only a simpliciter suit for permanent injunction without seeking declaration or possession. Consequently, it held that the plaintiff had failed to establish a prima facie case, balance of convenience or irreparable injury.

32. The Hon'ble High Court also approved the findings of the First Appellate Court, which had relied upon the Division Bench decisions in *Sant Ram Nagina Ram v. Daya Ram Nagina Ram*, *Bhartu v. Ram Sarup* and *Bachan Singh v. Swaran Singh*. The Appellate Court summarized the well-settled principles governing co-ownership, namely that every co-owner has an interest in every inch of the joint property; possession of one co-owner is generally deemed to be possession of all; exclusive occupation by one co-owner does not by itself amount to ouster; and a co-owner in possession is entitled to continue in possession until partition unless his possession becomes hostile to the knowledge of the other co-owners.

33. The Hon'ble High Court also approved the principle laid down in *Bachan Singh v. Swaran Singh* that: (i) a co-owner who is not in possession of any part of the joint property is ordinarily not entitled to seek injunction against another co-owner who is in exclusive possession; (ii) mere construction or improvement in the common property does not amount to ouster; (iii) a co-owner out of possession can seek injunction only where the acts of the co-owner in possession diminish the value or utility of the property or are otherwise prejudicial to the interest of the other



co-owners; and (iv) in all other cases, the proper remedy of the co-owner who is out of possession is to seek partition and not a bare injunction restraining the co-owner in possession from exercising rights over the common property.

**34.** Ultimately, the Hon'ble High Court affirmed the concurrent findings of the Courts below and held that since the plaintiff was admittedly not in exclusive possession, had instituted only a simpliciter suit for permanent injunction without seeking declaration or partition, and the defendants were already in possession of the property, the suit in the existing form was not maintainable and the proper remedy was to institute a suit for partition before the competent Court. The principles laid down in the aforesaid judgment squarely apply to the facts of the present case.

**35.** In the present suit also, the plaintiff himself has pleaded that the suit schedule property has not been partitioned among himself and defendants 1 and 2 after the family arrangement dated 19.07.1998 and that he is entitled only to an undivided one-third share. At the same time, the second defendant has categorically denied the plaintiff's possession, disputed his right over the suit property and asserted exclusive possession and enjoyment for several years. More importantly, the evidence of P.W.1 itself establishes that the second defendant has been paying the property tax, electricity charges, obtained patta in his name and has been residing in the suit property. Thus, the plaintiff has failed to establish actual possession over the suit property.

**36.** Further, except alleging that the second defendant demolished the old structure and attempted to put up construction, there is absolutely no pleading or evidence that such construction has resulted in any diminution in the value or utility of the suit property or that it amounts to waste of the common property. Therefore,



the present case does not fall within the recognised exceptions where an injunction may be granted against a co-owner in possession. On the contrary, the facts of the present case clearly attract the general rule reiterated by the Hon'ble Punjab and Haryana High Court that where the plaintiff is out of possession, the defendant is in settled possession and the rights of the parties are seriously disputed, a simpliciter suit for permanent injunction is not maintainable and the proper remedy of the plaintiff is to institute a comprehensive suit for partition and separate possession, together with such other consequential reliefs as may be available in law.

37. The learned counsel appearing for the plaintiff further placed reliance upon the judgment of the Hon'ble High Court of Madras in ***Manivannan v. Sellappan (S.A. No. 473 of 2013 dated 29.01.2024)*** and contended that one co-owner is entitled to maintain a suit for permanent injunction against another co-owner even without seeking the relief of partition. It was therefore argued that the present suit is perfectly maintainable notwithstanding the absence of a prayer for partition.

38. This Court has carefully gone through the said judgment. In the said case, the plaintiff had instituted a suit for permanent injunction restraining the defendant from removing the top soil of the suit property until the rights of the parties were adjudicated in an appropriate suit for partition or declaration. The principal allegation therein was that the defendant, by operating a brick kiln, was removing and utilizing the valuable top soil of the joint property, thereby causing permanent injury and substantial diminution in the value and utility of the common property to the detriment of all the co-owners.

