

IN THE COURT OF THE DISTRICT MUNSIF, SANKARI

Present: Tmt. R. ELAMATHI, B.A., B.L.,  
District Munsif Court, Sankari

Tuesday, the 5<sup>th</sup> day of August, 2025

திருவள்ளூர்வராண்டு 2056, விசுவாவசு வருடம், அடி திங்கள் 20 ம் நாள் செவ்வாய்க்கிழமை

**I.A. 2/2024 in O.S.98/2024**

K. Pappathi ... Petitioner / Plaintiff

//Versus//

K. Prakash ... Respondent / Defendant

This petition taken to file on 20.09.2024 and coming on this day 10.07.2025 for hearing before me in the presence of Thiru. S.B. Aruldassjames Advocate for the Petitioner and of Thiru. M. Panneerselvam Advocate for the Respondent 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/ Plaintiff Under Order XXXIX Rule 1 & 2 and Section 151 of Civil Procedure Code seeking a relief to grant a Ad-interim injunction restraining the respondent from making any alterations to the natural state of the property (or) constructing any new buildings till the disposal of the suit.

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

- 2.1) The petitioner submits that she is plaintiff in the suit.
- 2.2) The petitioner filed the suit seeking the relief of permanent injunction against the Respondent/Defendant.
- 2.3) The petitioner submits that the suit property was originally acquired

and enjoyed by her late father-in-law, Chinnapaiyan. On 05.04.1978 through a registered sale deed recorded in Book 1, Volume 605, Pages 357 to 360 in the Edapadi Sub Registrar Office as Doc.No.319 of the year 1978. He passed away on 05.07.1979. After his demise, the property devolved upon his legal heirs Sengottaiyan, the petitioner's husband kumar, Kandasamy and Kolandhapayan, who were jointly enjoying the property without any division of shares.

2.4) The petitioner averred that after the demise of Sengottaiyan his legal heirs, his wife Palaniammal daughter Amsarani, Parimala and Radhika and Son Ramesh and after the demise of Kumar, this petitioner (W/o. Kumar), Petitioner's son Murugesan and Petitioner's daughter Gomathi and after the demise of Kolandhapaiyan, his wife Valli, son Manivel and daughter Vijaya have all been jointly enjoying the property without any partition till this date.

2.5) The petitioner further averred that, while the above mentioned persons and the petitioner have been enjoying the property jointly and without partition, the heirs of the deceased Sengottaiyan namely his wife Palaniammal, daughter's Amsarani, Parimala and Radhika and Son Ramesh have sold 20.69 cents of land from the undivided suit property to Kandasamy's son, the Respondent Prakash by two sale deeds registered on 26.11.2021 and 09.11.2022 as Doc.No's: 4707/2021 and 5106/2022 at the Edapaddi Sub Registrar's Office. This fact came to petitioner's knowledge only recently.

2.6) The petitioner further submits that the Respondent Prakash, having acquired a portion of the undivided joint family property has started constructing a house on the said land. On 10.09.2024, the petitioner personally met the Respondent and informed him that no construction should be undertaken until the joint family property is duly partitioned and

each party receives their share. This petitioner requested that he build only after proper partition. However the Respondent, without responding has proceed with the construction using his man power and political influence. He has also applied for an electricity connection from the electricity board. If the Respondent constructs permanent structures on the undivided property and obtains an electricity connection, it will became impossible to effect a proper partition in the future, causing irreparable hardship and prejudice to the other co-owners.

2.7) The petitioner further more submits that she has filed the present suit seeking a permanent injunction to restrain the respondent from altering the natural structure of the suit property (or) constructing any new buildings until proper partition is effected. Hence this petition.

**3) The Brief Averments of the Counter:- (Memo has been filed by the Respondent to treat the Written Statement as Counter)**

3.1) The Respondent submits that all the allegations made in the petition are false, baseless and denied unless specifically admitted herein. This petition is not maintainable in law and is liable to be dismissed in limine.

3.2) The Respondent admits the relationship stated in the petition.

