IN THE COURT OF DISTRICT MUNSIF, SHENCOTTAI.

Present : **Thiru.K.N.Guru, B.A.B.L.,**
District Munsif, Shencottai.
Wednesday, the 29th day of July 2026

ORIGINAL SUIT No.10/2024

(CNR.No.TNTS11-000573-2024)

Govindan .. Plaintiff

/Vs/

Thirumalaiyandi .... Defendant/Counter Claimant

This suit came before me for final hearing on 20.07.2026 in the presence of Thiru.Y.Azath, Advocate for the Plaintiff, and Thiru.S. Pandiarajan, Advocate for the Defendant/Counter-claimant and after hearing both sides, and on perusal of the records and having stood over for consideration till this date and this court delivers the following:-

JUDGMENT

The suit is filed by the plaintiff seeking a decree of permanent injunction restraining the defendant from interfering with his possession of the suit schedule property except by due process of law, with costs. The defendant has filed a counter-claim seeking redemption of the mortgage, recovery of possession, execution and registration of the discharge deed, mesne profits, and costs.

2. Plaintiff’s case in nutshell:-

The case of the plaintiff, in brief, is that the suit schedule property originally belongs to the defendant, who, for his urgent personal expenses, borrowed a sum of ₹3,000/- from the plaintiff and executed a registered simple mortgage deed dated 23.01.1998, bearing Document No.103/1998 on the file of the Sub-Registrar, Idaikal, agreeing to redeem the mortgage within three years by repaying the principal together with interest at the agreed rate. Though the mortgage was initially a non-possessory mortgage, it is the specific case of the plaintiff that, owing to the defendant's inability to pay interest on account of ill-health, the defendant voluntarily delivered possession of the suit property to the plaintiff in March 1998 with permission to cultivate the land and appropriate the usufruct towards interest. Since then, the plaintiff claims to have remained in continuous, peaceful and uninterrupted possession and enjoyment of the suit property by cultivating the same after carrying out improvements at his own expense, and that the mortgage has not been redeemed till date. It is further alleged that the defendant subsequently borrowed additional sums of ₹20,000/- in May 2005, ₹25,000/- in August 2012, ₹35,000/- in July 2016 and ₹20,000/- in February 2021, aggregating to ₹1,00,000/-, without executing separate documents in view of the close relationship between the parties and the plaintiff's continued possession of the property, and that none of the said amounts has been repaid. According to the plaintiff, from the year 2023 onwards, the defendant made repeated attempts to dispossess him forcibly, attempted to alienate the property to third parties, lodged false complaints before the District Collector, Tenkasi and the Sub-Inspector of Police, Sambavar Vadakarai, and, by exercising political influence and with the assistance of the police, threatened the plaintiff with false criminal cases and unlawful eviction. Contending that he is in lawful possession as a mortgagee in possession and that the defendant is attempting to interfere with such possession otherwise than by due process of law, the plaintiff has instituted the present suit seeking a decree of permanent injunction restraining the defendant, his men, agents or anybody claiming through him from interfering with his peaceful possession and enjoyment of the suit schedule property except in accordance with law.

3. Defendant Case in Nutshell:-

The defendant contends that the suit is false, vexatious, barred by limitation and liable to be dismissed. While admitting the execution of the registered simple mortgage deed dated 23.01.1998 for ₹3,000/-, the defendant denies the alleged delivery of possession in March 1998 and contends that such a plea is contrary to the recitals of Ex.A1 and barred under Sections 91 and 92 of the Indian Evidence Act. The alleged subsequent borrowings of ₹1,00,000/- are also denied as false and unsupported by evidence. It is further contended that even assuming the plaintiff was in possession and enjoyed the usufruct, the mortgage interest stood satisfied. The defendant states that he tendered ₹3,030/- towards redemption, which was refused by the plaintiff, and thereafter deposited the amount before the Court under Section 83 of the Transfer of Property Act. Hence, the defendant seeks dismissal of the suit with costs and, by way of counter-claim, seeks redemption of mortgage, recovery of possession, execution of discharge deed and mesne profits.

