



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 06-08-2026

CORAM

THE HON'BLE MR JUSTICE N. ANAND VENKATESH

CMA No. 947 of 2026

AND

CMP NO. 9663 OF 2026

S.Balakrishnan

S/o.late Chinnapaiyan @ Sengoda Gounder,

..Appellant(s)

Vs

1. R.Rajendran

S/o.RAJI,

Chinnapaiyan Alias Sengoda Gounder,(Died)

Subbulakshmi(Died)

Vinoth(died)

2. Sornalatha,

W/o.Rajendran,

..Respondent(s)

Civil Miscellaneous Appeal has been filed under Order 43 Rule 1(r) of CPC to set aside the order dated 04.03.2026 made in I.A.No.7 of 2025 in OS No.426 of 2022 on the file of the Ld.Principal District Court,Namakkal by allowing this Civil Miscellaneous Appeal and thus render Justice.

For Appellant(s):

Mr.N.Manoharan

For Respondent(s):

Mr.C.Prakasam
for R1 and R2

Judgment

This Civil Miscellaneous Appeal has been filed under Order 43



Rule 1 (r) of CPC against the order and decretal order passed in I.A.No.7 of 2025 in O.S.No.426 of 2022 dated 04.03.2026 on the file of the learned Principal District Court, Namakkal.

2. The appellant is the plaintiff. The appellant filed a suit in OS No.426 of 2022 before the Principal District Judge, Namakkal, stating that the appellant has 1/6th share in the suit properties and that behind the back of the appellant, the partition deed was executed between the 1st and 2nd defendants and thereby, depriving the right and share of the appellant in the suit properties. An attempt was also made to alienate the suit properties. Accordingly, the appellant sought for the relief of partition and separate possession of his 1/6th share in the suit properties and to declare the partition deed dated 27.06.2011 as null and void and for permanent injunction restraining the defendants 1 and 2 from alienating the suit properties.

3. When this suit was pending, two Sale deeds came to be executed by the Defendants 1 and 3. The 1st Sale deed dated 18.06.2024 where four items of suit properties came to be sold in favour of the 4th defendant. Similarly, yet another Sale deed dated 18.06.2024 was executed by defendants 1 and 3 in favour of 5th defendant and in this sale deed, what was sold in favour of 5th defendant was 2/3rd share in the same four items of suit properties.



4. In view of the above, the appellant amended the plaint and sought for the relief of declaring both the Sale deeds dated 18.06.2024 as null and void and non-est.

5. When the suit was pending, the appellant filed IA No.7 of 2025 under Order 39 Rules (1) and (2) seeking for the relief of interim injunction restraining the defendants 4 and 5 from in any manner obstructing or hindering the enjoyment of the appellant in cultivating the lands, till the disposal of the suit. During the pendency of the suit, 1st defendant died on 08.08.2024, 2nd defendant died on 07.10.2023 and 3rd defendant died on 24.07.2024. Hence, virtually the *pendente lite* purchasers were impleaded as defendants 4 and 5 in the suit and they are the persons, who are now prosecuting the suit.

6. The defendants 4 and 5, who are the respondents in this appeal filed a counter and took a stand that items 1 and 2 of the suit properties had been partitioned between defendants 1 and 2 and that the defendants 1 and 2 were in possession and enjoyment of the same as their individual properties. In view of the same, the respondents herein took a stand that the defendants had every right to sell the properties in favour of the defendants 4 and 5 and that the plaintiff was never in possession and enjoyment of the properties and accordingly, sought for the dismissal of the petition.



7. The Court below on considering the facts and circumstances of the case and taking note of the stand taken by either parties and also considering the documents, came to a conclusion that the appellant had not made out a *prima facie* case and the balance of convenience was not in favour of the appellant and found that the appellant will not be put to irreparable loss and hardship if the interim injunction is not granted in favour of the appellant. Accordingly, dismissed the application by an order dated 04.03.2026 .Aggrieved by the same, the present appeal has been filed before this Court.

