

IN THE COURT OF THE I ADDITIONAL DISTRICT JUDGE, SALEM.

PRESENT: Thiru. R.Velaras, B.Sc., B.L., L.L.M.,

I Additional District Judge, Salem,

Tuesday, the 29th day of July, 2025

I.A.No.8/2024

in

O.S.No.81/2014

G.Ranga Jothiprakash

.... Petitioner/plaintiff

/ Versus /

1. R.Vijayakumar (died)

2. R.Gopalakrishnan

3. V.Moganasundari

4. R.Sornalatha

5. K.Poornimadevi

6. R.Ranga Karthikeyan

..... Respondents/Defendants

This petition is coming on 10.07.2025 before me for final hearing in the presence of Thiru.K.N.P.Ragunathan, learned counsel for the Petitioner and Thiru.V.Manigandan, learned counsel for the Respondents 3 to 5 and Tmt.V.Thendral, learned counsel for the 6th respondent and the 2nd respondent was called absent and set exparte, upon hearing the both and having stood for consideration till date, this court delivered the following.

ORDER

This petition has been filed by the petitioner under Order 11 Rule 14 of CPC to direct the respondents to cause production of the documents mentioned in this petition on the day to be fixed by this court and on subsequent dates of hearing.

2. **The brief facts of the Affidavit is as follows:-**

The petitioner is the plaintiff in the above suit. The petitioner/plaintiff seeking the relief to Partition, Separate possession and Permanent Injunction against the respondents/defendants. Originally the petitioner has filed the suit against the 1st respondent and subsequently added the 2nd respondent to avoid technicalities. While so, the 1st respondent died leaving behind him the respondents 3 to 6 as his legal

heirs. Hence, the petitioner have impleaded respondents 3 to 6 also as defendants 3 to 6 in the suit. The respondents 3 to 5 are daughters and the 6th respondent is the son of deceased 1st defendant. The respondents 3 to 5 filed memo admitting the suit claim and also claimed 3/8 shares for themselves and also paid court fee for their share. While so the 6th respondent filed the written statement on 14.06.2024 making certain allegations and disputing the rights of parties. The 1st item of the suit property belonged to the petitioner's grandfather late Mr.K.R.Ramasamy, who has executed a registered Will on 13.07.1992 bequeathing the same in favour of his two sons namely defendants 1 and 2. So also the suit 2nd item of the property was belonged to the petitioner's grandmother Smt.Janakiammal who has executed a registered Will on 13.07.1992 bequeathing the same in favour of her two sons namely the defendants 1 and 2. The original two Wills were in the custody of deceased 1st defendant. Subsequently, his death they are in the custody of the respondent/6th defendant. Neither the 6th respondent nor any of the defendants deny the execution and existence of the two Wills. As it is necessary to file the original Wills and formally prove them, the said documents are to be produced before this court. The 6th respondent who is in possession and custody of the original Will is bound to produce them into court. Hence, the petitioner prays to direct the respondents to cause production of the documents mentioned in this petition on the day to be fixed by this court and on subsequent dates of hearing.

3. The brief fact of the counter statement filed by the 4th Respondent/Defendant and adopted by the 3rd and 5th Respondents/Defendants is as follows:-

The petition is false, frivolous, vexatious and unsustainable in law and on facts. The respondent do not admit any of the allegations stated in the affidavit except those that are specifically admitted herein. The respondent submit that the suit properties were originally belonged to his grandfather and mother and they have executed the registered testament deeds dated 13.07.1992 and 11.03.1992 in favour of his father and his brother R.Gopalakrishnan. Subsequently, they died and the testament deeds acted upon. The petitioner has further submitted that the said R.Gopalakrishnan executed registered settlement deed dated 29.11.2012 in favour of his son namely G.Rangajothi prakash regarding his half share. Based on the settlement deed the said G.Rangajothi prakash i.e., the plaintiff has filed the above suit for partition and separate possession against his father R.Vijayakumar. Further, the respondent submit that pending the above suit his father R.Vijayakumar died intestate leaving behind themselves and the respondent/6th defendant to succeed his estate as per Hindu Succession Act, 1956. Hence, the respondents have been added as defendants 3 to 6 in the above suit for proper and final adjudication. As per the Hindu succession Act the petitioners are entitled 3/4 share out of 8/8 share in the suit property. The respondent/6th defendant is entitled 1/ 4th share out of 8/8 share in the suit property. The said G.Rangajothi prakash is entitled 4/8 share out of 8/8 share in the suit property. The suit properties are the dwelling house and the respondents are in joint

