

IN THE COURT OF THE PRINCIPAL DISTRICT JUDGE,
PERAMBALUR DISTRICT, TAMIL NADU STATE.

Present: Tmt.A.Balkis, B.L.,
Principal District Judge.

Wednesday, this the 19th day of February, 2025.

I.A.No.1/2023
in
O.S.No.33/2023

1. Deepika, 24/23,
D/o. Ganesan, W/o. Arunselvan.
2. Minor Aburvan, 5/23,
(the minor is rep. by his guardian/mother
Deepika the 1st petitioner herein)
Both are residing at
Irir Village, Alathur Taluk,
Perambalur District.

--- Petitioners/
Plaintiffs.

-Vs-

1. Arunselvan, 27/23,
S/o.(L) Perumal Goundar.
2. Kavitha, 50/23,
W/o.(L) Perumal Goundar.
3. Abinaya, 25/23,
D/o.(L) Perumal Goundar.
4. Pappathi, 55/23,
W/o.(L) Perumal Goundar.
5. Selvarani, 40/23,
W/o. Tamizharasan.

6. Selvakumar, 48/23,
S/o. Muthusamy.
7. Subramanian, 49/23,
S/o. Kandasamy.
the respondents 1 to 7 are residing at
Irur Village, Alathur Taluk,
Perambalur District.
8. The Branch Manager,
Katholic Siriyank Bank Ltd.,
Trichy – 620 001.
9. Thangavel,
Pattu Cycle Shop.
10. Vicky, Sankar Saloon Shop.
11. Britannia Biscuit Shop.
12. The Branch Manager,
Union Bank, Chettikulam,
Alathur Taluk, Perambalur District.
13. Selvakumar,
Citizen Tailoring Shop,
Alathur Taluk, Perambalur District.
14. Srinivasan, Welding Shop.
15. Murali, M.R.P Textile Shop.
16. Manikandan,
S/o. Rajamanikam,
Edition Electric Shop.
17. Thangavel, Rice Shop.
18. Ramesh, Goodluck Saloon.
19. Marimuthu, Suresh Rented Utensil Shop.

20. Ravichandran, Fertilizer Shop.
21. Ulaganathan, Barani Saloon Shop.
22. Thangavel, Saminathan Cycle Shop.
23. Brama, Puncture Shop.
24. Rajendran, Cable Connection Office.
25. Natrajan, Siddha Doctor.
26. Vimala.
27. Taluk Distributive Officer,
Alathur Village & Taluk, Perambalur District.
28. Rane Group Company Furniture Shop.

---Respondents/Defendants.

This petition is coming up before me for final hearing in the presence of Thiruvalargal.E. Ramalingam and P. Mohandas, Advocates for the petitioners and Thiru.R. Manivannan, Advocate for the respondents 1 to 4 and 8 to 24 and the respondents 5 to 7, 25, 26 and 28 are called absent set exparte and upon perusing the petition, counter and other relevant records, this Court has passed the following:

ORDER

This petition has been filed U/O 39 Rule 1 & 2 and Section 94 & 151 of CPC to grant interim injunction to restraining the defendants or their men or agents or their heirs from alienating the property among themselves or to any other person till the disposal of this petition and also grant temporary injunction till the disposal of the suit.

2. Brief averments made in the petition is as follows:

The case of the petitioners/plaintiffs is that the petitioner/1st plaintiff is the

