

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

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

Wednesday, the 24th day of June 2026

I.A. No. 08/2026 in O.S. No. 374/2024

M. Kanthimathinathan ... Petitioner/Defendants No.1

// Versus //

1. M. Devika ... Respondent/Plaintiff

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/Defendant No. 2 to 9

This petition came up before this court on 12.06.2026 for a final hearing in the presence of Thiru. A. Abdul Basheeth, Advocate for the Petitioner and Thiru. S.S. Sathyam, 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. Saravanan, 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. This petition has been filed under Order-14 Rule-2 r/w Section 12 of Tamil Nadu Court Fees and Suit Valuation Act to dismiss the plaint with costs.

2. The brief averments in the petition are as follows:-

The petitioner is the 1st defendant in the main suit. He is well known for the case details. The 1st respondent filed the suit for partition and other reliefs. The 1st respondent claimed 1/3 share of her father's 1 to 4 item properties as the total value of Rs. 40,15,36,084/- and 1/3 share value of Rs. 13,38,45,361/-. Further, the petitioner's father executed an unregistered WILL in favour of the petitioner before his demise. The 1st respondent has lived with her husband at Chennai, and she had no joint possession with the petitioner. So, the court fee paid under section 37(2) of the Tamilnadu Court Fees Suits and Valuation Act is not correct, and the court fee should be paid under section 37(1) of the Tamilnadu Court Fees Suits and Valuation Act. Hence, the suit is not maintainable. Hence, the petitioners have filed the petition to dismiss the suit with costs.

3. The brief averments of the counter filed by the 1st respondent are as follows:-

The petition is false, frivolous, and vexatious; the respondent denied the allegations contained in the petition except for the admitted facts. The petition is not maintainable in law and on the facts. The petitioner's father never executed any WILL in favour of the petitioner. The petitioner has not disclosed the WILL in the

reply notice. The Patta stands in the legal heirs of the deceased Muthusamy Pillai. So, the 1st respondent and other legal heirs are the co-owners of the schedule properties. So, the payment of court fee is very correct. The petitioner has already filed a petition before the Hon'ble Madurai Bench of Madras High Court, which was dismissed. The petitioner has filed the petition with the intention to drag the case. Hence, the petition may be dismissed with costs.

4. The point for consideration is: whether the petitioner is entitled to the relief as prayed for?

5. During the enquiry, no oral and documentary evidence is adduced on both sides.

6. Point: -

6.1. Heard both sides. This court carefully perused the affidavit, petition, counter, and case records.

6.2. On perusal of the records, the suit is filed for the relief of partition. The suit is pending for framing of issues. At this stage, the petitioner has filed the application for dismissing the suit on the reason of the plaintiff does not have joint possession with the defendants and the payment of court fee was made under section 37(2) of the Tamilnadu Court Fees Suits and Valuation Act. Further, his father executed a WILL in his favour, and the suit for partition is not maintainable. Per

contra, the respondent has opposed the petition for the reason that her father did not execute an unregistered WILL. The payment of court fee is correct.

6.3. This court considered revival submissions and case records. In the matter of joint possession, any co-owner can enjoy the property on behalf of the other co-owner. In this court considered the citation as

“Kailash Rai (Vs.) Jai Jai Ram & Others, AIR 1973 Supreme Court 893”

(3) Even when one co-sharer is in possession of the land the other co-sharers must be considered to be in constructive possession of the land. The expression 'Possession' in s. 18(1)(a) takes in not only actual physical possession but also constructive possession that a person has in law. [416C-E]

