

IN THE COURT OF THE ADDITIONAL DISTRICT JUDGE, DHARMAPURI.

Present: Tmt.U.Monica,M.L.,  
Additional Sessions Judge,  
Dharmapuri.

Friday, this the 11th day of March 2022.

**I.A.No.115/2018**  
**in**  
**O.S.No.106/2018**

1. B.Suseela  
2. B.Selvam  
3. B.Sampath

...Petitioners/Plaintiffs

/versus/

P.G.Murugesan

...Respondent/Defendant No.53.

This petition is coming on 28.2.2022 for final hearing before me in the presence of Thiru.D.Rameshkumar, Advocate the Petitioners and Thiru.T.Nehru, Advocate for the Respondent and upon hearing the arguments of both side and on perusal of the case records and having stood over till this day, this court pronounced the following:

### **ORDER**

This petition has been filed under Order-39, Rule-1 and 2 and Sec.151 C.P.C. to grant interim injunction against the respondent till disposal of the suit.

#### **2. The averments in the petition in brief is as follows:**

i) According to the petitioners, the suit property originally belonged to Pachiyappan, Kannaiyan and Muthusamy who sold it to P.N.Gnanaya Chettiyar and 17 others by way registered Sale deed dated:15.7.1965. All the purchasers jointly

invested the amount in the the suit property. One of the purchasers Rajagopal Naidu sold his common share 1/20th share to plaintiffs father Bolli Gounder by way of Sale deed dated:28.4.1969. One of the purchasers by name Gnanaya chetty relinquished his common share of 1/20 to other partners on 26.4.1969. Hence the petitioner father Bolli gounder got 1/19th share in the suit property. The defendants 1 to 5 are heirs of P.S.Akshaya Chettiyar and they have created General Power of Attorney deed dated:11.2.2010 infavour of the 53rd defendant in respect of their common 1/19th share. Thereafterwards cancelled the General Power of Attorney deed by way of registered Cancellation deed dated:18.6.2010. The defendants 6 to 8 are legal heirs of the partner deceased R.V.Narayana Chettiyar and the defendants 29 to 36 are the legal heirs of another partner Banni gounder and the defendants 10 to 13 are the legal heirs of another partner K.L.Munivenkata Subburayalu. The defendants 20 to 22 are the legal heirs of deceased partner Shanmugam. The defendants 6 to 8, 10 to 12, 20- to 22 and 29 to 36 have created invalid General Power of Attorney deeds infavour of 53rd defendant and the 53rd defendant have created invalid Sale deed infavour of the 52nd defendant by way of Sale deed dated:25.8.2011 in common 32 cents. The defendants 13 and 14 are the legal heirs of partner Ranganatha Chettiyar and the 28th defendant is the legal heirs of deceased S.R.Krishnamoorthy. The defendants 15 to 17 are the legal heirs of deceased partner Sulochana. The defendants 13 to 19 and 28 have executed invalid General Power of Attorney deed dated:5.2.2009 infavour the 53rd defendant and the 53rd defendant has created a Sale deed infavour of his brother 54th defendant in respect of 4/18th share in the suit property. One partner Nanjunda

Chettiyar and another partner Govindarajulu Chettiyar died leaving behind his son the 27th defendant and 25th defendant his legal heir of deceased partner Pachiyappa gounder and 23 and 24th defendants are legal heirs of deceased partner Nagarajan. The defendants 48 to 51 are the legal heirs of partner Venkatachalapathy Chettiyar. They have also executed registered Sale deed dated:7.9.2011 infavour of the 53rd defendant. The legal heir of deceased partner S.K.Rathinam Chettiyar has created invalid sale deed infavour of the 53rd defendant on 13.9.2011. The defendants 52 to 56 have created invalid Partition deed dated:5.12.2012 in the name of defendants 52 to 54 in respect of the suit property and other properties in which the 53rd defendant has been allotted acre 1.07 1/4 cents out of acre 1.45 cents. The defendants 37 to 40 are the legal heirs of deceased partner Kanniyammal. The defendants 41 to 47 are the legal heirs of deceased partner Lakshmana gounder. The 53rd defendant have created sale agreement in respect of common 1/19th share and filed O.S.No.47/2014 in this court. Hence the defendants 37 to 40 are impleaded as parties to this suit. The 53rd defendant has also created nominal sale deed dated:25.5.2015 infavour of the defendants 59 and 60 and cancelled the sale agreement. The 53rd defendant has created sale deeds dated:23.2.2017, 24.3.2017, 17.11.2017, 24.1.2018 and 2.7.2018.