8. Heard Mr.N. Manoharan, learned counsel for the petitioner and Mr.C.Prakasam, learned counsel for respondents 1 and 2.

9. This Court has carefully considered the submissions made on either side and the materials available on record.

10. This Court also carefully went through the order passed by the Court below.

11. At the outset, this Court must keep in mind the fact that the respondents in this appeal are *pendente lite* purchasers of the suit properties. The suit was instituted in the year 2022 and whereas, the respondents have purchased the properties on 18.06.2024. Even with respect to the said purchase,



the sale deed that was executed in favour of the 1st respondent shows as if the entire property had been sold whereas the sale deed executed in favour of the 2nd respondent shows as if only 2/3rd share had been sold in the very same property. In any case, the sale that has been made in favour of the respondents is subject to the final result in the suit.

12. It is true that any sale that is made during the pendency of the suit is subject to Section 52 of the Transfer of Properties Act. However, that does not mean that the Court can never grant an order of interim injunction when such sale is made. The Apex Court in ***[Ramkant Ambalal Choksi Vs. Harish Ambalal Choksi and others]*** reported in **2024 11 SCC 351** dealt with this issue and the relevant portion is extracted hereunder:-

44. Quite often, in these types of litigations, it is sought to be argued that an injunction restraining the defendant from transferring the suit property was absolutely unnecessary as no post-suit transfer by the defendant can adversely affect the result of the suit because of the provisions of Section 52 of the TP Act whereunder all such transfers cannot but abide by the result of the suit. It is true that the doctrine of lis pendens as enunciated in Section 52 of the TP Act takes care of all pendente lite transfers; but it may not always be good enough to take fullest care of the plaintiffs interest vis-à-vis such a transfer. We may give one appropriate illustration of a suit for specific performance of contract based on an agreement of sale. In a suit wherein the plaintiff prays for specific performance and if the defendant is not restrained from selling the



property to a third party and accordingly a third party purchases the same bona fide for value without any notice of the pending litigation and spends a huge sum for the improvement thereof or for construction thereon, the equity in his favour may intervene to persuade the Court to decline, in the exercise of its discretion, the equitable relief of specific performance to the plaintiff at the trial and to award damages only in favour of the plaintiff. It must be noted that Rule 1 Order 39 of the Code clearly provides for interim injunction restraining the alienation or sale of the suit property and if the doctrine of *lis pendens* as enacted in Section 52 of the TP Act was regarded to have provided all the panacea against *pendente lite* transfers, the legislature would not have provided in Rule 1 for interim injunction restraining the transfer of suit property. Rule 1 Order 39, in our view, clearly demonstrates that, notwithstanding the Rule of *lis pendens* in Section 52 of the TP Act, there can be occasion for the grant of injunction restraining *pendente lite* transfers in a fit and proper case. (See *Muktakesi Dawn v. Haripada Mazumdar* [*Muktakesi Dawn v. Haripada Mazumdar*, 1987 SCC OnLine Cal 51 : AIR 1988 Cal 25] .)

13. It is quite clear from the above judgement that notwithstanding the rule of *lis pendens* under Section 52 of the Transfer of Properties Act, there can be an occasion for the grant of injunction restraining the *pendente lite* transfer in a fit and proper case.

14. In the case in hand, the cause of action for filing an interim



application seeking for an injunction arose for the appellant only in the year 2025, after the sale was made in favour of the respondents in the year 2024.

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15. One of the reliefs that was sought for in the suit was for a permanent injunction restraining the original defendants from alienating the property. Unfortunately, the properties have been alienated during the pendency of the suit and the apprehension of the appellant is that his possession and enjoyment of the agricultural lands are being interfered with. In such a scenario, the petition for interim injunction can certainly be entertained and considered by the Court.

16. As stated supra, what was sold in favour of the respondents itself is not very clear. One sale deed speaks about the entire property being sold in favour of the 1st respondent and whereas the other sale deed shows that in respect of the very same properties, only 2/3rd share was only in favour of the 2nd respondent. If that is so, 2/3rd share can be identified only after the properties are properly demarcated in the suit for partition.

17. The question that arises for consideration is as to whether, in such a scenario, where an undivided share has been sold, an order of interim injunction can be granted by the Court.



