

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

**Present : Tmt. L. Kalaivani, B.A.,B.L.,
III Additional District Judge,
Salem.**

Friday, the 14th day of February 2025

**I.A.No.2/2023
in
A.S.No.36/2021**

1. A.Rajasakthi
2. A.Kumar
3.Rajamma
4.Rajammal
5.Selvam
6.Sakthi
7.Ramesh
8. Pappathi
9.Chellam
10.Poorani

... Petitioners/Defendants

/Vs/

Naamaivarasan

... Respondent / Plaintiff

This petition is coming on 12.02.2025 before me for final hearing in the presence of Thiru. G.Soundararajan learned counsel for the petitioners and Thiru.A.Mohankumar learned counsel for the respondent, upon hearing the both and having stood over for consideration till date, this court delivered the following:-

ORDER

This petition has been filed Under Order 13 Rule 9 and 151 of CPC.

1. Brevity of the petition is as follows:

The petitioners herein are the respondents in the appeal suit and the appeal suit has been filed by the Respondent herein. In fact the suit filed

by the respondent was dismissed on 10.02.2021 as it has no merits. During the trial the petitioners have produced Ex.B.1 to Ex.B.4, of them Ex.B.3 is the original sale deed dated 13.02.1989 stands in the name of M.Duraisamy and another. The said document is not the only evidence to disprove the case of the respondent, it is the one among the other evidence. The above said M.Duraisamy and another had required the Ex.B.3 to mortgage the property and the petitioners are ready to produce the true copy of the said document. Hence, the present petition seeking permission from the court to receive the original sale deed dated 13.02.1989 Ex.B.3.

2. The counter filed by the respondent is as follows:

The respondent had denied the averments stated in the petition except that those are specifically admitted by him. It is true that the respondent has filed suit for declaration and permanent injunction against the petitioners which was dismissed on 10.02.2021. It is false to state that Ex.B.3 is not only evidence to disprove the case of the respondent, it is one among the other evidence. In fact, Ex.B.3 is the vital document as per the contention of the petitioners and the petitioners have stated that they are going to encumber the same. The Ex.B.3 is not connected to the petitioners or his family members. It has been stated in the Ex.B.3 that the property was sold by one Anandhan and others in favour of M.Duraisamy and another. While so, if the document is substituted it will cause hardship to the respondent. Hence, it is prayed for dismissal.

3. The point for consideration is:-

Whether this petition is liable to be allowed or not?

4. Answer to the Point:

Heard the rival submissions and perused the materials available on record. A perusal of above would disclose that the petitioners herein are the

respondents in the appeal suit and the appeal suit has been filed by the Respondent herein and he is the plaintiff in the original suit. Admittedly, the suit in O.S.No.418/2013 on the file of 1st Additional Sub Judge, Salem was disposed on 10.02.2021 and against which the present appeal has been filed. Now, the petitioners have come forward with the present petition and sought the Ex.B3 filed by them to mortgage the property.

5. This application was resisted by the respondent stating that Ex.B.3 is the vital document as per the contention of the petitioners and the petitioners have stated that they are going to encumber the same. Moreover, the Ex.B.3 is not connected to the petitioners or his family members and it has been stated in the Ex.B.3 that it was sold by one Anandhan and others in favour of M.Duraisamy and another. Therefore, if the document is substituted it will cause hardship to the respondent.

6. Having regard to the rival submissions it is noted that the suit filed by the respondent in OS.No.418/2013 on the file of 1st Additional Sub Court, Salem was disposed on 10.02.2021 and against the above said decree, the respondent has filed the appeal before this court and the same is pending as AS.No.36/2021. Pending the appeal the petitioners who are the respondents in the appeal suit have come-forward with the present petition and demanded the original sale deed Ex.B.3. The owner of the said property namely P.Sakthivel was appeared before this court on 12.02.2025 and he filed an affidavit stating that he has no objection to this petition. Moreover, the document sought by the petitioners has been produced by them during the course of the trial and they are entitled to receive the same from the court after substituting the certified copy of the same. Therefore, this court inclined to allow this petition on the following terms.

1. The petitioners shall produce the document sought by them as and when required by the court.

2. The petitioners shall substitute the certified copies of the document sought for.

In the result, this petition is allowed. No cost.

Dictated by me, to the Steno Typist, transcribed and computerized by her, corrected by me and pronounced in the open court, on this 14th day of February 2025.

(Sd/-L.Kalaivani)
III Additional District Judge,
Salem.

Fair/Draft Order in
I.A.No.2/2023 in
A.S.No.36/2021
Dt. 14.02.2025
III ADJ.,Salem.