

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.21/2026
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 6 Rule 17 of CPC r/w Sec 151 of CPC seeking this Court to permit the plaintiffs to carry out the following amendments in the Plaint.

“ 1. In Page No.1, add M.Palpandiyar as 4th defendant in the short cause title.

2. In Page No.3, in long cause title, to be added as

4. The 4th defendant is M.Palpandiyar, S/o.Mayandithevar, Hindu, aged about years, residing at No.55, Theradi street, 3rd Ward, Bodinayakanur Town, Theni District.

3. In Page.No.7, to be added as

ix-a) The Plaintiffs state that while pendency of the suit, the 2nd respondent herein and his sons were executed a sale deed on 13.03.2026 to the 4th respondent herein in respect of the 4/5 shares over the suit properties. The sale deed is nothing but futile and only created to defeat our titles and further the 4th defendant herein is fully aware about the pendency of the present lis in

respect of the property and now he is trying to make further unwarranted encumbrances in respect of the suit properties by virtue of the impugned sale deed dated 13.03.2026.

4. In Page No.7, to be amended as

xi. The plaintiffs values the suit for the purpose of court fee of Rs.96,056/- + Rs.5000/- and paid a court fee of Rs.2,927.50 + Rs.150/- under section 22, 25(d), 33 of TNCF Act.

Instead of

xi. The Plaintiffs values the suit for the purpose of court fee of Rs.96,056/- and paid a court fee of Rs.2927.50 under section 22, 25(d), 33 of TNCF Act.

5. in Page No.8, in prayer portion to added (aa) prayer

(aa) declaring that the sale deed dated 13.03.2026 as null and void and is not acted upon

6. In Page No.9 in the valuation portion, It is to be added as

For relief aa)

The value of the document is incapable

And the same is valued at Rs.5,000/-

A court fee is paid u/s 25(D) of TNCF Act. Rs.150/-

7. In Page No.11, Add M.Palpandiyar as 4th defendant in the

short cause title.

8. In Page No.11, in list of document to be added as 9th serial as
The impugned sale deed dated 13.03.2026.”

2. For ease of understanding, the parties are addressed to as per their
litigative status in the main suit.

3. 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 sale deed executed in favour of the 4th

respondent has to be declared as null and void.

4. 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 sale deed executed in favour of the 4th respondent is valid.

5. 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. He would further submit that the 4th respondent has no manner of right to purchase the mortgaged property and that too undivided share in an ancestral property.

6. *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 no manner of right to seek declaration to declare the sale deed executed in favour of the 4th respondent as null and void.

7. This Court carefully considered the rival submissions and perused the materials available on record. The point for determination is whether this petition deserves to be allowed or not?.

8. Upon careful perusal of materials available on record, the following facts emerge 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 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 defendant and his sons have alleged to have sold the 4/5th share to the 4th respondent

9. The principal contention of the plaintiffs is that the 4th respondent has purchased the suit property during the pendency of the suit and, therefore, the sale deed executed in his favour is liable to be declared as null and void. This Court is unable to accept the said contention.

10. Admittedly, the registered relinquishment deed dated 01.12.2005, under which the 2nd defendant claims 4/5th share in the suit property, was

very much in existence on the date of institution of the suit. The plaintiffs were fully aware of the said document. In spite of the same, the plaintiffs have not sought any declaratory relief in respect thereof. The present suit has been confined to the relief of declaring the discharge receipt dated 07.05.1992 as null and void, recovery of the mortgage money with interest and consequential injunction.

11. It is only during the pendency of the suit that the 2nd defendant and his sons are stated to have executed a sale deed in favour of the proposed 4th respondent. Merely because the sale has been effected during the pendency of the suit, the plaintiffs cannot seek to declare the sale deed as null and void. It is a settled proposition of law that a mortgagor continues to be the owner of the mortgaged property and there is no legal impediment against alienation of the mortgaged property during the subsistence of a simple mortgage. Such transfer is not void *ab initio*. The transferee merely takes the property subject to the rights of the mortgagee and subject to the result of the pending litigation. Therefore, the sale deed executed in favour of the proposed 4th respondent is not void per se and cannot be ignored merely because the plaintiffs claim rights under the mortgage.

12. Even assuming that the plaintiffs ultimately succeed in establishing

that the discharge receipt dated 07.05.1992 is invalid and that the mortgage continues to subsist, the sale in favour of the proposed 4th respondent would nevertheless remain subject to the rights of the mortgagee.

13. In view of the foregoing discussions, this Court is of the view that this petition lacks merits and the same is liable to be dismissed.

In the result, this petition stands 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.