

**IN THE COURT OF THE II ADDITIONAL DISTRICT & SESSIONS JUDGE,
THANJAVUR.**

**Present :Thiru.P. Nagarajan, M.A.M.L.,
II Additional District & Sessions Judge, Thanjavur.**

**Tuesday the 7th day of April 2026.
(Thiruvalluvar Andu 2057 -Panguni Matham 24th day)**

ORIGINAL SUIT NO:86 of 2016

V.Arumugam

.....Plaintiff

/Vs./

- 1) The District Manager, Food Corporation of India,
Market Road, Thanjavur.
- 2) Jegarban Beevi
- 3) Sabarunnisa Begum
- 4) Basheer Ahamed
- 5) Habibunnisa Begum
- 6) Deensha Begam
- 7) Barjahan Beevi
- 8) Fathima Beevi
- 9) Anand Insurance Company,
Rep., by its Manager for South India,
No.14/17, Baker Street, Chennai -1.
- 10) New India Assurance Company, Rep., by its Manager,
No.14/17, Baker Street, Chennai -1.

.....Defendants

This suit was taken on file on 14.09.2016 on the file of the Principal District Court, Thanjavur and made over to this court on 16.11.2016. In this court this suit came up for final hearing before me on 27.03.2026 in the presence of **Thiru.P.Lenin**, Advocate for the Plaintiff and of **Thiru.K.J.Sathishkumar**, Advocate for the 1st defendant and of **Thiru.R.Thirunavukkarasu**, Advocate for the 10th defendant and

the 9th defendant was exonerated and the defendants 2 to 8 remained exparte and upon hearing the arguments of both sides, upon perusal of the material records pertaining to the case and the matter having stood over for consideration till this date, this court delivered the following.....

JUDGMENT

The plaintiff filed this suit to direct the defendants 1 and 10 defendants to pay a sum of Rs.5,91,232/- total accrued proportionate interest and cost in which the principal being Rs.1,50,000/- and along with the interest at the rate of 18% from 22.06.2012 being Rs.4,25,687/- together with interest at the rate of Rs.18% upon Rs.10,16,919/- from the date of filing of the suit till the date of realization of the amount and to direct the defendants 2 to 8 to pay the remaining sum of Rs.2,60,025/- total accrued proportionate interest and cost in which the principal being Rs.65,970/- and the interest at the rate of 18% from the 22.06.2012 being Rs.1,87,218/- together with interest at the rate of Rs.18% upon Rs.4,47,243/- from the date of filing of the suit till the date of realization of the amount and to direct the defendants 1 to 8 and 10 to pay the cost of the suit to the plaintiff.

2) The Summary of the Plaint filed by the Plaintiff as follows:

K.N.Shai Mohamed was appointed as an agent of the 1st defendant corporation under an agreement dated 07.10.1969 for procurement, hulling of paddy, storage of the rice at his place. The agent has accepted his liability with the 1st defendant and had executed a promissory note for his liability. Thereby K.N.Shai Mohamed became liable to pay a sum of Rs.1,72,413.85 to the 1st defendant. For this amount the 1st defendant had filed a suit in O.S.No.23/1973, on the file of the Subordinate Court,

Thanjavur. The suit was partly decreed in favour of the 1st defendant on 09.09.1985. The trial court had granted a decree for a sum of Rs.1,91,893.48 with subsequent interest at the rate of 8.5% upon the principal amount of Rs.1,68,871.48. The remaining prayer of liquidated damages was dismissed by the trial court including the liability of the insurance 9 and 10 defendant. Assailing the decree with respect to the dismissal of the portion of the relief, the 1st defendant had filed an appeal on the file of the Hon'ble High Court of Judicature at Madras in A.S.No.1299/1986. The Hon'ble High Court had modified the decree to the extent holding that the 10th defendant is liable to pay the decree amount to the 1st defendant. The decree amount was modified as Rs.2,15,517.31 payable together with 11% interest per annum till the date of filing of the suit and thereafter at 8.5% per annum till the date of realization of the amount. It is also decreed that the insurance policy amount had to be paid by the Insurance company namely the 10th defendant. The 9th defendant with whom there was insurance coverage by the Shaik Mohammed, was taken over under amalgamation by the 10th defendant. Hence, the 10th defendant was made liable to pay the coverage amount to the 1st defendant. The decree passed by the Hon'ble High Court of Judicature at Madras joint and several liability had been fixed upon the insurer and the insured Late K.N.Shaik Mohamed. The decree was put for execution in E.P.No.89/1990 for recovery of a sum of Rs.4,63,176.86. Pending the execution petition the said late K.N.Shaik Mohamed died and his legal heirs namely the defendants 2 to 8 were impleaded as Judgment debtors. The property belonging to the

