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

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

II Additional District Munsif, Nagercoil.

Tuesday, on the 7th day of October, 2025.

I.A. No.13 of 2025 in

O.S. No. 196 of 2011

CNR No.TNKK04-000551-2011

1. Rajappan

2. Chidambaram

3. Lekshmanan @ Ravichandran

4. Asokan

5. Chenthil

6. Nagarajan

7. Ramadhas @ Babu

8. Arunachalam @ Reghu

9. Lekshmi

10. Mariyammal

11. Chithra

.... Petitioners/defendants

-vs-

Muthammal

.... Respondent/Plaintiff

This petition came before this court on 26.09.2025 for a final hearing in the presence of Mr. N.S. Arumughavel, learned counsel for the petitioners / defendants and Mr. A. Sahaya Arasu, learned counsels for the Respondent / Plaintiff 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 petitioner had filed the above petition under Order VIII Rule 3 and Section 151 of the Code of Civil Procedure, seeking to permit the petitioners to file additional written statement and this court to accept the same.

2. Gist of Averments in the Petitioners Petition :

The Petitioner is the petitioner herein. The plaintiff filed this suit for injunction based on the sale deed obtained in her favour. The petitioners/defendants, filed our Written Statement. The defendants 2, 3, 5, 6, 7, 13, 15 and 16 filed a Counter claim in the suit. The petitioner contended that neither the plaintiff nor her vendors ever had any title, possession and enjoyment over the suit property. The sale deed No.1741/2004 dated 11.06.2004 in favour of the plaintiff is a fraudulent, collusive, created, illegal document which could not confer on her any title to the suit property. According to the plaintiff's averments in the plaint, the plaint schedule property and more area originally belonged to Madathi, who by a sale deed No.755 / 1089 M.E purchased the properties. But the plaintiff suppressed the fact that, after the death of Madathi, her son Arunachallam Mooppanar mortgaged the very same property ie, the plaint schedule property in favour of one Nadarajan on 12.09.1968 by means of a

mortgage deed No.3523 / 1968 registered before the District Registrar office Nagercoil. Neither the mortgagor redeems the mortgaged property during his lifetime nor his legal heirs; those who were entitled to partition the mortgaged property redeem the mortgage. The mortgagee Nadarajan after receiving the principal money due on mortgage and the accrued interest thereon, made over the mortgage in favour of one Meena by means of a registered Deed No. 3982/1972 dated 03.10.1972. The fact of made over is known to us when we engaged a document writer on 20.06.2025 to apply for an encumbrance certificate. The facts of the made over of mortgage, non-redemption of mortgage, the existence of encumbrance over the suit property etc, are known to us only now when petitioners applied for an encumbrance certificate and some documents pertaining to the plaint schedule property. Now more than 55 years have lapsed. The mortgagor's right or his legal representative's right or anybody claiming any right over the mortgaged property to redeem is legally barred and their right to redeem is legally extinguished due to Limitation Act. The mortgagee or the person who obtained made over or anybody claiming under them can treat the mortgaged property as absolutely their own. The above said Meena was in possession of the mortgaged property in her capacity as a mortgagee under made over and also as legal heir of the mortgagor. Meena and her predeceased husband had no issues. After her death her sisters Sangumuthu, Vellammal, Saraswathi, and Madathi inherited all her rights including the right

over the mortgaged property.

3. This being the position, the question that arose for consideration is whether the executor of the document in favour of the plaintiff is legally entitled to execute a sale deed when the right of redemption is barred by operation of Law. The new ground of defence which has arisen after the presentation of the written statement is submitted in our additional written statement. The question of law involved in the matter must be decided for the proper adjudication of the suit. Therefore, it is extremely necessary to file an Additional Written Statement of our defence. If an additional written statement is not filed, it will drastically affect our interest. Hence today petitioners file an Additional Written Statement. Hence, it is necessary to permit the petitioners to file an additional Written Statement, otherwise, petitioners will be put to irreparable loss and damages. Hence, this petition is to be allowed.

4. **Gist of Averments in the Respondent/Plaintiff's Counter:**

The Respondent / Plaintiff has filed counter stating in the petition except those which are specifically admitted or otherwise dealt with. The respondent/plaintiff denies all the averments stated in para 2 of the above said petition. The Plaint schedule property originally belonged to one Madathi by a sale deed bearing Number 755/1089 M.E. After her death the legal heirs namely Mani and 7 others of the deceased executed power deed in favour of

Azhagappan and on the basis of power deed they executed sale deed infavour of the Respondent/plaintiff on 11.06.2004 as document No.1741/2004. The above petition filed by the defendants is not a genuine one. Without any proper evidence he filed this petition purposely to drag on the suit. The Land Tax receipt stands in the name of the Respondent/Plaintiff. The Certificate of Extract from the Town Survey Land Register issued by the settlement Tahsildar stands in the name of the Respondent/Plaintiff. The Petitioners/Defendants ulterior motive is to only drag on the matter in various manners for not to dispose this suit. Hence, to accept the counter and dismissed the petition.