39. The Hon'ble High Court, while deciding the Second Appeal, framed the following substantial question of law: "*Whether one co-owner is entitled to maintain a suit for injunction as against another co-owner without presenting a suit for*



*partition when allegation of diminution in the value of the property is made?"* After considering the peculiar facts of that case, the Hon'ble High Court held that the defendant had acted in a manner prejudicial to the interests of the other co-owners by running a brick kiln and removing the top soil from the common property, thereby diminishing the value of the property itself. In those peculiar circumstances, the Hon'ble High Court held that the co-owner was entitled to maintain a suit for injunction to prevent further waste and deterioration of the joint property until the rights of the parties were finally determined in appropriate proceedings.

**40.** In the considered opinion of this Court, the ratio laid down in the aforesaid decision is distinguishable on facts and cannot be mechanically applied to the present case. In the present suit, there is absolutely no pleading that the second defendant has committed any act resulting in permanent waste of the property or diminution of its intrinsic value. The plaintiff has not alleged that the second defendant removed the top soil, excavated the land, exploited its natural resources, or committed any act causing irreversible injury to the corpus of the property. On the contrary, the plaintiff's grievance is only that the second defendant demolished the existing residential structure and attempted to put up further construction without his consent. Such allegations, by themselves, do not stand on the same footing as the facts considered by the Hon'ble High Court in *Manivannan v. Sellappan*.

**41.** Further, the plaintiff has failed to establish that he was in joint possession of the suit schedule property on the date of institution of the suit. On the contrary, the oral evidence of P.W.1 contains categorical admissions that the second defendant has been residing in the suit property, paying the house tax, paying the electricity charges and that patta also stands in his name. The second defendant has consistently denied the plaintiff's possession and has asserted exclusive possession and enjoyment over the suit property for several years. Thus, unlike the facts in



*Manivannan v. Sellappan*, the very foundation of joint possession is seriously disputed in the present case.

42. Moreover, the second defendant has specifically denied the plaintiff's right over the suit property and has asserted an exclusive claim based upon the document relied upon by him, long and uninterrupted possession, and the revenue records standing in his name. Therefore, the dispute in the present case is not confined merely to regulating the manner of enjoyment of an admitted joint property; rather, it involves serious and substantial disputes regarding possession and the very nature and extent of the parties' rights.

43. In such circumstances, the principles laid down by the Hon'ble Supreme Court in *Anathula Sudhakar* and the recent decision of the Hon'ble Punjab and Haryana High Court in *Dalbir v. M/s. Cloud Build Con Private Limited and others* are more appropriately applicable to the facts of the present case. Once the plaintiff has failed to establish his possession and the second defendant has denied the plaintiff's rights while asserting exclusive possession, the proper remedy available to the plaintiff is to institute a comprehensive suit for partition and separate possession, along with such other consequential reliefs as may be necessary.

44. Accordingly, this Court holds that the judgment in *Manivannan v. Sellappan* does not advance the plaintiff's case, as the factual matrix and the legal issues involved therein are materially different from those arising in the present suit. Hence, the said decision is clearly distinguishable and is not applicable to the facts of this case.

45. The learned counsel appearing for the plaintiff also placed reliance upon the judgment of the Hon'ble Supreme Court of India in ***Shanti Devi (since deceased)***





*through LRs v. Jagan Devi and others*, reported in **2025 INSC 1105**, and contended that the plaintiff's claim cannot be non-suited merely on technical grounds relating to the nature of the relief sought.

**46.** This Court has carefully considered the aforesaid decision. A reading of the judgment would show that the controversy before the Hon'ble Supreme Court was entirely different from the issues arising in the present suit. The principal question considered therein was the applicability of **Article 59** and **Article 65** of the Limitation Act, 1963, in determining the period of limitation governing a suit seeking declaration of title and the consequential reliefs arising therefrom. The Hon'ble Supreme Court examined the circumstances under which Article 59 or Article 65 would apply to a declaratory suit and the point of commencement of limitation in the facts of that case.

**47.** The ratio laid down in the said judgment is therefore confined to the interpretation and application of the provisions of the Limitation Act in relation to a suit wherein the plaintiff had sought a declaration of his rights. The Hon'ble Supreme Court was not concerned with the maintainability of a bare suit for permanent injunction between disputing co-owners, nor was it considering the question whether a co-owner, who is admittedly out of possession and whose rights are seriously disputed, can maintain a simpliciter suit for injunction without seeking the appropriate consequential reliefs.

