



**IN THE COURT OF THE PRINCIPAL DISTRICT AND SESSIONS JUDGE,
PUDUKKOTTAI.**

PRESENT : Thiru.K.Poorana Jeya Anand, M.A., M.L.,
Principal District Judge, Pudukkottai.

Tuesday, the 02nd day of June, 2026
(Thiruvalluvarandu 2057 Parabhava Varudam Vaikasi Thingal 19th day)

Civil Miscellaneous Appeal No.4/2026
(CNR No.TNPD01 005433 2025)

Kannan ... Appellant / Respondent/ 3rd Defendant

Versus

Sasikumar ... Respondent/Petitioner/Plaintiff

Appeal against the Fair Order and Decretal Order passed by the Principal Subordinate Judge, Pudukkottai in I.A.No.01/2025 in O.S.No.319/2019 dated 22.09.2025.

Between

Sasikumar ... Petitioner/Plaintiff

and

Kannan ... Respondent/Defendant

This Civil Miscellaneous Appeal has come up for final hearing before me on 07.04.2026 in the presence of Mr.V.S.Badrinath, Learned Advocate appearing for the Appellant and of Mr.Pon.Gajendran, Learned Advocate appearing for the



Respondent and upon perusing the Memorandum of appeal grounds, Order and Decretal Order of the trial court and entire connected available material records and upon hearing the arguments of both sides and having stood over for consideration till date, this court passed the following...

JUDGMENT

(1) The Civil Miscellaneous Appeal is filed by the appellant challenging the fair order and decretal order passed by the Principal Subordinate Judge, Pudukkottai in I.A.No.01/2025 in O.S.No.319/2019 dated 22.09.2025 allowing the petition for interim injunction.

(2) The petition in **I.A.No.01/2025 in O.S.No.319/2019** has been filed by the respondent herein under Order XXXIX Rule 1 and 2 praying to pass a interim injunction for the 3rd defendant and his mens restraining to construct any building over the suit property till the disposal of the Original Suit.

(3) The case of the petitioner is as follows:-

3.1) The petitioner is the plaintiff in the main suit. The plaintiff filed the suit for partition. The 3rd defendant/respondent has made arrangements to construct a house on the 5th item of the suit property and perform a pooja on 04.06.2025. The 5th item of the suit is situated in a residential area and is worth several lakhs. If a house is constructed on the 5th item of suit property, the 3rd defendant/respondent will demand that specific portion to be allotted to his share based on equity. Due to this, the petitioner and the other co-sharers will suffer immense hardship and loss.



3.2) The 3rd defendant/respondent already has sufficient residential housing facilities to reside. The 3rd defendant/respondent with an intention to deceive the petitioner and other co-sharers, he is making arrangements to construct a house on item No.5 of the suit property.

3.3) When the petitioner demanded the 3rd defendant/respondent to stop constructing the house, the 3rd defendant/respondent with his mens had threat the petitioner as to cause his death. The petitioner seeking an order to grant an interim injunction till the disposal of the original suit that the 3rd defendant and his mens are restrained to any construction over the item No.5 of the suit property. Hence this petition.

4) The case of the respondent is as follows:-

4.1) The title of the petition property is in favour of this respondent. There is no specific pleading in the plaint that the 5th item was purchased by this respondent out of funds generated from the ancestral property. Why every co-sharer choose this respondent to buy in his own name? are not only necessary but also prudent from the petitioner's perspective. Even in the plaint these material particulars are missing.

4.2) When the petitioner seeks an ad-interim injunction restraining this respondent from constructing a house in the suit 5th item/ petition property even assuming the property was purchased from the surplus income from the ancestral property by the petition is not maintainable and at the best the respondent can be



asked not to calculate the cost of the building at the time of final decree proceedings.

4.3) A co-sharer can be enjoined by another co-sharer at the best to whom the injunction is sought for must have spoiled or becoming detrimental to the property by damaging either by an act or by an inaction. In this case constructing a house will not spoil the petition property or cause any serious damage assuming the property is to be divided amongst the inter-parties.