9. In order to prove the respective cases, on the side of the petitioners Exs. P1 to P4 were marked. On the side of the Respondent Exs. R1 to R3 were marked.

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

6) Point:

Heard both sides. Records perused. The petitioner is the 1st defendant has filed this petition for and on behalf of the other defendants seeking leave to file an Additional Written Statement. The original written statement was filed on 17.08 2011. The petitioner stated that the plaintiff filed this suit for injunction based on the sale deed obtained in her favour. The petitioner further contended that neither the plaintiff nor her vendors ever had any title, possession and

enjoyment over the suit property. The sale deed No: 1741/2004 dated 11.06.2004 in favour of the plaintiff is a fraudulent, collusive, created, illegal document which could not confer on her any title to the suit property.

7. The plaintiff claims the property originally belonged to one Madathi under sale deed No. 755/1089 M.E. The petitioner says the plaintiff hid the fact that after Madathi's death, her son Arunachallam Mooppanar mortgaged that same property on 12.09.1968 (Mortgage deed No. 3523/1968). Neither he nor his heirs ever redeemed the mortgage. The mortgagee, Nadarajan, after being paid principal and interest, made over the mortgage to Meena by Ex.P1 is the Mortgage made over deed No. 3982/1972 on 30.10.1972. These facts only came to light when an encumbrance certificate was obtained on 20.06.2025 for which the petitioner produced encumbrance certificates which are marked as Ex.P2, Ex.P3 and Ex.P4. The petitioner further avers that now more than 55 years have passed, so any redemption right is now barred under the Limitation Act and is extinguished. Therefore, the mortgagee or the person to whom the mortgage was transferred may claim full rights to the property. Meena was in possession as mortgagee, and after her death as she had no children, her sisters Sangumuthu, Vellammal, Saraswathi, and Madathi inherited her rights, including over the mortgaged property.

8. The respondent opposes the petition, contending that the suit property originally belonged to Madathi via sale deed No. 755/1089 M.E, that after her death her legal heirs executed a power deed in favor of Azhagappan, who then executed the impugned sale deed in favor of the plaintiff on 11.06.2004 via Doc. No. 1741/2004 and the petition is a sham attempt to delay the suit. Also, averred that an Encumbrance Certificate dated 02.09.2025 (Ex. R1), the land tax receipts (Ex.R2) along with the certification extract from the Town Survey Land Register (Ex. R3) issued by the Settlement Tahsildar in favour of the plaintiff supports the plaintiff's claim of title.

9. On perusal of the additional written statement and the exhibits, it is clear that the new defence points raised now are set out in the proposed additional written statement which is the result of the newly discovered grounds which could not have been raised earlier. Hence, this court is of the considered view that on the basis of the new facts discovered, the key issue for trial is whether the right to redeem is legally barred, if yes can someone still execute a sale deed in favor of the plaintiff? To have a proper and effective adjudication of the suit and most importantly to avoid multiplicity of proceedings, it is just and necessary to accept the additional written statement even at this belated stage. Hence, in the light of above facts and circumstances, this court is inclined to allow this petition on conditional cost.

As a result,

This petition is allowed, on the condition that the petitioners shall pay a sum of Rs.1,000/- (Rupees One Thousand only) payable to the Mediation and Conciliation Centre, Kanniyakumari at Nagercoil on or before 13.10.2025. otherwise, this petition would be dismissed. Call on 13.10.2025.

Dictated to the Steno-Typist, and typed by her directly in the Computer, corrected and pronounced by me, in open court this, the 07th day of October 2025.

II Additional District Munsif,
Nagercoil.

Petitioners side witness :- - Nil -

Petitioners side Documents:-

Ex.P1	30.10.1972	Copy of Mortgage madeover deed bearing Doc. No. 3982/1972
.P2	24.06.2025	Copy of Encumbrance certificate
Ex.P3	24.06.2025	Copy of Encumbrance certificate
Ex.P4	...	Copy of Encumbrance certificate

Respondent side witness: - Nil -

Respondent side Documents:

Ex.R1	02.09.2025	Copy of Encumbrance certificate
Ex.R2	02.03.2020	Copy of Land tax receipt
Ex.R3	02.09.2025	Copy of Extract from the Town Survey Land Register

II Additional District Munsif,
Nagercoil.

Draft/Fair Order
I.A.No.13/2025 in
O.S.No.196/2011
Date: 07.10.2025.
II ADM Court, Nagercoil.