

**IN THE COURT OF THE I ADDITIONAL DISTRICT AND
SESSIONS JUDGE, VELLORE, VELLORE DISTRICT.**

**PRESENT: Tmt.G.Santhi,
I Additional District and Sessions Judge,
Vellore.**

Dated this the 16th day of July 2025, Wednesday

I.A.No.3 of 2024

IN O.S. No.77/2023

CNR.No.TNVL01-002119-2023

Thiru. K. Ashok Kumar

..... Petitioner/Plaintiff

-Vs-

- | | |
|------------------------------|------------------------------|
| 1. Dr. Durga Bai Sathyakumar | ... Respondent/1st defendant |
| 2. Thiru. Murali Mohan | ... Respondent/2nd defendant |

This petition came up before me for final hearing on 03.07.2025 in the presence of Thiru. S.R. Shanmugham, Counsel for the petitioner and Thiru.J.Sridharan, Counsel for the respondent/1st defendant, Thiru. V. Suresh Kumar, Counsel for the respondent/2nd defendant, upon hearing the arguments of both sides and upon perusing the entire case records and having stood over for consideration, till this date this court delivered the following:-

ORDER

This petition has filed by the petitioner under Order 7 Rule 11 CPC to reject the counter-claim, written statement filed by the 1st defendant as a

counter suit as their relief was not correctly valued and inappropriately stamped in the above suit.

2. The brief petition averments of the petition :

i) The Respondent/1st defendant has filed written statement as counter-suit without any justification is against the law and not maintainable. There is no prima facie case and cause of action including three properties of the registered WILL in the said counter-suit, written statement filed by the 1st defendant.

ii) The Respondent/1st defendant herself admitted in the written statement that there is no ancestral property and item 1 and Item 2 are self-acquired properties of father K. Kuppusamy Naidu and item 3 is the sole and absolute property of the mother K. Varalakshmi. Hence, it cannot be considered as joint family property and hence there is absolutely no joint possession, or constructive. the Respondent/1st defendant herself admitted in the written statement that there is no ancestral property and item 1 and Item 2 are self-acquired properties of father K. Kuppusamy Naidu and item 3 is the sole and absolute property of the mother K. Varalakshmi. Hence it cannot be considered as joint family property and hence there is absolutely no joint possession, or constructive possession. There is no prima facie case and

including other properties without proper supportive valid documents will only lead to undue harassment and total abuse of process of law.

iii) The registered WILL was executed by Kuppusamy Naidu on 11/11/1987 vide document no 237/1987 and the same is 36 years old and after the death of the testator Kuppusamy Naidu on 27.10.1995, for the past 28 years the contents of WILL were acted upon and carried out. Considering the mediation and family wishes, 2nd defendant executed registered settlement deed for 2nd item of the written mentioned property in favour the plaintiff on 5.11.2014 vide document no.11995/2014 and it is in absolute and exclusive possession of the plaintiff. The plaintiff applied to Vellore Corporation and changed the tax bill and EB card in his name also. The ration card also shows my family name only and in exclusive and sole possession of the property he filed tax receipts, Ration card. EB bill to prove my exclusive possession and he already filed certified copy of the registered WILL and the settlement deed in his favour along with Plaint. As precautionary measure he also filed reply for the counter-claim filed by the 1st defendant and it may be read as part and parcel of this counter-statement. As per the will the 2nd defendant took exclusive and sole possession of 1 item of the property.

iv) The Respondent/1st defendant has not filed any single supporting documents and properly valued the property, hence, the value of the property

and the stamp value under the TNCF Act as stated by the 1st defendant are not correct, and the same is objected before this Honorable Court. The 1st defendant has to pay court fees under 37(1) of the TNCF Act and not under 37(2) of the TNCF, and hence the written statement cannot be entertained by this Honourable Court and should be returned for want of proper court fee and valuation. Hence the 1st defendant may be directed to pay the court fee under Section 37(1) of the Act on the market value or as per guideline value.

