

**IN THE COURT OF PRINCIPAL DISTRICT MUNSIF
PADMANABHAPURAM.**

**Present: Thiru.R.Karthikeyan, B.A., B.L.,(Hons.)
Principal District Munsif.**

Thursday , the 13th day of August, 2026

O.S No. 264/2005 (CNR.No.TNKK08-000007-2005)

and

O.S No.30/2007 (CNR.No.TNKK08-000011-2007)

O.S No. 264/2005

1.Mary Anjel @ Anjilammal (Died)

2. Addl.Felix Joe Prakash

3. Addl.Arul Leo Prakash

4. Addl.Jain Jeya Prakash.

(Addl. Plaintiffs 2 to 4 are impleaded as per order in I.A.No.03 of 2022 dated
05.09.2022) ... Plaintiffs

/ Vs. /

1.Chellathurai (Died)

2. Thasammal (Died)

3. Retnabai

4. Sam Raj

5. Santhi

6. Sam Regi

7. Sam Sasi

8. Sheeba Rani

9. Addl.Akimas

10. Addl.Thankaiyan Nadar

11. Addl.Chellakannu (Died)

12. Addl.Samraj

13. Addl.Robinson

14. Addl.Manohara Raj

15. Addl.Josephine Mary

16. Addl.Stephen

17. Addl.Nirmala Mary

(Addl.D9 and D10 are impleaded as per order in I.A.No.39/2008 dated
14.12.2008)

(Addl.D11 is impleaded as per order in I.A.No.229/2008 dated 12.08.2009)
(Addl.D12 to 14 are impleaded as L.Rs. of Addl.D11 as per order in
I.A.No.75/2014 dated 18.02.2015)
(Addl.Defendants 15 to 17 impleaded as L.Rs. Of deceased 2nd defendant as
per order dated 21.09.2021 in I.A.No.02/2019) ...Defendants

O.S No.30/2007

1.Mary Anjel @ Anjilammal (Died)
2. Addl.Felix Joe Prakash
3. Addl.Arul Leo Prakash
4. Addl.Jain Jeya Prakash.
(Addl. Plaintiffs 2 to 4 are impleaded as per order in I.A.No.02 of 2022 dated
05.09.2022) ... Plaintiffs

/ Vs. /

1.Chellathurai (Died)
2. Thasammal (Died)
3. Retnabai
4. Sam Raj
5. Santhi
6. Sam Regi
7. Sam Sasi
8. Sheeba Rani
9. Addl.Josephine Mary
10. Addl.Stephen
11.Addl.Nirmala Mary
(Addl.Defendants 9 to 11 impleaded as L.Rs. Of deceased 2nd defendant as per
order in I.A.No.01/2019 dated 31.03.2023) ..Defendants.

Both the suits taken for joint trial and came for the final hearing before
this court, in the presence of Mr. M.Celestine, learned counsel for the
Plaintiffs and Mr.K.S.Sanil Kumar, learned counsel for the defendants D3, D5,
D7, D8 and Mr.M.Thankaraj, learned counsel for the defendants D12 to D14
and Mrs.M.Sheela, learned counsel for the defendant D15, D16 and defendant

D4, D6, D9, D10, D17 called absent and set exparte and defendants D1,D2, D11 died in O.S.No.264/2005 and Mr.M.Celestine, learned counsel for the Plaintiffs and Mr.K.S.Sanil Kumar, learned counsel for the defendants D3 and D5, D7, D8 and Mrs. Sheela, learned counsel for the defendant D9 , D10 and D4, D6, D11 called absent and set exparte and defendant D1, D2, died in O.S.No.30/2007. Upon hearing the Both sides counsels and on perusal of records having stood over for consideration till this day, this court delivers the following :-

COMMON JUDGMENT

O.S No.264 /2005

Suit is filed for declaration of her title and possession over the suit property and for a consequential injunction restraining the defendants from disturbing the possession of the plaintiff over the suit properties and other reliefs.

O.S No.30/2007

Suit is filed for partition of ½ share over the suit properties be allotted to her after effecting metes and bounds and other reliefs.

O.S No.264 / 2005

2. THE AVERMENTS IN THE PLAINT IN BRIEF:-

- i) The plaint schedule property originally belonged to one Appavu Nadar.

After the death of Appavu Nadar the property devolved on Selvadhas, his wife Lekshmi Ammal and his two sons namely Selvadhas, Chellathurai and his daughter Thasammal. While so, Selvadhas and his mother Lekshmi Ammal Jointly executed a mortgage deed infavour of Velayudhan Pillai on 05.10.1958. On 19.08.1961 the said Velayudhan Pillai executed an assignment deed infavour of the plaintiff in respect of entire suit property. The mortgage deed dated 06.10.1958 and the assignment dated 19.08.1961 have become barred by limitation due to non- redemption.

ii) The plaintiff is the wife of deceased Selvadhas. Defendants 1 and 2 are brother and sister of the above Selvadhas. The defendants have no right or possession over any portion of the suit property. The defendants are trying to disturb the possession and enjoyment of the plaintiff over the suit property. The defendants are also liable to be restrained by an order of injunction from disturbing the plaintiff's enjoyment over the suit property. The defendants attempted to disturb the possession of the plaintiff over the suit property on 11.09.2005. But they did not succeed due to the timely intervention of the plaintiff. Hence this suit.

