

IN THE COURT OF THE DISTRICT MUNSIF, SANKARI

Present: Tmt. R. ELAMATHI, B.A., B.L.,

District Munsif Court, Sankari

Friday, the 28<sup>th</sup> day of November, 2025

திருவள்ளூர்வராண்டு 2056, விசுவாவசு வருடம், கார்த்திகை திங்கள் 12-ம் நாள் வெள்ளிக்கிழமை

**I.A. 8/2025 in O.S.144/2001**

Marimuthu ... Petitioner / Plaintiff

//Versus//

1. Chinnathambi
2. Nachammal (died)
3. Chinnamuthu (died)
4. Chinnaponnu
5. Murugesan
6. Palanisamy
7. Chinnathayee
8. Palaniammal (died)
9. Iyathammal
10. Kunjammal
11. Chinnappillai
12. Marakkal
13. Kuolandaiammal
14. Muthuppaiyan
15. Uthirasamy
16. Sivakumar
17. Manikandan
18. Kannan
19. Prakash
20. Pappathi

... Respondents / Defendants

... Respondents / Proposed Parties 1 to 3

This Petition taken to file on 09.09.2025 and coming on this day 20.11.2025 for hearing before me in the presence of Thiru.R.Ramasamy Advocate for the Petitioner and of

Thiru. A. Kailasanathan Advocate for the Respondents 5, 6 and 17 to 20 / Proposed Parties 1 to 4. Thiru R. Subramani Advocate for the Respondents 1, 15 and 16 and R2 was dismissed in suit and R3 died and Respondents 4, 7 to 14 Exparte in suit and after perusing the Petition, Counter and hearing on both sides, this Court passed the following,

### **ORDER**

This Interlocutory Application has been filed by the Petitioner Under Order I Rule 10(2) of the Civil Procedure Code, 1908 seeking to implead the Proposed Parties R17 to R20 as defendants 17 to 20 in the above suit.

#### **2) The Gist of the petition:-**

2.1) The Petitioner averred that he is the plaintiff in the suit. The petitioner filed the above suit against the respondents for the relief of Partition and Permanent Injunction against the Respondents/Proposed Parties. The Petitioner submit that the 17<sup>th</sup> Respondent is son of the 5<sup>th</sup> Respondent while the Respondents 18 and 19 are two son's of the 6<sup>th</sup> Respondent. The above said Respondents 5, 6, 17 to 19 had executed a portion of suit property. The above deed Registered as Document No. 3032 of 2017 on the file of Sub-Registrar, Edappady. The Respondents 5, 6, 17 to 19 have no right to execute the mortgage deed since petitioner have undivided share in the property covered in mortgage deed. The purpose of creating deed is to defeat and defraud petitioner's interest over the suit property. The petitioner came to know the deed recently. It is necessary to seeking the relief of declaring the mortgage deed as null and void. Under these circumstance the proposed parties are necessary parties to this suit. Unless this petition is allowed he will be put to irreparable loss and hardship. Therefore, prays for allowing the petition.

**3) The Brief Averments of the Counter filed by the 1<sup>st</sup> Respondent and the same was adopted by the Respondents No. 15 &16 :-**

The Respondent contends that the petition filed by the petitioner is false, frivolous, unsustainable in law and on facts. The respondents does not admit any of the allegations contained in the petition except those that are specifically admitted and the petitioner is put to strict proof of the same. The Respondents / Defendants alleges that it is false to state that, the Respondents / Proposed Parties 5, 6 and 17 to 19 has no right to execute the mortgage deed and it is false to state that the purpose of creating deed is to delete and defraud the interest over the suit property, and came to know the deed recently, and it is necessary to seeking the relief of declaring the mortgage deed as null and void. Under these circumstance the Proposed Parties are necessary parties to this suit as alleged. The said allegations are false, Purposeful to protract the proceedings the above petition was filed a malafide intention. The Proposed Parties are unnecessary parties in the suit. The mortgager can mortgage suit property to anybody and the petitioner cannot question about the same. Therefore, prays for dismissal of the petition.