v) Further the petitioner states that the Respondent/1st defendant has not filed any documents or proof or certified copies of proof like an EB receipt, tax receipt, rental receipt, expense receipt, etc along with a counter claim to show joint possession or anything related to it, so at this stage, the property mentioned in the registered WILL that was acted upon cannot be included after 36 years of execution of the WILL, and including it now by mere frivolous allegation that the registered will was forged without valid evidence and documents and proper court fees is clearly an abuse of the process of law and just to cause harassment and hardship to others.

vi) Further the petitioner submits that the Respondent/1st defendant admitted that the 3rd item of the written statement mentioned property is exclusive and absolute self-acquired property of the mother, K. Varalakshmi and she is still alive. The plaintiff 1st and 2nd defendants herein do not have

any right or claim whatsoever in it, and hence there is no legal basis to include it in the present suit. There is no prima facie case and cause of action to include the property of the 3rd defendant in the suit.

vii) The Respondent/1st defendant herself admitted in the counter-claim written statement that from 1980 she was in Nagarkoila and later in Karnataka, and hence, admittedly, she is out of possession with regard to the properties mentioned in the counter-claim and also the WILL was acted upon and exclusive possession was also taken by the plaintiff, so 1st defendant has to pay court fees under 37(1) of the TNCF Act and not under 37(2) of the TNCF, and so the written statement may be returned for lack of a proper court fee, valuation slip, and without justification. The 3rd defendant has also filed without a proper court fee.

viii) The Respondent/1st defendant states that the written statement with counter-claim is not a plain written statement that can be admitted immediately by the court, it contains question of law and also issues regarding the TNCF Act, and hence the written statement with counter claim cannot be received by this Honourable Court, and the same may be returned to the 1st defendant to provide the documents and also to furnish the correct valuation of the property and court fees. Therefore the petitioner prays to pass an order to reject the counter-claim, written statement filed by the 1st defendant as a

counter-suit as their relief was not correctly valued and inappropriately stamped in the above suit and pass necessary orders.

3. The brief averments of the Counter filed by the 1st respondent/1st defendant is as follows :

i. The petition filed by the petitioner/plaintiff to reject the counter-claim, written statement filed by this respondent as a counter suit and her relief was not correctly valued and inappropriately stamped in the above said suit etc. are not maintainable either in law or on facts.

ii. This respondent specifically denies all the allegations except specifically admitted. The respondent states that the averments in petition para 1 to 8 are false.

iii. The respondent states that the Suit Properties duly mentioned in the plaint are the Self-Acquired Property of this respondent and the petitioner has no right to question the same. But, he filed suit for partition without supporting any documents by invoking benami transaction. As per his pleading he is a mentally unsound person. So, the admission of the plaint is itself questionable. The petitioner is never in joint and constructive possession of the Suit Properties. But, he pleaded that he is in joint and constructive possession of the Suit Properties and paid the court fee under

Section 37 (2) of the TNCF Act itself not acceptable one. But, he raised serious objection regarding the court fee paid by this respondent in respect of her father's Property.

iv. This respondent further submits that the Property duly mentioned in the written statement is the separate Properties of her father Kuppusamy Naidu and the third defendant in the main suit this respondent denies the execution of the Will by the said Kuppusamy Naidu as alleged by the petitioner herein. Hence, this respondent is deemed to be joint and constructive possession of the Properties belongs to the deceased Kuppusamy Naidu. Because, she inherited her share immediately after the death of her father Kuppusamy Naidu. The petitioner has to prove that the alleged Will was executed by his father out of free will. Further, the registration of Will is itself not a valid one. The petitioner has to prove the Will as per the Evidence Act. Further she states that if the petitioner opposes the court fee paid by this respondent as well as by the petitioner, it has to be decided at the time of trial not in the present application. Hence, the present application is liable to be dismissed with cost.