3. BRIEF OF WRITTEN STATEMENT FILED BY THE DEFENDANT D2 IS AS FOLLOWS :-

The death of Appavu Nadar the elder brother of this defendant Selvadhas

the Mother Lekshmi Ammal for herself and also for the Minor child Chellathurai. The 1st defendant executed a mortgage deed infavour of the alleged Velayudhas Pillai on 06.10.1958 as per document No.3137/1958 . The said mortgage was not followed with possession and only a charge for the amount borrowed was created over the said properties. The said properties were never enjoyed by the mortgages at any point of time as alleged. IN the mean time , the said Selvadhas and the 1st defendant sold item NO.3 and 4 to strangers without the consent and knowledge of this defendant. After the death of the said Selvadhas also the plaint schedule properties No.1, 2 and 4 are enjoyed by the defendants in common and no proper partition is effected over the said properties till date. The 2nd defendant was not a party to the said mortgage deed. This defendant is entitled to 1/3 right over the plaint schedule properties. Hence, this suit is liable to be dismissed.

4. BRIEF OF WRITTEN STATEMENT FILED BY THE DEFENDANT D3, D5, D7 ARE IS AS FOLLOWS :-

i) The Selvadhas and his mother Lekshmi Ammal were not entitled to execute any mortgage deed infavour of Velayudhan on 06.10.1958 with regard to the property of Appavoo Nadar. The property Lekshmi Ammal was having only 1/3rd right and Selvadhas was having only 1/3 of 2/3 share i.e, 2/9 share in the properties of deceased Appavoo Nadar. Selvadhas and his mother Lekshmi Ammal is not competent to execute any document with regard to

whole property of deceased Appavoo Nadar. The assignment deed dated 19.08.1961 infavour of the plaintiff was only with the money of Selvadhas who is the husband of the plaintiff. While so, the above said Selvadhas and his brother Chellathurai partitioned all the properties belonged to their father Appavoo Nadar on 23.07.1986 including the suit properties. Before and after the partition deed Selvadhas sold plant schedule items 3 and 5. As per the assignment deed dated 19.08.1961 the plaintiff never got possession over the suit property. Before the death on 03.07.1997 he has sold item No.3 to one Ahimas and he has sold item No.5 to one Thankian Nadar on 19.02.1980. Thus till the death of Selvadhas having title and possession over plaint schedule item No.1 , 2 and 4. It is true that the said Selvadhas married the plaintiff. The plaintiff was incapable of giving birth to child, wo on her own accord the left Selvadhas and went to her family house. Before leaving Selvadhas on the mediation of the well wishers the dispute between the plaintiff and the said Selvadhas were completely settled.

ii) Before death the said Selvadhas on 28.06.2000 executed a will infavour of his wife Retnabai and his children who are the defendants 3 to 8. The defendants 3 to 8 are absolute owners in possession of plaint item NO.1, 2, 4. Since the plaintiff is not in possession of the suit properties the question of disturbing the possession does not arise. The defendants never attempted to disturb the possession of the plaintiff on 11.09.2005 or any other date. The suit

itself is not maintainable only to grab the properties of the defendant 3 to 8 .

Hence, the suit is liable to be dismissed.

5. BRIEF OF WRITTEN STATEMENT FILED BY THE DEFENDANT

D11 IS AS FOLLOWS :-

i) The plaint schedule properties are originally belonged to one Appavu Nadar. This defendant is not aware of the execution of mortgage infavour of Velayuthan Pillai. But, the said Velayudhan Pillai never in possession of the plaint schedule property. The 11th defendant is in peaceful possession and enjoyment over the 10 ³/₄ cents of property comprised in old Survey No.1756 correlated to Re-survey No.91/2011 which is scheduled as 5th item in the plaint. The said Appavu Nadar got title over the property as per the partition deed document No.1620 of 1109 M.E. After the death of said Appavu Nadar, his properties devolved to his sons Chellathurai and Selvadhas. The plaint schedule 5th item property to one Thankaiyan Nadar who is the 10th defendant in the suit for valid consideration vide document No.568 of 1980. Then the 1st and 10th defendants is Chellathurai and Thankaiyan Nadar Jointly sold the property to the 11th defendant. The 11th defendant purchased the plaint schedule 5th item property for valid consideration from the 1st and 10th defendants on 06.04.1981 as document No.680 of 1981. The 11th defendant is having valid right and title over the plaint schedule 5th item property. Hence, the suit is liable to be dismissed.