4. Reply statement of the Plaintiff:-

The case of the plaintiff in the reply statement, in brief, is that the counter-claim filed by the defendant is false, frivolous, devoid of any cause of action, and has been preferred only to protract the proceedings and evade his liability. While admitting the execution of the registered mortgage deed dated 23.01.1998 by the defendant in favour of the plaintiff for a sum of ₹3,000/-, the plaintiff denies all the other averments made in the counter-claim. The plaintiff specifically disputes the defendant's plea that the suit is barred by limitation, denies the allegation that the subsequent borrowings aggregating to ₹1,00,000/- are false, and contends that the plaintiff's possession and enjoyment of the suit property in lieu of interest do not violate the provisions of the Registration Act or the Indian Evidence Act. The plaintiff further denies the defendant's allegation that a sum of ₹3,030/- was tendered through counsel towards redemption of the mortgage and contends that no such tender was ever made, rendering Sections 83 and 84 of the Transfer of Property Act inapplicable. It is further contended that the counter-claim seeking redemption of the mortgage, delivery of possession, execution of a discharge deed and mesne profits is not maintainable in law, is improperly valued and insufficiently stamped, and has been filed with the sole intention of defeating the plaintiff's lawful rights. On these averments, the plaintiff prays for dismissal of the counter-claim with exemplary costs.

5. <u>On the basis of the plaint, counterclaim, reply statement and documents on record, the following issues were framed.</u>

1. Whether the Plaintiff is entitled to the relief of Permanent Injunction restraining the defendant from unlawfully evicting him from the suit schedule property?

2. Whether the Counter-claim filed by the defendant with respect to redemption of mortgage is maintainable?

3. Whether the defendant is entitled for the relief of mesne profit?

4. Whether the Defendant is entitled for the mandatory injunction as prayed for?

5. To what other relief the parties are entitled ?

6. The issues originally framed are struck off and re-framed in exercise of the powers of this Court under Order XIV Rule 5 of the Code of Civil Procedure, as they do not comprehensively reflect the real questions in controversy arising from the pleadings, particularly in view of the counter-claim. Since both parties have already adduced their oral and documentary evidence and have addressed arguments on all the material issues, no prejudice would be caused by recasting the issues at this stage. The evidence already on record is sufficient for an effective adjudication of the lis. Accordingly, the following issues are framed for determination:

1. **Whether the plaintiff is entitled to the relief of permanent injunction restraining the defendant from interfering with his possession and enjoyment of the suit schedule property except by due process of law?**

2. **Whether the defendant is entitled to redeem the mortgage and consequently to recovery of possession, discharge of the mortgage and the other reliefs sought in the counter-claim under Order XXXIV CPC?**

3. **Whether the defendant is entitled to mesne profits from the plaintiff and, if so, at what rate and from which date?**

4. **To what other reliefs are the parties entitled?**

7. In the present case, on the side of the Plaintiff, PW1 was examined and Ex.A1 to Ex.A4 were marked. On the side of Defendant, No oral evidence and documentary evidence were produced.

8. Answer to Issues No.1 to 3:-

The above issues are interconnected and are therefore answered together.

i) The learned counsel for the plaintiff, in his written arguments, contended that the plaintiff has been in lawful possession and enjoyment of the suit schedule property as a mortgagee in possession since March 1998 and is therefore entitled to the relief of permanent injunction. He further submitted that the defendant is not entitled to redeem the mortgage or seek recovery of possession merely on the basis of the deposit made before this Court. It was also argued that the defendant, having failed to enter the witness box, has not proved the counter-claim and that an adverse inference ought to be drawn against him. The learned counsel further contended that the alleged deposit under Sections 83 and 84 of the Transfer of Property Act does not confer any right on the defendant to redeem the mortgage and that the plaintiff is entitled to continue in possession until his entire claim, including the alleged subsequent advances, is satisfied.

