

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.2/2023
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
Irur 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 by the 1st plaintiff on behalf of the 2nd plaintiff directing the defendants 9 to 28 to pay the share of the rent to the 2nd plaintiff and get receipt from the 1st plaintiff on behalf of the 2nd plaintiff failing which, the Court shall direct the respondents 9 to 28 to deposit the rent into the Court till 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 against 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 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 released 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 directing the defendants 9 to 28 to pay the share of the rent to the 2nd plaintiff and get receipt from the 1st plaintiff on behalf of the 2nd plaintiff failing which, the Court shall direct the respondents 9 to 28 to deposit the rent into the Court till 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 missed 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 plaintiffs have not enjoy 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 limini. 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.2/2023 is to be allowed or not?

Point:-

5. This application is filed by the 1st plaintiff on behalf of the 2nd plaintiff directing the defendants 9 to 28 to pay the share of the rent to the 2nd plaintiff and get receipt from the 1st plaintiff on behalf of the 2nd plaintiff failing which, the Court shall direct the respondents 9 to 28 to deposit the rent into the Court till disposal of the suit.

6. The suit is filed for partition and the 1st defendant claims properties by way of Will and the Will also admitted by the petitioners/plaintiffs in the earlier suit filed by them before the District Munsif Court, Perambalur. The 2nd plaintiff was born after the death of Perumal Goundar and the 1st defendant had obtained the property by way of Will which had come into existence in the year 2011 on which date, the 2nd plaintiff was not in existence. Therefore the 2nd plaintiff is not having the birth right in the properties. What the 2nd plaintiff has is only a chance of succession on the death of 1st defendant and till then he cannot seek for share in the rent from the 1st defendant. When the petitioner has not established the right of the 2nd petitioner over suit schedule properties, she cannot pray for an order of directing the respondents 9 to 28 to pay the rent to the 2nd petitioner/2nd plaintiff or to deposit the rent in to Court. Hence this petition is deserves to be dismissed and this point is answered as against the petitioners/plaintiffs.

7. 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