6. BRIEF OF WRITTEN STATEMENT FILED BY THE DEFENDANTS D12 to D14 ARE AS FOLLOWS :-

i) The said Velayudhan Pillai was never in possession of the plaint schedule properties. As per the alleged assignment Velayudhan never possessed the suit properties. The plaintiff has no title or possession over the suit properties. The plaintiff has nor become absolute owner over the suit properties as alleged. The suit properties originally belonged to one Appavu Nadar. He got right as per the partition deed of the year 1109 M.E. document No.1620. After the death of Appavu Nadar, his properties devolved on his sons Chellathurai and Selvadhas. As per the sale deed dated 06.04.1981, the 11th defendant Chellakannu who is the father of these defendants have purchased 10 $\frac{3}{4}$ cents which is plaint scheduled item NO.5 property from Chellathurai S/o.Appavu Nadar and Thankayyan nadar for valid consideration.

ii) As per the sale deed the father of these defendants namely Chellakannu got exclusive title, possession and enjoyment over his property by effecting valuable improvements till his death. In plaint item five, the 12th defendant has put up latrine and bath room and put up a kitchen. The 12th defendant is tapping the rubber trees. These facts prove that the plaintiff has neither possession nor in and enjoyment of plaint item No.5 property. The plaintiff has no right, title, possession or enjoyment over plaint schedule item number five which is the property of these defendants. No attempt was made by these

defendants on 11.09.2005 as alleged. No last oral request was made on 15.09.2005. Hence, the suit is liable to be dismissed.

7. BRIEF OF ADDITIONAL WRITTEN STATEMENT FILED BY THE DEFENDANT D3, IS AS FOLLOWS :-

The suit filed by the plaintiff as O.S.No.264 of 2005 and O.S.No.30/2007 is not maintainable in law. The plaintiff has no locus standi to file the present suit. The deceased one Selvadhas was dealing with the schedule of properties. The assignment deed dated 19.08.1961 infavour of the plaintiff was only with the money of the said Selvadhas and he got possession over the suit properties. Even though the deed of mortgage is in the name of the plaintiff it is not for a fixed period. The deceased Selvadhas all along his period up to his death. The properties scheduled in the plaint is absolutely are an agricultural lands. The deceased Selvadhas and his legal representatives are entitled for the benefit of the Tamil Nadu Agricultural Debt relief Act 1978. Further more the deceased Selvadhas had executed a will deed on 28.06.2000 infavour of the defendants 3,5,7 and 8. So the said Selvadhas executed a will deed with regard tot he property stands in his name. Also the said will deed is executed in the presence of his family members while he was hospitalized. Thus after the death of the said Selvadhas these defendants were got title and possession over the schedule of properties and they are enjoying the same as an absolute owners. Moreover the wife of the said Selvadhas and

her family is permanently residing in the building which is situated in the schedule item No.2. The said Selvadhas was died in the said building and he was buried in his own property. Hence, this suit is liable to be dismissed.

8. BRIEF OF ADDITIONAL WRITTEN STATEMENT FILED BY THE DEFENDANT D7 AND ADOPTED DEFENDANTS D3, D5 AND D8 ARE AS FOLLOWS :-

i) Moreover they are not the legal heirs of the deceased 1st plaintiff one Mary Anjali @ Anjilammal and they are the unnecessary parties to the suits. Since, the said Mary Anjilammal died without issues her brothers and sisters are to be the parties to proceed with the suit. Moreover to establish the legal heirship no legal heirs certificate was obtained from the Revenue authorities. Further the will deed dated 26.07.2007 was not executed by the deceased and it is void. The said will deed was executed under suspicious circumstances and it may not have any legal right. The said will deed was not executed by the deceased 1st plaintiff by her own will and pleasure.

ii) Moreover the said deed is hit by Doctrine of “Specs Succession is” No document could be executed and registered for the right over the properties expected in future. On date of execution of the said will deed the deceased 1st plaintiff had no right over any properties. So the will itself is not maintainable and it is void abinitio. No schedule of property has been described in the said will deed. Actually it is prepared and executed without the knowledge of the deceased 1st plaintiff Anjilammal. Hence, this suit is liable to be dismissed.

O.S No.30/2007

9. THE AVERMENTS IN THE PLAINT IN BRIEF:-

i) The plaintiff is the widow of late Maria Selvadas @ Selvadas . The above Selvadas @ Maria Selvadas died on 28.09.2000 at Catherine Booth Hospital, Nagercoil. The marriage of the plaintiff with the said Maria Selvadas solemnized on 12.09.1961 at St.Mary's Church, Mullagumoodu. No children are born in the wed Lock. The defendants 1 and 2 are brother and sister of the deceased Maria Selvadas @ Selvadhas. The defendants 3 to 8 are persons who has no right in the estate of deceased, but claim some right as if they are of his heirs. The estate left behind by the deceased which are the suit properties herein are not partitioned so far and as out of court settlement is not possible in the nature of the hostile attitude of the defendants on 30.01.2007. The plaintiff is entitled to ½ share and the remaining ½ share goes to defendants 1 and 2. Hence, this suit.