4. The brief averments of the Counter filed by the 2nd defendant is as follows :

i. The Respondent/2nd defendant states that allegation of the 1st defendant that the registered will executed 36 years ago by Kuppusamy Naidu dated 11/11/1987 vide document no. 237/1987, is forged by the plaintiff and 2nd defendant is denied in toto and puts to strict proof of the same. The Respondent/2^d defendant has filed a detailed reply for counter -claim along with documents showing exclusive possession of the 1st item of the Will mentioned property.

ii. The Respondent/2nd defendant submits that after the will was declared by the 1st defendant and demise of the father on 27.10.1995, the 2nd defendant took over the Will mentioned properties 28 years ago. As per the family wishes, the 2nd defendant executed a settlement deed for the 2nd item of the will mentioned property in favour of the plaintiff many years back. The 3rd item of the Will mentioned property is the exclusive and absolute property of the 3rd defendant and there is no legal basis to include it in the present suit.

iii. The Respondent/2nd defendant states that as per the registered WILL of his father K. Kuppusamy Naidu dated 11/11/1987, took exclusive control of the 1st item of will mentioned property after his demise ie. 27.10.1995 and started managing the property and receiving rents thereon.

Based on the original documents and original Will, the 2nd defendant took exclusive possession of the 1st item of the WILL mentioned property, subdivided the land, obtained Patta in his name, applied for plan approval from the Director of Town Planning in 2007-08, obtained property approvals in 2009, built 36,000 sq.ft of building by taking loans from REPCO Bank, HDFC Bank, from various relatives and friends, taking credit for materials, he put all his family to the tune 8 crores and constructed the commercial complex by name RAMANAS of around 36000 sq.ft and entered into a lease agreement with the corporate tenants, and also alienated a various portion of the building years back at various dates. The 2nd defendant from the year 1995 is in uninterrupted, continuous, unbroken, exclusive possession over the 1st item of the WILL mentioned property without any physical intrusion, with an intention to possess publicly quite hostile and adverse to the 1st defendant, plaintiff, and others and 2nd defendant possession is in continuity, with the intention to possess in publicity to the whole world, without any secrecy not by stealth, without permission, and holding the said property by claiming title as per the registered WILL dated 11/11/1987, that was acted upon and also alienated the various portion of the property many years back and the plaintiff and the 1st defendant know about the exclusive possession, heavy investment for construction of the building and also alienation of the 1st item of the

WILL mentioned property, thus 2nd defendant has acquired prescriptive title as he is in possession more than the statutory period and any claim or suit is barred by limitation.

iv. The Respondent/2nd defendant states that the counter claim filed by the 1st defendant the property was not correctly valued and proper court fees was not paid and also states that as he has alienated the various portions of Will mentioned properties, the Plaintiff and the 1st defendant has not impleaded proper parties and the petition is bad for mis-joinder and non-joinder of parties. Hence it is severely contested and objected to and should not be taken on file without determining value of the properties with supportive documents and proper court fee if the first defendant is serious about contesting the Will, let her value the property with supportive documents and pay the proper court fee.

v. As it is very clear from the 1st defendant's own admission and documents on records that 1st defendant was not in possession of the will-mentioned properties, and without a proper valuation and court fee, the counter-claim is not admissible. As per 1st defendant own admission that she is away and not in possession of the will mentioned property and at no point of time she was in separate or joint or constructive possession of the will mentioned properties. Hence this respondent prays to direct the 1st and 3rd

defendant to properly value the counter claim and pay court fees under correct provision of law and to include will mentioned properties and implead proper parties or reject the counter claim .

5. Now the Point is to be decided that,

1. Whether the Court Fee paid by the 1st defendant in counter claim is correct or not as alleged by the petitioner/plaintiff?
2. Whether the counter claim is to be rejected if Court Fee not paid?
3. What other relief?

6. Both side arguments heard. Records perused.

7. The learned Counsel for petitioner/plaintiff and the respondents/defendants filed written arguments.

8. The learned Counsel for petitioner/plaintiff is argued that, the plaintiff filed suit for two properties which is in possession of the plaintiff and 2nd defendant and purchased father K. Kuppusamy Naidu in the name of 1st defendant as benami under Benami Transactions (Prohibition) Act and to be divided into 4 equal shares among legal heirs.

9. That Mr. K. Kuppusamy Naidu and K Varalakshmi amma the 3rd defendant herein executed a Joint registered will at Vellore register office on 11/11/1987 vide deed 237/1987 with regard to their respective self-acquired, absolute properties in favour of 2 defendant. The 1st and 2nd item mentioned in the registered will (as mentioned in counter-claim) was self-acquired by the K. Kuppusamy Naidu and 3rd item (as mentioned in counter-claim) of the registered will is the self-acquired of. K. Varalakshmi amma. the 3rd defendant herein.

