

**IN THE COURT OF ADDITIONAL DISTRICT & SESSIONS JUDGE, (F.T.C),  
KUMBAKONAM.**

Present : Tmt. J. Rathika, M.A., M.L.,

Additional District & Sessions Judge, (F.T.C.), Kumbakonam.

Thursday the 17<sup>th</sup> day of October 2024

**I.A. No:147/2021 in O.S. No. 199/2021**

S.Devi Dayana ... Petitioner / Plaintiff  
VS  
1)A.Saran Singh ... Respondents/Defendants  
2)A.Gavaskar

This petition came up before this court for final hearing on 03.10.2024 in the presence of Thiru.D.Kesavan, Advocate for the Petitioner/Plaintiff and of Thiru.V.Balamurali, Advocate for the Respondents / Defendants and upon hearing the arguments of both sides and upon perusing the case records and having stood over for consideration till this day, this court delivers the following..

**ORDER**

This petition has been filed under Order 39 Rule 1 and 2 and Sec.151 CPC praying to pass an order of temporary injunction restraining the defendants/respondents, their men or anybody claiming under him, from in any way and in any manner to alienate the suit property to any 3<sup>rd</sup> party or making any encumbrance over the suit properties by means of temporary injunction, till the disposal of the suit.

**2. The averment the petition as follows:**

The plaintiff / petitioner has stated that suit has been filed for partition seeking 1/3 share in Item No.1 and 2/3 share in Item No.2 of suit properties and permanent injunction in respect of Item No.3 of the suit property. It is further stated that the plaintiff and the defendants are sister and brothers and the Item No.1 & 2 of the suit

properties and a part of Item No.3 of the suit property are belongs to their parents, viz., Amarsingh and Nageswari, by virtue of Sale deeds and they enjoyed the suit properties till their death and the said Nageswari and Amarsingh were died on 03.11.2015 and 21.11.2020, respectively, leaving the plaintiff and the defendants as their legal heirs, without executing any testamentary documents and after their death, the plaintiff and the defendants are enjoying the suit properties as joint family properties. It is further stated that the plaintiff is entitled 1/3 share and 2/3 in Item No.1 & 2 of the suit properties, respectively and since Item No.3 of the suit property is purchased in the name of the plaintiff and enjoyed by her, the defendants have no right over the same. It is further stated that since the plaintiff is residing at Trichy with her husband, the defendants are refusing to give her share in the yield in crops procured from the suit properties and due to the dispute arose in between the parties, the plaintiff gave a complaint before the Superintendent of Police, Thanjavur on 16.06.2021 and hence the defendants are trying to alienate the Item No. 3 of the suit property to 3<sup>rd</sup> parties. It is further stated that since the defendants are not come for amicable settlement, the plaintiff was constrained to file this suit for partition and permanent injunction and hence prayed in this petition to pass an order of temporary injunction restraining the defendants and their men from in any way and in any manner to alienate the suit property to any 3<sup>rd</sup> party or making any encumbrance over the suit properties by means of temporary injunction, till the disposal of the suit.

3) **The averment the counter as follows:**

In the counter filed by the 1<sup>st</sup> respondent, it is stated that the petition is not maintainable and it is partly true that the Items 1 & 2 of suit properties and part of Item No.3 of suit property were purchased by and belonging to the parents of the petitioner and the respondents. Major suit properties were bought out of the income from and by the respondents and the petitioner has nothing to do whatsoever in relation to the said properties. The father, Amarsingh is barely sufficient even to meet

out the expenses of the family and the mother, Nageshwari was in fact only a house maker and the 1<sup>st</sup> respondent is a Government servant and worked as Post Master and the 2<sup>nd</sup> respondent worked in abroad and only from the income of the respondents, the suit properties were purchased in the name of thier parents and sister / petitioner. The respondents are in possession and enjoyment of the suit properties since from the date of purchase. The petitioner is not entitled to seek partition in the suit properties. Since, the petitioner is not entitled for partition, she is not entitled to get the relief of temporary injunction, as prayed in this petition. Hence, prayed for the dismissal of the petition.