defendants 2 to 8 where brought for sale for public auction. In the auction claimed to be held, third party had made a highest bid and the sale was to be confirmed in his favour.

2.1) The order setting aside the sale was passed on 11.01.2013. While executing the decree in E.P.No.89/1990 before the Hon'ble High Court of Judicature at Madras in A.S.No.1299/1986 filed the execution petition passed by the trial court in O.S. No.23/1973 on the file of Subordinate Judges Court, Thanjavur which by itself is illegal and suppression of material facts. As per the decree passed by the Hon'ble High Court of Judicature of Madras the decree amount ought to have been satisfied by the 10th defendant on indemnification of the insured. Since the Plaintiff was made to pay under the execution petition filed by the 1st defendant, the defendants 2 to 8 and the 10th defendant are liable to pay the amount of Rs.9,53,757/- which was deposited by the plaintiff on 22.06.2012 together with interest at the rate of 18% to give a clear title encumbrance free of the properties sold by defendant No.2 to 8 to the plaintiff.

2.2) The 1st defendant has claimed the entire decree amount as against the defendants 2 to 8 by brought their property for sale and forced to plaintiff to pay the entire decree amount. The 1st defendant wantonly omitted to claim the insurance amount with proportionate interest and cost as against the 10th defendant also. Thus the 1st defendant is liable along with the 10th defendant to repay the insurance coverage amount of Rs.1,50,000/- with accrued proportionate interest calculated from

22.06.2012 to 21.06.2016 at 18% P.A and costs as per the Hon'ble High court Decree.
(Amended as per I.A. No.35/2018 order dated 22.07.2019)

3) The Gist of Written statement filed by the 1st defendant as follows:

There was no claim or no prayer against the first defendant, Food Corporation of India, Thanjavur, this written statement is filed to safeguard the interest of the first defendant and to clarify the dispute in this case. The first defendant herein filed O.S.No.23/1973 on the file of Sub-Court, Thanjavur against one K.N.Sheik Mohamed for the reasons stated in that plaint. After full trial, the Principal Sub Court, Thanavur granted a decree for a sum of Rs.1,91,893.48 with subsequent interest at the rate of 8.5% for the principal amount of Rs.1,687,871.48 in favour of plaintiff in that suit i.e., the first defendant herein and dismissed part of the claim and against which, the first defendant preferred first appeal before the High Court, Chennai in A.S.No.1299/1986. The Hon'ble High Court modified the decree to an extent of Rs.2,15,517.31 with 11% per annum till the date of filing suit and interest thereafter at 8.5% till the date of realization. The first defendant filed E.P.No.89/1990 to recover the decree amount due to the plaintiff in that suit and pending execution K.N.Sheik Mohamed died and his legal heirs were impleaded and the properties belonged to K.N.Sheik Mohamed were brought for sale in public auction.

3.1) The plaintiff purchased portion of the part which was the subject matter of E.P.No.89/1990 for valuable consideration and the first defendant did not claim any amount from the 10th defendant are not true and denied by this defendant. The first

defendant had not amended the E.P. No.89/1990 as per the judgment of High Court, Chennai in A.S No.1299/1986 is not correct. The defendants 2 to 8 suppressed the mortgage and sold the property to the plaintiff and the plaintiff without the knowledge of the mortgage paid the entire sale consideration are not true and denied by this defendant. The said allegations in the plaint are nothing to do in this case and are irrelevant and unnecessary.

