

IN THE COURT OF DISTRICT MUNSIF, BODINAYAKANUR.

PRESENT: Thiru.A.Mohamed Hashim, B.A., B.L.,
District Munsif,
Bodinayakanur.

Thursday, the 09th day of July 2026

IA.No.19/2026
in
OS No.61/2020

1. Ayyammal (Died) ...1st Petitioner / Plaintiff

2. Manoharan

3. Aberna Kumari

4. Brasanna Devi

5. Muthu Vignesh

.... 2 to 5 Petitioners / 2 to 5 Plaintiffs

Vs

1. P.Seeniammal

2. P.Baskaran

3. P.Senthilkumar@Kumaran 1to 3 Respondents / 1 to 3 Defendants

4. M.Palpandian 4th Respondent / Proposed 4th defendant

This Petition is coming up before this Court on 03.07.2026, in the presence of Thiru. D.Karthick Raja Learned Advocate for the Petitioners/Plaintiffs, and presence of Thiru. Pon.Chinnasamy Learned

Advocate for the Respondents/Defendants 1 to 3 and the notice to the 4th respondent is dispensed. Upon perusing the case records and having stood over for consideration till this day, this Court hereby delivered the following...

ORDER

1. The plaintiffs in the main suit have filed this petition under Order 39 Rule 1 of CPC seeking Temporary Injunction restraining the defendants from interfering in the peaceful possession of the plaintiffs in the suit property.

2. The case of the petitioners in brief:-

i) The suit property was mortgaged in favour of one Dharmar under a registered mortgage deed dated 21.03.1986. Thereafter, Dharmar executed a registered made-over deed dated 24.02.1989 in favour of the 1st plaintiff assigning all his rights under the mortgage. Without redeeming the mortgage in favour of the 1st plaintiff, the defendants created a forged discharge receipt dated 07.05.1992 as if the mortgage had been discharged. Hence, the main suit came to be filed.

ii) During the pendency of the suit, the 2nd defendant and his sons executed a registered sale deed dated 13.03.2026 in favour of the 4th respondent conveying their alleged 4/5 share in the suit property. The said sale deed has been brought into existence only to defeat the rights of the plaintiffs

in the pending suit. The 4th respondent was fully aware of the pendency of the suit at the time of purchase. The plaintiffs are in the possession of the suit property ever since the date of mortgage and the 4th respondent is now attempting to interfere in the peaceful possession of the plaintiffs over the suit property.

3. The case of the respondents in brief:-

i) All the averments stated in the affidavit filed in support of the petition are false. The suit property originally belonged to the 2nd plaintiff, the 1st defendant, the late Prabakaran and the late Ayyappan by virtue of a registered partition deed dated 02.09.1975. The 2nd plaintiff and the late Prabakaran mortgaged the suit property in favour of Dharmar under a registered mortgage deed dated 21.03.1986 for a sum of Rs.20,500/-. Thereafter, the 1st plaintiff paid the mortgage amount to Dharmar and obtained a registered made-over deed dated 24.02.1989 in her favour. Subsequently, the defendants, the 2nd plaintiff and the late Prabakaran repaid the entire mortgage amount together with interest to the 1st plaintiff. Upon receipt of the mortgage amount, the 1st plaintiff executed a discharge receipt and handed over the same to the 2nd plaintiff.

ii) Thereafter, the defendants 1 to 3, the 2nd plaintiff and the late

Prabakaran mortgaged the suit property in favour of Chokkiah and Chandra under a registered mortgage deed dated 15.02.1999. The 1st plaintiff was fully aware of the said transaction. Subsequently, the defendants 1 and 3 and the late Prabakaran executed a registered relinquishment deed dated 01-12-2005 in favour of the 2nd defendant in respect of their 3/5 share in the suit property, whereby the 2nd defendant became entitled to an aggregate 4/5 share in the suit property. The 2nd defendant thereafter discharged the mortgage in favour of Chokkiah and Chandra and redeemed the property.

iii) The plaintiffs have no manner of right to challenge the registered partition deed dated 01.12.2005. The plaintiffs have also failed to implead the legal heirs of the late Prabakaran, who are necessary parties to the suit. The suit itself is barred by limitation under Article 64 of the Limitation Act. The present suit has been instituted at the instance of the 2nd plaintiff and the 1st plaintiff has not made out any prima facie case for grant of an order of injunction. The plaintiffs were never in the possession of the suit property. Hence, the present petition is liable to be dismissed.

