

**IN THE COURT OF THE ADDITIONAL DISTRICT JUDGE (FTC),
VELLORE, VELLORE DISTRICT.**

PRESENT: Thiru.P.V.Sandilyan, M.L.
Additional District Judge (FTC), Vellore.

Thursday, the 2nd day of July, 2026

I.A. No.07/2026 in O.S.No.83/2018

1. T.S.Kannaiyan
2. Lakshmi Priya
3. Vinothkumar

. . . Petitioners/Defendants

/Vs/

1. A.N.Mohan (died)
2. M.Lakshmi
3. P. Jayanthi
4. M.Dhanabathi
5. M.Parthiban

. . . Respondents/Plaintiffs

This petition came up before me for final hearing on 25.06.2026, in the presence of M/s.C.Padmaja, and M/s.D.Tamilselvi Counsels for the Petitioners and Thiru.B.Yayathi Rajan, Counsel for the Respondents 2 to 5, and upon after hearing the arguments of both sides, upon perusal of case records and having stood over for consideration till this date, this court delivers the following:-

ORDER

This petition has been filed under Order XIV Rule 5 of C.P.C. to pass an order to frame the additional issues in the main case in O.S.No.83/2018.

2. The averments of the affidavit filed by the petitioner are as follows:-

2.1 The first petitioner is the first defendant in the suit. In para 3 of his written statement stated that " The humble submission of the defendants is legal heirs of deceased borrower are not personally liable to pay her debts. Debts of the deceased person are to be paid only from her assets in the hands of legal heirs. Perusal of suit prayer goes to show that the suit is for personal decree against the defendants who are the legal heirs of deceased borrower. " The petitioner stated that this is an important issue raised by the defendants in their pleadings are hence it is to be decided by this court in the interest of justice.

2.2 Further the written statement in para 5 of, the bar under Sec.6(2) of the TANPID Act, in para 6, the attachment of the property by the Government, and in para 7, the plaintiff's oral acceptance of waiver of interest, these issues are also to be decided. Therefore, the petitioner prayed to frame the additional issues mentioned in the petition.

3. The brief averments of the Counter filed by the 4th respondent adopted to 2, 3 and 5 respondents are as follows:-

3.1 The petition filed under Order 14 Rule 5 of CPC seeking additional issues mentioned in the petition is not sustainable in law and on facts. The respondent denies all the averments mentioned in the petition except those

specifically admitted. The averments made in para 2 of the affidavit that the defendants is legal heirs of the deceased borrower are not personally liable to pay her debts and that debts of the deceased person are to be paid only from her assets in the hands of the legal heirs and that on perusal of suit prayer goes to show that the suit is for personal decree against the defendants who are legal heirs of the deceased borrower are false, incorrect and misleading.

3.2 The suit prayers are as follows: a). directing the defendants to pay to the plaintiff the suit amount of Rs.51,40,000/- together with interest on Rs.15,00,000/- at 24% p.a from the date of filing of the suit till the date of realization and the costs of this suit within a date fixed by passing a mortgage preliminary decree, b). in case of failure of the defendants to pay the amounts within the date fixed to pass a decree for the sale of the mortgaged property by passing a final decree and c). and such other suitable order as this court deems fit and proper may be passed and justice render.

3.3 The suit is for recovery of mortgage amount with interest thereon in respect of the property of the deceased secured in registered mortgage deed. There is no prayer for personal decree or for payment of the suit amount by the defendants' out of their personal money or against them for personal decree. The prayer is only against the secured mortgaged property of the deceased mortgagor in the hands of the defendants. Hence, the petition filed by the petitioner

misleading the court by misleading the prayer mentioned in the suit s if it is for recovery of mortgaged amount form the defendants out of their money and for personal decree is mischievous and unwarranted. The draft issue No.1 mentioned in the petition is unwarranted since the suit is only for recovery of secured registered mortgage deed amount with interests out from an out of property mentioned in the mortgage deed which are in the hands of the defendants and no personal decree and payment of the suit amount from and out of the defendants money.