**48.** In the present case, the plaintiff has consciously chosen not to seek any declaration of title or declaration regarding the invalidity of the documents relied upon by the second defendant. Equally, the plaintiff has not sought the relief of partition or separate possession, though he has specifically pleaded that he is entitled only to an undivided one-third share in the suit schedule property. Thus, the controversy before this Court is confined to the maintainability of a bare suit for



permanent injunction in the backdrop of seriously disputed possession and co-ownership.

49. Therefore, the legal principles governing limitation under Articles 59 and 65 of the Limitation Act, which fell for consideration before the Hon'ble Supreme Court in *Shanti Devi (since deceased) through LRs v. Jagan Devi and others*, have no application to the facts of the present case. The issues arising in the present suit neither involve determination of limitation for a declaratory relief nor require adjudication upon the applicability of Articles 59 or 65 of the Limitation Act.

50. Accordingly, this Court is of the considered view that the judgment of the Hon'ble Supreme Court reported in **2025 INSC 1105** does not advance the case of the plaintiff and is clearly distinguishable on facts as well as on the questions of law involved. Consequently, the said decision is not applicable to the present case.

51. A cumulative reading of the principles laid down by the Hon'ble Supreme Court in *Anathula Sudhakar v. P. Buchi Reddy (Dead) by LRs.*, (2008) 4 SCC 594, the recent judgment of the Hon'ble Punjab and Haryana High Court in *Dalbir v. M/s. Cloud Build Con Private Limited and others*, C.R. No.1928 of 2026 (O&M), decided on 01.07.2026, and the discussion made above, makes it abundantly clear that where there exists a serious dispute regarding the rights of the parties as co-owners, where one party asserts exclusive possession and exclusive rights over the suit property while denying the rights claimed by the other, and where the plaintiff himself asserts only an undivided share in the property without seeking partition or other consequential reliefs, a simpliciter suit for permanent injunction is not the appropriate remedy. The law is well settled that, in such circumstances, the Court cannot adjudicate the inter se rights of the parties or effectively determine the nature and extent of their respective interests in a suit framed merely for injunction. The appropriate course open to the plaintiff is to institute a comprehensive suit seeking



partition and separate possession, together with such other consequential reliefs, including declaration wherever necessary, so that all disputed questions relating to title, co-ownership, possession, validity of documents and the respective rights of the parties can be finally and effectively adjudicated in one proceeding. The exceptional circumstances under which a co-owner may maintain a suit for injunction against another co-owner, as recognized in judicial precedents, are also absent in the present case, since there is no specific pleading that the acts complained of have resulted in diminution of the value or utility of the suit property or constitute waste or other acts prejudicial to the common estate. Accordingly, this Court holds that the present suit, as framed, is not maintainable in law. ***Accordingly, Issue No.1 is answered against the plaintiff.***

#### **Discussion on Issue No.2:**

**52.** Issue No.2 is that, Whether the plaintiff is in possession of the suit schedule property? The burden of proving possession squarely lies upon the plaintiff. In a suit for permanent injunction, the plaintiff must establish that on the date of institution of the suit he was in lawful possession of the suit schedule property and that such possession was sought to be interfered with by the defendants. Mere proof of title or co-ownership is not sufficient for granting the equitable relief of injunction unless possession is also established.

**53.** The plaintiff would contend that though he was employed at Coimbatore, he continued to remain in joint possession of the suit property along with defendants 1 and 2 after the family partition dated 19.07.1998. According to him, taking advantage of the Covid-19 lockdown, the second defendant demolished the old residential building and attempted to alter the nature of the suit property without his consent.



54. To substantiate his case, the plaintiff examined himself as P.W.1. During his chief examination, P.W.1 reiterated the plaint averments and relied upon Ex.A1 Sale Deed standing in the name of Saveniammal, Ex.A2 to Ex.A7 and the family arrangement marked subsequently as Ex.A8.