10. WRITTEN STATEMENT FILED BY THE 2nd DEFENDANT IS AS FOLLOWS :-

The estate of deceased Selvadhas is not yet partitioned. This defendant is also prepared to pay the required court fee for the partition of her right over the plaint schedule properties. Allotting the half share of this defendant over the one half share of defendants 1 and 2. Hence this suit is liable to be dismissed.

11. WRITTEN STATEMENT FILED BY THE DEFENDANTS D3, D5 AND D8 ARE AS FOLLOWS :-

i) The plaintiff is not the wife of one deceased Selvadhas. After the marriage they were lived together for some years. Before leaving on the mediation of the well wishers the dispute between the plaintiff and the said Selvadhas were completely settled. After that on 07.02.1973 the said Selvadhas married the 3rd defendant and they were living a happy married life. Due to the wedlock defendants 4 to 8 were born to them. Meanwhile the said Selvadhas died. Due to this reason only she with her own accord abandoned the matrimonial life and left the said Selvadhas and living separately for the past several years.

ii) The 3rd defendant is the actual wife of the deceased Selvadhas and rest of the defendants are the children of the deceased Selvadhas. Now, they are in possession and enjoyment over the scheduled properties. The properties scheduled herein as item No.1 and 2 and more area originally belongs to the father of the deceased Selvadhas. After the death of his father he along with his brother the 1st defendant partitioned the same on 23.07.1986 and he got four items of property as 'A' scheduled. The property which is scheduled herein as item No.3. The deceased Selvadhas is in absolute possession and enjoyment of defendants 3 to 8. She is having no way in connection with the schedule of properties or the said Selvadhas. Only to grab the properties of this defendants 3 to 8.

iii) Moreover before the death of the said Selvadhas on 28.06.2000 he executed a will infavour of his wife Retna Bai the 3rd defendant and his children who are the defendant 4 to 8. They are enjoying the same as absolute owners and paying revenue tax. The plaintiff never demanded anything to this defendants and also there is nothing to be settled in between the plaintiff and these defendants. The Re-survey numbers, area, and the boundaries mentioned for the schedule of properties. So, now the plaintiff is estopped from claiming any right over the plaint schedule property and she is estopped from claiming the status of the wife of the deceased Selvadhas. Hence, this suit is liable to be dismissed.

12. ADDITIONAL WRITTEN STATEMENT FILED BY THE DEFENDANT D7th AND ADOPTED DEFENDANTS D3, D5 AND D8 ARE AS FOLLOWS:-

i) Moreover they are not the legal heirs of the deceased 1st plaintiff one Mary Anjali @ Anjilammal and they are the unnecessary parties to the suits. Since, the said Mary Anjilammal died without issues her brothers and sisters are to be the parties to proceed with the suit. Moreover to establish the legal heirship no legal heirs certificate was obtained from the Revenue authorities. Further the will deed dated 26.07.2007 was not executed by the deceased and it is void. The said will deed was executed under suspicious circumstances and it may not have any legal right. The said will deed was not executed by the deceased 1st plaintiff by her own will and pleasure.

ii) Moreover the said deed is hit by Doctrine of “Specs Succession is” No document could be executed and registered for the right over the properties expected in future. On date of execution of the said will deed the deceased 1st plaintiff had no right over any properties. So the will itself is not maintainable and it is void abinitio. No schedule of property has been described in the said will deed. Actually it is prepared and executed without the knowledge of the deceased 1st plaintiff Anjilammal. Hence, this suit is liable to be dismissed.

13. SETTLED ISSUES :- O.S.No.264/2005

On the basis of pleadings on both sides, the following issues were framed.

1. Whether the plaintiff is entitled to get the relief of declaration as prayed for?
2. Whether the plaintiff is entitled to get the relief of permanent injunction as prayed for?
3. To what relief if any the plaintiff is entitled?

14. SETTLED ISSUES :- O.S.No.30/2007

On the basis of pleadings on both sides, the following issues were framed.

1. வழக்குரை பட்டிகை சொத்து முழுவதும் 3-ம் பிரதிவாதிக்கு உரிமைப்பட்டு 8 பிரதிவாதிகள் கைவச அனுபவத்தில் உள்ளதா?

2. வாதி வழக்குரையில் கோரியுள்ள வழக்குரை

பட்டிகைச் சொத்தில் ½ பங்கு கிடைக்கக்கூடியதா?

3. வாதிக்கு கிடைக்கக்கூடிய இதர பரிகாரம் மற்றும்

செலவுத்தொகை குறித்த உத்தரவு என்ன?