ii) The petitioners father have 1/19 share in the suit property and after the death of their father, the petitioners are entitled to his share. The defendants 56 to 58 have no right or title over the suit properties. But the 53rd defendant had obtained General Power of Attorney deed executed sale agreement infavour of the 54th defendant on 25.2.2013 is not valid. The defendants 68 and 69 are the tenants in the

suit property and they have not paid rent for the past 2 1/2 years and the petitioners are entitled to 1/2 share in the rent. The partners of constructed theatre by name Geetha Talkies after obtaining approval. The 53rd defendant took the management of the theatre illegally and created lot of problems among the remaining partners and there was arrears of Rs.94,40,040/- tax. The Income Tax Department has also issued an order dated:12.2.2018 prohibiting from transferring the suit property and taking any benefits of such a transfer of charge of Geetha Theatre. When the petitioners and other partners approached for partition, they evaded it and the 53rd defendant took illegal possession of the suit property. The 53rd defendant has created invalid sale deed on 2.7.2018 infavour of 65th to 67th defendants and the defendants 65 to 67 along with 53rd defendant have trespassed into the suit property erect pillars so as to construct buildings without any right. Hence the petitioners come forward with this petition to grant temporary injunction by restraining the 53rd defendant by alienating or creating any encumbrance over the suit schedule property till the disposal of the suit.

**3. The respondent filed memo stating that the written statement may be treated as counter. The averments in the counter filed by the 53rd respondent and adopted by respondents 52, 54, 62, 68, 69 and 77 in brief is as follows:**

The respondents contended that the alleged sale deed dated:27.4.1969 executed by Rajagopal Naidu infavour of Bolli gounder, the father of the plaintiffs is invalid sale deed and not binding upon the other share holders. Bolli gounder is not the partner to the Geetha Theatre and has not contributed any share amount. The

plaintiffs are bound to prove that they are the legal heirs of Bolli gounder. The plaintiffs are no right to question the sale deed executed by other owners. The partnership property namely Geetha Theatre was dissolved and the theatre was demolished long ago after getting permission and approval from the respective Department. Hence the claim of the plaintiffs to dissolve the partner firm with effect from 10.10.2019 and to furnish the accounts is barred by limitation. As the suit property was sold by major owners to 53rd defendant and the legal heirs of one of the share holder namely Lakshmana gounder refused to execute the sale deed in pursuance of the sale agreement for which he has filed O.S.No.47/2014 for the relief of specific performance and the same is pending in this court. The 'C' form licence was duly cancelled by the District Collector as per his order dated:5.11.2009 in Na.Ka.No.25249/2009/C2. The said theatre was also demolished after getting the proper approval for demolition from the respective authorities. There is no property for firm of Geetha Theatre and hence the plaintiffs are entitled to seek any kind of relief for the said firm. There is no cause of action for the suit and the alleged cause of action is false. The valuation of the suit and the payment of the court fees are totally wrong. Admittedly the plaintiffs are out of possession and their claim is absolutely illegal. There is no merit in the suit.

**4. The point for consideration:**

Whether the petition is to be allowed or not?

5. No oral evidence have been adduced on either side. On the petitioners side Ex.P1 to Ex.P33 were marked. On the Respondent side Ex.R1 to Ex.R3 were marked.