3.2) The execution of E.P. No.89/1990 in O.S. No.23/1973 is illegal and suppression of material are not true and denied by this defendant. The plaintiff herein cannot challenge or find fault with the execution of the said decree in this case. The plaintiff is having any remedy and having any grievance of the over the execution proceedings, he ought to have work out his remedy only in that execution proceeding only and not by any separate suit. The plaintiff has not been compelled to pay any amount towards the E.P. No.89/1990 only to avoid the property purchased by him sold in auction and to safeguard his interest he paid amount in the court. There is no privity of contract between the plaintiff and the defendants 9 and 10. The amount and interest claimed in the suit are exorbitant and the plaintiff is not entitled to claim any amount.

3.3) The plaintiff has not preferred any revision or appeal and the plaintiff claimed regarding the amount deposited in the court attained finality. Since the dispute between the plaintiff and the defendant 1, 9 & 10 have been already attained finality by the said order of the executing court; the plaintiff cannot re-agitate the

matter once again. Hence, prayed to dismiss this suit.

4) The Gist of Written statement filed by the 1st defendant as follows:

There was no claim or no prayer against the first defendant, Food Corporation of India, Thanjavur, this written statement is filed to safeguard the interest of the first defendant and to clarify the dispute in this case. The first defendant herein filed O.S.No.23/1973 on the file of Sub-Court, Thanjavur against one K.N.Sheik Mohamed for the reasons stated in that plaint. After full trial, the Principal Sub Court, Thanjavur granted a decree for a sum of Rs.1,91,893.48 with subsequent interest at the rate of 8.5% for the principal amount of Rs.1,687,871.48 in favour of plaintiff in that suit i.e., the first defendant herein and dismissed part of the claim and against which, the first defendant preferred first appeal before the High Court, Chennai in A.S.No.1299/1986. The Hon'ble High Court modified the decree to an extent of Rs.2,15,517.31 with 11% per annum till the date of filing suit and interest thereafter at 8.5% till the date of realization.

4.1) The first defendant filed E.P.No.89/1990 to recover the decree amount due to the plaintiff in that suit and pending execution K.N.Sheik Mohamed died and his legal heirs were impleaded and the properties belonged to K.N.Sheik Mohamed were brought for sale in public auction. The plaintiff purchased portion of the part which was the subject matter of E.P.No.89/1990 for valuable consideration and the first defendant did not claim any amount from the 10th defendant are not true and denied by this defendant. The first defendant had not amended the E.P. No.89/1990 as per

the judgment of High Court, Chennai in A.S.No.1299/1986 is not correct. The defendants 2 to 8 suppressed the mortgage and sold the property to the plaintiff and the plaintiff without the knowledge of the mortgage paid the entire sale consideration are not true and denied by this defendant. The said allegations in the plaint are nothing to do in this case and are irrelevant and unnecessary.

4.2) The execution of E.P. No.89/1990 in O.S.No.23/1973 is illegal and suppression of material are not true and denied by this defendant. The plaintiff herein cannot challenge or find fault with the execution of the said decree in this case. The plaintiff is having any remedy and having any grievance of the over the execution proceedings, he ought to have work out his remedy only in that execution proceeding only and not by any separate suit. The plaintiff has not been compelled to pay any amount towards the E.P. No.89/1990 only to avoid the property purchased by him sold in auction and to safeguard his interest he paid amount in the court.

4.3) There is no privities of contract between the plaintiff and the defendants 9 and 10. The amount and interest claimed in the suit are exorbitant and the plaintiff is not entitled to claim any amount. The plaintiff has not preferred any revision or appeal and the plaintiff claimed regarding the amount deposited in the court attained finality. Since the dispute between the plaintiff and the defendant 1, 9 & 10 have been already attained finality by the said order of the executing court, the plaintiff cannot re-agitate the matter once again. Hence, prayed to dismiss this suit.

5) Additional Written statement filed by the 1st defendant as follows:

The first respondent filed the suit O.S. No.23/1973 on the file of Principal Subordinate Judge, Thanjavur for recovery of money against the said Sheik Mohamed and the suit was decreed. As the said Sheik Mohamed died, his legal heirs were impleaded and against them E.P. was proceeded before the Sub-court, Pattukkottai and the property belonging to Sheik Mohamed, to avoid the sale of property purchased by him, he paid the E.P. amount into court. The entire allegation of the plaint is to the effect that D2 to D10 alone liable to pay the suit amount and now here in the plaint it has been contended that the first defendant is liable to pay the suit amount and that being so how the plaintiff could now contend and amend the plaint making the first defendant also liable to pay the suit amount? Against the dismissal order, the plaintiff did not prefer any revision before the Hon'ble High Court. If really the plaintiff was aggrieved, he would have preferred revision. But he did not do it.