4.4) The petitioner has not specifically prayed that by allowing the respondent to construct will cause any damage which will constrain the other parties from enjoyment. There is no prima facie title in favour of the petitioner. The title is in favour of this respondent. Mere averment that the petition property was purchased in the name of this respondent is not sufficient.

4.5) The petitioner has not specifically averred or substantiated through any evidence that the balance of convenience is in his favour. The petitioner has not specifically averred how he will be affected and by the construction of a house in the 5th item of suit property. The petitioner filed this application only to procrastinate the proceedings. There is no bonafide and the petitioner has approached this court with unclean hands as he filed this application after deposing in chief. Hence prays to dismiss the petition with exemplary costs.

5) Gist of memorandum of grounds of appeal:-

5.1) The order and decree by the trial court is against law, weight of evidence and probabilities of the case.



5.2) The trial court has not appreciated the plaint pleading and the affidavit filed by the petitioner along with the interim application those resulted in miscarriage of justice.

5.3) The trial court failed to appreciate that the petition property was claimed by the respondent herein was bought through his income too. He has never pleaded that the petition property was bought out of the surplus income of the co-parcenary property.

5.4) Even assuming that the assumption of the trial court is right that the property could have been purchased through the surplus income from the co-parcenary property the plaint is silent about what is the total surplus amount? what is the actual earning from the co-parcenary property? What was the inter-parties doing in the co-parcenary property or what was they cultivating? the trial court has not appreciated the same.

5.5) The trial court failed to appreciate that the property stands obviously not in the name of the inter-parties father, mother or fore-fathers. So the assumption or the presumption cannot be stretched to the property standing in the name of this respondent.

5.6) The trial court has failed to appreciate that the documents relied/marked by the petitioner-respondent herein or absolutely irrelevant to substantiate prima facie case in his favour.



5.7) The trial court failed to appreciate that the property standing in the name of this appellant and the construction in that will not create chaos at the time of final decree proceedings even assuming the property to deserves severance. The trial court has not appreciated this aspect of balance of convenience in the appellant's favour.

6) The learned Counsel appearing for the Appellant / Respondent has submitted that the trial court failed to consider the facts in a proper manner and so, he prays for allowing this Appeal.

7) Per contra, the learned Counsel appearing for the Respondent / petitioner/ Plaintiff has submitted that the finding of the trial court is well considered one and there is no need to disturb the findings of the trial court.

8) I have carefully considered the arguments advanced by either side and perused the records. **Upon considering the same, the following points are essential to decide this Appeal :**

- 1) Whether the petitioner is entitled to get the interim injunction as asked for?
- 2) Whether the fair order and decretal order passed by the trial court needs to be interfered?
- 3) To what relief, the appellant is entitled to?

(For the sake of convenience and easier understanding, the parties shall be referred to as they were arrayed in the original petition.)



Points No.1 to 3:

9) The case of the petitioner is that the 3rd defendant/respondent has made arrangements to construct a house on the 5th item of the suit property and perform a pooja on 04.06.2025. The 3rd defendant/respondent with an intention to deceive the petitioner and other co-sharers, he is making arrangements to construct a house on item No.5 of of the suit property. The petitioner seeking an order to grant an interim injunction till the disposal of the original suit that the 3rd defendant and his mens are restrained to any construction over the item No.5 of the suit property. Hence this petition.

10) The case of the respondent is that the title of the petition property is in favour of this respondent. There is no specific pleading in the plaint that the 5th item was purchased by this respondent out of funds generated from the ancestral property. There is no prima facie title in favour of the petitioner. The petitioner filed this application only to procrastinate the proceedings. Hence prays to dismiss the petition with exemplary costs.

11) At this juncture, this court has to decide that whether the suit property is in joint possession or the suit property is the separate property of the 3rd defendant. This facts is to be decided only at the time of trial only, at the same time the plaintiff has asked or seeking partition in this case.

