

IN THE COURT OF THE II ADDITIONAL DISTRICT JUDGE,
THOOTHUKUDI.

Present: Tmt. M.Breetha, M.L.,
II Additional District Judge,
Thoothukudi.

Wednesday, this the 02nd day of September 2026

I.A. No. 9/2023
in
O.S. No. 37/2018

1. Brammanayagam
2. Suryakumari
3. Subbarayan

.. Petitioners/Plaintiffs

/Vs/

- 1) Ayyasamy (Died)*
- 2) Chinnakannan
- 3) Ashok Kumar
- 4) Sankar
- *5) Arumugam

.. Respondents/Plaintiffs

(*Amended as per orders in I.A.No.13/26 dated 23.03.2026)

This petition came before me for final hearing on 19.08.2026 in presence of Tmt.V.Neelaveni, Learned Advocate for Petitioners/Plaintiffs and Thiru.Mohammed Raffik, Learned Advocate for the respondents 1, 2 and 5 and Thiru.N.Selvaraj, Learned Advocate for 4th respondent and upon hearing both side arguments and on perusal of records and having stood over till this day for consideration of this court, this court delivers the following:

ORDER

1) This petition has been filed by the petitioner under Order 26 Rule 10A and 151 of C.P.C. seeking appointment of Advocate Commissioner to obtain the opinion of the hand writing expert.

2) Brief averments of the petition and affidavit:

(i) The petitioners are the plaintiffs in the suit and have averred that the plaint scheduled property and a larger area originally belonged to their ancestor Nallaperumal Pillai by virtue of a registered sale deed dated 24.09.1939 and that in a partition took place among the said Nallaperumal Pillai and his sons Shunmugasundaram Pillai and Chinnakannu Pillai by virtue of a registered partition deed dated 15.12.1945, the plaint scheduled property was allotted to the share of S.N.chinnakannu Pillai and that by virtue of the exchange deed executed between the said Chinnakannu Pillai and Devaraj Nadar, the plaint scheduled properties were in the absolute possession of Chinnakannu Pillai and after his demise, the female legal heirs of Chinnakannu Pillai, relinquished their share in favour of the male legal heirs by virtue of a relinquishment deed dated 07.06.1961 and that after the division of the share by one of the male legal heirs Subramanian, the plaint scheduled properties are in the joint possession of the 1st petitioner Nallaperumal Pillai and Sankararameswaran by virtue of the family arrangement dated 10.09.1980 and they are in joint possession over the same and that after the demise of Nallaperumal Pillai, his 1/3 share was allotted to Ayyasamy and Chinnakannan as per their family arrangement and that after the demise of Sankararameswaran, his 1/3 share was allotted to his wife Suryakumari and his son Subbarayan as per their family arrangement and accordingly, the plaint scheduled properties belonged to the plaintiffs and the defendants 1 and 2 and they are in absolute possession over the same.

(ii) The petitioners have further averred that after the sale of 4 acres 12 cents in the 4th item of the plaint scheduled property by Chinnakannu Pillai in favour of one Ammakannu, the balance 3 acres 49 cents in survey no.35, was in the possession of Chinnakannu Pillai and further, the plaintiffs and defendants 1 and 2 acquired right over Item Nos.1 to 4 of the plaint scheduled properties by way of family arrangement and were in possession over the same and that during the year 2016, when the plaint

scheduled properties were measured with the help of surveyor to facilitate partition between the plaintiffs and defendants 1 and 2, the petitioners came to know that the entries in the revenue records in respect of the plaint scheduled properties were mutated in the names of defendants 3 and 4 without any right or title and that when the petitioners gave application to the revenue authorities to correct the entries, they advised to seek remedy through court.