*** For proper and effective adjudication the Issue No. 1 and 3 are
strikeout as unnecessary under order XIV, Rule 5 of code of civil
procedure code and remaining issues are re-arranged.**

1. Whether the plaintiffs is entitled for the relief of ½ share as prayed?

2. To what relief if any the plaintiff is entitled?

15. To prove the case, the plaint in O.S.No.264 of 2005 and O.S.No.30 of 2007, the 1st plaintiff examined herself as PW1 and 1st defendant Mr.Chelladurai was examined as PW.2 and 2nd plaintiff was examined as PW.3 and independent witness Mr. Justin bright was examined as PW.4 and Ex.A1 to Ex.A9 were Marked . On the defendants side, the 12th defendant was examined as DW1 and 8th defendant was examined as DW.2 and 7th defendant was examined as DW.3 and attesting witness Mr.Russal dhas was examined as DW.4 and Ex.B1 to Ex.B16 were Marked.

16. As per an order in Roc. No.110/2013 -A dated 05.07.2013 of Hon'ble District Court, Nagercoil in O.S.No.264 of 2005 and O.S.No.30 of 2007 were jointly tried and common evidence was taken and both parties in the both suits would be referred herein as per their respective ranks.

17. ON ISSUE NO.1 AND 2 in O.S.No 264 of 2005 :-

Both side written Argument notes and Citations relied Perused. Oral and documentary evidences perused carefully.

Whether the plaintiff is entitled to get the relief of declaration and permanent injunction as prayed for?

i) For convenience and better understanding and to prevent the repetition of facts issue No.1 and 2 in O.S.No 264 of 2005 were discussed and decided jointly. The Pw1 reiterated all the contentions set out in the plaint and sought a relief of declaration, permanent injunction and other reliefs.

ii) It is settled principle of law that when plaintiff seeks for the relief of declaration over the plaint schedule properties the initial burden of proof lies upon plaintiff. Here in this case defendants have denied the title of plaintiff over the plaint schedule property on the ground that incase of usufructuary mortgaged property period of limitation under section 61(a) of limitation Act starts from date of payment of the mortgage and not from the date of creation of the mortgage. Moreover in respect of usufructuary mortgage there is no specific period of time such as period of 30 years as in other mortgages and hence plaintiff cannot seek for the relief of declaration of title over this mortgaged property. To prove the plaintiff's case, the Late. Mrs.Mary Angel was examined as PW.1 and PW.3 , PW4 supported the plaintiff's Case. Ex.A1 to Ex.A9 were marked on plaintiff's side. The main contention of the plaintiff

is that the property originally belongs to one Appavu Nadar and after death of Appavu Nadar the property devolved to his wife Lekshmi Ammal and his three Children namely Selvadhas, Chellathurai and his daughter Thasammal. While so, Selvadhas and his mother Lekshmi Ammal Jointly executed a mortgage deed infavour of Velayudhan Pillai on 05.10.1958. On 19.08.1961 the said Velayudhan Pillai executed an assignment deed infavour of the plaintiff in respect of entire suit property.

iii) Since, the mortgage deed dated 06.10.1958 and the assignment dated 19.08.1961 have become barred by limitation due to non- redemption. So usufructuary Mortgage has become time barred by limitation and plaintiff became absolute owner of the suit property. Defendants without having any right of possession are trying to disturb the possession and enjoyment of the plaintiff over the suit property. Thus from the above contention it is very clear that plaintiff seeks for the relief of declaration based on the expiry of right of redemption exhausted in the usufructuary mortgage. On the other hand to support the defendants contention 12th defendant examined DW.1 and marked Ex.B1 to Ex.B3. Similarly 8th defendant was examined as DW.2 and Ex.B4 to Ex.B13 were marked and 7th defendant was examined as DW.3 and Ex.B16 was marked and independent witness Mr.Russeldhas was examined as DW.4.

iv) PW.1 itself have admitted in her cross examination dated 29.09.2011 as follows “இந்த வழக்கில் 11-வது பிரதிவாதி 5-வது அபிட்டச்சொத்துக்களை தங்கையநாடார் மற்றும் செல்லத்துரையிடமிருந்து விலைக்கு வாங்கி அனுபவித்து வருகிறார் என்றால் அதுபற்றி எனக்கு தெரியாது. 5-வது அபிட்டச்சொத்தில் என்ன உள்ளது என்பது பற்றியும் எனக்கு தெரியாது. சொத்துக்கையில் நான் எந்த காலத்திலும் அனுபவம் எடுக்கவோ கரம் செலுத்தியதோ இல்லை. அ.வ.எண்.264/2005 உள்ள 5-வது அபிட்டச்சொத்தில் எனக்கு எந்தவித உரிமையும் இல்லை என்றும் தற்போது செல்லக்கண் அனுபவத்தில் இருந்து வருகிறது என்றால் சரியல்ல 1-ஆம் பிரதிவாதிக்கு எதிராக இந்த வழக்கு தள்ளுபடி செய்யப்பட வேண்டுமென்றால் சரியல்ல”. PW.2.

