

IN THE COURT OF THE FIRST ADDITIONAL DISTRICT JUDGE,
TIRUNELVELI.

PRESENT: Thiru. D. SELVAM, M.L.
1st Additional District Judge,
Tirunelveli.

Thursday, the 09th day of April 2026

I.A.No. 02/2024 in OS. No. 374/2024

M. Devika

... Petitioner/Plaintiff

//versus//

1. M. Ganthimathinathan
2. M. Sankar (Died)
3. M. Tamil
4. Indian Oil Corporation,
Madurai through its Manager,
5. Ajaykumar
6. M. Mahesh
7. S. Gomathi
8. S. Banumathi
9. S. Vidhubala

... Respondents/Defendants

This petition came up before this court on 02.04.2026 for a final hearing in the presence of Thiru. S.S. Sathyam, Advocate for the Petitioner and Thiru. M. Abdul Baseeth, Advocate for the 1st Respondent and Thiru. H.J. Kissinger, Advocate for the 3rd Respondent and Thiru. A. Mohanraj, Advocate for the 4th Respondent and Thiru. P. Pillai Vinayagam, Advocate for the 5th Respondent and Thiru. S. Radhakrishnan, Advocate for the 6th Respondent and Thiru. S. Iyyappan, Advocate for the 7th to 9th Respondents and the 2nd respondent died and upon hearing both sides' arguments and upon perusing the records and having stood over till this date for consideration, this court delivers the following...

ORDER

1. The petition is filed under Order 39 Rule 1 and 2 and section 151 of C.P.C., to grant ad interim injunction and not to creating encumbrance and not change the declaration of property till the disposal of the suit, and claimed the 1/3 share of the rent to be deposited in the court account till the disposal of the suit.

2. The brief averments in both petitions are as follows:-

The petitioner is the plaintiff in the suit and filed the suit for partition and permanent injunction, mandatory injunction, and other reliefs. The schedule property belongs to Mr. Ganthimathinathan through the partition deed, in Doc. No. 796/1953, dated. 01.05.1953, in respect of the 2nd and 3rd schedule properties, who is the grandfather of the petitioner and the 1st and the 2nd respondents. After his demise, her father, K. Muthusamypillai, succeeded to the properties. He enjoyed the property with his wife, M. Banumathi, the petitioner and 1st and 2nd respondents, and he died on 05.08.1995. The petitioner's father has been running a Theatre in the name of M. Banumathi till the year 2002. The scheduled property is the joint property of the petitioner, and the 1st and 2nd respondents, and the 1st schedule property is the Punjai land, and the 2nd schedule property is the house site, and here the joint possession and other properties also. The 3rd to 6th respondents enjoyed the property as tenants, and the 7th to 9th defendants are the legal heirs of the 2nd respondents. The petitioner's mother gave the lease to the Theatre on 09.12.2011 to one Mani, who converted it to Banu Brinthavan Marriage Hall and conducts a hotel business, and the 1st respondent

has been receiving the rent till the date and has not given the share to the petitioner. After demise of her parents, the respondents had not given the share of the rent to the petitioners. The 1st respondent is the practicing advocate and taking the law on his hand and acted as highhanded. So, the petitioner issued the legal notice demanded the share for the 1st and 2nd respondent and replied and denied the shares from the properties. So, the suit is filed. At this stage the 1st and 2nd respondent proclaimed to sell property and changed the nature of the property. Hence the petitioner filed this petition for the relief as restraining the respondent from creating any encumbrance or modification of the property till the disposal of the suit, and claimed the 1/3 share of the rent to be deposited in the court account till the disposal of the suit.

3. The brief averments of the counter filed by the 1st and 2nd Respondents are as follows:-

The petition is not maintainable either in law or on the facts. The respondent denied the allegations contained in the affidavit, except for the admitted facts. The family was running on the income of the respondent, who was doing real estate business and money lending business. He was educated the petitioner, and solemnized the marriage on his personal money and sold some properties of his wife. Item no. 4 of the property given to the petitioner during the marriage. So, the item no. 4 property could not be partitioned, and it is an imaginable one. The respondent invested his personal money in Pon Ram Power Pvt. Ltd., and he incurred a heavy loss of money, which is not a joint family fund. The petitioner's father and 1st and 2nd

