

TNMD010103452022



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**IN THE COURT OF THE I ADDITIONAL DISTRICT JUDGE,
MADURAI**

**Present: Thiru. S. John Sundarlal Suresh, B.Sc., M.L.,
I Additional District Judge, Madurai.**

Saturday the 06th day of June 2026.

A.S.No.62/2025

CNR No. TNMD010103452022

V. Anjalai

--- Appellant / 1st Defendant

/VS/

1. R. Abdul Kalam

--- 1st Respondent/Plaintiff

2. Rajaram

--- 2nd Respondent /2nd Defendant

On appeal from the Judgment and decree in O.S.No.887/2018 dated 30.03.2022 on the file of Principal Sub Judge, Madurai.

R. Abdul Kalam

--- Plaintiff

/VS/

1. V. Anjalai

2. Rajaram

--- Defendants



This appeal coming on 03.06.2026 for final hearing in the presence of advocate Thiru.T.Selvam for the appellant and advocate Thiru.R.Parthasarathy for the 1st respondent, but no representation for 1st respondent, the 2nd respondent was called absent and set exparte and perusing the grounds of appeal, judgment and decree of the trial court and other material papers connected thereto and upon hearing the arguments of appellant and 1st respondent and having stood over for consideration till this day, the court delivered the following

JUDGMENT

The plaintiff had filed the suit as against the 1st and 2nd defendants, seeking the relief of declaration, delivery of vacant possession and with cost. The trial court after taking into consideration of the evidence emerged on records decreed the suit . Aggrieved over the same the 1st defendant has filed this appeal before this court.

The litigative status of the parties is referred as in the lower court in this appeal for the sake of convenience.

2. The contents of the plaint filed by the plaintiff in the trial court in brief as follows.

The plaintiff is the absolute owner of the suit property by means of the registered sale deed dated 06.11.2017. The suit property is a housing board property which was originally allotted to one J. Saroja, wife of S. Jayaraman on 01.07.1986 and after allotment, the said J. Saroja had entered into a lease-cum-sale



agreement dated 05.06.1990 with the Tamil Nadu Housing Board. After the payment of the sale consideration in full, the Tamil Nadu Housing Board has executed a registered sale deed dated 25.10.2017 to the said J. Saroja who is the original allottee. Thereafter, the said J. Saroja has executed a registered sale deed dated 06.11.2017 in favour of the plaintiff for valuable consideration. After the purchase, the plaintiff mutated the Madurai Corporation property tax and the E.B. connection in his name. The plaintiff's father was working as a tanker lorry driver with the Indian Oil Corporation and was residing in Silayaneri. The plaintiff with the 2nd defendant and other members of family were residing in the suit property from 1996 to 2006. The said J. Saroja had executed a registered general power of attorney deed dated 16.4.1996 in favour of the 2nd defendant to look after and deal with the suit property. While it is so the said Saroja wanted to sell the suit property and accordingly she had executed the registered sale deed dated 06.11.2017 in favour of the plaintiff in respect of the suit property. After the plaintiff had purchased the property, the plaintiff met the 1st defendant during the middle of November 2017 and asked her to vacate the suit property as he is going to shift his family from Karikudi to Madurai and wanted the suit property for his living. The 1st defendant promised to vacate the suit property and sought 6 months time to hand over the vacant possession of the suit property and the plaintiff also agreed for the same. The 2nd defendant out of his animosity with the plaintiff has joined with the 1st defendant and in active collusion told the 1st defendant not to vacate the suit property and postpone the vacating of the suit property on one pretext or



another. When the plaintiff met the 1st defendant after 6 months i.e. during the middle of May 2018, the 1st defendant refused to vacate the suit property contending that she is an othidar under the 2nd defendant. There is no relationship of othidar between the plaintiff and the 1st defendant. The 1st defendant was permitted to occupy the suit property by the plaintiff after his purchase and hence, the 1st defendant is a permissive occupant of the suit property and the continued occupation of the suit property by the 1st defendant is illegal. Hence suit.

3. The contents of written statement filed by the 1st defendant in the trial court in brief as follows

The suit property was entrusted to the 1st defendant by the plaintiff's father on 02.09.2017. When the plaintiff purchased the suit property it is the duty of the plaintiff to bring notice regarding the purchase of the suit property to the 1st defendant either through his father or himself. But the suit property was handed over to the 1st defendant by the plaintiff's father on 02.09.2007 and the 2nd defendant executed a mortgage deed in favour of the 1st defendant and a sum of Rs.1,45,000/- was received by the 2nd defendant till 10.01.2016 from the 1st defendant regarding the suit property as mortgage. The plaintiff permitted the 1st defendant to occupy the suit property is false because the suit property was handed over to the 1st defendant by the plaintiff's father, the 2nd defendant and a mortgage was executed by the plaintiff's father who is the 2nd defendant to the 1st defendant. Hence the suit is to be dismissed.