ii) In the contrast the learned counsel for the defendant submitted that the plaintiff's suit is not maintainable in law and is liable to be dismissed, as the plaintiff cannot seek to defeat the defendant's statutory right of redemption. It was contended that Ex.A1 is admittedly a registered simple mortgage for ₹3,000/- and that the plaintiff himself has pleaded that he has been in possession of the suit property since March 1998 and has been appropriating the usufruct towards interest. It was further argued that the defendant has deposited the entire mortgage amount together with the interest due before this Court and has thereby validly exercised his right of redemption under the Transfer of Property Act, entitling him to recovery of possession and execution of the discharge of mortgage. The learned counsel also submitted that the plaintiff's claim regarding subsequent advances of ₹1,00,000/- is wholly unsupported by any documentary evidence and cannot alter the terms of the registered mortgage. He therefore prayed for dismissal of the suit and for allowing the counter-claim as prayed for.

iii) This court carefully considered the arguments of either and perused the records produced.

iv) It is an admitted fact that the suit schedule property belongs to the defendant and that he executed the registered simple mortgage deed dated 23.01.1998, marked as Ex.A1, in favour of the plaintiff for ₹3,000/-. Though Ex.A1 is a simple mortgage and contains no recital regarding delivery of possession, the plaintiff has specifically pleaded that the defendant voluntarily handed over possession of the suit property in March 1998 in lieu of interest and permitted him to appropriate the usufruct towards interest. The defendant, while disputing the legal effect of such possession, has sought redemption of the mortgage and recovery of possession by way of counter-claim, which itself is a clear admission that the plaintiff is in possession. Thus, it stands established from the pleadings of both parties that the plaintiff has been in possession of the suit property since March 1998 as a mortgagee in possession, though Ex.A1 continues to retain its legal character as a simple mortgage.

v) The plaintiff's claim that the defendant subsequently borrowed an additional sum of ₹1,00,000/- between 2005 and 2021 is wholly unsupported by any documentary evidence. When the parties admittedly executed a registered mortgage even for ₹3,000/-, it is wholly improbable that further advances of ₹1,00,000/- secured by the same property were made without any written instrument. Mere oral assertions cannot vary or enlarge the terms of a registered mortgage. Consequently, the alleged additional loan transactions are liable to be rejected.

vi) The plaintiff has also admitted in his cross-examination that he is aware of the deposit made by the defendant towards the mortgage amount. Once such admission is available, no further proof is required. Having admittedly enjoyed the usufruct of the property towards interest from March 1998, the plaintiff cannot simultaneously resist the defendant's statutory right of redemption after the mortgage amount has been deposited before this Court.

Vii) Section 60 of the Transfer of Property Act embodies the settled principle that "once a mortgage, always a mortgage." The right of redemption is a statutory right which continues until extinguished by the act of the parties or by a decree of a competent Court, and any clog on such right is void. Sections 83 and 84 of the Transfer of Property Act provide a complete statutory mechanism enabling the mortgagor to redeem the mortgage by depositing the mortgage money before the competent Court. Upon such deposit and compliance with the statutory requirements, the mortgagee cannot continue to claim interest. In the present case, the defendant has deposited ₹3,030/-, representing the principal amount together with one month's interest. The plaintiff himself admits that possession was delivered only in March 1998 and that he has been appropriating the usufruct towards interest thereafter. Therefore, having enjoyed the usufruct for nearly three decades, the plaintiff cannot legally oppose redemption.