4. The learned counsel for the plaintiffs reiterated all the averments set out in the affidavit filed in support of the petition and would submit that the suit property is the ancestral property of the 2nd plaintiff and that the 1st

plaintiff has acquired the rights of the original mortgagee by virtue of the registered made-over deed and the plaintiffs are in possession and enjoyment of the suit property. The 4th respondent, having purchased the property during the pendency of the suit, is attempting to interfere in the possession of the plaintiffs over the suit property. Therefore, in order to preserve the suit property and protect the rights of the plaintiffs pending disposal of the suit, the present application for temporary injunction deserves to be allowed.

5. *Per contra*, the learned counsel appearing for the defendants 1 to 3 reiterated all the averments set out in the counter and would submit that the main suit itself is vexatious and hopelessly barred by limitation. He would further submit that the 2nd plaintiff had himself joined in executing the subsequent mortgage deed in favour of Chokkiah and Chandra and was fully aware of the registered partition deed dated 01.12.2005. Therefore, the plaintiffs have no manner of right to question the subsequent sale deed executed in favour of the 4th defendant. He would further submit that the 2nd defendant was in the exclusive possession of 4/5th share in the suit property since the date of registered partition relinquishment deed and that now 4th respondent is in the possession of the suit property. He would further submit that the plaintiffs have failed to establish any prima facie case, balance of

convenience or irreparable injury warranting the grant of an order of temporary injunction. Hence, the present petition is liable to be dismissed.

6. This Court carefully considered the rival submissions and perused the materials available on record. The point for determination is whether the plaintiffs are entitled to the relief of temporary injunction as prayed for or not?

7. It is settled proposition of law that the petitioners have to satisfy three essential ingredients to get temporary injunction in their favor viz. prima facie case, balance of convenience and irreparable injury.

8. Upon careful perusal of materials available on record, the following facts emerges for consideration.

i) The suit property admeasuring 2 Acres 80 cents of land comprised in Sy No: 1375/1A of Bodinayakanur Village was vested with the 1st defendant and his sons viz Manoharan (2nd plaintiff), Baskaran (2nd defendant), Senthilkumaran (3rd defendant) and late. Prabakaran by virtue of registered partition deed 26-09-1975.

ii) The 1st defendant and his sons viz Manoharan (2nd plaintiff), Baskaran (2nd defendant), Senthilkumaran (3rd defendant) and late. Prabakaran have mortgaged the suit property with one Dharmar vide registered mortgage deed dated 21-03-1986. The said mortgage is a simple mortgage. The

mortgage amount in Rs. 20,500/- and the interest rate in 12% per annum and mortgage period is 3 years expiring on 20-03-1989. On 24-02-1989, a mortgage made over deed was executed in favour of original 1st plaintiff who is none other than wife of Manoharan (2nd plaintiff). In the made over deed, there is no time limit stipulated.

iii) A mortgage discharge receipt has been registered on 07-05-1992 as if executed by the 1st plaintiff. The 1st plaintiff disputes the same and claims it was forged by impersonating her and has filed the main suit seeking declaration to declare the said registered discharge receipt as null and void and for recovery of mortgage warrant along with interest and for permanent injunction restraining the defendants 1 to 3 from alienating the suit property. To be noted, the main suit is not filed under Order 34 of CPC.

iv) In the meanwhile, the 1st defendant and his sons viz Manoharan (2nd plaintiff), Baskaran (2nd defendant), Senthilkumaran (3rd defendant) and late. Prabakaran have executed another registered mortgage deed in favour of Chokkiah and Chandra on 11-02-1999. The said mortgage is also simple mortgage for a period of 3 years.

v) The 1st defendant, Senthilkumaran (3rd defendant) and late. Prabakaran have executed a relinquishment deed on 01.12.2005 in favour of