Based on the admission made by Pw.1 and Pw2 it is clear that the 5th item scheduled in the plaint schedule property was never in the possession of this deceased Mrs.Mary Angel PW.1. Pw2 also submits that plaintiff was not in possession of plaint schedule properties. It is also to be noted that on the side of plaintiff no exhibits was adduced to support the plaintiff's possession and enjoyment over the plaint schedule properties.

v) Plaintiffs claim declaration relief over the plaint schedule properties based on the usufructuary mortgage deed executed in the year 1958 and assignment deed dated 19.08.1961 however to this defendants have raised strong objection and submit that plaintiff cannot seek for the declaration through mortgage deed and it is settled principle of law that once a mortgage

is always a mortgage. Moreover plaintiff counsel itself submitted written argument notes by relying upon Hon'ble Supreme court decision in 2015 (2) law weekly Page No.1 held that usufructuary mortgagee is not entitled to file the suit for declaration that he become owner after the expiry of 30 years from the date of mortgage. As plaintiffs itself have admitted that plaintiff cannot seek for the relief of declaration of title over the plaint schedule property as the property was under usufructuary mortgage. On perusal of Ex.A5 and Ex.A6 it is clearly disclosed that mortgage deed was executed only as usufructuary mortgage and surrendering the possession of mortgage is clearly stated. By relying upon the decision held by Hon'ble Supreme court in 2025 INSC 1498 Dalip singh through legal heirs Vs. Sawan Sing through legal heirs dated 12.11.2025. Hon'ble Supreme Court held that in a usufructuary mortgage the period of limitation does not run from the date of creation of mortgage but from the date of payment of the mortgage under section 52 of Transfer of Property Act till then the period of limitation would not start under section 61(a) of the scheduled to limitation Act.

vi) As stated by the plaintiff side argument and decision relied by learned plaintiff counsel it is clear that plaintiff cannot seek for the relief of declaration over the usufructuary mortgaged property. Moreover no exhibits was adduced on plaintiff side to support their possession over the plaint schedule property. Except the oral evidence of the plaintiff side witnesses no

other reliable evidence was adduced to support the plaintiff contention. Ex.B1 to Ex.B3 were adduced to support the possession of D11 to D14. On perusal of Ex.B1 and Ex.B16 it is clear that the plaint schedule properties devolved to several other persons and subsequently the property was mutated and separate patta was also obtained by them and were enjoying the same. It is settled principle of law that plaintiff to stand and fall on his own leg and not to rely upon the weakness of the defendant. Here in this case as discussed above the plaintiff cannot seek for the relief of declaration over the usufructuary mortgaged property and moreover to prove the possession and enjoyment of the plaintiffs over the plaint schedule property no exhibits such as revenue records, tax receipts were adduced. Hence, it is very clear that plaintiff was never in possession and enjoyment of the plaint schedule property. Hence, this court is of considered view that plaintiff is not entitled for the relief of declaration and permanent injunction over the plaint schedule properties as prayed. Accordingly, issue No.1 and 2 are answered against plaintiffs in O.S.NO.264/2005

18. ON ISSUE NO.1 IN O.S.NO. 30/2007 :-

Whether the plaintiff is entitled for the relief of $\frac{1}{2}$ share as prayed?

i) When the plaintiffs seeks for the relief of partition over the plaint schedule properties the initial burden of proof lies upon plaintiffs. To prove the plaintiffs case, the 1st plaintiff examined herself as PW.1 and PW.2 to

PW4 supported the plaintiff's Case. Ex.A1 to Ex.A9 were marked on plaintiffs side. On the other hand to support the defendants contention 8th defendant was examined as DW.2 and Ex.B4 to Ex.B13 were marked and 7th defendant was examined as DW.3 and Exhibits was marked and independent witness Mr.Russeldhas was examined as DW.4. The contention of the plaintiffs is that the plaintiff is the legal wedded wife of deceased Selvadhas and as no child was born to her she executed a will deed infavour of her brother's son namely Mr.Felix Joe Prakash, Mr.Arul Leo Prakash, Mr.Jain Jeya Prakash. The above said will deed was adduced Ex.A7. Based on the Ex.A7 the additional plaintiffs were impleaded in this suit . As the Mary Angel has deceased now the additional plaintiff's seeks the relief of partition of ½ share based on the will deed Ex.A7 over the plaint schedule properties. To support the plaintiffs contention that deceased mary angel was the legally wedded wife of deceased Selvadhas . Ex.A1 marriage certificate was adduced. Ex.A2 Death certificate of Selvadhas was adduced. Ex.A4 partition deed dated 23.07.1986 was adduced. on perusal of Ex.A4 it is observed that the property of the Appavu Nadar was partitioned between deceased Selvadhas and his brother Chelladurai by excluding the right of their sister thasammal. Ex.A5 and Ex.A6 are the usufructary mortgage deed was executed by deceased Selvadhas and her mother deceased Lekshmi Ammal.

