

**IN THE COURT OF THE II ADDITIONAL DISTRICT MUNSIF,
NAGERCOIL.**

Present : Selvi. V. Sivaranjani, B.A., L.L.B.,

II Additional District Munsif, Nagercoil

Wednesday, on the 15th day of April, 2026.

I.A. No.10 of 2025 in O.S.No.79 of 2019

CNR No.TNKK04-000152-2019

1. Meena

2. B. Muthuswamy

... Petitioners / Defendants

-vs-

1. T. Ramachandran

2. Kannan

3. Thangam

(Amended as per order in I.A.No.11 of 2026

dated 05.03.2026)

... Respondents / Plaintiffs

This Petition came up before this Court on 30.03.2026 for a final hearing in the presence of Mr. A. Subramonia Pillai, learned Counsel for the Petitioners / Defendants and Mr. H. Sthanu Subramony, learned Counsel for the Respondents / Plaintiffs and upon hearing both sides, perusing the case records, and having stood over for consideration till this day, this court hereby delivers the following:

ORDER

The Petitioners have filed under Section 62 of Transfer of Property Act, Rule 154 of Civil Rules of Practice and Section 151 of the Code of Civil Procedure, seeking to pass an order to permit the 2nd defendant to deposit the mortgage amount of Rs.400/- in court and chellan may be issued to deposit the said amount in court.

2. Gist of Averments in the Petitioners Petition :

The petitioner is the 2nd defendant in this suit. The petitioner stated that the plaintiffs have filed the suit for declaration of their alleged title and possession of the plaintiff over the plaint Schedule property and for other reliefs.

3. The petitioners further stated that the plaint schedule property originally belonged to one Abathukatha Pillai and on 07.03.1951 he had executed an usufructory mortgage deed in favour of one Shenbagam Ammal. During the existence of the said mortgage, on 23.04.1952 the said Abathukatha Pillai and his children entered into a registered partition deed bearing No.1087/1952. As per the said partition deed the plaint schedule property had been allotted to his elder son Chithambarathanu Pillai and that on 11.12.1952 he also executed another otti deed in favour of the said Shenbagam Ammal. That on 30.09.1961 the said Shenbagam Ammal had executed an assignment of otti deed

in favour of one Madi Pillai for Rs.400/-. That on 18.04.1968 the said Madi Pillai had assigned the said otti deed in favour of one Thirumal Pillai for Rs.400/- . The said Thirumal Pillai is the father of the plaintiffs. The Thirumal Pillai died on 28.07.1978 and his wife Shenbagavadivu also died on 12.02.2019. Thus the present plaintiffs are the legal heirs of Thirumal Pillai and they are the assignee mortgagees of the plaint schedule property.

4. The petitioners further stated that the said Chithambarathanu Pillai S/o. Abathukatha Pillai who was the 2nd mortgagor under the mortgage deed dated 11.12.1952. The said mortgagor Chithambarathanu Pillai married one Padmavathi in the year 1954 and within one year due to the difference of opinion arose between them she had deserted him and married one Subbiah Pillai from Krishnancoil. Thereafter the Chithambarathanu Pillai had not married anybody and went away from the native place. The 2nd defendant got information from his relatives that he died in the year 1999. He died intestate. He had no issues. The parties to the release deed dated 04.09.2014 are the legal heirs of late Abathukatha Pillai as well as Chithambarathanu Pillai. That can be seen from Ex.A12 partition deed dated 23.04.1952. As such they alone are the legal heirs of the original mortgagee Abathukatha Pillai and his son Chithambarathanu Pillai.

5. The petitioners further submits that PW1 had admitted the said fact in his cross examination and deposed that the legal heirs of Abathukatha Pillai had executed the Ex.A5 released deed in favour of 2nd defendant and the same is as follows: "வா.சா.ஆ.1 எழுதிக் கொடுத்த ஆபத்துகாத்த பிள்ளை வாரிசுகள் 2-ம் பிரதி வாதி பெயருக்கு வா.சா.ஆ.5 விடுதலைப்பத்திரம் எழுதிக்கொடுத்தார்கள் என்றால் சரிதான்" So far the said mortgage is not yet redeemed. That the 2nd defendant is to ready to deposit the mortgage amount of Rs.400/- in court and to which he is entitled.

6. As per the Hon'ble Supreme Court ruling reported in AIR 2014 SC 3447 FB, usufructory mortgagor's right under Section 62 of Transfer of Property Act continue till mortgage money is paid. Mere expiry of period of 30 years from date of mortgage does not extinguish the right of mortgagor under section 62 of Transfer of Property Act. As such the 2nd defendant may be permitted to deposit the mortgage amount of Rs.400/- in court. If not irreparable loss and hardship will be caused to the defendants and the same may not be compensated by money at all. Hence, this petition is to be allowed.