mother of the 2nd plaintiff Aburvan and she filed this petition for her son also. They filed the suit for partition from the respondents/defendants. The suit property is the ancestral property vested in her son Aburvan and other defendants 1, 3 and 4. The 1st defendant is her husband and the 2nd plaintiff is the son of the 1st defendant. The 1st defendant is the son of the 2nd defendant. The 3rd defendant is the daughter of the 2nd defendant. The 4th defendant is the wife of Perumal Goundar who is the father of the 1st defendant. One Sengamalai is the paternal grandfather of the 1st defendant. The ancestral properties are belonged to the said Sengamalai and he was enjoying the same. The said Sengamalai having 3 sons namely Perumal Goundar who is the father of the 1st defendant, Vellaiyan and Ambal. The younger son of Sengamalai by name Ambal who died at his young age without marrying. Thereafter an oral partition has been made in respect of ancestral properties of the said Sengamalai between the Perumal Goundar and Vellaiyan and they enjoyed their possession. On 28.08.1975, the father of the 1st defendant had purchased the property from one Ramasamy Aachari at Irur village in S.F.No.370/3 by the income earned from the ancestral property and he enjoyed the same along with his ancestral property. The Perumal Goundar obtained release of the share of Annamalai Aachari in the said property by a release deed dated 09.10.1975. He had purchased the property from Ariyalur Bypaas Mining Works P. (Ltd.) at Irur village in S.F.No.369/1 and 369/6 in his name and his wife namely Pappathi who is the 4th defendant by the income earned from the ancestral property. On 25.10.1980 and 17.06.1985 vide Doc.No.1035/1985, the Perumal Goundar executed a sale deed in respect of his ancestral property in favour of his brother Vellaiyan Goundar. The father of the 1st defendant transferred the sale deed in the name of his wife to his name on 23.05.2000. He has constructed shops in S.F.No.369/6B and he received rent from the said shops and houses. To get a loan from the Bank, he had executed a gift settlement deed dated 15.02.2007 in favour of the 2nd defendant. The said gift settlement deed is a fraudulent one and it has not been brought into force by law. The father of the 1st defendant was enjoying the suit

properties as joint family ancestral property till his death. Prior to the death of the said Perumal Goundar, the 1st defendant said that his father had executed a will in favour of himself and therefore he executed the sale deeds in S.F.No.369/1B, acre 0.071/2 cent to the 5th defendant and in S.F.No.369/7 acre 0.30 cent to the 6th defendant. The plaintiffs have filed a suit in O.S.No.273/2019 before the District Munsif Court, Perambalur against the 1st defendant and Sub-Registrar of Chettikulam and the said case was dismissed for default on 07.08.2021. When the plaintiffs came to know about the dismissal of the said suit they are taken steps to restore the suit. In the joint family ancestral properties, the 1st defendant is entitled to 1/3rd share and the 2nd and 4th defendants are entitled to 1/3rd share each. In the properties belonged to the 1st defendant, the 2nd plaintiff having 1/2 share. It is only now they came to know that the 1st and 3rd defendants have obtained loan from the 8th defendant by mortgaging the suit property which was owned by the 2nd plaintiff. If the defendants 1 to 4 sell the suit property to others, it will cause great hardship to them. Therefore, the plaintiffs have filed the suit for partition. In S.F.No.369/6B and S.F.No.369/3, 9 to 28 defendants are running shops on rent. when she tried to know the rent details, the defendants 9 to 28 had refused to give correct information. Therefore, the defendants have not paid the rent due to the property to which the 2nd plaintiff is entitled. The defendants are having manpower and money power and are not bound by the law. They will sell the suit property at any time. Therefore, until the end of this case, it is necessary for this Court to grant an injunction to prevent the defendants from selling the property to themselves or to other persons. Otherwise the plaintiffs will be put to great loss and hardship. Therefore this Court may pleased to grant interim injunction to restraining the defendants or their men or agents or their heirs from alienating the property among themselves or any other person till the disposal of this petition and also to grant temporary injunction till the disposal of the suit. Hence this petition.

3. The brief averments made in the counter filed by the 1st respondent/defendant and the same was adopted by the defendants 2 to 4 and 8 to 24 as follows:-

The contention of the respondents/defendants is that all the allegations stated in the affidavit and petition are all denied as false except those that are specifically admitted herein and the petitioners are put to the strict proof of the same. The petition is not maintainable under law and on facts and is liable to be dismissed in limine. Perumal Goundar, Velliyappan and Ramaraj were legal heirs of Sengamalai. In which the said Ramaraj died unmarried. On 28.08.1975 and 08.08.1980, the said Perumal Goundar purchased the properties in S.F.No.370/3, S.F.No.369/1 and S.F.No.369/6 from out of his own income and he used to enjoying them as separate property without any disturbance. The plaintiffs stated that the Perumal Goundar had sold some properties. As the plaintiff did not include the sold properties in the suit, the suit is partially flawed. All the properties belonged to the Perumal Goundar are separate properties out of his own income and he was enjoying full ownership of those properties. In fact, on 28.08.1975 no document stands in the name of the 4th defendant. A land in S.F.No.369/3 acres. 0.79 cent is separate property of the said Perumal Goundar. He is having full right to execute a gift settlement deed in favour of his wife who is the 2nd defendant herein. After the execution of the said gift settlement deed, the possession was handed over to the 2nd defendant and patta has been issued to that effect by the Revenue Department. Thereafter, the 2nd defendant get a loan through mortgaging her property and to repay the loan from her own income. The 2nd defendant enjoying the possession of the suit property. The said Perumal Goundar had executed a registered Will dated 02.06.1997 in respect of the properties acquired by him through the partition in favour of the 1st defendant and in the said will it has been stated that he would enjoy the same as owner and also have a right to sale and thereafter the said Perumal Goundar died on 04.10.2011. After his death, the said Will came into force. Thereafter, a title deed was issued in the name of the 1st defendant by the Revenue Department in view of the enjoyment and

