

IN THE COURT OF ADDITIONAL DISTRICT MUNSIF, CUDDALORE

Present: Selvi.B.Phebe, B.A.,LLB.,
Additional District Munsif, Cuddalore
Tuesday, the 24th day of March – 2026

O.S.No.34/2022

TNCD-04000050-2022

V.Pethaperumal

...Plaintiff

-Vs-

1. The State of Tamilnadu,
rep. by its District Collector,
Cuddalore District.
2. The Assistant Commissioner (Excise),
Collectorate Building, Cuddalore-607 001.
3. The Tahsildar,
Taluk Office, Cuddalore-1.
4. The Joint II Sub-Registrar,
Joint II Sub-Registrar Office,
Cuddalore-2.

....Defendants

This suit came up for final hearing before this court on 23.03.2026 in the presence of learned Advocate Mr.K.Muthukumar for plaintiff, learned Advocate Mr.T.Murugan Pleader for Government for the defendants 1 to 4 upon perusal of records and having stood over for

consideration till this day, this court delivers the following:

JUDGMENT

The Suit for Declaration and Mandatory Injunction and for cost.

2. The case of the plaintiff in brief is as follows:

(i) The suit property originally belonged to the plaintiff's father S.Velayutha Giramani who purchased the same on 18.10.1957 in a Court auction held in E.P. No. 313 of 1956 in Small cause No. 44 of 1955 on the file of Sub-Court, Cuddalore. Since then he is in possession and enjoyment of suit property. Velayutha Giramani has created a registered mortgage in favour of the Government of Tamil Nadu represented by the His Excellency, the Governor of Tamil Nadu under a document dated 26.11.1971 in order to obtain a license for Abkari Privileges.

(ii) The Original mortgage deed dated 26.11.1971 was with the Government. Though the mortgage was executed, the possession of the property was with the plaintiff's father S. Velayutha Giramani till his death on 22.06.1988 and after his death the possession continued with the plaintiff. The said mortgage was created only as a security for the purpose of obtaining license for Abkari Privileges. The purpose of mortgage was lapsed on prohibition laid by the Government of Tamil Nadu.

(iii) The plaintiff's father S. Velayutha Giramani is not aware that the mortgage has to be discharged by way of registered instrument by the Government in his favour due to his ignorance of law. The plaintiff's father S.Velayutha Giramani died leaving behind his wife Muthulakshmi, son the plaintiff herein and a daughter Kalaiselvi as his legal heirs. Kalaiselvi has relinquished all her rights in the properties in favour of the plaintiff and her mother Muthulakshmi under a registered release deed dated 23.02.2011. Muthulakshmi died on 16.01.2018.

(iv) As the house in the property was in a dilapidated condition the plaintiff decided to demolish and construct a new one. The plaintiff in order to obtain loan for the construction of new superstructure has perused encumbrance certificate online. Only then he came to know that there was a registered mortgage in favor of the Government of Tamil Nadu represented by his Excellency the Governor of Tamil Nadu. So, the plaintiff has given Monday petition to the first defendant on 23.10.2017 during grievance day.

(v) The plaintiff sent a petition to the second defendant requesting to cancel the mortgage. The second defendant instead of taking steps to cancel the mortgage has sent a reply dated 20.02.2019 directing the plaintiff to send the G.O. regarding the prohibition imposed by the Government after 1971. All the efforts taken by the plaintiff, ended in vain. Hence the suit.

3. The Gist of the Written statement filed by the 3rd Defendant:

The defendants denied all the allegations of the plaintiffs but admitted that the defendant has demanded to produce the G.O. It was demanded for the reason that the said G.O. was not available with the office at that time. In fine sought to dismiss the suit.

4. Records were perused and the following issues were framed:

1. Whether the plaintiffs are entitled for the relief of Declaration as prayed for?
2. Whether the plaintiff is entitled for the relief of Mandatory injunction as prayed for?
3. To what other reliefs the plaintiffs are entitled for?

5. Witness PW1 is examined and Ex.A1 to Ex.A16 were marked on the plaintiff's side and one more additional witnesses were examined as PW2. No witnesses were examined and no documents were marked on defendant side.

6. Arguments:

(i) The learned counsel for the plaintiff reiterated the plaintiff's averments and argued that the suit property originally belonged to plaintiff's father namely S.Velayutha Giramani vide., Sale deed dated 18.10.1957 through court auction in E.P.No.313/1956 in small cause No.44/1955. Since then he is in possession and enjoyment of the suit property till his death on 22.06.1988. The

plaintiff's father has created a Registered simple Mortgage in favour of Government of Tamilnadu dated 26.11.1971 and obtained abkari privileges license. However, the possession was with the plaintiff's father. After his death the plaintiff was in possession of the suit property. Mortgage lapsed as government laid prohibition to the above policy. However, due to the ignorance of plaintiff's father the Mortgage was not discharged. The efforts taken by plaintiff to discharge it ended in vain. The Mortgage is discharged by efflux of time and the debt is also time-barred. There is no subsisting liability on the plaintiff.