3.3) The Respondent denies all the allegations except those specifically admitted. It is admitted that the suit property was originally acquired by the deceased Chinnapaiyan through a registered sale deed dated 05.04.1978 and then he passed away on 05.07.1979. However, during his lifetime, Chinnapaiyan orally partitioned the suit properties and other properties, including houses and vacant lands in Survey No.344/21, among his sons namely Sengottaiyan, Kolandhapayan, Kumar and Kandasamy. Though no written partition deed was executed, the oral partition was acted upon and is still being followed by the respective legal heirs.

3.4) The Respondent contends that as per the said oral partition, the house in S.No.344/21 was divided into 2 portions namely the northern portion was allotted to Sengottaiyan and the Southern portion to Kandasamy (the father of the Respondent). Sengottaiyan Constructed a tiled house in his portion bearing Door No.3/40 and lived there separately. Likewise Kumar (husband of the petitioner) constructed a tiled house on his share and lived with his family in Door No.3/41, Kandasamy, the Respondent's father also constructed a tiled house on his share and lived there with his family in Door No.3/39. In survey No.347/3, the land measuring 1.67 cents was orally divided equally into four shares. Accordingly the families of Sengotaiyan, Kolandhapayan, Kumar and Kandasamy are each enjoying approximately 0.41 cents separately and cultivating their respective shares.

3.5) The Respondent further contends that the claim in the petition, that the suit property remains undivided and is being jointly enjoyed is false and misleading. The suit property was divided orally decades ago, and the respective heirs are enjoying their portion separately. The petitioner's statement that she and others are jointly enjoying the suit property is false and invented solely for the purpose of filing this case.

3.6) The Respondent further more contends that the heirs of Sengottaiyan, namely Palaniammal (wife), Amsaveni, Parimala and Radika (daughters) and Ramesh (son) have sold 20.69 cents of land from their inherited share to the respondent through 2 registered sale deeds dated 26.11.2021 (Doc No.4707/2021) and 09.11.2022 (Doc.No.5106/2022) both registered at Edapaddi SRO. These transactions are valid and binding on all concerned. The property so purchased is being enjoyed separately by the Respondent as per the model plan annexed.

3.7) The Respondent alleges that the petitioner had approached the heirs of Sengotaiyan to purchase their share of the property at a lower price,

which was refused. Aggrieved by this, the petitioner has filed the present suit with false allegations and malafide intent to harass the respondent and restrain him from exercising his rightful ownership and enjoyment of the purchased property. The Respondent alleges that the petitioner objected to the construction on 10.09.2024 (or) that she requested the Respondent to stop building until a partition is effected. The Respondent has merely laid the foundation for construction of a house on the property lawfully purchased and is within his right to do so. He has also applied for electricity service connection and paid the necessary charges to the Tamil Nadu Electricity Board. The Respondent contends that the petitioner has wrongfully filed objections with the Electricity board to prevent the Respondent from getting a power connection further proving her malafide intention.

3.8) The Respondent submits that the petitioner is only entitled to the share orally allotted to her husband, Kumar. However the petitioner has not included the other legal heirs of Kumar in the suit. Hence the suit suffer from non-joinder of necessary parties. The suit property and other properties have already been orally partitioned and are being enjoyed separately. Hence, the relief of permanent injunction without seeking partition is not legally sustainable.

3.9) The petitioner has no cause of action against the Respondent, who is enjoying property lawfully purchased from co-owners. The petitioner has paid the court fees Under Section 27(c). Based on that the petitioner has to be in the possession of the suit property. Hence the suit is to be dismissed.

3.10) The Respondent submits that it is settled law that a suit for permanent injunction can be entertained only if the petitioner proves legal possession and ownership. In this case the petitioner has not produced any documents to show absolute ownership (or) possession over the entire suit

property. On the contrary, the petitioner herself admitted that the respondent purchased the property by 2 sale deeds. Thus the respondent is in lawful possession of the purchased property and no injunction can be granted against him.