55. However, during the course of cross-examination, several important admissions came to be elicited. P.W.1 deposed in Tamil as follows: "தாவா சொத்திற்கு பிரதிவாதி சிவலிங்கம்தான் வரி செலுத்தி வருகிறார் என்றால் சரிதான், ஆனால் அவர் பஞ்சாயத்து யூனியனில் போலி ஆவணங்களை கொடுத்து அதன் அடிப்படையில் வரி செலுத்தி வருகிறார்" He further admitted: "செவினியம்மாள் இறந்த பிறகு தாவா சொத்திற்கான மின் கட்டணங்களையும் பிரதிவாதி சிவலிங்கம்தான் செலுத்தி வருகிறார் என்றால் சரிதான்..." He also admitted: "தாவா சொத்திற்கு 2 ஆம் பிரதிவாதி சிவலிங்கம் பெயரில் பட்டா வழங்கப்பட்டுள்ளது என்றால் சரிதான்."

56. Though the plaintiff attempted to explain that such patta and tax receipts were obtained on the basis of fabricated documents, admittedly he has not obtained any declaration setting aside the patta nor has he challenged the same before the competent revenue authority.

57. The most significant admission made by P.W.1 relates to actual possession. He categorically stated: "தாவா சொத்தில் இந்த வழக்கு தாக்கல் செய்வதற்கு முன்பும், தற்போதும் 2 ஆம் பிரதிவாதிதான் அனுபவத்தில் இருந்து வருகிறார் என்றால் சரிதான்." Again he deposed: "நான் வாரத்தில் ஒரு நாள் எனது தாயாரைப் பார்ப்பதற்காக தாவா சொத்திற்கு செல்வேன்." The above admission unmistakably shows that according to the plaintiff himself, the



second defendant alone was residing in the suit property and the plaintiff was only occasionally visiting the property for meeting his mother.

58. The plaintiff further admitted: "தாவா சொத்து இதுவரை பிரிக்கப்படவில்லை." He also admitted that no partition suit has been filed by him till date. When questioned regarding the alleged fabricated documents, he stated: "2 ஆம் பிரதிவாதி போலி பத்திரத்தின் அடிப்படையில் வரி மற்றும் மின் கட்டணம் செலுத்தி வருவது தொடர்பாக நான் பஞ்சாயத்து, காவல் நிலையம் மற்றும் வட்டாட்சியரிடம் புகார் கொடுத்துள்ளேன்."

59. However, during further cross-examination, he admitted that even in those complaints he had not alleged fabrication of documents. His evidence reads: "காவல் நிலையத்தில் கொடுத்துள்ள புகாரில் 2 ஆம் பிரதிவாதி போலி ஆவணத்தின் அடிப்படையில் தாவா சொத்திற்கு வரி செலுத்தி வருவதாக குறிப்பிட்டுள்ளேனா என்றால் இல்லை." and further, "பஞ்சாயத்தில் புகார் கொடுக்கும்போது அந்த ஆவணம் போலி ஆவணம் என்பது எனக்கு தெரியாது." He also admitted: "அந்த ஆவணம் போலி ஆவணம் என்று தெரிந்த பிறகும் நான் காவல் நிலையத்தில் புகார் கொடுக்கவில்லை என்றால் சரிதான்."

60. These admissions considerably weaken the allegation that the second defendant fabricated documents for securing exclusive possession. The plaintiff has also admitted: "2 ஆம் பிரதிவாதி எங்கள் அனுமதியில்லாமல் தாவா சொத்தில் உள்ள கட்டிடத்தை புதுப்பித்துவிட்டார் என்றால் சரிதான்." Further he stated: "இந்த வழக்கை தாக்கல் செய்த பிறகு தாவா சொத்து



குறித்து பாகப்பிரிவினை கேட்டு இதுவரை நான் வழக்கு தாக்கல் செய்யவில்லை என்றால் சரிதான்." The above admissions clearly establish that even according to the plaintiff, the second defendant alone has been managing the property, paying taxes, paying electricity charges and carrying out construction activities.

61. The plaintiff next examined Chandra Rajan as P.W.2. P.W.2 admittedly is closely related to the plaintiff. During cross-examination he admitted: "வாதி எனது உறவினர் என்றால் சரிதான்." He further admitted: "எனது மனைவியும், வாதியின் மனைவியும் ஒன்றுவிட்ட சகோதரிகள் என்றால் சரிதான்." Therefore, his evidence requires careful scrutiny. P.W.2 admitted that the second defendant had been taking care of Saveniammal. His evidence reads: "செவணியம்மாளை சிவலிங்கம் என்பவர்தான் பார்த்துக் கொள்கிறார் என்றால் சரிதான்." He further admitted: "மேற்கண்ட தாவா சொத்து வீட்டில் கழிவறை வசதி இல்லாமல் இருந்ததால் சிவலிங்கம்தான் அதை சரிசெய்து கட்டியுள்ளார் என்றால் சரிதான்."