3.4 The additional issues mentioned as 2 in the draft issue "Section 6(2) of the TANPID Act whether the suit is maintainable" is unwarranted and not applicable for this suit since the suit mortgage deed is executed much prior to alleged criminal case and the property no way connected with the said criminal case. Further, it is separate property of the deceased which is no way connected with the alleged criminal case. In any event the petitioner has not mentioned and not produced any evidence to show that the suit property is listed in any criminal case as case property. Hence, the petitioner in order to dragon the proceedings event after laps 8 years to avoid payment of the mortgage amount filling this type of vexatious petition. Further the plaintiff who had filed suit for recovery of mortgaged deed mount of Rs.15,00,000/- which executed on 09.04.2007 died without recovering the mortgaged deed amount and now his legal heirs re

continuing the suit. Since, the said prayer is not legally sustainable in law since the suit for recovery of secured mortgage deed amount and the suit property is not included in any criminal case the said additional issue No.2 is unnecessary and unwarranted.

3.5 The additional issue mentioned as 3 in the draft issue " Whether the decree can be passed in respect of the property attached by the Government" is unwarranted and not applicable for this suit since the suit mortgage deed is executed much prior to alleged criminal case, the property no way connected with the said criminal case and the property is still now not attached by the Government in any case. No order of attachment served on the respondents and the petitioner also did not mentioned order in their written statement and also did not produce the alleged order copy in the suit. Further the petitioner has not produced any such order copy with the petition. In any event the suit is for recovery of secured mortgage amount. Therefore the said is not maintainable.

3.6 The additional issue mentioned as 4 in the draft issue "Whether the plaintiff agreed to waive the interest and receive principle alone?" is unwarranted and not applicable for this suit since the suit mortgage deed amount with interest thereon. The plaintiff has valued the suit and paid court fee for principle after the amount paid as interest and he had never agreed to waive the principle

amount at any point of his life time. Hence the issue in respect of waiving interest amount would not arise. Therefore the said issue is also unwarranted and liable to be rejected. The petitioner in order to drag on the proceedings and to avoid the recovery of decree amount which would be passed against the property of the deceased in the suit filed this vexatious and mischievous petition and prayed to dismiss the petition with cost.

4. There is no oral and documentary evidence on both sides.

5. The point for consideration in this petition is, **whether this petition is to be allowed or not?**

6. Point:-

6.1 The petitioners are defendants in the original suit. The respondents/plaintiffs filed the suit for recovery mortgage amount with interest in respect of the property belongs to the deceased mortgagor. Now the petitioners filed petition Under Order 14 Rule 5 to frame additional issues stated in the petition. The respondent vehemently opposed to allow the petition as those additional issues are unnecessary and unwarranted.

6.2 The suit based on registered mortgage executed by the Sundari Kannaiyyan on 09.04.2007. Later the mortgagor died, suit was filed against the legal heirs of the mortgagor. The relief sought by the respondent in the suit is for recovery of secured registered mortgage amount with interest from and out of the property mentioned in the mortgage deed by sale of the mortgage property.

6.3 The liability of the legal representatives/the defendants is limited to the extent of the estate inherited by them from the deceased mortgagor. Under such circumstances the defendants are not personally liable from their own assets. The respondents/plaintiffs are entitled to enforce the mortgage against the mortgaged property only no personal decree can ordinarily be decreed. Hence framing of additional issues with regard to the petitioners are personally liable or not is seems to be necessary.

6.4 Further framing of additional issues with regard to bar under Sec.6 (2) of TANPID Act, attachment of the property by the Government and plaintiffs oral acceptance of waiver of interest are all necessary issues for deciding the suit.

6.5 The court can frame or amend, or strike out issues at any time before passing a decree under Order 14 Rule 5 of CPC. These additional issues stated in the petition is necessary for determining the matters in controversy between the

parties. There would be no prejudice caused to the parties, they can very well adduce evidence for these additional issues. Hence the petition is to be allowed and ordered accordingly.

In the result, *this petition is allowed. No costs.*

Dictated to the Steno-Typist, directly typed by her, corrected and pronounced by me in the Open Court, on this the 2nd day of July, 2026.

**Additional District Judge (FTC),
Vellore.**

Both side Witnesses and Exhibits:- - NIL -

**Additional District Judge (FTC),
Vellore.**