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.18/2026
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. 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 making any kind of encumbrances in respect of the suit properties on the strength of sale deed dated 13-03-2026 till the disposal of the suit.

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/ plaintiffs 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. Even thereafter, the 4th respondent is attempting to create further encumbrances over the suit property on the strength of the impugned sale deed. If the 4th respondent is permitted to continue with such acts, it would result in multiplicity of proceedings and cause irreparable loss and prejudice to the plaintiffs.

4**. <u>The case of the defendants/ respondents 1 to 3 in brief:-</u>**

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. Hence, the present petition is liable to be dismissed.

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 create further encumbrances 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.

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 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.

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

8. 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.

9. 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 mortaged 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 mortage period is 3 years expiting 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 impersonting 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 money 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

10. The primordial contention of the plaintiffs is that the 4th respondent, having purchased the suit property during the pendency of the suit, is attempting to create further encumbrances over the suit property and, therefore, an order of temporary injunction restraining further alienation ought to be granted.

11. It is an admitted fact that the mortgage dated 21.03.1986 is only a simple mortgage. Under the terms of the mortgage deed, the mortgage period was fixed as three years and, therefore, the mortgage became redeemable on 20.03.1989. Prior to the expiry of the mortgage period, the original mortgagee, Dharmar, executed a registered made-over deed dated 24.02.1989 in favour of the original 1st plaintiff assigning all his rights under the mortgage. Though the made-over deed does not prescribe any independent period, the assignee merely steps into the shoes of the original mortgagee and acquires no better rights than the assignor.

12. It is trite law that a suit by a mortgagee to recover the mortgage

money secured by a mortgage is governed by Article 62 of the Limitation Act, 1963, which prescribes a period of twelve years from the date when the money secured by the mortgage becomes due. In the present case, the mortgage money became due on the expiry of the mortgage period, namely on 20.03.1989. However, the present suit has been instituted only on 11.09.2020, nearly three decades thereafter. Though the plaintiffs seek to avoid the discharge receipt dated 07.05.1992 by alleging impersonation and fraud, the issue as to limitation and the maintainability of the suit assumes considerable significance while considering the existence of a prima facie case.

13. It is also pertinent to note the 1st defendant and his sons, including the 2nd plaintiff himself, executed another registered simple mortgage deed dated 11.02.1999 in favour of Chokkiah and Chandra. The 2nd plaintiff is admittedly one of the executants to the said mortgage. The materials further disclose that the subsequent mortgage has also been redeemed. Thus, the conduct of the 2nd plaintiff himself is inconsistent with the case now projected by the plaintiffs that the mortgage in favour of the 1st plaintiff continued to subsist uninterruptedly.

14. Yet another aspect is that the mortgage deed dated 21.03.1986 was executed not only by the 1st defendant but also by Manoharan (2nd plaintiff),

Baskaran (2nd defendant), Senthilkumaran (3rd defendant) and the late Prabakaran. The present suit, in substance, seeks enforcement of the rights flowing from the said mortgage and recovery of the mortgage money. Curiously, the 2nd plaintiff, who is admittedly one of the executants to the mortgage deed and one of the principal mortgagors, has been arrayed as defendant and now he has been impleaded as legal heir of original plaintif. Likewise, the legal heirs of the deceased Prabakaran, another executant to the mortgage deed, have not been impleaded.

15. 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 the plaintiffs have not made out a case for grant of temporary injunction restraining alienation. It is a settled proposition of law that a mortgagor continues to be the owner of the mortgaged property and there is no legal bar against the mortgagor transferring the mortgaged property during the subsistence of the mortgage. Such a transfer is neither void nor illegal. The transferee merely takes the property subject to the rights of the mortgagee and remains bound by the mortgage. Therefore, the sale in favour of the 4th respondent cannot, by itself, be treated as illegal merely because the plaintiffs claim that the mortgage is

still subsisting.

16. The apprehension expressed by the plaintiffs that the 4th respondent may create further encumbrances also does not advance their case. Any subsequent transferee would likewise take the property subject to the rights, if any, ultimately established by the plaintiffs in the suit. Therefore, the alleged alienations do not, by themselves, extinguish the rights claimed by the plaintiffs.

17. In the light of the above circumstances, this Court is of the considered view that the plaintiffs have failed to establish a prima facie case warranting the grant of an order of temporary injunction and therefore the question of balance of convenience or irreparable injury does not arise. Accordingly, this petition is liable to be dismissed.

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

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

MOHAMED HASHIM A

Digitally signed by MOHAMED HASHIM A
Date: 2026.07.09 18:08:11 +0530

District Munsif,
Bodinayakanur.

<u>Petitioners' Side Witness and Documents</u> :-

- Nil -

<u>Respondents' side Witnesses and Documents</u> : -

- Nil -

MOHAMED HASHIM A

Digitally signed by MOHAMED HASHIM A
Date: 2026.07.09 18:08:19 +0530

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Bodinayakanur.

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Fair / Draft Order
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