



**IN THE COURT OF PRINCIPAL DISTRICT JUDGE,
RAMANATHAPURAM.**

**PRESENT: THIRU.A.K. MEHBUB ALI KHAN, B.L.M.,L.L.M.,
PG.D.PM/IR.Dip.in.J.J & J.Psy.,
PRINCIPAL DISTRICT JUDGE,
RAMANATHAPURAM.**

Saturday, the 4th day of January 2025

**I.A.No. 04/2024 in
O.S. No. 70/2024**

Ibrahim Ammal ... Petitioner/ Plaintiff
-vs-

01. P. Karthikeyan
02. Vijayakumar
03. B. Karmegam ... Respondents/5 to 7
defendants

This petition came on 19.12.2024 before this Court for final hearing in the presence of Thiru. A.Thirunavukkarasu, Advocate for the petitioner/plaintiff, Thiru. Linganathan, Advocate for the 1st respondent, Thiru. P. Natarajan for the Respondents 2 and 3 and on heard their arguments and on perusal of records, this Court delivers the following:

ORDER

The petition is filed by petitioner/ Plaintiff under Order 39 Rule 1 and 2 of Civil Procedure Code.



2. The contention of the petitioners in brief:

Petitioner is the plaintiff and she has filed the suit for partition of 1/8 share and for injunction against the defendants. The properties originally extending 15 acres and 7 cents comprised in S.Nos. 430/1 and 430/2 belonged to Mohammed Meerangani, Ibramsha and Umarchanand were jointly enjoyed by them. After their demise, their legal heirs inherited the properties and they also enjoyed jointly by obtaining joint patta in their name. Later, they orally divided the properties as per the village customs and Mohammed Meerangani was allotted 5 acres 2 cents towards his 1/3rd share on the eastern portion of the total extent and he was enjoying the same. After his demise, his wife Ibrahim Ammal and sons Kamarudheen, Noor Mohammed and Abulkalam inherited the said extent and enjoyed it jointly. Joint patta was also granted to them. The property was re-surveyed as S.No. 430/70A1 and the Chitta was granted in their names jointly for an extent of 1.59.36 Hectares. After the death of Ibrahim Ammal her three sons inherited her share also and they orally divided the properties in 1990 and the plaintiff's husband Abulkalam was allotted an extent of 1 acre 67 cents towards his share and he enjoyed the same. The said Abul Kalam died on 28.07.2014 leaving his wife the petitioner/plaintiff herein and the defendants 1 to 4. Being the wife of Late. Abul Kalam the property is



entitled to $\frac{1}{8}$ share i.e. $\frac{7}{56}$ shares extending 20.87 cents and the defendants 1 to 3 being his sons are entitled to $\frac{2}{7}$ i.e. $\frac{14}{56}$ share each i.e. an extent of 41.7 cents and the 4th defendant being his daughter is entitled to $\frac{1}{7}$ i.e. $\frac{7}{56}$ shares extending 20.53 cents. The said legal heirs of Late. Abul Kalam are enjoying the said property jointly without any division. While so, the 3rd defendant Seeni Meerangani has sold his undivided share of 14.56 shares to Respondents 1 to 3 (Defendants 5 to 7) vide a registered sale deed dated 24.12.2021. Though the respondents 1 to 3 have purchased the said share, they did not take any steps to get the properties divided and they are not in exclusive possession of any specific portion of the properties. Thus, the petitioner/plaintiff and the defendants 1 to 4 are jointly enjoying the suit property by putting up a fence and rearing 7 Mango trees, two Naval Trees, 17 Neem Trees and 30 Coconut Trees. The respondents 1 to 3/Defendants 5 to 7 have damaged a portion of the fence and have cut and removed 10 coconut trees by using JCB and have attempted to cut the mango trees also. The petitioner/plaintiff with the help of her son-in-law has prevented them by filing a police complaint. The respondents 1 to 3 are attempting to create a lay out and divide the properties into plots by removing of the trees. Unless they are prevented by an order of this Court, they would damage the trees and create a lay out



and the petitioner would be put to irreparable loss and hardships. Therefore, she prays to grant temporary injunction restraining the respondents from damaging the trees and interfering with the peaceful possession and enjoyment of the petitioner till disposal of the suit.