**4) The Brief Averments of the Counter filed by the 5<sup>th</sup> Respondent and the same was adopted by the Respondents No. 6, 17 to 20 :-**

4.1) The Respondents / Defendants alleges that the petition filed by the Petitioner is false, fraudulent, and wholly unsustainable either in law or in equity. The 5<sup>th</sup> respondent categorically denies all the allegations made in the affidavit, except those specifically admitted herein, as false and misleading. The petitioner has filed the present petition with a malicious and fraudulent intention to delay the trial of the case, by suppressing true

facts and by putting forth false and concocted allegations. The Respondents 5, 6 and 17 to 19 executed a Registered Mortgage Deed in favour of the 20<sup>th</sup> respondent on 12.09.2017 in respect of a portion of the suit property. The said document was registered in the office of the Sub-Registrar, Edappadi, as Document No. 3032/2017. The petitioner claims that he has a common share in the suit property and therefore respondents 5, 6 and 17 to 19 mortgage.

4.2) The Respondent further alleges that the Mortgage Deed was created to defraud him of his alleged rights in the property and that he came to know about the document only recently. On that basis, he contends that the Proposed Parties are necessary parties and that the petition should be allowed. All such allegations made in the affidavit are false and wholly baseless. In fact, the petitioner has never had any right, title or interest in the suit property. He has also never been in enjoyment of the property. Though he filed the suit in 2001, he has been deliberately delaying the trial for the past 25 years. He was examined in chief only on 21.09.2015, and thereafter he has been filing one petition after another, avoiding cross examination, solely with the intention of prolonging the proceedings.

4.3) The Respondents/ Defendants further avered that, I.A. No. 6/2022 filed for seeking amendment of the suit property description, which was dismissed on 10.04.2023 after full hearing. He has filed a revision before the Hon'ble High Court, which is still pending, and using that as a pretext he continues to delay the trial. Despite being given ample opportunities for nearly 10 years, the petitioner failed to appear for cross examination. Therefore, the court closed the evidence of PW1 on 23.04.2025. Thereafter, the petitioner did not file any petition for re-opening or

recalling PW1. Based on the statement of the petitioners counsel, the plaintiff's evidence was finally closed on 20.08.2025, and the case was posted for the defendant's evidence.

4.4) The Respondents / Defendants contends that the Petitioner has filed the present petition without any justification or bonafide reason, seeking to implead the Proposed Parties. For the past 25 years he has not taken any sincere steps to conduct the trial, nor has he adduced evidence for the last 10 years. When the petitioner has not proved his entitlement to the suit property and has not come forward to conduct the case diligently, there is no necessity to seek cancellation of the Mortgage Deed or to implead the Proposed Parties at this stage.

4.5) The Respondents / Defendants further contends that the Petitioner was fully aware of Mortgage Deed on the very date of its execution. However, he has filed this application belatedly after about eight years, without raising any objection earlier. In a suit for Partition, any Mortgage executed by some co-shares over a portion of the joint property is always subject to the final result of the suit. Therefore, there is no need to seek cancellation of the Mortgage Deed or to implead the Mortgage and Mortgagors as parties. The present petition has been filed only with the intention to delay the proceedings further. No suit or petition challenging the Mortgage Deed or relating to the alleged facts was ever filed earlier. Hence, the present petition is wholly untenable. Therefore, the 5<sup>th</sup> respondent respectfully prays that this court may be pleased to dismiss the petition filed by the petitioner, with damages and costs, and pass such further orders as this court may deem fit and proper. Hence, the Petition is liable to be dismissed.

**5) Point for consideration:-**

Whether the Respondents 17 to 20 / Proposed Parties 1 to 4 are necessary (or) proper parties for effective and complete adjudication of the partition suit and whether the mortgage deed affects the rights of the Plaintiff in this Partition suit?

6) No oral and documentary evidences were adduced on both sides.