possession of the 1st defendant in the suit properties. The plaintiffs filed a case in O.S.No.273/2019 and stated in Para. No.3 as follows, "the said Perumal Goundar executed a registered Will dated 02.06.1997 during his lifetime in respect of the suit properties and certain properties. The said Perumal Goundar died on 04.10.2011 and the said Will dated 02.06.1997 executed by him has been duly registered and attested." The plaintiff has admitted the genuineness of the Will and has now filed this suit for illegal appropriation of suit property and for making a profit. The plaintiffs are prohibited under the principle of estoppel. In the above case in O.S.No.273/2019, the plaintiff filed a petition in I.A.No.2/2019 that the sale should not be made by 1st defendant. The said petition was dismissed on merits. The plaintiff has filed a petition in I.A.No.1/2023 in this case also seeking the same relief. The said suit was dismissed for default and has come forward with the present suit to fill up the gaps that was missed out in the earlier suit. The plaintiff has no right in law to get the share demanded by them. Item No.2 of the suit property is the separate property of the 1st defendant and he has full right to rent the same and collect rent. The 1st defendant has filed a divorce petition against the 1st plaintiff in which she filed counter with false allegations. The plaintiff have not enjoying the suit property. The plaintiff was not living together with the 1st defendant and her name is not in the family card. She has filed this suit with the intention of interpolate the enjoyment of the defendants in the suit property and to confiscating the property. The plaintiff has threatened the defendants and trying to defraud them of money or property. Therefore, she never acquired any right in the suit property. She did not approach the Court with clean hands and for this reason, the suit is liable to be dismissed in the limine. She did not send any notice to the defendants before filing this suit. From this it is clear that this case has been filed with the intention of deceiving the defendants somehow by bypassing the law. The value of the property shown by the plaintiffs in their suit is less. The suit is bad for non-joinder of necessary parties. The plaintiffs are barred by statute of limitations from filing the

suit and they are not entitled to any relief. Therefore, the petition deserves to be dismissed with cost of the defendants.

4. Point for consideration is:

Whether the petition in I.A.No.1/2023 is to be allowed or not?

Point:-

5. This application is filed for granting interim injunction restraining the respondents/defendants from alienating the suit schedule properties till the disposal of the suit.

6. The suit is filed for partition by the petitioners/plaintiffs against the defendants. The relationship between the parties are admitted. The 2nd plaintiff is the son of the 1st defendant and the 1st defendant's father one Perumal Goundar was owning ancestral properties through his father one Sengamalai Goundar. The said Sengamalai Goundar had 3 sons namely Perumal Goundar, Vellaiyan Goundar and Ramaraj and Ramaraj died leaving no issues. After the demise of Sengamalai, the properties were divided between the Perumal Goundar and Vellaiyan.

7. According to the petitioners/plaintiffs, the Perumal Goundar enjoyed the properties obtained by him by partition and from out of the income earned from the ancestral properties, he purchased properties in S.F.No.370/3 from one Ramasamy Aachari and he enjoyed the property by treating it as a joint family property and he also obtained release deed dated 09.10.1975 from one Annamalai Aachari. Further, he also purchased properties in S.F.No.369/1 and 369/6 by sale deeds dated 08.08.1980 and thereafter he also thrown the property into common hotch pot and treated as a joint family property. Thereafter he sold out the joint family property to his brother Vellaiyan Goundar by sale deed dated 25.10.1980 and 17.06.1985. Therefore, the plaintiffs claims that the 2nd plaintiff is the son of the 1st defendant and

he is having 1/3rd share in the suit schedule properties and the 1st defendant is trying to alienate some of the suit schedule properties to the 3rd parties. Since the 2nd plaintiff is having birth right in the joint family properties of the 1st defendant he shall not alienate it. Further, the plaintiffs also averred that the 1st defendant got some Will from his father Perumal Goundar bequeathing the suit properties and other properties by means of the Will. He shall not alienate the properties because the 2nd plaintiff is having right in the properties covered by the Will.