3.10) The Respondent further alleges that the land purchased by the Respondent is specifically identifiable and is bounded as follows the 1<sup>st</sup> plot is bounded by Kandasamy's land in east, Olapadathan Perumal's land in West, Kumar/ Papathi (Petitioner's land) in North, Canal bank in South which is a extent of 0.31 1/2 cents. The second plot is bounded by Kandasamy's land in east, Olapadathan Perumal's land in West, Ayyannan's land in South, Kumar/Papathi (Petitioner's village land) in North which is in extent 0.10 cents. The Respondent is in separate enjoyment of 0.41 1/2 cents of land in total, as per the above description. The petitioner is well aware of this and has filed this petition solely to cause hardship and delay the respondent's construction. There is no interference by the Respondent with property being enjoyed by the petitioner. The lands are separately enjoyed by respective parties as per oral partition. The claim of joint enjoyment is false and contrary to facts. The petition lacks merit and has been filed with malafide intention. The Respondent prays this court to dismiss the petition with cost.

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

**5) Point for consideration:-**

Whether the Petitioner/ Plaintiff is entitled for the relief as prayed for?

6) Heard both sides learned Counsels. Records perused. This Interlocutory Application has been filed Under Order XXXIX Rule 1,2 and Section 151 of Civil Procedure Code, Seeking a relief to grant a temporary

injunction restraining the respondents from making any alterations to the natural state of the property (or) constructing any new buildings till the disposal of the suit. The petitioner submits that the suit property originally belonged to her late father-in-law, Chinnapaiyan, who acquired the same under a registered sale deed dated 05.04.1978. After his death the property devolved on his four sons, including the petitioner's late husband and their respective families, who are said to be in joint possession and enjoyment without partition. It is the petitioner's grievance that certain co shares (heirs of one brother) have sold portions of the property to the defendant/respondent and that the respondent has now commenced construction on the property without any formal partition, thereby affecting the petitioner's alleged rights. She seeks an injunction restraining the Respondent from proceeding with any construction.

6.1) On the other hand, the respondent contends that the suit property and other ancestral properties were orally partitioned nearly 45 years ago among the four sons of the original owner, and that each branch of the family is in separate and exclusive possession and enjoyment. The Respondent further claims to have purchased specific and identifiable plots from the heirs of one Co-sharer. Under two registered sale deeds and is in lawful enjoyment and construction on that land. The Respondent has also produced a site plan showing boundaries and possession and alleges that the petitioner filed this petition with malafide intention after failing to purchase land herself.

6.2) Upon careful consideration of contention of parties, this court is of view that, the petitioner has admitted that the Respondent had purchased land under 2 registered sale deeds from co sharers of the petitioner. The petitioner does not dispute the execution of the sale deeds. She merely

alleges that the property was undivided and joint. However, the Respondent by his pleadings convinced that the property had been orally partitioned decades ago and that parties have been in separate and exclusive possession of their respective shares. This is substantiated by the existence of individual houses with door numbers, long standing enjoyment and cultivation pattern. The Hon'ble Supreme Court **In Ananthula Sudhakar – Vs – P. Buchi Reddy (2008) 4 SCC 594**, the Hon'ble Supreme Court held that “where there is a serious dispute as to title and possession, and no clear right is established, injunction cannot be granted. Further the court held that in suits between co-owners, mere claim of joint ownership does not entitle a person to seek injunction against another co-owner in exclusive possession unless partition is 1<sup>st</sup> sought and proved”. Hence, prima facie, the petitioner failed to establish exclusive possession (or) even co-possession over the specific portion of land over which construction is underway.

6.3) If an injunction is granted, the respondent would suffer hardship and financial loss by being prevented from building on property lawfully purchased. On the other hand, if the petitioner eventually succeeds in the main suit, she can be compensated by adjustment in the final partition (or) by way of monetary relief. **In Dalpat Kumar – Vs – Prahlad Singh (1992) 1 SCC 719**, the Hon'ble Supreme Court reiterated that “mere prima facie case is not sufficient, the applicant must establish balance of convenience and risk of irreparable injury. Based upon the contentions of parties and discussions made above through relevant precedents, this court is of considered opinion as the petitioner has not made out a prima facie case, nor is the balance of convenience in her favour. No irreparable loss would be caused to her. The injunction sought, therefore, is not legally sustainable.

7. In the result, This interlocutory application is dismissed. No cost.

This order directly dictated to the Steno-typist and typed by him and corrected by me, and Pronounced in the Open Court in the 05<sup>th</sup> day of August, 2025.

District Munsif,  
Sankari.

**Encl.:**

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

**Respondent side Witnesses & Exhibits :-** NIL

District Munsif,  
Sankari