4. The contents of grounds of Appeal filed by the appellant in brief as follows.

- The decree and judgment passed by the trial court is against law.
- The trial court failed to consider the truth of the evidence of the appellant / 1st defendant.
- The trial court has failed to consider the documents produced by the appellant / 1st defendant.
- The trial court did not consider that the 1st respondent/plaintiff's prayer against the appellant/ 1st defendant in OS No 887 of 2018 is not maintainable.
- The plaintiff could not seek remedy from the appellant /1st defendant to declare that "consequently directing the appellant / 1st defendant to deliver vacant possession of the suit property to the 1st respondent/plaintiff without any let or hindrance".
- The appellant / 1st defendant is in peaceful possession and enjoyment of the property as mortgagee for the mortgage amount a sum of Rs.1,50,000/- that the appellant /1st defendant has given money to the 2nd respondent/ 2nd defendant for mortgage the suit mentioned property because the 2nd respondent/2nd defendant is the power of attorney of the suit mentioned property that the 1st respondent/ plaintiff has agreed it in the plaint in O.S.No. 887 of 2018 that further the 1st respondent/plaintiff has agreed that the 2nd respondent/2nd defendant has given the suit mentioned property to the



appellant/1stdefendant which has been mentioned it in the plaint that the appellant / 1st defendant has spent money a sum of Rs.3,00,000/- (Rupees three Lakh only) for repairing works in the suit mentioned property and that appeal is to be allowed.

5. The points for the consideration

- 1 Whether the plaintiff is entitled for the relief of declaration and recovery of possession in respect of the suit property as prayed for?
- 2 Whether the relief of declaration and relief of recovery of possession sought by the plaintiff in respect of the suit property is maintainable in law in view of the fact that the appellant/1st defendant claim to have been in possession of the suit property on the basis of the othi deed executed by the 2nd defendant in the capacity of power agent of the original owner of the suit property?
- 3 Whether the judgment and decree of the trial court are correct in law?
- 4 To what other relief?

6.Point Nos. 1, 2 and 3

The specific case of the plaintiff is that the plaintiff had purchased the suit property from one Saroja who is the owner of the suit property by means of registered sale deed dated 06.11.2017. After the plaintiff had purchased the



property, the plaintiff met the 1st defendant during the middle of November 2017 and asked her to vacate the suit property. The 1st defendant promised to vacate the suit property and sought 6 months time to hand over the vacant possession of the same. But the 1st defendant refused to vacate the suit property contending that she is the othidar of the 2nd defendant. The 1st defendant is the permissive occupant of the suit property and continuous of her occupation of the suit property is illegal. Hence the suit is to be decreed.

7. The specific case of the 1st defendant is that the suit property was handed over by the father of the plaintiff to the 1st defendant on 02.09.2007 and the 2nd defendant executed the mortgage deed in favour of the 1st defendant. The 2nd defendant received a sum of Rs.1,45,000/- till 10.01.2016 from the 1st defendant with regard to the suit property. The suit property was handed over to the 1st defendant by the 2nd defendant who is the father of the plaintiff and mortgaged deed was executed by the 2nd defendant who is the father of the plaintiff in favour of the 1st defendant. Hence the suit is to be dismissed.

8. The learned counsel for the appellant/1st defendant contended that the 1st defendant has been in possession and enjoyment of the suit property on the basis of the mortgage deed which was executed between the 1st and 2nd defendants in respect of the suit property. Moreover the 2nd defendant let the said suit property to the 1st defendant in the capacity of the power agent of the original owner by name Saroja. Hence unless and until the mortgage/othi is redeemed, the suit filed by the



plaintiff seeking the relief of declaration and recovery of possession against the mortgagee of the suit property is unsustainable in law and liable to be dismissed. But the trial court on mis appreciation of the evidence emerged on records decreed the suit. Hence the judgment and decree of the trial court are unsustainable in law, liable to be set aside and that appeal is to be allowed.