5.1) Further, if the plaintiff wants to maintain a suit against this defendant, he ought to have raised the claim against the first defendant within three years from the date of withdrawal of the amount. Even though this suit is filed in the year of 2016, the claim against this respondent has been newly pleaded /raised and introduced by the plaintiff by amending the plaint in the year of 2018 which is clearly barred by time. Paid the E.P amount into the court with a view to avoid the confirmation of sale of the property sold in auction. The plaintiff is not a bonafide purchaser and so

he cannot blame the first defendant or any one. The plaintiff cannot blame any one for his own fault.

5.2) Further the Hon'ble High Court in the Final Portion of its Judgment has stated that for the liability of the first defendant (viz.K.M.Sheik Mohamed) in the suit O.S. No.23/1973, the defendants 2 to 5 in that suit are also liable to pay the amount covered in the Policy. So the said M.K.M. Alaudeen and M.A.Mohamed Ali (i.e., Defendants 4 and 5 in the original suit O.S. No.23/73) are necessary parties to this suit and this suit should have been filed including them as the defendants to the suit. So, this suit is bad for non-joinder of necessary parties. This defendant is an unnecessary party to this suit and so the suit is bad for mis-joinder of unnecessary party.

6) Written statement filed by the 10th defendant as follows:

The averments stated in the plaint are all false, except those that are deemed fit in the circumstances of the case. The suit has to be dismissed in limine. The defendant states that there is no liability to prove that this defendant is liable to pay any amount to the plaintiff. This defendant submit that all other averments containing in the plaint are all false. The suit is barred by limitation. Hence prayed to dismiss the suit with costs.

7) On perusal of both side pleadings and documents this court frames the following issues on 05.02.2019.

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| 1) | Whether the plaintiff is entitled to get money from 1 st and 10 th |
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	defendant?
2)	Whether the plaintiff is entitled to get money from 2 to 8 defendants?
3)	Whether the suit is barred by limitation?
4)	Whether the suit is hit by Resjudicata?
5)	Whether the suit is hit by Order 2 Rule 2 of CPC?
6)	Whether the plaintiff is entitled to get amount from 1 and 10 th defendants?
7)	Whether the plaintiff is entitled to get amount from 2 to 8 defendants?
8)	What other relief available for the plaintiffs?

8) In this suit, on the plaintiff's side the plaintiff Sagayarani was examined as PW.1 and Ex.A1 to Ex.18 documents were marked through him, on the side of the defendants no evidence or documents to be produced.

9) The learned counsel for the plaintiff submitted that K.N.Shai Mohamed was appointed as an agent of the 1st defendant corporation under an agreement dated 07.10.1969 for procurement, hulling of paddy, storage of the rice at his place. The agent has accepted his liability with the 1st defendant and had executed a promissory note for his liability and to pay a sum of Rs.1,72,413.85 to the 1st defendant. For this amount the 1st defendant had filed a suit in O.S.No.23/1973, on the file of the Subordinate Court, Thanjavur. The suit was partly decreed in favour of the 1st defendant. Assailing the decree with respect to the dismissal of the portion of the relief, the 1st defendant had filed an appeal on the file of the Hon'ble High Court of Judicature at Madras in A.S.No.1299/1986 and the appeal was modified the decree to the extent holding that the 10th defendant is liable to pay the decree amount to the 1st defendant. It is also decreed that the insurance