2nd defendant conveying their 3/5th share in the suit property. Therefore the 2nd defendant is having 4/5 th share in the suit property and the 2nd plaintiff is having 1/5th share in the suit property.

vi) The 2nd defednat and his sons have alleged to have sold the 4/5th share to the 4th respondent

9. The relief sought in the present application is to restrain the 4th respondent from interfering with the alleged possession of the plaintiffs over the suit property. However, a careful reading of the plaint would show that the main suit is primarily one for declaring the registered discharge receipt dated 07.05.1992 as null and void, for recovery of the mortgage money with interest and for consequential permanent injunction restraining alienation of the suit property. Admittedly, the mortgage dated 21.03.1986 is only a simple mortgage. Neither under the original mortgage deed nor under the registered made-over deed dated 24.02.1989 was possession of the suit property delivered to the mortgagee. Therefore, possession of the suit property was never the subject matter of the mortgage transaction.

10. The plaintiffs now contend that they are in possession of the suit property. On the other hand, the defendants have produced several documents along with the counter to show that the 2nd defendant and thereafter the 4th

respondent are in possession of the suit property. This Court is not inclined to undertake a roving enquiry into the disputed question of possession while deciding an interlocutory application as the possession is not a subject matter of the suit.

11. It is further seen that the mortgage dated 21.03.1986 was a simple mortgage for a period of three years and the mortgage money became due on 20.03.1989. Though the original mortgagee executed a registered made-over deed in favour of the 1st plaintiff on 24.02.1989, the assignee merely steps into the shoes of the original mortgagee and acquires no better right than the assignor. A suit by a mortgagee to recover the mortgage money is governed by Article 62 of the Limitation Act, which prescribes a period of twelve years from the date on which the money secured by the mortgage becomes due. The present suit came to be instituted only on 11.09.2020, long after the expiry of the said period. Though the plaintiffs dispute the genuineness of the registered discharge receipt dated 07.05.1992 by alleging impersonation, the issue of limitation assumes considerable significance while considering whether the plaintiffs have established a prima facie case.

12. It is also an admitted fact that the very same mortgagors, including the 2nd plaintiff himself, executed another registered simple mortgage deed

dated 11.02.1999 in favour of Chokkiah and Chandra. The said mortgage has subsequently been redeemed. Thus, the conduct of the 2nd plaintiff in joining the subsequent mortgage transaction prima facie militates against the present case projected by the plaintiffs.

13. Even assuming for the sake of argument that the discharge receipt dated 07.05.1992 was not executed by the 1st plaintiff and that the allegation of impersonation is ultimately established during trial, still that by itself would not entitle the plaintiffs to an order of temporary injunction. It is a settled proposition of law that there is no prohibition for a mortgagor to alienate the mortgaged property during the subsistence of a simple mortgage. Such transfer is not void. The transferee merely takes the property subject to the rights of the mortgagee. Therefore, the sale alleged to have been executed in favour of the 4th respondent cannot, by itself, furnish a ground for grant of temporary injunction.

14. It is also pertinent to note that the mortgage deed dated 21.03.1986 was executed by the 1st defendant, the 2nd plaintiff, the defendants 2 and 3 and the late Prabakaran. Though the suit substantially seeks enforcement of the mortgage and recovery of the mortgage money, the 2nd plaintiff, who is one of the mortgagors, has been arrayed as a plaintiff instead of a defendant.

Further, the legal heirs of the deceased Prabakaran, another mortgagor, have not been impleaded.

15. In the light of the above circumstances, this Court is of the view that the plaintiffs have failed to establish a prima facie case for grant of an order of temporary injunction. Once the plaintiffs fail to establish a prima facie case, the questions of balance of convenience and irreparable injury need not detain this Court. Accordingly, the present petition is liable to be dismissed.

In the result, this petition is dismissed. No costs.

Dictated to the Steno-typist, transcribed by her, corrected, and pronounced by me in open Court, this the 09th day of July 2026.

District Munsif,
Bodinayakanur.

Petitioners' Side Witness and Documents :-

- Nil -

Respondents' side Witnesses and Documents :-

- Nil -

District Munsif,
Bodinayakanur.