(4) Section 18(1)(a) takes in two other contingencies, namely, lands held as khudkasht or lands deemed to be held as khudkasht. Even assuming that in view of the finding submitted by the first appellate court that the respondents were in possession, and on that basis, the appellant could not be considered to be also in possession, nevertheless, the lands and could be considered to be held or deemed to be held by the appellant also. If the expression 'held' occurring in cl. (a) means actual possession then the same meaning must be given to the same word occurring in (b) also. But, in the latter part of cl. (b) the Legislature has used the expression 'personal cultivation' with reference to Avadh, whereas it has not used any such expression in the first part of cl. (b). Therefore, the expression 'held' must have a meaning different from 'personal cultivation;' and can only taken to connote the existence of a right or title in a person; and the appellant's right and title as holder of the lands had already been declared. It can also be held that the lands can be considered to be 'deemed to beheld' by the appellant. The expression 'deemed to be held' has been used by the Legislature to treat persons like the appellant bhumidhars by creating a fiction. [417A-D]

Budhan Singh & Anr. v. Nabi Bux & Anr., [1970] 2 S.C.R. 10 followed.

Rama Kant Singh and others v. Deputy Director of Consolidation and others, A.I.R. 1966 All. 172 over ruled.

“Subramaniyan and others (Vs.) Savithiri (Died) and another, S.A.No.415 of 2018 and CMP No.11442 of 2018”

20. With regard to the rights of co-owners, in Mitra's Co- Ownership & Partition, 8th Edition (Eastern Law House), at Page No.2, it is observed as follows:

“All Co-owners have equal rights and co-ordinate interest in the property. But their shares may be either fixed or indeterminate. If the sharers are known they need not be equal.

S.A.NO.415 OF 2018 But whether the shares are known or indeterminate and whether the shares are equal or unequal, every co-owner has a right of enjoyment and possession equal to that of the other co-owners. Each co-owner is in theory interested in every infinitesimal portion of the subject-matter and each has the right,

irrespective of the quantity of his interest, to be in possession of every part and parcel of the property, jointly with the others.”

“Vineeta Sharma vs Rakesh Sharma and others, AIR 2020 SUPREME COURT 3717”

23. Hindu coparcenary is a much narrower body. It consists of propositus and three lineal descendants. Before 2005, it included only those persons like sons, grandsons, and great-grandsons who are the holders of joint property. For example, in case A is holding the property, B is his son, C is his grandson, D is great-grandson, and E is a great-great-grandson. The coparcenary will be formed up to D, i.e., great-grandsons, and only on the death of A, holder of the property, the right of E would ripen in coparcenary as coparcenary is confined to three lineal descendants. Since grandsons and great-grandsons become coparceners by birth, they acquired an interest in the property.

24. Coparcenary property is the one which is inherited by a Hindu from his father, grandfather, or great grandfather. Property inherited from others is held in his rights and cannot be treated as forming part of the coparcenary. The property in coparcenary is held as joint owners.

In this regard, the petitioner already approached the Hon’ble Madurai Bench of Madras High Court in W.P.(MD) No. 25866/2025 and W.MP.(MD) No. 20233/2025 which was dismissed on 16.03.2026.

6.4. Further, this court considered the matter of unregistered Will. In this regard, the petitioner already approached the Hon’ble Madurai Bench of Madras High Court in CRP No. 2904 of 2016 and CMP No. 14776 of 2016 which was dismissed on 03.02.2023.

6.5. As above, the Hon’ble Madurai Bench of Madras High Court already directs the petitioner to prove the unregistered WILL during the course of trial in the suit. But the petitioner has filed this petition with the intention to drag the case and beyond the direction of the Hon’ble Madurai Bench of Madras High Court. As per the settled position of law, this petition is not maintainable at this stage. This court would not like to allow the petition by the interest of justice.

7. In the result, this petition is dismissed. Further, this court would like to frame the necessary issues for trial, in respect of joint possession, the payment of court fee and validity of unregistered WILL. No costs.

Directly dictated to the Steno-typist, typed by her in a computer, and corrected and pronounced by me in the open Court, on this the 24th day of June 2026.

1st Additional District Judge,
Tirunelveli.

The petitioner's and the respondents' side witnesses and documents: Nil

1st Additional District Judge,
Tirunelveli.

I Additional District Court,
Tirunelveli
DRAFT / FAIR ORDER
IA No.08/2026 in
OS No.374/2024
Dated: 24.06.2026