policy amount had to be paid by the Insurance company namely the 10th defendant. The 9th defendant with whom there was insurance coverage by the Shaik Mohammed, was taken over under amalgamation by the 10th defendant. Hence, the 10th defendant was made liable to pay the coverage amount to the 1st defendant. Pending the execution petition the said late K.N.Shaik Mohamed died and his legal heirs namely the defendants 2 to 8 were impleaded as Judgment debtors. The property belonging to the defendants 2 to 8 were brought for sale for public auction. In the auction claimed to be held, third party had made a highest bid and the sale was to be confirmed in his favour. As per the decree passed by the Hon'ble High Court of Judicature of Madras the decree amount ought to have been satisfied by the 10th defendant on indemnification of the insured. The 1st defendant has claimed the entire decree amount as against the defendants 2 to 8 by brought their property for sale and forced to plaintiff to pay the entire decree amount. The 1st defendant wantonly omitted to claim the insurance amount with proportionate interest and cost as against the 10th defendant also. Hence pray for allowing the suit.

10) The learned counsel for 1st defendant submitted that even though this suit is filed in the year of 2016, the claim against this respondent has been newly pleaded /raised and introduced by the plaintiff by amending the plaint in the year of 2018 which is clearly barred by time. Paid the E.P amount into the court with a view to avoid the confirmation of sale of the property sold in auction. The

plaintiff is not a bonafide purchaser and so he cannot blame the first defendant or any one. Hence, prayed to dismiss this suit.

11) The learned counsel for 10th defendant submitted that there is no liability to prove that this defendant is liable to pay any amount to the plaintiff. This defendant submit that all other averments containing in the plaint are all false. The suit is barred by limitation. Hence prayed to dismiss the suit with costs.

12) Other defendants 2 to 8 were remained exparte.

13) Heard both side. Perused the documents and evidence.

14) Issue No 3 TO 5:

On the side of the plaintiff plaintiff was examined as PW.1. He stated that he purchased the property in the year 24./08.2005 by document 31, 32/2005 from the Sheik Mohamed in the year 2012 vide EP.No.84/2012 dated:22.06.2012 before the court by lodgment amount was received sale was canceled on application. The present plaintiff and the 1st defendant received the amount deposited in the court by way of filing application in which also the present application contest and filed his objection. Even after that the executing court after proper enquiry allowed the payment petition. The payment was granted to counsel for the Food Corporation of India against which the present plaintiff PW.1 was not preferred any appeal. This was took place in the year 2012 but in the year 2016 after lapse of 3 years of time filed this suit for recovery of money from the Insurance Company and Food Corporation of India and also from the

legal heirs of the deceased Sheik Mohamed. Actually the suit property was purchased by the present plaintiff on 24.08.2005 when the earlier suit execution proceedings upon the trial. The plaintiff stated in his evidence that he purchased the property on good faith and he may be considered as bonafide purchaser to safe guard himself and he deposited the sale amount and 5% additional amount before the executing court to stop the sale proceedings accordingly. The execution court also permitted to present plaintiff to deposit. In the deposit the present plaintiff simply deposited the amount without reasoning the right. Neither the 1st defendant nor the 10th defendant having direct connection with the plaintiffs. On the date of sale in the year 24.08.2005 the previous suit was decreed, appeal also completed in the 2002. The statement made by the plaintiff that he does not know about the original suit and appeal and the execution proceedings before the purchase of property is simply a word it cannot be taken as he stated without any supplementary cause or evidence. The date of purchase is 2005. The date of payment is 2012. The date of filing of suit is 2016. From date of payment and date of filing it is beyond the period of 3 years. Hence it is considered as the plaintiff deposited the amount in the year 2012 and copy application filed in the year 2016. In between there is no steps. Which clearly shows that the plaintiff filed the suit belatedly after lapse of 3 years. Hence the suit is filed after lapse of limitation period and in further whether the suit is hit of Res judicata principle complied or not is the question. To answer the question from the above discussion

it is found that there was earlier suit, earlier appeal and earlier execution proceedings. Only in the execution proceedings the present plaintiff filed the petition and paid amount to this court and to stop the sale proceedings and execution proceedings. There is no step cause of action for the plaintiff to receive the amount from the 1st and 10th defendant. He ought to file appeal before the appellate court against the order of executing court regarding the payment made to the Food Corporation of India counsel. Without filing appeal the present plaintiff filing the present suit after lapse of 3 years for the same reason without supporting cause and reason. For the same facts becomes hit by res judicata and even in the execution proceedings the present plaintiff is not filed any proceedings to get permission under Order 2 Rule 2 of CPC to file fresh suit in the same cause of action. No such proceedings filed before this court. Hence the suit is barred under Order 2 Rule 2 of CPC and filed without permission of earlier proceedings. Hence from the above discussion the suit is filed beyond limitation period and hit by res judicata and also not in order to Order 2 Rule 2 of CPC proceedings. Hence these issues are answered accordingly.