62. Though P.W.2 attempted to support the plaintiff regarding the family partition of 1998 and stated that the suit property was allotted jointly to the plaintiff and defendants 1 and 2, he could not speak about actual possession after the death of Saveniammal. His testimony is insufficient to establish that the plaintiff was in actual possession on the date of suit.

63. On the contrary, the evidence of D.W.1 is consistent regarding his continuous occupation. D.W.1 categorically stated that after the death of Saveniammal he alone continued to reside in the property along with his mother, wife and children. He further deposed that he had been paying house tax and electricity



charges continuously. During cross-examination, though extensive suggestions were put to him, several material aspects remained unshaken. He admitted the family partition dated 19.07.1998 and identified Ex.A8. However, he consistently maintained that the plaintiff had not been residing in the property. His evidence reads: "வாதி 40 வருடங்களாக தாவா சொத்திற்கு வரவில்லை."

64. Though the above statement may be an exaggeration in view of the plaintiff's admission that he used to visit his mother periodically, the fact remains that D.W.1 has consistently asserted exclusive occupation. Further, D.W.1 stated: "புகார் கொடுத்தது உண்மைதான், ஆனால் அது எனது பகுதியாகும். எனது தாயாருக்கு கழிவறை வேண்டும் என்பதால் நான் அதை இடித்து கட்டினேன்." He also explained that after the police intervention no further construction was made and subsequently the mud walls collapsed due to heavy rains.

65. Significantly, the documentary evidence also probabilises the possession of the second defendant. Ex.B1 Patta stands in the name of the second defendant. Ex.B2 series are house tax receipts. Ex.B3 series are electricity receipts. Though the plaintiff disputes the correctness of those documents, he has not produced any document showing that he himself has been paying taxes or electricity charges after the death of Saveniammal. No revenue record, municipal record, tax receipt or electricity receipt stands in the name of the plaintiff for the relevant period. The Court is conscious that revenue records by themselves do not confer title. Nevertheless, they constitute relevant evidence regarding possession.

66. When such documentary evidence is read together with the categorical admissions of P.W.1 that the second defendant alone has been paying taxes, paying electricity charges, holding patta and residing in the property, this Court finds it difficult to hold that the plaintiff was in actual possession on the date of suit. Even



assuming that the plaintiff continues to have an undivided share in the property by virtue of inheritance or Ex.A8 family partition, the evidence unmistakably establishes that actual physical possession has remained with the second defendant.

**67.** In a suit for permanent injunction, what is required to be proved is existing lawful possession on the date of suit. The plaintiff has failed to establish such possession. On the contrary, his own admissions probalilise the defence of exclusive possession pleaded by the second defendant. Accordingly, this Court holds that the plaintiff has failed to prove that he was in possession of the suit schedule property on the date of filing of the suit. ***The Issue No.2 is therefore answered against the plaintiff.***

### **Discussion on Issue No.3:**

**68.** Issue No.3 is that, Whether the plaintiff is entitled to the relief of permanent injunction as prayed for? The relief of permanent injunction is an equitable and discretionary relief. Before such relief can be granted, the plaintiff must establish not only a legal right but also his existing lawful possession as on the date of institution of the suit and a real threat of unlawful interference by the defendants. The burden to establish these essential ingredients rests entirely upon the plaintiff.

**69.** As already discussed while answering Issue No.2, the plaintiff has failed to establish his actual possession over the suit schedule property on the date of filing of the suit. On the contrary, his own admissions establish that the second defendant has been residing in the suit property, paying the house tax, paying the electricity charges and holding patta in his name.

**70.** The plaintiff has attempted to explain these circumstances by contending that the second defendant had obtained the revenue records and tax receipts by





relying upon a fabricated agreement said to have been executed by Saveniammal. According to the plaintiff, Ex.B4 is a forged and fabricated document.