Viii) The counter-claim has been filed within the period of limitation prescribed under Article 61 of the Limitation Act. This view is fortified by the decision of the Madras High Court in **Nagarajan v. S. Nagarathinam**, SA(MD) Nos.283 & 284 of 2026 (decided on 03.07.2026), wherein it was held that where the mortgagor has already deposited the entire mortgage amount before the Trial Court and there is no dispute regarding the amount due, the object of Order XXXIV Rules 7 and 8 CPC stands satisfied and the Court may directly pass a final decree for redemption without first passing a preliminary decree.

ix) Further, Section 62 of the Transfer of Property Act entitles a mortgagor in a usufructuary mortgage to recover possession upon payment or deposit of the mortgage money. Since the plaintiff has admittedly enjoyed the usufruct of the property and the defendant has deposited the mortgage amount before this Court, the defendant is entitled to recover possession. Insofar as mesne profits are concerned, the defendant is at liberty to work out his remedy in appropriate proceedings from the date of deposit of the mortgage amount.

x) The plaintiff has attempted to defeat the defendant's statutory right of redemption by relying upon unsupported oral claims of additional borrowings. Such an attempt cannot be countenanced in law. Accordingly, this Court holds that the plaintiff is not entitled to the relief of permanent injunction. On the other hand, the defendant has established his statutory right of redemption under Sections 60, 83 and 84 of the Transfer of Property Act and is consequently entitled to redemption of the mortgage, recovery of possession of the suit schedule property and execution of a valid discharge of the mortgage

xi) Accordingly, Issue No.1 is answered against the plaintiff, as he has failed to establish any subsisting legal right to continue in possession after the defendant validly exercised his statutory right of redemption by depositing the mortgage amount before this Court. Once the mortgage money has been deposited in accordance with Sections 83 and 84 of the Transfer of Property Act, the mortgagee in possession cannot resist the mortgagor's right to recover possession, and therefore the plaintiff is not entitled to the relief of permanent injunction, as granting such relief would defeat the defendant's statutory right of redemption under Section 60 of the Transfer of Property Act. Issue No.2 is answered in favour of the defendant, as he has validly exercised his statutory right of redemption under Sections 60, 62, 83 and 84 of the Transfer of Property Act, 1882, and having deposited the mortgage amount before this Court, he became entitled under Section 62 to recover possession of the mortgaged property from the plaintiff, who admittedly remained in possession as a mortgagee in possession and appropriated the usufruct towards interest. Consequently, the defendant is entitled to redemption of the mortgage, recovery of possession of the suit schedule property, and execution and registration of the discharge deed of mortgage. Issue No.3 is answered partly in favour of the defendant by holding that he is entitled to claim mesne profits from the date of deposit of the mortgage amount before this Court; however, the quantum of mesne profits shall be determined in separate proceedings under Order XX Rule 12 CPC.

9. Answer to Issue No.4:-

The parties are not entitled to any other reliefs.

In the result, the suit is dismissed. No order as to costs.

In the result, the Counter-Claim is decreed. No order as to costs. The plaintiff is permitted to withdraw the mortgage amount of ₹3,030/- deposited by the defendant and shall, within one month thereafter, deliver vacant possession of the suit schedule property to the defendant and a mandatory injunction directing the plaintiff to execute a register deed of redemption of mortgage. In default, the defendant is at liberty to have the deed executed through Court and recover possession in accordance with law. The defendant is entitled to mesne profits from the date of deposit of the mortgage amount till delivery of possession, the quantum of which shall be determined in separate proceedings under Order XX Rule 12 CPC.

Dictated to the Steno-typist directly and typed by him in computer, corrected and pronounced by me in open court, this the **29th day of July 2026.**

GURU

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Date: 2026.07.29 18:02:06 +0530

District Munsif,
Shencottai.

Plaintiff Side Witnesses:

PW1 – Govindan (Plaintiff)

Plaintiff Side Documents:-

Ex.A1	23.01.1998	Original Mortgage Deed.

Ex.A2	--	Online Copy of Encumbrance Certificate.
Ex.A3	27.01.2024	The RTI documents comprising the complaint given by the defendant against the plaintiff at Sambavar Vadakarai Police Station and the statements of both parties.
Ex.A4	11.12.2023	Land tax receipt.

Defendant side Witnesses and Documents:

Nil

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District Munsif,
Shencottai.

DM Court, Shencottai,
O.S.No.10/2024
Draft/Fair Judgment (counter claim)
Dated. 29.07.2026