(ii) The learned counsel for the defendants reiterated the averments in the written statement and argued that, as per law the alleged Mortgage is lapsed under efflux of time and there is no need to execute a document canceling the alleged Mortgage. Once prohibition is enforced by government a document executed for that purpose comes to an end. It is admitted that the defendant has demanded the G.O as it was not available in the office. Hence sought to dismiss the suit.

7. Analysis:

(i) The case of the plaintiff is that the suit property originally belonged to his father who executed a simple Mortgage in favour of Government of Tamil Nadu to obtain abkari privileges. Despite the Mortgage, the suit property was in

possession and enjoyment of plaintiff's father and in the hands of plaintiff after his father's demise. Further, he stated that the said policy was disowned by government after 1971 and hence the Mortgage has lapsed. However, due to the ignorance of the plaintiff's father, he failed to get it discharged. Hence, this suit for discharge of Mortgage. To prove his case plaintiff relied on ExA1 to ExA16 and examined himself as PW1 and also examined an additional witness as PW2.

(ii) **ExA1** is the Sale Certificate in favour of Shri Velayutha Giramani for property in T.S.No.1247 comprising 3872 sq.fts of land, stating that he is the purchaser of property therein vide., Court's public auction on 09.10.1957. It further shows that the Sale was confirmed on 18.10.1957. **ExA2** is the Mortgage deed dated 26.11.1971 in Doc.No.1658/1971 executed by S.Velayutha Girmani in favour of Governor of Tamil Nadu. **ExA3** is the Encumbrance certificate in Doc.No.434/2016 dt.12.02.2016 for the period from 01.01.1967 to 31.01.1986. It shows the encumbrance of Mortgage in favour of Government of Tamilnadu dt.26.11.1971. **ExA4** is the Judgment and Decree in O.S.No.760/1988 wherein the court has declared the plaintiff, his sister and mother as the legal heir of deceased S.Pethaperumal @ Velayutham. **ExA5** is the Release deed dt.23.02.2011 in favour of Muthulakshmi and Pethaperumal by Kalaiselvi. **ExA6** is the Acknowledgment receipt of Monday petition dated 23.10.2017. **ExA7** is the Reply dated 20.02.2019 requesting the plaintiff to present before assistant commissioner on 07.03.2019

with relevant documents and G.O on prohibition.

(iii) **ExA8** is the Reply dated 16.07.2019 to take necessary action and to report the same to the plaintiff. **ExA9** is the Letter dated 01.08.2019 requesting necessary details as to the encumbrance, discharge of debt and Certificate for the same. **ExA10** is the Letter dated 11.03.2020 by plaintiff to Joint Sub Registrar II to remove the encumbrance. **ExA11** is the Reply dated 17.03.2020 by Joint II Sub Registrar requesting to discharge the Mortgage debt to remove encumbrance. **ExA12** is the Legal notice dated 07.12.2021 along with receipts. **ExA13** to **ExA16** are the acknowledgment cards for the same.

The defendants admit the discharge of Mortgage by efflux of time. No oral and documentary evidence were adduced on the side of defendants.

8. Issue No.1 to 3:

(i) The plaintiff claim that suit property originally belonged to his father who died leaving behind his wife, plaintiff and daughter as legal heirs. Plaintiff relies on Ex.A5 to prove that both the mother of plaintiff and his sister has executed release deed in his favor with regard to the suit property. However, Ex. A5 was written by Plaintiff's sister in favor of plaintiff and his mother. It is pleaded that plaintiff's mother has died on 16.01.2018. This was not specifically disputed by the defendant and hence deemed to be admitted.

(ii) The plaintiff submits that there is an encumbrance in suit property. The plaintiff's father has executed a mortgage in favor of the Governor to obtain Abkari License. It remains undischarged. The plaintiff claims that this debt is discharged by efflux of time, and he is not liable to pay any debt under the said mortgage deed. Though defendants admit the above statement during arguments, no documents were filed by either side to prove the same.