respondent alone the jointly sold to one K.S.Abdul Harim and K.S. Balu Ammal W/o. Muthu Pattany Sahib, through the registered sale deeds on 24.10.1985. Further, the respondent purchased the property in the name of his father on his personal income. So, his father executed the WILL in favour of this respondent on 15.12.1994 in respect of the schedule properties. The details of the WILL are already informed through the reply notice. So, Items No. 2 and 3 were not available for the partition. The petitioner and the respondents did not have any joint possession over the scheduled property. The respondent already filed the writ petition before the Hon'ble Madurai Bench of Madras High Court for evicting the tenants. But the petitioner had indirectly contracted with the 3rd respondent and acted against this respondent. So, the family is severely affected. The allegations of joint possession are denied, and the respondent has the exclusive right and possession of the properties as per the WILL, and there is no necessity for the given share of the income to the petitioner. The other allegations are false and denied. There is no prima facie case in favour of the petitioner. Hence, the petition may be dismissed with costs.

4. The brief averments of the counter filed by the 3rd Respondent are as follows:-

The petition is not maintainable either in law or on the facts. The respondent denied the allegations contained in the affidavit, except for the admitted facts. The relationship between the petitioner and the 1st and 2nd respondents should be proved by the petitioner. The petitioner and the respondent enjoying the property in joint

possession is also to be proved by the petitioner. In respect of the lease, this respondent invested a huge amount of money in the business. This respondent paid the rent to the 1st and 2nd respondents in cash and bank transactions, as per the lease agreement dated. 19.12.2011. The lease was entered with the permission of Banumathi, and the rent was given to the 1st and 2nd respondents. The other allegations stated in the affidavit is belongs to their family. If the court passes the order to deposit the rent before this court, the respondent is ready to deposit it. On 06.01.2020, another lease is it was entered into between the respondent father Mani and Muthusamypillai. The lease was renewed every year, and Rs. 15 lakhs was paid in advance. The rent was received by the 1st and 2nd respondents. After receiving the legal notice, the 1st and 2nd respondents demanded the property and were given an alternative place, and the 1st respondent issued the legal notice to require the property. This respondent has already issued a suitable reply. The 1st and 2nd respondents lodged the complaint against the 3rd respondent. The 1st and 2nd respondent and their men damaged the electric pole and restrained this respondent from conducting the business. So, this respondent filed the writ petition before the Madurai Bench of the Madras High Court and got the order with police protection. So, the respondent fixed the CCTV camera in his place. the 1st respondent lodged the false complaint, and they are not ready to obey the court direction. This respondent filed the contempt petition against the 1st respondent. This respondent has invested Rs. 46 lakhs from the

property. Even though the undivided share, the 1st and 2nd respondents filed the suit for eviction against this respondent. Hence, the petition may be dismissed with costs.

5. The brief averments of the counter filed by the 4th Respondent are as follows:-

The petition is not maintainable either in law or on the facts. The respondent denied the allegations contained in the affidavit, except for the admitted facts. The respondent got the lease from Banumathi, Gandhimathinathan, Shankar, and Devika on 30.03.2004, and it expired on 29.03.2024. As per the lease deed, they are dividing share of the rent. Then the 1st and 2nd respondent not willing to renew the lease deed and filed the writ petition in W.P. (MD). No. 9495/2024 and allowed the writ petition. Then the 4th respondent is taking steps to file an appeal against that order. As per the terms of the lease conditions, this respondent is the tenant alone. The 4th respondent has no interest in the case. Hence, the petition may be dismissed with costs.

6. The brief averments of the counter filed by the 6th Respondents are as follows:-

The petition is not maintainable either in law or on the facts. The respondent denied the allegations contained in the affidavit, except for the admitted facts. The 6th respondent, running a small hotel in the name of the Style of Lakshmi Café. The property is about 36 cents, and 15 dilapidated houses were on the roadside. The 1st respondent requested the 6th respondent to restructure the property after removing the dilapidated buildings. So, the 6th respondent worked with the hollow block stones and

restructured the building and ran the Hotel. He came to know that the owner of the land executed a WILL in favour of the 1st respondent. Now the petitioner is disturbing the respondent's possession and claiming the property. So, the 1st respondent filed the writ petition before the Hon'ble Madurai Bench of Madras High Court in W.P. (MD) No. 3395 of 2025. At the time, the building was letting out without rent, towards to compensate for the expenses already incurred by me. Hence, the petition may be dismissed with costs.