3. The contentions of the respondents 1 to 3

These respondents have admitted that the properties originally belonged to Mohamamed Meerangani, Ibramsha and Umarkhan and that the total extent was 15 acres and 7 cents. They have also admitted that their legal heirs inherited the properties and were jointly enjoying the same. They have also admitted that they divided the properties under oral partition and each one was allotted 1/3rd share. They have further admitted that an extent of 1.59.36 Hectares in S.No. 430/70 A1 was registered in the joint names of Kamarudheen, Noor Mohammed and Abul Kalam and patta was granted jointly to them. The respondents have contended that an extent of 1.67 Acres allotted to Kamrudheen towards his share was inherited by his legal heirs Fathima Beevi and Seeniammal and that these respondents have purchased 67 cents from the said share holders on 12.11.2020. They have also purchased an extent of 41.75 cents from 3rd defendant Seeni Meerangani towards his undivided share of 14/56 on 24.12.2021 under registered sale deeds. The purchase from the legal heirs



to Kamarudheen is suppressed by the petitioner. These respondents are enjoying the said extent exclusively and separately. The plaintiff and other sharers are not in joint possession as alleged by the petitioner and they have denying the said averments. Similarly, they have denied that the legal heirs of Mohammed Meerangani had divided the properties and the plaintiff's husband was allotted 1.67 acres. They have further contended that the petitioner is not in joint possession of the properties and there is no prima facie case or cause of action. The balance of convenience is in favour of respondents and the petitioner is not entitled for any injunction as prayed by her, and they have prayed to dismiss the petition.

4. Point for consideration in this petition is “ **Whether the petitioner be entitled for temporary injunction as prayed for?** ”

5. The petitioner has filed the documents and marked as Ex.P1 to Ex.P.10 and Ex.C1 and Ex.C2 were marked on the side of Court. No documents were filed by the respondents.

6. Heard the arguments on both sides.

7. **Answer to Point**

In a petition seeking temporary injunction, the Court has to be considered that the following 3 ingredients are available and satisfied.

1. Whether there is a prima facie case in favour of the petitioner ?



2. Whether the balance of convenience is in his/her favour ?
3. Whether if injunction is not granted, the petitioner would be caused irreparable injury?

These 3 ingredients are not mere formalities but the petitioner has to establish that all the three ingredients are available in the case and even if any one ingredient is not satisfy, no injunction can be granted in favour of the petitioner. These guiding principles to be followed by the courts while granting temporary injunction in a suit where laid down by the Hon'ble Supreme Court in "*Gujarat Bottling Company Limited -vs- Coca Cola Limited*"¹ These guiding principles were reiterated in "*Shanthi Kumar Pavda -vs- Shakuntala Devi*"² by the Hon'ble Supreme Court.

7.1 Thus, in this case also this Court has to endeavor to find out if the said three ingredients are satisfied by the petitioner so as to get an order of Temporary Injunction in her favour.

7.2 (1) Prima Facie case:

In this case, the petitioner has filed Ex.P.1 to Ex.P.10 and Ex.C1 and C2 in support of her claim. A careful perusal of Ex.P.1 to Ex.P.3 namely S.L.R. Register, 'A' Register Extract and Chitta Extract clearly show