and constructive possession of the same. On 26.04.2024 the respondent/6th defendant entered into an agreement of sale with one M.Kumar and agreed to sell his 1/ 4th share out of 4/8 share in the suit property for a valuable consideration of Rs.5,00,000/- and received an advance amount of Rs.1,50,000/- and fixed the time for completion of sale as 11 months which is registered as Doc.No.1646 of 2024 of Book 1 of Office of SRO, Veerapandy, Salem in respect of portion of the suit property. As per law the respondent /6th defendant is not entitled to alienate his 1/ 4th share out of 4/8 share in the above suit since the suit property is the dwelling house. If the respondent/6th defendant alienated his share in the dwelling house it will create problem from enjoying the property as well as division of share. Hence, the respondents filed ad-interim / temporary injunction petition before this court on 06.06.2024. Then the same is returned by this court on 14.06.2024. Then due to returned of the said petition the respondent/6th defendant alienate his share of the suit property to in favour of M.Kumar on 28.06.2024. Now the petitioner/plaintiff has filed another I.A.No.9/2024 in O.S.No.81/2014 to implead the purchaser of the suit property as 7th defendant in the above suit. The original documents such as Registered Will dated 13.07.1992 executed by R.Ramasamy Chettiar, bearing document No.42/1992, registered before Dadagapatty SRO, Registered Will dated 13.07.1992 executed by Janakiammal, bearing document No.43/1992, registered before Dadagapatty SRO, are in the hands of the respondent/6th defendant he creates further encumbrance over the suit property in order to obtain decree in favour of them by delay of tactics. The respondent/ 6th defendant may create further encumbrance and execute document in

favour of 3rd party, then it will lead multiplicity of proceedings will be initiated by them before the competent court of law and it may cause much harm to them. Hence, the respondents filed petition to produce original documents before this court on 06.06.2024 and the same is returned on 14.06.2024. The respondent further submit that the said application is not given to the petitioner/plaintiff at the time of filing petition, because he is not arrayed as party to the said interim application. Therefore, the petition mentioned documents are the hands of the 6th defendant, there is no hesitation to allow this application.

4. The brief fact of the counter statement filed by the respondent/6th Defendant is as follows:-

The petition is false, frivolous, vexatious and unsustainable in law and on facts. The respondent do not admit any of the allegations stated in the affidavit except those that are specifically admitted herein. The relationship between the parties are true. The original suit has been filed by the petitioner/plaintiff for the relief of partition and the suit properties originally belonged to his father and the properties are in his possession by virtue of gift settlement deed executed by his father. The plaintiff is admitted that the suit property is undivided property which is contained in the above said gift settlement deed in his plaint. The petition mentioned Wills are not into his hands. Hence, this petition is not maintainable one and liable to be dismissed.

5. Now the point for consideration is:-

Based on the averments made in the petition and counter, this court has framed the following point for consideration:

Whether this petition is liable to be allowed or not?

6. Point:-

This petition filed by the petitioner/plaintiff against the respondents under Order 11 Rule 14 of C.P.C to produce the original Wills dated 13.07.1992 executed by K.R.Ramasamy and another Will dated 13.07.1992 executed by Janakiraman.

7. The respondents 3 to 5 were appeared before this court through their counsel and filed their counter by stating that the Wills dated 13.07.1992 were not in the hands of them and it is in the hands of 6th respondent. Therefore, they filed detailed counter regarding the non availability of the above said Wills. In the mean time, the 6th respondent also filed his counter by stating that the above said original Wills are not in the hands of 6th respondent and it maybe in the hands of either the petitioner or with 3 to 5 respondents. Further he stated that this petition is filed by the petitioner with collusive of R3 to R5 only to give troubles to R6. Therefore, he prayed for dismissal of the petition.

8. On perusal of records and on consideration of the arguments of both side it reveals that both the parties were accepted the Wills executed by one K.R.Ramasamy and another Will executed by one Janakiraman on 13.07.1992. Therefore, the original Wills may be in the hands of petitioner or any other respondents. The petitioner filed the suit for the relief of partition and separate possession and for permanent injunction based on the settlement deed dated 29.11.2012. Even though, the Wills dated 13.07.1992 may be a parent document, it is the duty of the petitioner/plaintiff

to produce the original Wills and to prove the execution. The petitioner/plaintiff has not stated anything in the plaint regarding the custody of the above said original Wills. Therefore, without any pleadings regarding custody of original Wills the petitioner cannot seek direction against the respondents to produce the original Wills dated 13.07.1992. So it is clear that this petition is filed by the petitioner/plaintiff only to escape from his initial burden of proof. Further the appeared respondents have categorically denied that the original Wills are not in the hands of R3 to R5 or in the hands of R6. Therefore, if the original Wills are produced by the petitioner or by R3 to R5 or R6 in this case during the time of trial that will not taken into account, since, the petitioner/plaintiff, R3 to R5 and R6 have stated that the original Wills are not in the hands of them. In this juncture, this petition filed by the petitioner/plaintiff cannot be ordered as prayed for and this petition is liable to be dismissed.

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

Dictated to the Steno-typist by me transcribed and typed by her in computer corrected and pronounced by me in open court on this the 29th day of July, 2025.

(Sd/-R.Velaras)
I Additional District Judge,
Salem.

Annexure : NIL

(Sd/-R.Velaras)
I Additional District Judge,
Salem.