7. The brief averments of the counter filed by the 8th respondent and 7th and 9th respondent adopted are as follows:-

The petition is not maintainable either in law or on the facts. The respondent denied the allegations contained in the affidavit, except for the admitted facts. The petition is maintainable, the lease between the parties is correct. These respondents are the legal heirs of the deceased 2nd respondent. The Muthusamypillai died on 05.08.1995. The 1st and 2nd respondents were residing in the same house. The 8th respondent, Banumathi, is a practice advocate in the Chennai Court. The writ petition was filed by the 1st respondent before the Madurai Bench of Madras High Court, and the notice was not served by the 2nd respondent, which was received by the third party. After that, the 2nd respondent understood the case and informed the matter to the 8th respondent. The 1st respondent claimed the right based on the WILL, but the Hon'ble Madurai Bench of Madras High Court suo motto added the petitioner and the 2nd respondent as the party and directs the 1st respondent to prove the WILL in this

case. The 2nd respondent did not aware of the litigation from the beginning. The 2nd respondent did not sign his signature in Tamil, and he always signed in English. After filling the suit, the 1st respondent tried to get the share of the 8th respondent, changed the description of the property, and closed the Petrol Bulk. Because the 1st respondent is the Advocate, and he had taken the law into his hands. In this regard, the photos and CDs are filed. The 7th to 9th respondents are entitled to the 1/3 share and are ready to pay the court fee for the share. Now the 1st respondent filed 9 writ petitions before the High Court, which were dismissed. The 2nd respondent died, without knowledge of the litigation. After the demise of the 2nd respondent, the 7th to 9th respondents demanded the share from the 1st respondent, but he lodged a false complaint with the police. The police complaint is also pending for enquiry. Hence, the petition may be allowed with costs.

8. The point for determination in these petitions is

Whether the petitioner entitled to the relief of an ad-interim injunction as prayed for?

9. During the enquiry, no oral evidence was adduced by either side. On the petitioner side, Ex. P-1 to Ex. P-11, and the respondents' side, Ex. R-1 to Ex. R-26 was marked.

10. Answer to the Point :-

(i) Heard both sides. This court carefully perused the affidavit, counter, and case records.

(ii) As per the submissions and the settled position of law, the interim injunction applications shall be decided within the parameters under Order 39 Rule-1, 2 of the CPC. The relevant provisions of the Order 39 Rule 1, 2 of the CPC as

Order 39, Rule 1 and 2 of the Code of Civil Procedure (CPC) empower a court to grant a temporary injunction, which is a court order to prevent irreparable harm by preserving the status quo of a dispute until a final decision is made.

Rule 1 applies when the property in dispute is in danger of being wasted, damaged, or sold, or if the defendant threatens to dispose of their property to defraud creditors.

Rule 2 applies when the defendant threatens to dispossess the plaintiff or cause injury concerning the property in dispute, or to prevent the repetition or continuance of a breach of contract or other injury.

(iii) As the above provision and the settled position of law in respect of the interim injunction held by the Hon'ble Supreme Court as

“State of Kerala (Vs.) Union of India, Original Suit No. 1 of 2024, Supreme Court of India”

12. The globally acknowledged golden principles, collectively known as the Triple-Test, are followed by the Courts across the jurisdictions as the pre-requisites before a party can be mandatorily enjoined to do or to refrain from doing a particular thing. These three cardinal factors, that are deeply embedded in the Indian jurisprudence as well, are:

- (a) A ‘Prima facie case’, which necessitates that as per the material placed on record, the plaintiff is likely to succeed in the final determination of the case;*
- (b) ‘Balance of convenience’, such that the prejudice likely to be caused to the plaintiff due to rejection of the interim relief will be higher than the inconvenience that the defendant may face if the relief is so granted; and*
- (c) ‘Irreparable injury’, which means that if the relief is not granted, the plaintiff will face an irreversible injury that cannot be compensated in monetary terms.*

So, the golden principles of the prima facie case, balance of convenience, and irreparable loss are to be considered without going to the merits of the case.

(iv) As per the petitioner's side, documents were created to dispute the property and claim the share as per her legal notice. But the 1st respondent's side documents were described as he managed the properties and paid the taxes to the government, and income tax was also paid, and he participated in the connected litigations of the income tax tribunal and DRT proceedings. Further, the 1st respondent has participated in the Writ petition proceedings. However, the 1st respondent has not disclosed the accounts of the receipt of rent from the tenants and expenses. So, these documents would not suffice for deciding interim injunction application. Further, the Ex. R-4 unregistered WILL is the disputed matter in the partition suit.

(v) Prima facie case and balance of convenience:

(a) The petitioner is the sister of the 1st and 2nd respondent, who are the legal heirs of deceased Muthusamypillai. Mr. Muthusamypillai succeeded to the property from his father, as he is the only son. His father Kanthimathinathan got the properties through the partition as per the Ex. R-1. So, the petitioner claimed the relief of partition due to the nature of the ancestral properties. But the 1st respondent has denied the share based on the Ex. R-4 WILL, which was executed by the petitioner's father on 15.12.1994. So, the dispute between the brothers and the sister arose for the partition of property.