7. **Gist of Averments in the 1st Respondent's Counter:**

The counter was filed by the 1st Respondent and adopted by the 2nd and 3rd Respondents.

8. The respondents stated that these petitioners / defendants have no right over the property. The mortgage was sold to the parties through registered

documents. Therefore the assignment of right does not arise. The purchase extinguished the mortgagor right. These defendants are not the legal heirs of the said Chithambarathanu Pillai. The burden of proving the legal heir is on the defendants, particularly 2nd defendant.

9. The respondents also stated that entire reading of the Exhibit A12 and other documents and deposition of the D.W.1. will clearly prove that these defendants are not the legal heirs of Late Abathukatha Pillai or Chithambarathanu Pillai. The Abathukatha Pillai has no right over the property after execution of Exhibit A12 and these defendants cannot rely on Exhibit A1 to prove the genealogy. Till date no death certificate or legal heir certificate could be produced by the defendant. The entire evidence has to be read and mere one statement cannot be taken into admission to decide the entire case.

10. The respondents further submitted that the offer for the deposit of Rs.400/- cannot be entertained. This suit is not for redemption of mortgage or deposit of mortgage money. The issue and the evidence were not advanced for redemption or deposit of the payment of the mortgage amount.

11. The respondents stated that the petitioner / defendants in their Written Statement stated that it is not a mortgage with possession, on the other hand now in this petition it is averred that "So far the said mortgage is not yet redeemed" Therefore the defendants are estopped from saying any averment which is against the judicial admissions in the Written Statement and deposition.

The Hon'ble Supreme court citation Reported in A.I.R. 2014 S.C. 3447 FB will not be applicable to this case in any way By willful suppression of the content of the document and the act of parties the mortgage was already time barred by extinguishment. The 30 years of period as alleged in this petition will not be applicable in this subject matter of the mortgage.

12. No sufficient reasons were stated to deposit the mortgage amount of Rs.400/- before this Honourable Court. There is no preliminary or final decree of mortgage passed by any of the court to permit the petitioners/defendants to deposit the mortgage money. The petitioner superseded the procedure of redemption and trying to deposit the mortgage money before the court to get an unlawful remedy. In any view of the matter the petition is not maintainable. Hence the petition is to be dismissed.

13. The point for consideration is whether the above petition has to be allowed or not?

14. Heard both sides. Records perused.

15. The case of the petitioners is that the suit property was originally under an usufructuary mortgage and the same has not yet been redeemed. According to the petitioners, he is entitled to redeem the mortgage and is ready to deposit the mortgage amount of Rs.400/- before this Court .

16. Per contra, the respondents / plaintiffs strongly oppose the petition stating that the petitioners had no right over the property, that the mortgage right is already extinguished and that the petitioners are not a legal heir of the original owner. They also argue that this suit is not for redemption of mortgage and therefore such deposit cannot be allowed in this proceeding.

17. Upon careful perusal of the pleadings and considering both side arguments, this court is of the considered view that the present petition is only for the limited purpose in order to permit the petitioners to deposit a small amount of Rs.400/- in court. In particular, this court is not deciding whether the petitioners had any right over the property, whether he is a legal heir, whether the mortgage is still valid or whether he has a right to redeem the mortgage. All these issues are kept completely opened and will be decided only at the time of final disposal of the suit after full fledged trial. As such, this petition does not involve deciding any complicated rights at this stage.

18. Mere deposit of Rs.400/- will not create any new right in favour of the petitioners, nor will it take any right of the respondents. This court is also of the view that permitting such deposit will not cause any harm or prejudice to the respondents. The respondents will have full opportunity to present their case, produce evidence and challenge the claims of the petitioners during the trial. Therefore, their rights are hereby fully protected.

19. Furthermore allowing this petition does not amount to acceptance of the petitioners claim in any manner and it will not bind or influence the final decision of this court in the suit. Hence, in the interest of Justice, this court finds it appropriate to permit the petitioners to deposit the amount while clearly safeguarding the rights of both parties. In the light of above facts and circumstances, this court is inclined to allow this petition.

In the result, this petition is allowed. No cost.

The Order directly dictated to steno-typist typed in computer, and after making necessary corrections, and pronounced by me in the open court, this the 15th day of April 2026.

II Additional District Munsif,
Nagercoil.

Petitioners side witnesses and documents -: Nil.

Respondents side witnesses and documents : Nil.

II Additional District Munsif
Nagercoil.

*II ADM, Nagercoil.
Draft/Fair Order
I.A.No.10/2025 in
O.S.No.79/2019
Date: 15.04.2026.*