7) Heard Both sides Learned counsels and records perused. This Interlocutory Application has been filed by the Petitioner/ Plaintiff Under Order 1 Rule 10 (2) of Civil Procedure Code 1908, seeking to implead the Proposed Parties as D17 to D20 in the main suit. The Proposed Parties 1 to 3/ Respondents 17 to 19 has executed a registered Mortgage Deed dated 12.09.2017 in favour of the Proposed Parties 4 / 20<sup>th</sup> respondent, mortgaging portion of the suit property (registered as Doc. No. 3032/2017 at the Sub-Registrar, Edappady) and that such mortgage affects the petitioners claim in undivided interest. The petitioner contends that the mortgage was created to defeat his rights and that the mortgage and the mortgogor's are necessary parties for the complete adjudication of rights. The petitioner has also sought consequential relief of including the mortgage deed as null and void in the above suit.

7.1) On the other hand the Respondents 1, 15 and 16 does not admit any of the allegation and contends that the petition is false and unsustainable in law and on facts. They deny that Respondents 5, 6 and 17 to 19 had no right to execute the Mortgage Deed (or) that it was created to defraud the petitioner. They assert that the petitioners claim of recently coming to know about the deed is false and that the petition is filed only to drag on the proceedings of the suit. The Proposed Parties are not necessary and a

mortgagor is entitled to mortgage his share. Hence this petition is liable to be dismissed. The Respondents 5, 6 and 17 to 20 stated that the petition is false, fraudulent and filed only to delay the proceedings of suit. They deny all allegations except those specially admitted. They contend that the Mortgage Deed dated 12.09.2017 executed by Respondent 5, 6 and 17 to 19 in favour of 20<sup>th</sup> Respondent was valid and within their rights and was not created to defraud the petitioner. They assert that the petitioner has no right (or) enjoyment over the suit property and has been delaying the case for 25 years by filing repeated petitions and avoiding cross examination since 2015 leading even to closure of his evidence. They further state that the petitioner knows about the mortgage from the beginning and has filed this impleading petition belatedly after eight years only to protract proceedings. They further argue that in a Partition suit the mortgage is subject to final decree and therefore the Proposed Parties are not necessary. Hence, this petition deserves to be dismissed with cost.

7.2) Upon careful consideration of contention of both sides, this court is bound to elucidate the scope of Order 1 Rule 10 of CPC which allows impleadment of necessary or proper parties i.e. the persons whose presence is indispensable for effective adjudication or for preventing multiplicity of proceedings, but the grant of such a relief is discretionary and is to be exercised in view of all surrounding facts, including delay, bonafides and prejudice. Delay, laches and malafides may operate to refuse equitable or discretionary relief, particularly where the applicant has slept over his right and delay has occasioned prejudice. The sole question for determination in this Interlocutory Application is whether the impleadment of 17<sup>th</sup> to 20<sup>th</sup> respondents are necessary or proper Under Order 1 Rule 10 of CPC so as to warrant addition of those parties at this stage and whether interim relief

should be granted. In considering this, two principle strands of law and facts requires scrutiny : (a) the legal effect of an encumbrance created by co-sharers during pendency of a partition suit (lis pendens and the limited effect of alienations by co-sharers) and (b) the petitioners conduct, delay and the resulting prejudice if any to the respondents. It is well settled that : (a) a co-sharer may alienate or encumber his own undivided share, such alienation binds the alienor's share but does not extinguish rights of other co-sharers (b) according to section 52 of Transfer of property Act, transfer made during pendency of lis pendens are subject to the result of pending suit. A transferee pendente lite takes subject to the final decree. On looking into the present case in hand and on plain legal analysis, the petitioner/plaintiff has filed the suit for partition, in the year 2004 and a mortgage executed by respondents 5, 6 and 17 to 19 in 2017 is on the face of it, an encumbrance by some co-sharers. Since the partition suit was instituted in the year 2001, the mortgagee / 20<sup>th</sup> respondent stands in constructive notice of the lis pendens. Consequently the mortgage, if validly executed, would operate only against the specific interest if any of the executing respondents and remains subject to the final decree that determines shares. This court is of considered opinion that the plaintiff himself seeks for a partition relief, in such situation the plaintiff right of getting shares in the suit property is at question, and not determined yet and the petitioner / plaintiff son's who are 5<sup>th</sup> and 6<sup>th</sup> defendants are already on record, therefore this court is of view that, impleading 17<sup>th</sup> to 19<sup>th</sup> respondents in the suit is neither necessary nor proper party to decide the issues pending for consideration in the suit. Mortgage by one co-owner of a specific portion to the mortgage does not affect rights of other sharers at best the mortgagee steps into the shoes of the mortgagor's. Such alienation

