

**IN THE COURT OF THE II ADDITIONAL DISTRICT & SESSIONS JUDGE,
THANJAVUR.**

Present : Thiru.**S.Baskaran**, B.Sc., B.L.,
II Additional District & Sessions Judge, Thanjavur.

Tuesday the 3rd day of July 2018
(Thiruvalluvar Aandu 2049 -Aani Matham 19th day)

I.A.No. 808/2015 in O.S. NO.103/2015

T.Meena

..Petitioner/ 2nd Plaintiff

/vs/

(1) K.Saraswathy

(2) K.Manimozhi

(3) K. Nithya

.....Respondent/ Defendants

This petition having come up for final hearing before me on 21.6.2018 in the presence of Tmt.**N.Poongothai,B.Sc.,B.L.**, Advocate for the petitioner and Thiru.**R.Elayaraja,B.A.,B.L.**, Advocate for the 2nd respondent /2nd defendant and of Thiru. **R.Udhayakumar, M.A.,B.L.**, Advocate for the respondents 1 and 3/defendants 1 and 3 , upon hearing the arguments of both sides, upon perusal of the entire material records pertaining to the case and the matter having stood over for consideration till this date, this court delivered the following

ORDER

(1) This petition has been filed by the petitioner/2nd Plaintiff u/o.39 R.1 and 2 of C.P.C to pass an order of temporary injunction till the disposal of the suit against the respondents not to prevent the petitioner/2nd plaintiff from registering sale deeds in respect of the petition mentioned properties.

(2) The Gist of the affidavit filed along with the petition can be stated as follows:

The suit properties are ancestral properties. They originally belonged to the 1st plaintiff's father Somasundaram Mudhaliar. After his death they have devolved upon the plaintiffs and the defendants. It was agreed among all the sharers to convert the suit properties into the house sites and

(2)

the second defendant agreed to make such conversions on his own expense. At request of the 2nd defendant 7 plots were sold for the marriage expenses of the daughters and for the development of the layout. However the 2nd defendant paid only Rs.2,00,000/- to the first plaintiff and kept the remaining amount with him. In the meantime the 2nd defendant attacked the first plaintiff and his wife on 14.1.2005 and a criminal case is pending in this regard. In order to avoid further problems, the first plaintiff executed separate settlement deeds in favour of all his sons and daughters in the presence of mediators. The first plaintiff has executed a registered settlement deed on 4.5.2015 settling plot numbers 32 to 36 in Kavi Avenue in favour of the petitioner. Name transfer has been effected in the revenue records. Since the first plaintiff did not have funds to register the other settlements in favour of other sharers, he requested the petitioner to sell the plots settled in her favour to raise funds. However the second defendant prevented the registration of the settlement deeds. The defendants 1 to 3 have also filed a suit in O.S.No.86/2015 for the relief of permanent injunction to restrain the plaintiffs from alienating the suit properties. The petitioner and other plaintiffs have filed this suit for partition. Each plaintiff is entitled to 1/8th share in the suit properties. The petitioner has entered into oral agreement of sale with third parties to sell the properties settled in her favour. The respondents are attempting to prevent the petitioner /2nd plaintiff in executing sale deeds in respect of the properties settled in her favour by the first plaintiff. Therefore, this petition for injunction.

(3) The respondents have adopted the written statements filed by them as the counter in this I.A.

The Gist of the said written statement can be stated as follows:

It is admitted that the suit properties originally belonged to Somasundaram Mudhaliar as per the partition deed dated 9.1.1958.