(b) In respect of the WILL in favour of the 1st respondent, the Hon'ble Madurai Bench of Madras High Court directs the 1st respondent to decide the validity of the

WILL in this case through the Ex. R-25. So, the matter of partition is pending for the deciding the validity of WILL.

(c) But the 3 to 6 respondents are the tenants. The 4th respondent informed that the legal heirs of Mr. Muthusamypillai entered the lease for 20 years, and it has expired on 29.03.2026, and the 4th respondent vacated the building. The 3rd respondent is the tenant of the 2nd schedule property, and he claimed his huge investment for his business, and he struggled with the business due to the interference of the 1st respondent and his litigation and police complaint.

(d) The 6th respondent stated that he is doing the business in one of the schedule property, without rent, and it is adjusting for his incurred expenses for improving the property and restructuring the duplicated houses.

(e) As per the allegations, the tenants have not paid the rent to the petitioner, which was received by the 1st and 2nd respondents, and they did not give her the legitimate share as per the lease agreement and the co-sharer. But the respondents had changed the identification of the property and improved it without the consent of the petitioner, it will cause prejudice at the final determination of the case.

(f) This court, considering the above, found that the suit is filed for the relief of partition. But the respondents have not given her a share of the rents, and the tenants have changed the description of the property. In this circumstance, the tenants had taken different stands as per the canvass of the 1st respondent and his claim of the right of WILL. But the WILL is under the scrutiny of this court as per the direction of

the Hon'ble Madurai Bench of Madras High Court in the Ex. R-25. So, this court finds the prima facie case, balance of convenience in favour of the petitioner.

(vi) Irreparable loss :

(a) As per the revival submissions, this court would not decide the matter of right and share of parties in this application without testifying the WILL Ex. R-4. But the tenants took the stand and paid the rent to the 1st respondent, and improvements were made on the property, and a huge investment was also made, which will make it difficult to decide the rights of the parties at the end of the litigation. Further, the 1st respondent collected the rent from the tenants without any proper account and caused irreparable loss to the petitioner.

(b) Normally, the courts have not given an interim injunction between the co-sharers. But the petitioner and other co-sharers of 7 to 9 respondents also claim the share of the rent, since their father/2nd respondent, has not been aware of the real nature of the litigation and died. Further, the tenants were modifying the property with the aid of 1st respondent and marked the Ex. R-24 Photos with CD.

(c) But the petitioner claimed the relief as restraining the respondent from creating any encumbrance or modification of the property till the disposal of the suit, and claimed the 1/3 share of the rent to be deposited in the court account till the disposal of the suit. In this regard, this court, considering the nature of restraining to create any encumbrance is not put any prejudice to the respondents. Since it is decided by the hon'ble Madurai Bench of Madras High Court in Ex. R-25 and

directing the 1st respondent that he would not claim any right based on the Ex. R-4 WILL until decision of this case. But calculating the 1/3 share of rent is an unidentified one. Since neither party had filed the rental agreement nor stated the payment of rent as on date. Hence, this court would like to direct the 3rd, 5th, and 6th respondents to submit their lease agreement copy and deposit the rents in the court account, and this court permitted the petitioner, 1st and 7 to 9 respondents, claiming their respective shares from the court account till disposal of the suit by the interest of justice. Accordingly the point is decided.

8. In the result,

(i) This petition is allowed. This court directs the respondents did not create any encumbrance of sale, lease or any other transaction and made any improvement or value-added work over the scheduled properties till the disposal of the suit.

(ii) Further, the 3rd, 5th, and 6th respondents are to submit their lease agreement copy and deposit the rent before this court till disposal of the suit and this court is permitted the petitioner, 1st and 7 to 9 respondents, claiming their respective shares of the rent from the court account till the disposal of the suit

(iii) The 4th respondent vacated the property, the 1st respondent did not lease that property without permission of this court till the disposal of the suit. As per the submission and on the welfare of the parties, this court would like to direct the petitioner, 1st, 7 to 9 respondents to use the 4th respondent vacated the property for any lease by the consent of both of them with the approval of this court. Since this

court would not like to waste the properties without any benefit till the disposal of the suit.

This order is directly dictated to the Steno-typist typed in a computer, corrected and pronounced by me in the open Court, on this the 09th day of April 2026.

1st Additional District Judge,
Tirunelveli.