(iii) The petitioners have further averred that defendants 3 and 4 fraudulently fabricated a sale deed dated 08.09.1977 bearing no.731/1977, which was allegedly executed by Nallaperumal, Subramanian, Sankara Rameswaran, and Brammanayagam in favour of the fourth defendant while he was a minor, through his mother, Savithri Ammal, acting as his guardian; a sale deed dated 08.09.1977 bearing no.732/1977, which was allegedly executed by Nallaperumal, Subramanian, Sankara Rameswaran, and Brammanayagam in favour of the brother of the fourth defendant Janakiraman while he was a minor, through his mother, Savithri Ammal, acting as his guardian; a sale deed dated 08.09.1977 bearing no.733/1977, which was allegedly executed by Nallaperumal, Subramanian, Sankara Rameswaran, and Brammanayagam in favour of the brother of the fourth defendant Subbaiah while he was a minor, through his mother, Savithri Ammal, acting as his guardian; a sale deed dated 08.09.1977 bearing no.734/1977, which was allegedly executed by Nallaperumal, Subramanian, Sankara Rameswaran, and Brammanayagam in favour of the third defendant while he was a minor, through his mother, Savithri Ammal, acting as his guardian. The petitioners have averred that neither the petitioners nor the defendants 2 and 3 had executed the above said sale deeds in favour of the above said persons and the signatures found in the sale deeds are not their signatures and that on 30.05.1979, S.C.Nallaperumal, S.C.Subramanian, S.C.Sankararameswaran and SC.Brammanayagam had jointly executed a sale deed bearing no.875/1979 in favour of G.Paranjothi and a sale deed bearing no.876/1979 in favour of S.Joseph Mmanochandrasekar and a sale deed bearing no.877/1979 in favour of one

P.Prabakar Sathyanathan which are the documents of contemporary period and that if the signatures found in the above said sale deeds are compared with the signatures found in the sale deeds bearing nos.731/1977, 732/1977, 732/1977 and 733/1977, the plea of forgery raised by the plaintiffs against the defendants 3 and 4 could be proved and hence constrained to file this petition seeking appointment of advocate commissioner to obtain the opinion of the expert with regard to the signatures of the 1st plaintiff and his brothers Sankararameswaran, Subramanian found in the sale deeds dated 30.05.1979 bearing no.875/1979 and 876/1979 with that of the signatures found in the sale deeds bearing nos.731/1977, 732/1977, 732/1977 and 733/1977 said to be executed in favour of the defendants 3 and 4 and to submit his report and prays to allow the same.

3) Brief contentions of counter filed by the 4th respondent and adopted by the 3rd respondent:

The respondents 3 and 4 have denied all the averments made in the petition and have contended that in the written statement filed by the defendants 3 and 4 on 10.09.2018, they have stated about the sale deeds bearing nos.731/1977, 732/1977, 732/1977 and 733/1977 executed in their favour and that this petition has been filed after a period of 3 years and that further, without seeking the relief of declaration to declare the title of the plaintiffs over the plaint scheduled properties, the suit is not maintainable and that after selling the plaint scheduled properties for a valuable consideration, the plaintiff has denied their signatures and taken the plea of forgery to extort money and that this petition is not maintainable and that this petition has been filed to protract the proceedings and that as the sale deeds executed in favour of the defendants are 47 years old, it has to be considered as ancient documents and that it is not necessary to obtain the opinion of the expert and prays for dismissal of the petition with costs.

4) **The point for consideration is whether this petition is to be allowed or not.**

5) Both sides are heard. Records have been perused.

6) The petitioners are the plaintiffs and the respondents are the defendants in the suit. The main suit has been filed seeking preliminary decree for partition of plaintiff's share over the plaint scheduled properties and for the reliefs of permanent injunction restraining the defendants 3 and 4 from encumbering the plaint scheduled properties and to restrain them from interfering with the plaintiff's peaceful possession over the plaint scheduled properties. When the case was posted for trial, the petitioners have come forward with this petition seeking appointment of advocate commissioner to obtain the opinion of the expert with regard to the signatures of the 1st plaintiff and his brothers Sankara Rameswaran, Subramanian found in the sale deeds dated 30.05.1979 bearing no.875/1979 and 876/1979 with that of the signatures found in the sale deeds bearing nos.731/1977, 732/1977, 732/1977 and 733/1977 said to be executed in favour of the defendants 3 and 4 and to submit his report.

7) It is the case of the plaintiffs that defendants 3 and 4 fraudulently fabricated a sale deeds dated 08.09.1977 bearing nos.731/1977, 732/1977, 733/1977 and 734/1977 which was allegedly executed by Nallaperumal, Subramanian, Sankara Rameswaran, and Brammanayagam in favour of the third and fourth defendant while they were minor, through their mother, Savithri Ammal, acting as their guardian and that neither the petitioners nor the defendants 2 and 3 had executed the above said sale deeds in favour of the above said persons and the signatures found in the sale deeds are not their signatures and that on 30.05.1979, S.C.Nallaperumal, S.C.Subramanian, S.C.Sankararameswaran and SC.Brammanayagam had jointly executed a sale deed bearing no.875/1979 in favour of G.Paranjothi and a sale deed bearing no.876/1979 in favour of S.Joseph Mmanochandrasekar and a sale deed bearing

no.877/1979 in favour of one P.Prabakar Sathyanathan which are the documents of contemporary period and that if the signatures found in the above said sale deeds are compared with the signatures found in the sale deeds bearing nos.731/1977, 732/1977, 732/1977 and 733/1977, the plea of forgery raised by the plaintiffs against the defendants 3 and 4 could be proved.