**71.** This Court is unable to accept the said contention in the present suit. The plaintiff has neither sought a declaration that Ex.B4 is void nor sought cancellation of the said document. Though suggestions were put to D.W.1 regarding the alleged fabrication, no independent evidence has been produced to prove the same. Consequently, the genuineness or otherwise of Ex.B4 cannot be finally adjudicated in the present suit for bare injunction.

**72.** Likewise, much reliance has been placed by both parties upon Ex.A8 dated 19.07.1998. The plaintiff relies upon the said document to contend that the suit property was allotted jointly to the plaintiff and defendants 1 and 2. Significantly, D.W.1 has admitted the execution of Ex.A8. However, the mere existence of Ex.A8 does not automatically establish that the plaintiff continued in joint physical possession till the institution of the present suit. At best, Ex.A8 may indicate that certain rights were recognized among the parties in the family arrangement. Whether those rights continued thereafter, whether they were acted upon, whether the second defendant subsequently perfected any independent right, and whether the plaintiff abandoned possession are all questions which necessarily require adjudication in an appropriate comprehensive suit. The present suit has been deliberately confined only to a prayer for injunction. This Court is therefore not required to pronounce finally upon the title of either party.

**73.** Another important aspect deserves consideration. The plaintiff himself has pleaded that no partition has taken place between himself and defendants 1 and 2 after the family arrangement. The plaintiff further admits that he claims only one-third share in the property. Without partition by metes and bounds, no Court can identify the exact portion to which the plaintiff is entitled. If the injunction prayed for



is granted, the inevitable consequence would be to restrain the second defendant from making use of the entire property though admittedly he is residing therein. Such an order would virtually amount to granting possession to the plaintiff indirectly without there being any adjudication of his actual possession.

74. The evidence further discloses that the second defendant has been residing in the property along with his aged mother. The plaintiff himself admitted during cross-examination: "2 ஆம் பிரதிவாதி எங்கள் அனுமதியில்லாமல் தாவா சொத்தில் உள்ள கட்டிடத்தை புதுப்பித்துவிட்டார் என்றால் சரிதான்." D.W.1, while explaining the circumstances, stated: "புகார் கொடுத்தது உண்மைதான், ஆனால் அது எனது பகுதியாகும். எனது தாயாருக்கு கழிவறை வேண்டும் என்பதால் நான் அதை இடித்து கட்டினேன்." He further deposed: "நான் வீட்டின் ஒரு பகுதியைத்தான் இடித்தேன். ஆனால் வாதி காவல்துறையில் புகார் கொடுத்ததால் காவல்துறையினர் மேற்கொண்டு எந்தவிதமான கட்டுமானமும் செய்யக்கூடாது என்று கூறிவிட்டார்கள்."

75. Even assuming that the second defendant subsequently attempted certain construction activities, such construction by itself cannot furnish a ground to grant permanent injunction unless the plaintiff establishes his existing possession. The plaintiff has also relied upon the evidence of P.W.2. This Court has already noticed that P.W.2 is closely related to the plaintiff. Though relationship alone is not sufficient to discard evidence, the testimony of P.W.2 does not establish actual possession of the plaintiff. On the contrary, P.W.2 admitted: "செவணியம்மாளை சிவலிங்கம் என்பவர்தான் பார்த்துக் கொள்கிறார் என்றால் சரிதான்." and "மேற்கண்ட தாவா சொத்து வீட்டில் கழிவறை வசதி இல்லாமல் இருந்ததால் சிவலிங்கம்தான் அதை சரிசெய்து கட்டியுள்ளார் என்றால்



சுறிதான்." These admissions probabalise the defence version that the second defendant had been managing and maintaining the property.

76. The plaintiff has also produced complaints said to have been given before the police and Panchayat. Those complaints only establish that a dispute had arisen between the parties. They do not establish that the plaintiff was in possession on the date of filing of the suit. The law is well settled that an injunction cannot be granted merely because the plaintiff apprehends future injury. Possession must first be established.

77. This Court is also of the opinion that the plaintiff has an effective and efficacious alternative remedy. If according to the plaintiff the property continues to be joint family property and no partition has taken place among the plaintiff and defendants 1 and 2, the proper course open to him is to institute a comprehensive suit for partition, separate possession, declaration regarding his rights, if necessary, and all consequential reliefs including injunction.