(iii) That being the case, this court is of the view that Ex. A2 the simple mortgage deed creates charge upon the property. The conditions stipulated thereunder is as follows:

*“Whereas the above named mortgagers by a bond under their hands and seals dated the 26th day of November 1971 became jointly and severally bound with one Thiru.K.S.Bethaperumal who was the purchaser of certain abkari privileges the conditions and stipulations whereof are contained in licence No.34 Navaneetham agar dated the 13th day of August 1971 issued by the collector of South Arcot, Cuddalore unto the Governor of Tamil Nadu **in the sum of Rs.21,100.00 to be paid to the Governor of Tamil Nadu his Successors of assigns for which payment they bound themselves their heirs, executors, Administrators and representatives firmly by the said bond**”*

(iv) From the above terms, it could be seen that the plaintiff's father has bound himself, his legal heirs to discharge the mortgage debt. One cannot plead

that those debts are discharged by efflux of time. Even the plaintiff in his chief examination has stated that his father should have paid the said amount and should have got the mortgage discharged. The relevant excerpt is as follows:

"அடமானத்தை பைசல் செய்து அதனை பதிவு செய்ய வேண்டும் என எனது தந்தைக்கு தெரியாததால் அவ்வாறு மேற்படி அடமானத்தை ரத்து செய்து பதிவு செய்ய எனது தந்தை நடவடிக்கை ஏதும் எடுக்கவில்லை."

(v) Though it is true that the period of limitation to enforce the mortgage deed either by way of specific performance or for recovery of money has expired, one cannot plead that it discharges the property from mortgage, as the said amount would be a charge on the property. The law governing the same is Section 57 of the Transfer of Property Act, 1882 as the plaintiff herein is seeking to free the property from encumbrance. The scope of the provision in detail is dealt by the Hon'ble Kerala High Court in the case of *M.P. Varghese v. Annamma Yacob* reported in **2020 SCC OnLine Ker 3321**. That being the case, this court is of the view that the plaintiff is bound to pay the mortgage amount under the simple mortgage deed and then on presenting the receipt of same, the defendants are bound to remove the encumbrance in the revenue records.

(vi) In fine, the plaintiff is to tender the amount of Rs.21,100/- the capital amount mentioned in the mortgage deed to the 2nd defendant, who in-turn shall

acknowledge the receipt of said amount. It is, resultantly, declared that on such payment by the plaintiff, the suit scheduled property will stand free from the charge on it, created as per the terms of the Mortgage Deed in Document No.1658/1971. **In light of all the above discussions, Issue No.1 and 2 is answered in favor of the plaintiff. As for Issue No. 3, parties are not entitled to any other reliefs.**

In fine, this court is inclined to decree the suit with the following modified reliefs:

1. The plaintiff is hereby directed to pay Rs.21,100/- in favour of 2nd defendant for which he has to tender acknowledgment of receipt.
2. Consequently, the suit scheduled property is declared to be free from encumbrance and the registered Mortgage dated 26.11.1971 in favour of the Government of Tamilnadu by S.Velayutha Giramani would be statutorily discharged.
3. Mandatory injunction is granted directing the 4th defendant to record in the book of encumbrance that the registered Mortgage deed dated 26.11.1971 was discharged after verifying the receipt of payment of Rs.21,100/- to 2nd defendant.
4. No order as to costs.

Dictated by me and directly typed in the computer by Steno typist and printed

out by her and corrected and pronounced by me in open court, on this day, the 24th day of March 2026.

Additional District Munsif,
Cuddalore.

List of Witnesses on Plaintiffs' side:

PW1 – Mr.Petha Perumal, S/o.Velayutha Gramani. (Plaintiff)

PW2 – Mr.Ponnambala Vasan, S/o.Purushothaman.

List of Documents on Plaintiffs' side:-

ExA1	18.10.1957	Sale Certificate	Original
ExA2	26.11.1951	Mortgage Deed	Copy
ExA3	01.02.2016	Encumbrance certificate	Original
ExA4	31.10.1998	Judgment & Decree in O.S.No.760/1988	Copy
ExA5	23.02.2011	Release Deed	Copy
ExA6	23.10.2017	Acknowledgment receipt of Monday petition	Copy
ExA7	20.02.2019	Reply	Original
ExA8	16.07.2019	Reply	Original
ExA9	01.08.2019	Letter	Original
ExA10	11.03.2020	Letter by plaintiff to Joint Sub Registrar-2	Copy
ExA11	17.03.2020	Reply by Joint-II Sub Registrar	Original

ExA12	07.12.2021	Legal Notice	Copy
ExA13	-	Acknowledgment Card	Original
ExA14	-	Acknowledgment Card	Original
ExA15	-	Acknowledgment Card	Original
ExA16	-	Acknowledgment Card	Original

List of Witness and Documents on Defendants' side: -Nil-

Additional District Munsif,
Cuddalore.

ADM Court, Cuddalore.
Fair Judgment