4) The point for consideration is whether the petition is to be allowed or not ?

**5) Answer:**

Heard both sides. On perusal of the petition it came to know that it is the case of the petitioner that the suit properties are belongs to the parents of the petitioner and the respondents, viz., Nageswari and Amarsingh by virtue of Sale deeds and they were died on 03.11.2015 and 21.11.2020, respectively, leaving the plaintiff and the defendants as their legal heirs, without executing any testamentary documents and after their death, the plaintiff and the defendants are enjoying the suit properties as joint family properties and the plaintiff is entitled 1/3 share and 2/3 in Item No.1 & 2 of the suit properties, respectively and since Item No.3 of the suit property is purchased in the name of the plaintiff and enjoyed by her, the defendants have no right over the same. Further, it is the case of the petitioner that since the plaintiff is residing at Trichy with her husband, the defendants are refusing to give her share in the yield in crops procured from the suit properties and due to the dispute arose in between the parties, the plaintiff gave a complaint before the Superintendent of Police, Thanjavur on 16.06.2021 and hence the defendants are trying to alienate the Item No. 3 of the suit property to 3<sup>rd</sup> parties and since the defendants are not come for

amicable settlement, the plaintiff was constrained to file this suit for partition and permanent injunction and hence prayed in this petition to pass an order of temporary injunction restraining the defendants and their men from in any way and in any manner to alienate the suit property to any 3<sup>rd</sup> party or making any encumbrance over the suit properties by means of temporary injunction, till the disposal of the suit.

6) On the other hand, the respondents have not disputed the relationship between the parties and the properties are purchased in the name of their parents, but have stated that they were purchased from out of the income of the respondents, as the 1<sup>st</sup> respondent is working as Post Master and the 2<sup>nd</sup> respondent is working in abroad and the father, viz., Amarsingh barely sufficient even to meet out the expenses of the family and the mother, Nageshwari was only a house maker and they have no income to purchase the suit properties and the petitioner has nothing to do whatsoever in relation to the said properties and hence the petitioner is not entitled for partition and as such she is not entitled to get the relief of temporary injunction, as prayed in this petition.

7) It is not disputed that the suit properties are in the name of the parents of the petitioner and respondents in the suit and the parents were died intestate and the relationship between the parties. Since, the petitioner has filed this suit for partition in the suit properties, if the properties are alienated before the conclusion of the suit, it will create multiplicity proceedings among them. The relief of the partition and permanent injunction in the suit will be decided only after adjudication of both parties in the main suit. The relief sought for in this petition is only for a limited period, ie., till the disposal of the suit. Since, the respondent has not disputed the relationship and the properties are in the name of their parents, and this suit is for partition, this court is satisfied with the apprehension of the petitioner, and convinced with the prima facie for the prayer made in this petition, so as to protect the right of the petitioner.

If the relief is not granted and the respondents have alienated the suit property as alleged in the petition to 3<sup>rd</sup> party, irreparable loss will be caused to the petitioner, but, if the relief is granted, no loss will be caused to the respondents and hence considering the balance of convenience and to protect the right and interest of the petitioner, this court is inclined to allow the petition by granting the relief of temporary injunction restraining the defendants/ respondents, their men or anybody claiming under them, from in any way and in any manner to alienate the suit property to any 3<sup>rd</sup> party or making any encumbrance over the suit property by means of temporary injunction, till the disposal of the suit.

In the result, this petition is allowed with costs and the defendants/ respondents, their men or anybody claiming under them, are hereby restrained by way of temporary injunction from in any way and in any manner to alienate the suit property to any 3<sup>rd</sup> party or making any encumbrance over the suit property, till the disposal of the suit.

Dictated to Steno typist, directly typed out by him on computer, corrected and pronounced by me, in the open court on this the 17<sup>th</sup> day of October 2024.

Sd/-(J. RATHIKA)  
Addl. District & Sessions Judge  
(Fast Track Court)  
Kumbakonam.