15) Issue No. 1, 2 6 and 7:

From the above discussion it is found that the suit is barred by limitation and hit by res judicata not a proper proceedings under Order 2 Rule of CPC. Therefore the plaintiff is not entitled to get amount from any defendant since the claim was made by the plaintiff after lapse of limitation period granted by the law of

limitation (ie) beyond 3 years. Therefore the plaintiff is not get any amount from any defendant.

16) **Issue No.8**: Whether the plaintiff get any other relief?

To answer proper relief was discussed and find out in the above discussion.

Hence there is no other relief available for the plaintiff.

In the result, the suit is dismissed with cost of defendant 1 and 10.

This judgment is dictated by me to steno-typist, transcribed in computer by her, corrected and pronounced by me in open court this the **7th day of April 2026**.

**II Additional District and Sessions Judge,
Thanjavur.**

Plaintiff's side witnesses:

PW.1	Arumugam (Plaintiff)
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Plaintiff's side Exhibits

Ex.A1	--	Plaint Copy in OS.No.23/1973 filed by the 1 st respondent in Sub-court, Thanjavur.
Ex.A2	09.09.1985	Copy of Judgment in OS.No.23/1973 of Sub-court, Thanjavur.
Ex.A3	09.09.1985	Copy of Decree in OS.No.23/1973 of Sub-court, Thanjavur
Ex.A4	28.11.2002	Copy of Judgment in A.S. No.1299/1986
Ex.A5	28.11.2002	Copy of Decree in A.S. No.1299/1986
Ex.A6	04.07.1990	Execution Petition No.89/1990 of Sub-court, Thanjavur

Ex.A7	02.06.2012	E.A. Petition No.84/2012 in E.P.89/1990 on the file of Sub-court, Pattukkottai.
Ex.A8	22.06.2012	Copy of Lodgement Schedule in E.P. 84/2012 in E.P.89/1990 in O.S. No.23/1973 (Rs.8,51,257/-)
Ex.A9	07.01.2013	Copy of Lodgement Schedule in E.P. 84/2012 in E.P.89/1990 in O.S. No.23/1973 (Rs.1,02,500/-)
Ex.A10	07.01.2013	E.A. Petition No.94/2012 in in E.P.89/1990 in O.S. No.23/1973 filed on the file of Sub-court, Pattukkottai
Ex.A11	21.03.2013	Counter in E.A.petition No.15/2013 in E.P.No.89/1990 in O.S. No.23/1973 filed on the file of Sub-court, Pattukkottai
Ex.A12	15.07.2013	Copy of Order in E.A. petition No.15/2013 in E.P.No.89/1990 in O.S. No.23/1973 filed on the file of Sub-court, Pattukkottai
Ex.A13	15.07.2013	Copy of Decretal Order in E.A. petition No.15/2013 in E.P.No.89/1990 in O.S. No.23/1973 filed on the file of Sub-court, Pattukkottai.
Ex.A14	07.01.2013	Copy of F.S. Memo and Payment Schedule filed by 1 st defendant
Ex.A15	11.01.2013	Copy of Order in E.A No.84/2012 in E.P.No.89/1990 on the file of Sub-court, Pattukkottai.
Ex.A16	11.01.2013	Copy of Decretal Order in E.A No.84/2012 in E.P.No.89/1990 on the file of Sub-court, Pattukkottai.

Ex.A17	24.08.2005	Sale Deed Agreement in the name of Plaintiff Arumugam executed by Sheik Mohamed Rawvuthar
Ex.A18	19.02.2020	Copy of CRP Petition No.1142/2020

Defendants' side witnesses, documents:

**II Additional District and Sessions Judge,
Thanjavur.**

JUDGMENT IN
O.S. NO.86 OF 2016
DATED: 07.04.2026