9. Per contra the learned counsel for the 1st respondent/plaintiff contended that in fact the 1st defendant is under permissive occupant of the suit property. When the plaintiff is the title holder of the suit property he has every right to file the suit for declaration and recovery of possession in respect of the suit property as the 1st defendant creates cloud over the title of the suit property, claiming that she has been in occupation of the suit property in the capacity of othidar. Moreover the 1st defendant failed to prove the fact that she has been in occupation of the suit property in the capacity of othidar. Hence the occupation of the 1st defendant in respect of the suit property became illegal. The trial court on correct appreciation of the evidence emerged on records ultimately decreed the suit. Hence the well considered judgment of the trial court need not to be interfered in this appeal and that appeal is devoid of merits and liable to be dismissed.

10. This court carefully considered the above said submission of the learned counsel of the both parties and perused the records. It is pertinent to note that the suit property was sold by Tamil Nadu Housing Board by means of sale deed under Ex.A1 on 25.10.2017 in favour of one Saroja, in turn, the said Saroja sold the suit



property by means of sale deed under Ex.A2 dated 06.11.2017 in favour of the plaintiff. The title of the suit property is not seriously disputed by the defendants in particularly the 1st defendant. Under these circumstances, on cumulative appraisal of the evidence emerged on record, in the context of the sale deeds under Ex.A1 and Ex.A2, this court concluded that the plaintiff is the title holder of the suit property.

11. Moreover there is no dispute about the fact that the 1st defendant has been in possession of the suit property. The 1st defendant claim her possession in pursuance to the unregistered othi deeds under Ex.B1, Ex.B2 and Ex.B4, but so for the 1st defendant did not file any suit claiming the right of occupation over the suit property either against the 2nd defendant or the owner of the suit property on the ground that she is entitled to be in continuous possession in respect of the suit property unless until the mortgage is discharged. While it is so the unregistered mortgaged deeds under Ex.B1, Ex.B2 and Ex.B4 will not add any advantage to the case of the 1st defendant.

12. The judgment cited by the learned counsel for the appellant/1st defendant in **Rame Gowda (D) by Lrs ..vs.. M.Varadappa Naidu(D) by Lrs and another reported in AIR 2004 Supreme Court 4609** related to the concept of settled possession in respect of the one property where plaintiff therein failed to prove his title but proved his settled possession over the part of the said property which is vacant land . But the 1st defendant claimed to have been in the suit property which



is house in the capacity of the othidar in respect of the suit property. Hence the facts of the above said judgment cited by the learned counsel for the appellant/1st defendant will not be applicable to the facts and circumstances of the case. The yet another judgment cited by the learned counsel for the appellant/1st defendant in **Panneerselvam ..vs.. Anandan and others rendered by the Hon'ble High Court of Judicature at Madras dated 17.02.2022** published in internet, the legal dictum was laid down that the charge over the property with regard to the mortgage will continue even if the ownership changes. There can not be any quarrel about the said legal dictum laid down in the said judgment. But in this case, the 1st defendant neither proved the fact that she has been possession in suit property on the basis of the othi deeds nor claim any othi amount either from the 2nd defendant or the owner of the suit property by way of initiating appropriate proceedings under law. While it is so even if the case of the 1st defendant is true that she has been in possession of the suit property on the basis of the othi deed executed by the 2nd defendant in the capacity of the power agent of the original owner at worst the 1st defendant may claim charge over with regard to the suit property in respect of the mortgage/othi amount. But in this case, the 1st defendant neither proved that she has been in possession of the suit property on the basis of the alleged mortgage or othi deeds nor proved the fact that she has been in legal occupation of the suit property at present. When the plaintiff is the title holder of the property, he is entitled for the recovery of possession of the suit property from the defendants in particularly the 1st defendant. Under these circumstances on



cumulative appraisal of the evidence emerged on record, the trial court on correct appreciation of the evidence emerged on record and arrived correct conclusion and ultimately granted the relief of declaration and recovery of possession in respect of the suit property in favour of the plaintiff. Hence the well considered judgment and decree of the trial court need not to be interfered in this appeal and that the appeal is devoid of merits and liable to be dismissed. These points are answered accordingly.

13. Point No.4

Since above points are decided as above on the basis of the oral and documentary evidence the appeal is devoid of merits and liable to be dismissed. This point is answered accordingly.

In the result the appeal is dismissed confirming the judgment and decree of the trial court. Having regard to the facts and circumstances of this case, no order as to cost.

Dictated to the Stenographer, transcribed and typed by her in the computer, corrected and pronounced by me in open court, on this 06th day of June 2026.

I Additional District Judge,
Madurai.