ii) Thus it is very clear that plaintiff deceased Mary Angel is the legally wedded wife of deceased Selvadhas. Pw2 also supports the deceased plaintiff Mary Angel is the legally wedded wife of deceased Selvadhas. Though defendants denied this contention no reliable evidence was adduced to disprove it. Ex.A8 obtained through right information Act relating to the Stamp paper details dated 28.06.2000 for Rs.10/- totally 38 numbers was also adduced. Ex.A8 discloses that no such stamp paper was sold to deceased Selvadhas on 28.06.2000. PW.1 to PW.4 supported the plaintiffs case and Ex.A7 the will deed in favour of the additional plaintiffs was also proved by PW4 witnesses who deposed about the execution of registered will deed by Mary Angel in favour of the Additional plaintiffs Mr.Felix Joe Prakash, Mr.Arul Leo Prakash, Mr.Jain Jeya Prakash. Generally a will deed shall be proved examining atleast one attesting witness as per section 68 of Indian evidence act read with section 63(c) of Indian succession Act,1925. However the two attesting witnesses in Ex.A7 has deceased and hence the PW.4 deposed about the execution of will deed who was present at the time of registration before sub registrar office. Thus it is clear that deceased Mary Angel is a legal wedded wife of deceased Selvadhas and subsequently she has executed share to be obtained in the result of O.S.No.30 of 2007 suit in favour of the additional plaintiffs Mr.Felix Joe Prakash, Mr.Arul Leo Prakash, Mr. Jain Jeya Prakash. When the initial burden of proof was proved by the plaintiffs the burden of proof automatically shifts over the defendants.

iii) Here in this case on side of defendants, defendants denies and submits that deceased Mary Angel is not a legally wedded wife of deceased Selvadhas as she left matrimonial house and deceased Selvadhas. Subsequently deceased Selvadhas married Rethina bai and as a result four children were born to deceased Selvadhas and Rethina Bai and hence deceased Mary Angel is not a legally wedded wife of deceased Selvadhas. Moreover defendants also denies the contention that the property of the deceased Selvadhas was partitioned. Defendants submits that partition was effected through will deed executed in 2000 and same was adduced as Ex.B5. One of attesting witness of the will deed Ex.B5 was examined as DW.4, DW.4 supported the defendants contention. Though Ex.B5 will deed was executed by deceased Selvadhas now the issue to be decided here is whether the deceased Mary Angel is the legally wife of deceased Selvadhas and she entitled for $\frac{1}{2}$ share over the plaint schedule properties.

iv) The plaint schedule property in O.S.No.30/2007 belong to deceased Selvadhas which is the ancestral property but the property of deceased appavu was not equally partitioned between the legal heirs of appavu itself. The partition deed Ex.A4 executed in 1986 itself not a valid partition deed. Though defendants have denied that deceased Mary Angel is not a legally wedded wife now and subsequently she left after receiving the sufficient settlement through mediation of the well wishers of the plaintiffs and

Selvadhas and was completely settled. But to support the above contention no document was adduced on the defendants side. It is also to be noted that the Rethina Bai claimed to be wife of the deceased Selvadhas have not adduced any document to prove their marriage. It is also clear from the evidence adduced on the defendants side that marriage was not held in church and was held in the house before family members. Since Ex.A1 was adduced on the plaintiffs side to prove the marriage between deceased Mary Angel and deceased Selvadhas and Pw2 the brother of deceased selvadhas also supported the plaintiff case. It is clear that the will deed executed as Ex.B5 in the year 2000 is also will deed executed for the unpartitioned ancestral property excluding the thasammal sister of deceased selvadhas. Plaintiffs have also disputed the execution of the will deed and adduced Ex.A8 the document relating informations obtained under right to information Act Stating that Stamp vendor Mr.Kannan license No.4/77 has sold Rs. 10/- Stamp paper of 38 numbers on 28.06.2000 to M/s Veckaliamman real estate and serial No.2236-2273 for Rs.380/- and denied that the document serial number above stated was sold to Mr.A.Selvadhas Kanyakumari District, Kuzhikode.

v) The above Ex.A8 also creates suspicious ground against the Ex.B5 the will deed infavour of this defendants executed by deceased selvadhas. Though Ex.B8, Ex.B9, Ex.B12 and Ex.B15 the revenue records were adduced to support the defendants possession. It is settled principle of law that revenue

records will not confer any title and doesnot plays vital role in deciding title disputes. In this case plaintiffs seek for the relief of partition share of the deceased Mary Angel. Hence, the exhibits adduced on the defendants side Ex.B6 to B16 doesnot bind the share of the plaintiffs. Even though plaintiffs have proved their will deed was executed for the property resulted as per the out come of the suits.