10. That the 1st defendant has filed counter-claim and included all THREE properties mentioned in the registered Will dated 11/11/1987 vide deed 237/1987 executed by K.Kuppusamy Naidu & K. Varalakshmi Amma in favour of 2nd defendant. The 1st defendant herself admitted in the written statement that there is no ancestral property, item 1 & 2 item of said Will are self-acquired properties of K. Kuppusamy Naidu and item 3rd item of the said will is sole self-acquired, absolute property of K.Varalakshmi, the 3rd defendant. Hence there is no joint possession or constructive possession or joint family property.

11. As per Section 63 of the Indian Succession Act, 1925

Joint Wills - A Will executed by two or more testators as a single document duly executed by each testator disposing of his separate properties

or his joint properties is not a single Will It operates on the death of each and is in effect for two or more Wills On the death of each testator the legatee would become entitled to the properties of the testator who dies.

12. Further submits that the 3rd defendant is still ALIVE and the said WILL has not come into effect with regard to 3rd item of the Will-mentioned property. The 3rd item of property is exclusive and absolute property of the 3rd defendant as per Section 14 of Hindu Succession Act and there is no Cause of Action and barred by law to include it in the present suit. It is totally absurd for 3rd defendant to pray for injunction and pay court fees for her own absolute property, when the neither the plaintiff nor the 1st and 2nd defendant makes any claim over it She is aged 97 years and does not know any of facts of the case and fact that she signed in vakalatnama and instruction given to adopt the statement filed by the defendant is totally false and strictly disputed.

13. Further submits that the Testator Kuppusamy Naidu died on 27.10.1995, and on his death his portion of the item 1 & 2 came into effect and the will is acted upon. The legatee of the said will 2nd defendant herein of two properties he took absolute possession of it 2nd defendant on heeding the family wishes executed registered settlement deed for 2nd item of the Will-mentioned property in favour the plaintiff on 5.11.2014 vide document no 11995/2014 and from thereon it is in absolute and exclusive possession of the

plaintiff. The plaintiff has changed the tax bill and EB card in his name also and the ration card also shows plaintiff family name only and he is in exclusive and sole possession of the property. The tax receipts, E B Bills have been filed Hence the said item was never in joint or constructive possession of the 1st defendant or others. (The document prove his ownership and possession is filed along with plaint)

14. The 1st item will-mentioned property after the demise of K. Kuppusamy Naidu ie. 27.10.1995, the legatee, the 2nd defendant herein took exclusive possession, obtained Patta, plan approvals in his name, and loans from various banks and, constructed 'RAMANAS' complex let out to corporate tenants Thereafter the 2 defendant was in the year 30.04.2015 vide deed 3814/2015. 5.5.2017 vide deed 2102/2017, 1.3.2019 vide deed 3888/2019 vide deed 6072/2024 alienated the entire property to 3rd parties by way of registered deed at Katpadi Register office. Hence, 2nd defendant or any parties to the suit are neither owners nor in possession as it has been totally alienated Subsequent purchasers and transferees have not been added as parties and any order against the 1st item of the property Will become infructious, meaning less without adding the transferees. Since it is in neither of possession of plaintiff nor the defendants, it cannot be still belonging to

any one of family and court fee cannot be paid under 37(2) of TNFC Act (EC copy has been filed along with for proof of various registrations.

15. The 1st defendant as alleged that the Will dated 11/11/1987, doc.No.237/1987 has been forged, hence she cannot at the same time allege the Will as forged and rely on the said registered will showing it as parent document. The said registered joint Will was executed in favour of the 2nd defendant when he was 18 years as his date of birth is 5.2.1969. It is very unlikely that it may be forged. The counter claim statement should have a specific averment details regarding the counter claim mentioned properties and substantiate the said averments with supporting documents ie. Date of purchase, Name of purchaser, Parent documents, legal heir certificate, Now in whose possession it is? etc. It is totally silent with no averments. She has NOT filed any SINGLE document proving ownership or joint-possession of all the THREE properties mentioned in counter-claim (Will mentioned properties) for proving that it is the name of K.Kuppusamy Naidu or K Varalakshmi amma along with counter-claim petition till date. The 1st defendant has to file the Parent documents showing ownership & possession like certified copies, EC Patta or other documents of the said three properties mentioned in the Will For the 3rd item, not a single document has been filed by any of the parties.