¹ AIR 1995 SC 2372

² 2004 (1) SCC 438



that the properties originally belonged to Mohammed Meeranangani, Ibramsha and Umarghan. This fact is also admitted by the respondents in their counter. Similarly, Ex.P.4 and Ex.P.5 namely the Death Certificate of Abul Kalam and the Legal Heir ship Certificate clearly show that the petitioner/plaintiff is his wife and the defendants 1 to 4 are his children. The petitioner has contended that the properties inherited by the legal heirs of Abul Kalam remain undivided and they are jointly enjoyed by them. Though, this is denied by the respondents in their counter, they have also established that the said properties were not divided between them and each legal heir is in exclusive possession of their respective shares. In fact, the respondents have admitted in their counter that they have purchased the undivided share of 14/56 shares extending 41.7 cents from the 3rd defendant Seeni Meerangani one of the sons of late. Abul Kalam. A perusal of Ex.P.6, the sale deed dated 24.12.2021 executed by Seeni Meerangani in favour of respondents 1 to 3 (Defendants 5 to 7) clearly show that they have purchased an undivided share alone from him. It is relevant to refer to the description of properties as mentioned in Ex.P.6.

"சர்வே எண், 430.1 க்கு புஞ்சை ஏக்கர் 15, செண்டு 07 ல் தெற்குப் பக்கம் 3 ல் 1 பாகம் ஏக்கர் 5 செண்டு 02 ல் தெற்கு பக்கம் அபுல்கலாம் பாகம் ஏக்கர் 1 செண்டு 67 அளவுள்ளதில் எனக்குரிய பிரிபடாத 8 ல் இரண்டு பாகம் செண்டு 41.75 அளவுள்ள சொத்திற்கு பெரு நான்குமால் விவரம் பின்வருமாறு:"



Therefore, it is evident that the respondents herein have purchased the undivided 2/8 share from one of the share holder and that the said property so purchased remains undivided. This fact can be inferred from the description of properties wherein the larger boundaries are given. If, the respondents had purchased specific property from Seeni Meerangani, they would have described the property so purchased with specific boundaries of the smaller extent purchased and not the larger boundaries. The recitals of Ex.P.6 clearly establish that the properties remain undivided and the respondents 1 to 3 have only purchased in undivided share within the larger extent of 1.67 acres belonging to Abul Kalam. Thus the petitioner, being the wife of Abul Kalam is entitled for 1/8 share in the said entire extent as per the Muslim Law. Since, the properties of Late. Abul Kalam were not divided and they remain undivided and are being jointly enjoyed by his legal heirs, the respondents 1 to 3 cannot claim exclusive possession over the extent purchased by them.

7.3 Therefore, having established that the petitioner is the wife of Late. Abul Kalam and that she is entitled for 1/8 share in the total extent of 1.67 cents in the suit survey number and also that the said total extent is not divided, the petitioner has established that she has a prima facie case and



that she is entitled for a particular share in the suit properties. Having admitted that they have purchased an undivided share from one of the shareholders and legal heirs of Late. Abul Kalam, Respondents 1 to 3 have not established that they are in exclusive possession of the said extent. Therefore, this Court is of the considered opinion that the first ingredient namely prima-facie case is established by the petitioner and that she has passed the first test of prima facie case in the petition.

7.4 (2) Balance of convenience

The second ingredient namely the balance of convenience has to be considered by this Court. While doing so, this Court finds that the properties remain undivided and though the respondents 1 to 3 have purchased 14/56 shares from 3rd defendant Seeni Meerangani, they have not taken any steps to divide the said properties were in mets and bounds and obtain exclusive possession of the same through legal means. Unless, the properties are undivided metes and bounds and specific extent is earmarked and allotted to the shareholders, the purchaser from a particular shareholder cannot claim exclusive possession over the properties so purchased. It is important to note that the boundaries given in Ex.P6 sale deed are the larger boundaries and not smaller boundaries for the extent



purchased by them. Hence, the petitioner being entitled to 1/8 share in the suit property, has every right to be in possession and enjoyment of her share which may extend in any portion of the entire extent until it is specifically divided. The petitioner has exercised her remedy of getting her share divided by filing this suit for partition. It is evident that the respondents 1 to 3 have not taken any steps to get the properties purchased by them divided through legal means and hence they cannot interfere with the peaceful possession and enjoyment of the petitioner/plaintiff over her share. There is no other adequate remedy available for the petitioner as she has 1/8th share in the suit property except by safeguarding her share by way of an order of the Court. Hence, the balance of convenience tilts in favour of the petitioner when compared to the recourse available in the respondents 1 to 3. Thus, it held that the petitioner has also passed the test of Balance of Convenience in this case.