Heard. Records perused.

8. **Point:**

a) The petitioners have filed the suit for partition and for declaration of sale deeds as null and void and for injunction restraining the defendants from alienating or encumbering the suit property and for appointment of Receiver.

b) The petitioners contended that they are entitled to 1/20 share in the suit property. The respondents created many documents and are trying to trespass into the suit property and erect pillars and building in the suit property without any right. Hence a Commissioner has to be appointed to note down the physical features and measure the suit schedule property and note down the fresh constructions made by respondents 53, 65 to 67 with the help of qualified surveyor and note down the age of the construction.

c) The contesting respondents allege that the petitioners father have no right over the suit property and the petitioners also have no right over the suit property and they cannot seek injunction against the 53rd respondent who is major share holder of the suit property. The petitioners allege that they have got 1/20th share in the suit property which the respondent denies. The question whether the petitioners have right over the suit property cannot be decided at this stage. However the rights of the petitioner have to be protected. Admittedly the respondents have created many sale deeds in the suit property. Hence this court is of view that the petitioners alleged 1/20th share in the suit property have to be safe guarded. The petitioners have made out Prima facie case. Balance of convenience is in favour of petitioners and

petitioners will be put to irreparable loss if injunction is not granted. In the interest of justice, to provide the petitioners an opportunity to prove the case and to prevent multiplicity of proceedings and for proper adjudication in this case, this court is of view that the petitioners right have to be protected as the partition has not been effected by metes and bounds. Hence the 53rd respondent is hereby directed not to alienate the petitioners 1/20th share in the suit property by metes and bounds till the disposal of the suit.

**In the result, petition is allowed and the 53rd respondent is hereby restraining by way of temporary injunction from alienating the petitioners 1/20th share in the suit property by metes and bounds till the disposal of the suit.**

Dictated by me, typed by the Steno-typist, corrected and pronounced by me in Open Court on this the 11th day of March 2022.

Additional Sessions Judge,  
Dharmapuri.

**Petitioner side Evidence: Nil**

**Petitioners Side Exhibits:**

Ex.P1	15.07.1965	Registered Sale deed executed by Pachiyappan and others to and in favour of Gnanaya Chettiyar and others vide document No.1409/1965 of S.R.O., Palacode. (certified copy)
Ex.P2	25.09.1968	Registered Agreement deed executed by the father of the plaintiffs and other partners vide document No.1851/1968 of S.R.O., Palacode. (certified copy)

Ex.P3	27.04.1969	Registered Sale deed executed by Rajagopal Naidu to and in vafour of the father of the plaintiffs vide document No.730/1969 of S.R.O., Palacode. (certified copy)
Ex.P4	23.08.2011	Registered Sale deed executed by defendant No.53 to and in favour of defendant No.52 vide document No.2805/2011 of S.R.O., Palacode. (certified copy)
Ex.P5	22.08.2011	Registered Sale deed stands in the name of defendant No.54 vide document No.2737/2011 of S.R.O., Palacode. (certified copy)
Ex.P6	07.09.2011	Registered Sale deed stands in the name of defendant No.53 vide document No.2944/2011 of S.R.O., Palacode
Ex.P7	13.09.2011	Registered Sale deed stands in the name of defendant No.53 vide document No.3004/2011 of S.R.O., Palacode. (certified copy)
Ex.P8	31.10.2011	Registered Sale Agreement stands in the name of the defendant No.54 vide document No.3436/2011 of S.R.O., Palacode. (certified copy)
Ex.P9	05.12.2012	Registered Partition deed took place among the defendant No.s 52 to 55 vide document No.3493/2012 of S.R.O., Palacode. (certified copy)
Ex.P10	25.05.2015	Registered Sale Agreement stands in the name of defendant No.53 vide document No.1290/2015 of S.R.O., Palacode. (certified copy)
Ex.P11	17.11.2017	Registered cancellation of Sale Agreement took place among the defendant No.53 and others vide document No.2926/2017 of S.R.O., Palacode. (certified copy)
Ex.P12	23.02.2017	Registered Sale Deed stands in the name of defendant No.62 vide document No.336/2017 of S.R.O., Palacode. (certified copy)
Ex.P13	23.02.2017	Registered Sale Agreement stands in the name of defendant No. 61 vide document No.337/2017 of S.R.O., Palacode
Ex.P14	24.03.2017	Registered Sale Agreement stands in the name of defendant No. 63 vide document No.705/2017 of S.R.O., Palacode. (certified copy)