16. The 1st defendant herself admitted in the counter-claim that from 1980. She was in Nagarkoail and later in Karnataka, and hence, admittedly, she is out of possession with regard to the properties mentioned in the counter-claim. On perusal of documents, it is evident that the WILL is acted upon and exclusive possession was also taken by the plaintiff, and the 1st defendant has not filed single documents showing joint or constructive possession, so 1st defendant has to pay court fees under 37(1) of the TNCF Act and not under 37(2) of the TNCF Act.

17. The counter-claim as per Order 8, 6 - A, (4) shall be treated as plaint and governed by the rules applicable to plaints. The 1st and 3rd defendant has valued the Will mentioned three properties as Eighteen crores. It is evident on perusal of documents and admitted by the 1st defendant that she is not in possession in her counter-claim and properties are transferred to third parties. The 1st Defendant by clever drafting and by creating illusion, by quoting wrong provision of law, cannot pay court fee under 37(2) of the TNCF Act. She has to pay under 37(1) of the TNCF Act. Hence the court may reject the counter-petition and direct the 1st defendant to file fresh statement quoting correct provision of law and court fees.

18. The learned counsel for 1st respondent/1st defendant argued that the property duly mentioned in the written statement is the separate Properties of

her father Kuppusamy Naidu and the third defendant in the main suit this respondent denies the execution of the Will by the said Kuppusamy Naidu as alleged by the petitioner herein. Hence, this respondent is deemed to be joint and constructive possession of the Properties belongs to the deceased Kuppusamy Naidu. Because, she inherited her share immediately after the death of her father Kuppusamy Naidu. The petitioner has to prove that the alleged Will was executed by his father out of free will. Further, the registration of Will is itself not a valid one. The petitioner has to prove the Will as per the Evidence Act. Further she states that if the petitioner opposes the court fee paid by this respondent as well as by the petitioner, it has to be decided at the time of trial not in the present application. Hence, the present application is liable to be dismissed with cost.

19. The learned counsel for 2nd defendant argued that the counter claim filed by the 1st defendant the property was not correctly valued and proper court fees was not paid and also states that as he has alienated the various portions of Will mentioned properties, the Plaintiff and the 1st defendant has not impleaded proper parties and the petition is bad for mis-joinder and non-joinder of parties. Hence it is severely contested and objected to and should not be taken on file without determining value of the properties with supportive documents and proper court fee if the first defendant is serious

about contesting the Will, let her value the property with supportive documents and pay the proper court fee.

20. Points :

Both side Arguments heard. Records perused. The petitioner/plaintiff argues the Will has been acted upon for 36 years and the 1st defendant is out of possession. However, the 1st defendant disputes the Will, claims it is forged, and asserts her inheritance. This fact and issue may be decided through trial. Now, the case of the 1st respondent is that, he is in constructive possession which is denied by 1st and 2nd defendant, the plaintiff and 1st defendant stated that many documents EB card, Tax bill, Ration card to prove made out their possession since, it is a matter through trial. Since it is a material point for the plaintiff that he is in constructive possession, this application may be a point for the defence in counter claim. The Court Fee has to be paid upon the alleged constructive possession of the parties. Hence, this court not inclined to fix the Court Fee issue in this application. Since it is a mixed question of law, it will decide after trial. Hence, the petition filed by the plaintiff under Order 7 Rule 11 CPC to reject the counter-claim is dismissed.

As a result, this petition is dismissed. No costs.

Dictated to Steno-typist directly, typed by her through computer,

corrected and pronounced by me in open court, this the 16th day of July 2025.

Sd/- Tmt. G.Santhi,
I Additional District Judge,
Vellore.

Annexure : Nil

Sd/- Tmt. G.Santhi,
IADJ,
Vellore.

FAIR/DRAFT ORDER

IA.No.3/2024 in IA.2/2023

IN OS.No.77/2023

CNR No.TNVL01-002119-2023

D.O.D.16.07.2025

I Additional District court, Vellore.