12) At this juncture, it is admitted case of the appellant/respondent is that the properties stood in the name of plaintiff's father Sivalingam are in joint possession



and no partition was taken place.

13) The learned counsel appearing for the appellant/respondent has stated that the title of the 5th item of the suit property is in the name of the appellant/respondent. In order to strengthen his case, he submitted a Madras High Court Division Bench Order in **O.S.A.No's. 4 and 5 of 2008, B.K. Krishnamurthy Vs. S.Balasubramanian and Rajni Foundation PVT. Ltd., decided on 13.11.2008.**

14) Whether the appellant/ 3rd defendant/ respondent has absolute right or not is to be seen only at the time of trial. Ad-interim injunction means to maintain status-quo till the disposal of the suit. Whether the 3rd defendant is having absolute right over the suit property is to be seen only at the time of trial only. Then there is no evidence to show or there is no records produced by the appellant/respondent that the appellant/ 3rd defendant/ respondent has absolute right in 5th item of the suit property. Under the said circumstances, to avoid multiplicity of proceedings and to maintain status-quo is necessary.

15) If the parties are co-owners, one co-owner could not make construction affecting the right of the other co-owner.

16) The decision reported in **AIR 1985 MAD 283, Rukmani and others Vs. H.N.Thirumalai Chettiar**, wherein it was held as follows:-

2. The order of the learned judge proceeds on the basis that the respondent has come to purchase 2/3rd share in the suit property he can be permitted to put up



constructions at his risk on condition that he will not make any claim for compensation in future in the event of the plaintiff's succeeding. The question is whether a co-sharer having 2/3rd share in the suit property could be allowed to put up constructions in the suit property even with such a condition as has been imposed by the learned Judge, if the respondent claims to have acquired full title to the suit property and if such a title comes to the questioned by other parties it may be that the court prima facie proceed on the basis of his full title and permit him to put up constructions, at his own risk and cost without any claim for compensation. But where the respondent has not claimed full title to the suit property the court and if such a title comes to be questioned other parties if may be that the court can prima facie proceed on the basis of his full title to the suit property the court cannot permit him to put up constructions on the suit property much to the prejudice of other co-sharers. If the respondent has acquired title to the property only partly he cannot be taken to be the full owner and he cannot exercise rights of exclusive ownership to the detriment of other co-sharers. Unless he has his share demarcated in a suit for partition by any other argument he cannot put up construction either on the entirely or on a portion of the property. On the finding given by the learned single judge that the respondent has purchased a 2/3rd share in the suit



property we think that it is not possible to sustain the order permitting the petitioner to put up constructions on the suit property at his risk. The respondent being a co-sharer cannot be allowed to come prejudice to the other co-sharers by putting up a substantial construction during the pendency of a suit for partition filed the co-sharers. In this view we are not in a position to uphold the order under appeal on merits.

17) In view of the above, the injunction granted by the trial court restraining the 3rd defendant/respondent from proceeding with the construction on the suit site, pending disposal of this suit is correct. In view of the discussion made supra the petitioner is entitled to get injunction asked for the suit. There is no need to interfere the fair order and decretal order passed by the trial court. In view of the findings in Points No. 1 and 2, the Civil Miscellaneous Appeal fails. Accordingly, the order of the trial court is confirmed. Thus, the points No.1 to 3 are answered accordingly.

18) In the result, this Civil Miscellaneous Appeal is dismissed and the fair order and decretal order delivered on 22.09.2025 in I.A.No.1/2025 in O.S.No.319/2019 on the file of Principal Subordinate Court, Pudukkottai is confirmed. There is no order as to costs. Accordingly, the trial court is directed to dispose the suit preferably one year from the date of this order.

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11

This Judgment is directly dictated to the Stenographer Grade - III of this Court, typed by him in computer, corrected and pronounced by me in open court, this the 02nd day of June, 2026.

**Principal District Judge,
Pudukkottai.**

Copy to:- The Principal Subordinate Judge, Pudukkottai.