Ex.P15	17.11.2017	Registered Sale Deed stands in the name of defendant No.53 vide document No.3027/2017 of S.R.O., Palacode. (certified copy)
Ex.P16	24.01.2018	Registered Sale Deed stands in the name of defendant No.69 vide document No.200/2018 of S.R.O., Palacode. (certified copy)
Ex.P17	02.07.2018	Registered Sale Deed stands in the name of defendant No. 65 to 67 vide document No.1861/2018 of S.R.O., Palacode. (certified copy)
Ex.P18	12.02.2018	Registered Property under Attachment deed vide document No.2/2018 of S.R.O., Palacode. (certified copy)
Ex.P19	08.12.2008	Renewal Agreement No. 262/08-09 issued by Films Division. (True copy)
Ex.P20	02.07.2016	RTI reply letter issued by Tahsildar, Taluk Office, Dharmapuri to the plaintiff No.3. (True copy)
Ex.P21	30.05.2016	RTI reply letter issued by District Collector, Dharmapuri to the plaintiff No.3. (True copy)
Ex.P22	29.08.2016	RTI reply letter Head Quarters Deputy Tahsildar, Palacode in the name of plaintiff No.3. (True copy)
Ex.P23	10.07.2016	Proceedings of Tahsildar, Taluk Office, Palacode. (True copy)
Ex.P24	18.11.2016	Proceedings of Revenue Officer, Dharmapuri. (True copy)
Ex.P25	26.03.2018	Proceedings of Tahsildar, Taluk Office, Palacode. (True copy)
Ex.P26	05.07.2018	Encumbrance Certificate in No.2266 for a period of 1 year from 01.01.1969 to 31.12.1967 of S.R.O., Palacode. (True copy)
Ex.P27	18.06.2018	Computerized Encumbrance Certificate in No.2072 for a period of 32 year from 01.01.1987 to 17.06.2018 of S.R.O., Palacode. (True copy)
Ex.P28	19.07.2018	Computerized Encumbrance Certificate in No.2433 for a period of 1 year from 01.01.2018 to 17.07.2018 of S.R.O., Palacode. (True copy)
Ex.P29	31.07.2018	Computerized Encumbrance Certificate in No. 2399. (True copy)
Ex.P30	31.07.2018	Computerized Encumbrance Certificate in No.3474.

		(True copy)
Ex.P31	19.09.1968	Mortgage deed (certified copy)
Ex.P32	23.09.1968	Loan Document No.1851/1968 (certified copy)

**Respondents Side Evidence: Nil.**

**Respondents Side Exhibits:**

Ex.R1	07.09.2011	Registered Sale deed executed by Nanjunda Chettiyar and others to P.G.Murugesan, document No.2944/2011 of S.R.O., Palacode (certified copy).
Ex.R2	25.09.1968	Registered Sale deed executed by Krishnamoorthy to P.G.Murugesan, document No.3004/2011 of S.R.O., Palacode (certified copy).
Ex.R3	05.12.2012	Registered Partition Deed. (certified copy)

-  
Additional Sessions Judge,  
Dharmapuri.

**Fair Order**

I.A.No.115/2018 in

O.S.No.106/2018

Dated:11.3.2022.