8) It is the contention of the respondents 3 and 4 that in the written statement filed by the defendants 3 and 4 on 10.09.2018, they have stated about the sale deeds bearing nos.731/1977, 732/1977, 732/1977 and 733/1977 executed in their favour and that this petition has been filed belatedly after a period of 3 years and that as the sale deeds executed in favour of the defendants are 47 years old, it has to be considered as ancient documents and that it is not necessary to obtain the opinion of the expert.

9) On a careful consideration of the rival submissions and perusal of records, it is seen that the plaintiffs have filed the main suit for partition and separate possession, challenging the right of defendants 3 and 4 over the suit properties. The defendants 3 and 4 claim independent title over the property by virtue of four registered sale deeds dated 08.09.1977 bearing document nos. 731/1977, 732/1977, 733/1977, and 734/1977. On the other hand, the petitioners unequivocally claim that these four documents are forgeries and were never executed by Nallaperumal, Subramanian, Sankararameswaran, or Brammanayagam.

10) To substantiate their plea of forgery, the petitioners have produced three registered sale deeds dated 30.05.1979 bearing document nos. 875/1979, 876/1979, and 877/1979, which were executed by the very same executants in favour of third parties. The petitioners seek to compare the disputed signatures in the 1977 sale deeds with the admitted signatures in the 1979 sale deeds through a scientific expert to establish the fraud.

11) The primary objection raised by the respondents is that the disputed sale deeds are 47 years old, making them ancient documents under Section 90 of the Indian Evidence Act, 1872 and therefore, their execution must be presumed genuine. However, it is a well-settled legal proposition that the statutory presumption attached to an ancient document is rebuttable and does not operate as an absolute bar against a plea of forgery. When a specific fraud is pleaded, and contemporary registered documents of a proximate period are available for comparison, a scientific examination will conclusively resolve the controversy. The court cannot shut out a valuable scientific mechanism to unearth the truth merely on the strength of a legal presumption.

12) The respondents have also vehemently argued that the petition is highly belated as it was filed three years after the filing of the written statement. While there is an undeniable delay on the part of the petitioners in taking this step, it is fundamental that rules of procedure are handmaids of justice. In a suit for partition where the title of the family is claimed to have been completely divested through alleged fraudulent instruments, determining the genuineness of the signatures goes to the root of the matter. Refusing the relief on the sole ground of delay would result in a failure of justice. Conversely, sending the documents to an expert will cause no prejudice to the respondents, as they will have a full opportunity to cross-examine the expert during the trial. Therefore, to ensure a fair trial and to assist this Court in arriving at a just conclusion, this Court is of the considered view that the petition deserves to be allowed.

In the result, this petition is allowed on the following conditions:

Advocate Thiru.A.Ashwin Kumar is appointed as Advocate commissioner by this Court to securely take the original disputed sale deeds Nos. 731/1977, 732/1977, 733/1977, and 734/1977 and the admitted contemporary sale deeds Nos. 875/1979,

876/1979, and 877/1979 from the custody of the Court and produce them before the Forensic Science Department. The Expert at the Forensic Science Department is directed to compare the disputed signatures of Nallaperumal, Subramanian, Sankararameswaran and Brammanayagam with their admitted signatures in the contemporary documents and submit a detailed report. The fee of the Advocate Commissioner is fixed as Rs.15,000/-. The petitioners shall pay the fee to the Advocate commissioner directly. Further, the petitioners shall bear the entire expenses and the expert examination charges. The entire process shall be completed, and the report shall be submitted to this Court on or before 01.10.2026. For the report of the Advocate Commissioner, call on 01.10.2026.

The order was dictated by me to the Steno-Typist, typed by her, then corrected and pronounced by me in open court, this the 02nd day of September 2026.

**II Additional District Judge,
Thoothukudi.**

Petitioner side witnesses:- Nil

Respondents side witnesses:- Nil

Petitioner side documents:- Nil

Respondents side documents:- Nil

**II Additional District Judge,
Thoothukudi.**

Draft/Fair Order

I.A. No. 9/2023

in

O.S. No. 37/2018

Dated: 02.09.2026