18. The above question is no longer *res integra* and it would be relevant to take note of the judgement of the Apex Court in [Ramdas Vs. Sitabai and others] reported in 2009 7 SCC 444. The relevant portions are extracted hereunder:-

16. It is settled law under the Transfer of Property Act, 1882 that a purchaser cannot have a better title than what his vender had. The possession which is claimed by Defendant 3 Ramdas (the appellant herein) in respect of the entire land bearing Gat No. 19 area admeasuring 2.56 H of Mouza Padoli was also illegal and without proper sanction of law. So long as the property is joint and not partitioned, Defendant 3 Ramdas (the appellant herein) is not entitled to get possession of the said land. Even otherwise, the appellant herein having purchased the land from Defendant 1 Sudam could be entitled to be declared at the most to the extent of half-share of the said piece of land having stepped into the shoes of his vendor and could not have asked for and claimed ownership and possession over the entire land of Gat No. 19 admeasuring 2.56 H.

17. Without there being any physical formal partition of an undivided landed property, a co-sharer cannot put a vendee in possession although such a co-sharer may have a right to transfer his undivided share. Reliance in this regard may be placed to a decision of this Court in *M.V.S. Manikayala Rao v. M. Narasimhaswami* [AIR 1966 SC 470] wherein this Court stated as follows : (AIR p. 473, para 5)

“5. ... Now, it is well settled that the purchaser of a coparcener's undivided interest in joint family property is not entitled to possession of what he has purchased. His only right is to sue for partition of the property and ask for allotment to him of that which on partition might be found to fall to the share of the coparcener whose share he had purchased.”

18. It may be mentioned herein that the aforesaid findings and the conclusions were recorded by the Supreme Court by placing reliance upon an earlier judgment of this Court in *Sidheshwar Mukherjee v. Bhubneshwar Prasad Narain Singh* [(1953) 2 SCC 265 : AIR 1953 SC 487] wherein this Court held as under : (AIR p. 491, para 11)



“11. ... All that [vendee] purchased at the execution sale was the undivided interest of the coparceners in the joint property. He did not acquire title to any defined share in the property and was not entitled to joint possession from the date of his purchase. He could work out his rights only by a suit for partition and his right to possession would date from the period when a specific allotment was made in his favour.”

19. In view of the aforesaid position there could be no dispute with regard to the fact that an undivided share of co-sharer may be a subject-matter of sale, but possession cannot be handed over to the vendee unless the property is partitioned by metes and bounds amicably and through mutual settlement or by a decree of the court.

19. It is clear from the above judgement that where the property dealt with pertains to an undivided share in the property, the relevant share can be identified only after the property is partitioned by metes and bounds. Till then, the share of a co-sharer can never be identified and consequently, an order of injunction cannot be passed.

20. The Court below lost sight of the above issues and dealt with the interim application like in a normal case where the Court is only supposed to see as to who is in possession of the property and pass an order of interim injunction to protect such possession pending disposal of the suit.

21. The Court below did not take into consideration two crucial factors in this case and they are :-

(a) the respondents are admittedly *pendente lite* purchasers and



(b) one of the sale deeds shows that what has been purchased is only 2/3rd share in the property.

In such a scenario, the Court should not have rejected the application filed by the appellant seeking for interim injunction. The respondents will have to establish their right and the concerned share will have to be demarcated, which can be done only after the preliminary decree is passed and the demarcation takes place after the passing of the final decree.

22. In view of the above, the order and decretal order passed by the Court below suffer from perversity and it requires the interference of this Court and the same is hereby set-aside. The application filed by the appellant in IA no.7 of 2025 in OS No.426 of 2022 is allowed and there shall be an order of interim injunction pending disposal of the suit.

23. It is brought to the notice of this Court that the issues have already been framed and the suit is now at the stage of trial. Considering the fact that the suit is of the year 2022, there shall be a direction to the Principal District Judge, Namakkal, to dispose of the suit within a period of six months from the date of receipt of a copy of this order.



24. In the result, this Civil Miscellaneous Appeal is allowed in the above terms. No costs. Consequently, the connected miscellaneous petition is closed.

06-08-2026

Index: Yes/No

Speaking/Non-speaking order

Neutral Citation: Yes/No

RKA

To

The Principal District Judge, Namakkal,



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N.ANAND VENKATESH J.

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