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It is also admitted that after the death of Somasundaram Mudhaliar, the suit properties devolved upon the plaintiffs and the defendants. On the request of the plaintiffs, the defendants converted the suit properties into house sites and the 2nd defendant spent money for the layout expenses. 7 Plots were sold to third parties and the sale proceeds were jointly divided between the plaintiffs and the defendants. The defendants never agreed for a settlement by the first plaintiff in favour of the 2nd plaintiff. Therefore, the settlement deed dated 4.5.2015 pleaded by the petitioner is null and void and not binding on the respondents. These respondents have filed a suit in O.S.No.86/2015 before the District Munsif cum Judicial Magistrate, Papanasam for injunction. The 2nd defendant has incurred an expense of Rs.16,00,000/- to convert the suit properties into house sites. The first plaintiff agreed to repay this sum of Rs.16,00,000/- and another sum of Rs.12,00,000/- towards the marriage expenses of the 2nd defendant. However he did not fulfill the promise. The first plaintiff has executed a Uruthimozhi Aavanam to the second defendant in respect of the agreement entered into by him. The original deed is in the custody of the first plaintiff and the Xerox copy is with the second defendant. The first plaintiff without fulfilling his promise, attempted to sell the plots without the knowledge of the defendants to defraud them and therefore only the suit was filed in Papanasam. Without including the entire family properties the suit has been filed. Hence the petition has to be dismissed.

(4) The point for consideration here is

Whether this petition can be allowed?

(5) Point:

The petitioner who is the second plaintiff in the suit seeks the relief of injunction as against the defendants on the allegation that they are attempting to prevent the petitioner from registering the sale deeds in respect of the petition mentioned properties contending that the said properties have been settled in her favour by a registered settlement deed dated 4.5.2015 executed by the first plaintiff. Admittedly, the suit is for the relief of partition. It is not in dispute that the suit

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properties originally belonged to Somasundaram Mudhaliar as per the partition deed dated 9.1.1958. It is also admitted that the first plaintiff is the son of the said Somasundaram Mudhaliar and the other plaintiffs and the defendants are the children of the first plaintiff. The plaintiffs and defendants are admittedly the legal heirs of the Somasundaram Mudhaliar who is said to have died intestate. Therefore this suit for partition has come into existence. It is the case of the petitioner that in the meanwhile a mediation talk was held and that in the said mediation the petition mentioned properties have been settled in her favour under the registered settlement deed dated 4.5.2015 executed by the first plaintiff. The respondents/defendants are denying the genuineness of the said settlement deed. It is the admitted case of all parties that the first plaintiff is not the absolute owner of the suit property. Therefore any alienation by him can be only in respect of his share in the suit properties. The share of each party are yet to be ascertained. Admittedly there is also another suit in O.S.No.86/2015 before the District Munsif cum Judicial Magistrate, Papanasam which has been filed by the defendants herein against the plaintiffs herein for the relief of injunction to prevent them from alienating or encumbering the suit properties herein. That suit has also been now transferred to this court for joint trial along with this suit and it is pending in O.S.No.28/2018 on the file of this court. The subject matter in both the suits namely, the suit properties are common. Therefore when there is a claim of injunction by one party against the other party not to sell away the property, this injunction which is mainly aimed at permission to one of the rival parties to sell away the suit properties cannot be considered at this stage. As discussed supra, the rights of the first plaintiff to execute the settlement deed on the basis of which the petitioner claims right to sell is also the document pending for consideration in both the suits. In such circumstances granting an injunction in favour of the petitioner will stultify the reliefs claimed in both the suits. Therefore the petitioner has not made out either a prima facie case or the balance of convenience in her favour for grant of interim injunction in this petition. The point is answered accordingly.

In the result, this petition is dismissed. There is no order as to costs.

(5)

Dictated to the steno-typist, transcribed by her in computer, corrected and pronounced by me in open court, this the **3rd day of July 2018.**

(sd) **S.Baskaran**

**II Additional District & Sessions Judge,
Thanjavur.**

Petitioner and Respondents side

Exhibits and Witnesses : Nil

(sd) **S.Baskaran**

**II Additional District & Sessions Judge,
Thanjavur.**

DRAFT/FAIR ORDER
I.A.No. 808/2018 in
O.S. NO.103/2015
Dated: 3.7.2018