78. In such a suit, the parties would have full opportunity to establish their respective rights, challenge the documents relied upon by each other, seek expert opinion wherever necessary and obtain an adjudication on title as well as possession. Granting a permanent injunction in the present suit would prejudice such adjudication.

79. For all the foregoing reasons, this Court holds that the plaintiff has failed to establish either his lawful possession or his entitlement to the equitable relief of permanent injunction. *Accordingly, Issue No.3 is answered against the plaintiff.*

**Discussion on Issue No. 4:**

**80.** Issue No.4 is that, to what other relief the plaintiff is entitled for, in this regard, since it is decided that, the plaintiff has failed on Issues Nos.1 to 3, no other relief can be granted to the plaintiff in this suit. *Accordingly Issue No.4 is answered.*

**81.** Considering the close relationship between the parties, who are admittedly brothers litigating over ancestral family property, this Court is of the view that directing either party to bear their own litigation expenses would serve the ends of justice.

**RESULT**

**82.** *In the result, the suit is dismissed. No costs.*

This judgment is dictated to the steno typist, typed by her in computer, corrected and pronounced by me in open court, on this 09<sup>th</sup> day of July 2026.

**DISTRICT MUNSIF,  
UDHAGAMANDALAM**

**List of Witnesses and Documents:****Plaintiff's side witnesses examined:**

- 1. N.J. Chandran - Pw-1 (Plaintiff)**
- 2. Chandra Rajan - Pw-2**

**Plaintiff's side exhibits marked:**

| Sl. No | Date       | Documents                                                          | Nature of Documents                | Exhibits |
|--------|------------|--------------------------------------------------------------------|------------------------------------|----------|
| 1.     | 09.09.1982 | Sale Deed                                                          | Online Certified Registration Copy | Ex. A-1  |
| 2.     | 15.03.1982 | Electricity Connection Certificate                                 | Original                           | Ex. A-2  |
| 3.     | 15.07.2021 | C.S.R. Receipt                                                     | Photostat Copy                     | Ex. A-3  |
| 4.     | -          | Complaint to President of Nanjanadu Panchayat                      | Photostat Copy                     | Ex. A-4  |
| 5.     | 08.07.2021 | Notice of the President of Nanjanadu Panchayat                     | Coloured Photo Copy                | Ex. A-5  |
| 6.     | -          | Photographs – 8 Nos. along with Compact Disc                       | Printed Copy/Original              | Ex. A-6  |
| 7.     | 13.09.1921 | RTI Reply from Nanjanadu Panchayat Union along with Agreement Copy | Coloured Photo Copy                | Ex. A-7  |
| 8.     | 19.07.1998 | Terms of Settlement of 1998 Partition                              | Photostat Copy                     | Ex. A-8  |

**2<sup>nd</sup> Defendant's side witnesses examined:**

1. N.J. Sivalingam - Dw-1 (2<sup>nd</sup> Defendant)

**1<sup>st</sup> Defendant's side exhibits marked:**

| Sl. No | Date       | Documents                                           | Nature of Documents     | Exhibits |
|--------|------------|-----------------------------------------------------|-------------------------|----------|
| 1.     | 27.01.2014 | Patta in the name of 2 <sup>nd</sup> Defendant      | Original                | Ex. B-1  |
| 2.     | -          | House Tax Receipts – 7 Nos.                         | Original                | Ex. B-2  |
| 3.     | -          | Electricity Bill Receipts – 3 Nos.                  | Original/Photostat Copy | Ex. B-3  |
| 4.     | -          | Unregistered Agreement Deed dated as September 1982 | Original                | Ex. B-4  |



|    |            |                                                                   |                                         |                |
|----|------------|-------------------------------------------------------------------|-----------------------------------------|----------------|
| 5. | -          | Old and New Family Identity Card of the 2 <sup>nd</sup> Defendant | Photostat Copy (Compared with Original) | <b>Ex. B-5</b> |
| 6. | -          | House Tax Receipts – 2 Nos.                                       | Original                                | <b>Ex. B-6</b> |
| 7. | 05.01.2025 | Property Tax Receipt                                              | Online Certified Copy                   | <b>Ex. B-7</b> |

**DISTRICT MUNSIF,  
UDHAGAMANDALAM.**



Draft / Fair Judgment:

**O.S. No. 85/2021**

Dated: **09.07.2026**

**District Munsif Court,  
Udhagamandalam**