8. The respondents contended that the properties purchased by the Perumal Goundar by sale deed dated 28.08.1975 was his own self acquired properties out of his own earnings and not from the income of the ancestral properties. The said Perumal Goundar also constructed shops in S.F.No.369/6B and a gift settlement deed executed in favour of his wife Pappathi dated 15.02.2007 was actually acted upon and she is owning that property and further the 1st defendant contended that he had filed divorce petition against the 1st plaintiff before the Family Court and the same is pending and with a view to take revenge against him, a suit has been filed by the 1st plaintiff.

9. Further, the petitioner/1st plaintiff also contended that she has also filed another suit before the District Munsif Court in O.S.No.273/2019 and the said suit was dismissed for default on 17.08.2021 for non prosecution and she has taken steps to restore the suit. The 1st defendant and other defendants contended that even in that suit filed before the District Munsif Court, the petitioner has filed an application for injunction not to alienate the property and the said petition was dismissed on merits now again the petitioner having allowed the suit has to be dismissed for default and has come forward with the present suit to fill up the gaps that was left out in the earlier suit.

10. Now the question is to be decided is whether the 2nd plaintiff who is the legitimate son of the 1st defendant is having right by birth in the ancestral properties of Sengamalai Goundar and the properties of Perumal Gounder.

11. As per the averments of the petitioners as well as the respondents, originally the Sengamalai Goundar was owning properties and Perumal Goundar got the ancestral properties of Sengamalai Goundar on partition between himself and his brother Vellaiyan Goundar and thereafter, he had executed a Will in favour of the 1st defendant bequeathing some of the suit properties and other properties and the Perumal Goundar died on 04.10.2011. Prior to his death, he has executed a Will dated 02.06.1997 when the 1st defendant was minor and he bequeathed both the self acquired and ancestral properties in favour of the 1st defendant and other sons who will be born to him through his 2nd wife. He also appointed his wives as administrators of the property and he also authorized his wives to collect the rent and deposit it in the name of the 1st defendant and to maintain proper accounts. Thus upon the execution of the Will dated 02.06.1997 and after the death of Perumal Goundar in the year 2011, the Will has come into force and the properties which was bequeathed by the Will becomes the absolute properties of the 1st defendant.

12. The 1st defendant married the 1st plaintiff in the year 2017 and when the suit was filed by the 1st plaintiff before the District Munsif Court, the age of the 2nd plaintiff is stated as 2 years and in this present suit the age of the 2nd plaintiff is stated as 5 years. Therefore, the 2nd plaintiff might have born in the year 2018. So far as the ancestral properties are concerned, immediately upon partition it becomes a separate properties of the joint family members and only when a son was born to him, it becomes ancestral properties in the hands of son and if at all the 2nd plaintiff was born during the lifetime of said Perumal Goundar prior to coming in to force of the

Will then the 2nd plaintiff might have got birth right in the ancestral properties. At the time of death of Perumal Goundar, the only co-parcenar is the 1st defendant and the Perumal Goundar had bequeathed all his ancestral and self acquired properties in favour of the 1st defendant and as soon as he died in the year 2011, the properties left by the Will has become absolute properties of the 1st defendant in which the son who was not in existence on the date of death of Perumal Goundar will not have any right by birth. What the 2nd plaintiff is now having is only spes successionis that is the chance of inheritance. Therefore, when the 1st plaintiff has not substantiated 2nd plaintiff's right over the suit schedule properties, she cannot seek an order of injunction to prohibit the 1st defendant from alienating the properties since he is the absolute owner and therefore, the petitioners/plaintiffs are not entitled to any relief as prayed for and the point is answered accordingly.

13. In the result, this petition is dismissed. No cost.

Dictated to the Executive Assistant, transcribed and typed by her, corrected and pronounced by me in open Court, this the 19th day of February, 2025.

Principal District Judge,
Perambalur.

PDJ Court,
Perambalur.

Fair/Draft Order
I.A.No.1/2023
in
O.S.No.33/2023
D.D:19.02.2025