7.5 (3) Irreparable Injury

The 3rd test being irreparable injury should also be passed by the petitioner so as to obtain an order of temporary injunction. In this regard, it is needless to state that the petitioner has got 1/8th share in the suit property. It is equally important to note that the respondents 1 to 3 have also become co-owners by virtue of their purchase from the 3rd defendant.



However, since they are not in exclusive possession of the properties so purchased, they have to be construed only to be in joint possession along with petitioner. But their right as co-owners cannot entitle them to damage the properties and to cause depreciation of its value. It is well settled that the injunction against co-owner can be granted if they act in detriment to the value of the properties. In this case, the petitioner has filed Ex.P.7 to Ex.P.10 photographs showing the damages caused to the fence and establishing that some of the trees were cut using the JCB. A commissioner was appointed in this case and he has filed Ex.C1 and Ex.C2 the Report and Plan. From a perusal of the Report it is found that the trees are cut down and the fence is damaged. This clearly establishes that the respondents 1 to 3 have attempted to create a lay out in the suit properties by cutting down the trees and damaging the fence. If permitted to do so, this would definitely decrease the value of the properties and would be detrimental to its value, the valuable right of the property of the petitioner would be affected and this amounts to irreparable injury being caused to the petitioner. If temporary injunction is not granted, the value of the property would be decreased by the damages caused to the same and thereby the petitioner would be put to irreparable loss and hardships. On the other hand, if injunction is granted, no serious prejudice would be caused to the



respondents and their right over the property would not be affected. Thus, it is held that the petitioner has passed the 3rd test of irreparable injury being caused to her if injunction is not granted.

7.6 Therefore, in view of the discussion made above, this Court is of the considered opinion that the petitioner has passed the triple test laid down by the Hon'ble Supreme Court in the decisions referred above and that the petitioner is entitled for temporary injunction restraining the respondents 1 to 3 from interfering with her peaceful possession and enjoyment and also to restrain them from causing further damage to the properties by removing the fence and cutting the trees. Thus, this point is decided accordingly.

In the result, the petition is allowed with cost.

Dictated to Executive Assistant and transcribed and typed by her in computer, corrected and pronounced by me in open Court on this the 4th day of January 2025.

Sd/Thiru.A.K.MEHBUB ALIKHAN
Principal Sessions Judge,
Ramanathapuram,
04.01.2025



List of witnesses on either side: NIL

List of witnesses on petitioner side :

01. - - Certified Xerox copy of extract of S.L.R. register.
02. - - Certified Xerox copy of extract of Chitta .
03. - - Certified Xerox copy of Patta
04. 07.08.2014 - Certified Xerox copy of Death Certificate of Late. Abul Kalam.
05. 17.11.2022 - Certified xerox copy of Legal Heir ship certificate.
06. 24.12.2021 - Certified Xerox copy of sale deed.
07. - - Photographs 2 in numbers.
08. - - Photographs 4 in numbers.
09. - - Photographs 2 in numbers.
10. - - One Photograph.
11. 05.04.2024 - Copy of Letter sent to the Sub Registrar, Velipattinam by the petitioner.

List of documents on Respondents side :NIL

The exhibits marked on Court side:

01. Commissioner's Report
02. Commissioner's Plan

Sd/Thiru.A.K.MEHBUB ALIKHAN
Principal Sessions Judge,
Ramanathapuram,
04.01.2025