vi) It is also to be noted that O.S.No.30/2007 was filing in the year 2007 was executed on 12.02.2007. Thus it is very clear that Ex.A7 was executed before this suit O.S.No.30/2007. Defendant mainly disputes that no schedule of property was stated in Ex.A7.and also raise defence that when the suit was filed in the year 2005 plaint its contained description of the properties no description mentioned in Ex.A7 also creates suspicious ground. It is also to be noted that Ex.A7 will deed is hit by Section 6 of transfer of property Act 1982 and Section 52 of transfer of property Act. Though the above grounds of defence was raised on the date of execution of will deed deceased mary angel doesnot know the share to be allotted in O.s.No30/2007.Moreover the defence that will deed was hit by spec succession under sec 6 of transfer of property act doesnot applies to this case as deceased plaintiff mary angel got married to deceased selvadhas on 12.09.1961 itself and same was admitted by deceased selvadhas in the will deed Ex.B5 executed in the year 2000. Deceased mary angel bears a share in selvadhas property impliedly from 12.09.1961 itself

however the only dispute is relating to the proportion of property to be allotted to deceased mary angel. Hence the will deed Ex.A7 is perfectly valid and as plaintiff mary angel has died the will deed have come into action from the date of the death of the mary angel. As discussed above since plaintiffs have proved their case that deceased mary angel was the legally wedded wife of deceased selvadhas and she have acquired implied share of the schedule property and same was executed infavour of additional plaintiffs, no partition was effected to Thasammal sister of deceased selvadhas by adducing cogent and credible evidence this court is of considered view that plaintiffs is entitled for the relief of partition as prayed. Accordingly, issue No.1 is answered infavour of plaintiffs in O.S.NO.30/2007. .

19. ON ISSUE NO.3 in O.S.No.264of 2005 and issue No. 2 O.S.No.30 of 2007 :-

In the light of above findings and decisions on the preceding issues, this court is of considered view that Plaintiffs are not entitled for any other reliefs in this suit.

20. RESULT :

OS.No.264/2005 :-

In the result, Considering the fact and circumstances of the case, after determination of above issues, in the interest of justice, this suit is dismissed .
No Costs.

OS.No.30/2007 :-

In the result, Considering the fact and circumstances of the case, after determination of above issues, in the interest of justice, this suit is decreed,

i) by granting a decree of partition $\frac{1}{2}$ share over the suit properties be allotted to her after effecting metes and bounds.. No Costs.

Dictated to the Steno-Typist, transcribed and typed by her, corrected and pronounced by me in open court, this the 13th day of August 2026.

Principal District Munsif ,
Padmanabhapuram.

Plaintiffs' side witnesses in O.S.No. 30 /2007 :-

1. P.W.1. Mrs.Mary Anjel @ Anjilammal
2. P.W.2. Mr.Chelladurai
3. P.W.3. Mr.Felix Joe Prakash
4. PW.4. Mr. Justin Bright

Defendants' side witnesses In. O.S.No.264/2005:

1. D.W.1 – Mr.Sam Raj
2. D.W.2 – Mrs.Sheeba Rani
3. D.W.3. - Mr. Sam Sasi
4. D.W.4.- Mr.Russal Dhas

Plaintiffs' side Documents in O.S.No. 264/2005 and 30/2007 :

1. Ex.A.1	-	--	-	Original Marriage certificate of Maria Sevadhas.
2. Ex.A.2	-	29.09.2000	-	Original death certificate of Selvadhas
3. Ex.A.3	-	18.09.1989	-	Certified copy of sale deed

4. Ex.A.4	-	--	-	Original partition deed No.1481/1986
5. Ex.A.5	-	--	-	Original Mortgage deed No.3137/1958 (Malayalam)
6. Ex.A.6	-	--	-	Original Mortgage deed No.3233 of 1961
7. Ex.A.7	-	26.07.2007	-	Original will deed
8. Ex.A.8	-	02.05.2019	-	Certificate of Registration Department
9. Ex.A.9	-	--	-	“A’ Register

Defendants’ side Documents O.S.No. 264/20005 and 30/2007 : :-

1. Ex.B.1	-	06.04.1981	-	Original sale deed (Malayalam)
2. Ex.B.2	-	--	-	Original land tax receipts
3. Ex.B.3	-	--	-	Original Photos and CD
4. Ex.B.4	-	14.09.1992	-	Original sale deed
5. Ex.B.5	-	28.06.2000	-	Original will deed
6. Ex.B.6	-	--	-	Certified true copy of sale deed
7. Ex.B.7	-	--	-	Original house tax receipts
8. Ex.B.8	-	--	-	Original land tax receipts
9. Ex.B.9	-	--	-	Original electricity bill
10. Ex.B.10	-	18.09.1989	-	Original sale deed
11. Ex.B.11	-	03.07.1997	-	Certified copy of sale deed
12. Ex.B.12	-	--	-	Original Chitta
13. Ex.B.13	-	--	-	Certified copy of sale deed
14. Ex.B.14	-	19.02.1980	-	Copy of sale deed (Tamil Translation)
15. Ex.B.15	-	--	-	Original land tax receipts
16. Ex.B.16	-	--	-	Online patta

P.D.M.

PDMC Padmanabhapuram
O.S.No.264/2005 (CNR.No.TNKK08-000007 -2005)
and
O.S.No.30/2007.(CNR.No.TNKK08-000011-2007)
Draft/Fair Common Judgment:

Date: 13.08.2026

Mary Anjel @ Anjilammal (Died) & others Vs. Chellathurai and others 30
Mary Anjel @ Anjilammal (Died) & others Vs. Chellathurai and others

O.S.No264 of 2005 & 30 of 2007