Petitioner side Witnesses: Nil

Petitioner side Documents:

Ex.P.1	05.08.1995	Death certificate of the Mr. Muthusamy Pillai	Photo copy
Ex.P.2	14.09.1995	Legal Heir Certificate of the Mr. Muthusamy Pillai	Photo copy
Ex.P.3	10.10.2016	Death certificate of the Mrs. Banumathi	Photo copy
Ex.P.4	---	Legal heir certificate of the Mrs. Banumathi	Photo copy
Ex.P.5	---	1 st schedule property Patta in survey no. 242/2E	Photo copy
Ex.P.6	---	2 nd schedule property Certificate for the Extract from the Town Survey Land Register	Photo copy
Ex.P.7	---	3 rd schedule property Certificate for the Extract from the Town Survey Land Register	Photo copy
Ex.P.8	29.07.2024	Legal notice	Photo copy
Ex.P.9	12.08.2024	Reply notice	Photo copy
Ex.P.10	06.11.2024	Rejoinder notice	Photo copy
Ex.P.11	07.11.2024	Acknowledgment card	Original

Respondents side Witnesses: Nil

Respondents side Documents:

Ex.R.1	01.05.1953	Registered partition deed	Photo copy
Ex.R.2	08.01.1985	Security executed to Sri Visalam Chits	Photo copy

Ex.R.3	27.01.1985	‘C’ Form license issued to Banumathi Theatre	Photo copy
Ex.R.4	15.02.1994	An unregistered WILL executed by the father of the plaintiff and in favour of the 1 st defendant.	Photo copy
Ex.R.5	04.02.2011	Order passed by the Income Tax Appellate Tribunal	Photo copy
Ex.R.6	11.11.2013	Closure Letter issued by the LIC of India along with the payment receipts.	Photo copy
Ex.R.7	12.12.2018	The receipt showing the payment made by the 1 st defendant towards the liability incurred by the father of 1 st defendant and plaintiff	Photo copy
Ex.R.8	12.12.2003	The proceedings against the Muthusamy Pillai and sons in in O.A. No. T11 of 2001 DRT 11, Chennai	Photo copy
Ex.R.9	11.06.2004	Notice issued by DRT 11, Chennai	Photo copy
Ex.R.10	07.06.2004	Recovery certificate issued by DRT 11, Chennai	Photo copy
Ex.R.11	11.02.2009	Order passed by DRT, Madurai, for the liability incurred by Mr. Muthusamy Pillai and sons	Photo copy
Ex.R.12	21.12.2009	Orders obtained by the 1 st defendant in W.P. (MD) No. 13741 of 2009, Hon’ble High Court, Madurai.	Photo copy
Ex.R.13	09.08.2024	Reply notice issued by the 1 st defendant	Photo copy
Ex.R.14	01.08.2025	Order obtained in W.A. No. 1022 of 2025 High court, Madurai.	Online copy
Ex. R.15	01.08.2024	Order in W.P. (MD) No. 9495/2024	Online copy
Ex. R.16	2001 to 2004	Receipts for the payment made by the 1 st defendant for the debt incurred by Muthusamy Pillai	Photo copy
Ex. R.17	17.12.1999	Chellan for the receipt of payment made by the 1 st defendant for the loan incurred by Muthusamy Pillai to the Central Bank	Photo copy
Ex. R.18	21.03.2001	The letter sent to the Central Bank by the 1 st defendant for the payment of Rs. 4 lakhs	Photo copy

Ex. R.19	22.10.2001	Receipt showing payment to the Central Bank a sum of Rs. 1 lakh.	Photo copy
Ex. R.20	08.11.2001	Receipt of a sum of Rs. 90,000/- to the Central Bank	Photo copy
Ex. R.21	2002 to 2004	Payment of receipt to Central Bank by 1 st defendant for a sum of Rs. 7,04,837/-.	Photo copy
Ex. R.22	11.03.2014	Payment receipt to Central Bank a sum of Rs. 2,61,915/-.	Photo copy
Ex. R.23	06.02.2015 to 18.03.2015	Payment of property tax due a sum of Rs. 7,61,415/-.	Photo copy
Ex. R.24	---	Photos and CDs	Original
Ex. R.25	30.01.2026	Order in W.P. (MD) No. 25866 f 2025	Photo copy
Ex. R.26	---	List of petitioner in writ petitions	Photo copy

1st Additional District Judge,
Tirunelveli.

I Additional District Court,
Tirunelveli.
IA No.02/2024 in
OS No.374/2024
ORDER (Draft/Fair)
Dt: 09.04.2026