need not result in impleadment of the mortgagor and mortgagee in partition suit. In the present case there is no material to show that the non impleading of 17<sup>th</sup> to 19<sup>th</sup> respondent will affect the partition rights of the petitioner/plaintiff. The existence of mortgage does not, on its own, extinguish or defeat the substantive right of the petitioner to claim his share in the property. The court must determine whether, despite the foregoing principle, the absence of the mortgagee or executing mortgagers would prevent effective adjudication of the main controversy. The respondent pointed out that issues concerning the validity, quantum and effective of the mortgage, which are ordinarily be adjusted and worked out at the decree stage when shares are ascertained. Impleading the mortgagee and mortgager in this Interlocutory stage is not mandatory merely because of a charge exists over the portion of the suit property. The addition of parties must be shown to be necessary for passing an effective preliminary decree or to irreparable practical difficulties. Even accepting that a mortgagee's right are subject to the final decree, the court has to weigh whether impleadment now is necessary to secure effective relief are whether the same object can be achieved at decree stage without impleadment at present. In the present case there is no material to show that 20<sup>th</sup> respondent has taken or threatens immediate coercive action which would render the decree nugatory or cause irreparable prejudice to the petitioner. No application has been made for urgent interim injunction to show that there is imminent threat caused by 20<sup>th</sup> respondent engaging in further encumbrance of the mortgaged property. Mortgaging the suit property does not confers title on 20<sup>th</sup> respondent it merely creates charges upon the suit property. The 20<sup>th</sup> respondent no way affects this partition suit and rights of the petitioner /plaintiff. Consequently this court is of considered opinion

that, the 20<sup>th</sup> respondent is neither necessary nor proper party to decide the issues pending for consideration in the suit. Based upon the discussions made above this court is of considered opinion that impleadment of 17<sup>th</sup> to 20<sup>th</sup> respondents is not necessary at this Interlocutory stage for effective adjudication of the suit, the effect of mortgage can be adequately and equitably dealt with, at the time of final decree shares will be ascertained. This court is of considered opinion as the petitioner has failed to give a satisfactory explanation for the long delay in moving this application after registration of mortgage on 12.09.2017. This court could see that there is no immediate threat or irreparable prejudice has been caused to the petitioner / plaintiff for non impleadment of proposed parties 17<sup>th</sup> to 20<sup>th</sup> respondents/defendants in order to seek the relief of declaring the mortgage deed as null and void and also this court further opines that, considering the year of institution of this suit, if this petition is allowed, even if there is no necessity to implead the Proposed Parties as Defendants 17 to 20, it will likely to stagnate the progress of the suit and also it will cause prejudice to the Respondents / Defendants.

9) In the result, this Interlocutory Application is dismissed. No cost.

This order directly dictated to the Typist and typed by her and corrected by me, and Pronounced in the Open Court in the 28<sup>th</sup> day of November, 2025.

District Munsif,  
Sankari.

**Encl.:**

**Petitioners side Witnesses & Exhibits :-** - Nil -

**Respondents side Witnesses & Exhibits:-** - Nil -

District Munsif,  
Sankari.

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District Munsif Court, Sankari.  
Draft / Fair Order  
I.A.8/2025in  
O.S. No.144/2001  
Date: 28.11.2025

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