

SA(MD). Nos.283 & 284 of 2026

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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Reserved On : 17.06.2026

Delivered on : 03.07.2026

CORAM

THE HONOURABLE MR. JUSTICE P.B.BALAJI

SA(MD). Nos.283 & 284 of 2026

and

CMP(MD)Nos.7359, 7360 & 7361 of 2026

Nagarajan

... Appellant / Appellant / Plaintiff
in both SAs.

Vs.

1. S.Nagarathinam

2. Muthukumar @ Vinoth

... Respondents / Respondents /
Defendants in both SAs.

COMMON PRAYER :- Second Appeals filed under Section 100 of Civil Procedure Code to set aside the judgment and decree passed in A.S.Nos.5 & 6 of 2023 dated 10.02.2026, on the file of the Sub Court, Kulithalai confirming the judgment and decree passed in O.S.No.8 of 2012, dated 15.12.2022 on the file of the District Munsif Court, Kulithalai.

(In both Second Appeals)

For Appellant : Mr.H.Arumugam

For Respondents : Mr.K.Govindarajan
for Mr.S.Pon Senthil Kumaran.



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COMMON JUDGMENT

These second appeals are directed against the judgment and decree passed in A.S.Nos.5& 6 of 2023 dated 10.02.2026, on the file of the Sub Court, Kulithalai confirming the judgment and decree passed in O.S.No.8 of 2012, dated 15.12.2022 on the file of the District Munsif Court, Kulithalai. The appellant herein is the plaintiff and the respondents herein are the defendants in O.S.No.8 of 2012

2. I have heard Mr.H.Arumugam, learned counsel for the appellant/ plaintiff in both the second appeals and Mr.K.Govindarajan, learned counsel for Mr.S.Pon Senthil Kumaran, learned counsel for the caveators/ respondents/ defendants.

3. For the sake of convenience, the parties are referred to as per their rank before the trial Court.

4. Mr.H.Arumugam, learned counsel for the appellant/ plaintiff would contend that the trial court committed a grave error by directly



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passing a final decree without first passing a preliminary decree, which is a mandatory prerequisite under Order 34 Rule 7 of the Code of Civil Procedure. He would further state that the determination of the amount due and payable was a pre-condition in a suit for redemption of mortgage and the Courts below have failed to even consider the fact that the defendants did not even to choose to file a suit for redemption of the mortgage; however, he filed it only as a counter-claim, which was clearly an attempt to circumvent the plaintiff's claim for permanent injunction. It is also the submission of Mr.H.Arumugam, learned counsel for the appellant that the Courts below did not even advert to the objection of the appellant, with regard to the improper valuation of the counter claim and erred in refusing the relief of permanent injunction, especially, in the light of the admission by the defendants themselves regarding the continuous physical and lawful possession of the suit property by the plaintiff. The learned counsel would also state that the first appellate Court had erroneously dismissed the application filed under Order 41 Rule 27 CPC. in I.A. No. 2 of 2026 without appreciating the fact that the said document was crucial to decide the issue involved in the suit.

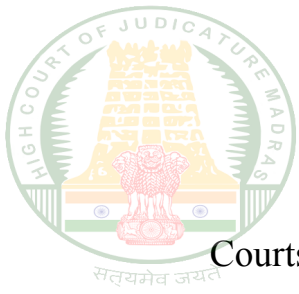


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5. The learned counsel for the appellant / plaintiff, in this regard, has taken me through the findings of the trial Court as well as the first appellate Court and also dismissing the application filed under Order 41 Rule 27 CPC. The learned counsel for the appellant therefore suggests that substantial questions of law arise for consideration in the second appeal, even though the findings are concurrent and prayed for the second appeal being heard, after framing substantial questions of law and disposed of on merits.

6. Per contra, Mr.K.Govindarajan learned counsel for the caveators / respondents, would state that the Courts below have not committed any error or infirmity in refusing the relief of permanent injunction. He would further submit that the findings recorded by the Courts below are based on the pleadings, evidence adduced, and the facts brought on record during the course of proceedings and there is no perversity in the appreciation of the findings. It is also his case, the entire amount due was paid at the first hearing of the suit, which fact was taken note of by the Courts below. Upon appreciating the said fact, the



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Courts below rightly concluded that the plaintiff was not entitled to the relief of permanent injunction. The subsequent attempt made by the plaintiff to seek an amendment of the plaint by filing I.A.No.749 of 2017 before the trial Court was also rightly considered and rejected, though in revision.

7. The learned counsel for the respondents / defendants would further state that though the trial Court entertained the said amendment application. Aggrieved by the same, the first respondent preferred a revision before this Court in CRP.(MD)No.539 of 2018 and this Court finding that the entire mortgage money was deposited before the Court, also came to the conclusion that the attempt to seek amendment of plaint was strange and has been erroneously entertained by the trial Court and allowed the revision, holding that the relationship between the plaintiff and the defendants is only that of mortgagor and mortgagee and the question of introducing a prayer for pre-emption would not arise and thereby dismissed the application for amendment.



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8. The said order in CRP(MD)No. 539 of 2018 dated 13.04.2022, is made available. On going through the same, I find that this Court recorded the fact that the amendment sought for was beyond the scope of plaint averments. This Court also recorded the fact that the entire mortgage money was deposited before the trial Court, which prompted the appellant to file an application for amendment, despite being aware of the fact that the relief of permanent injunction was not maintainable, in view of the deposit of the mortgage money. The said order in the revision petition, dismissing the amendment petition has become final with no Special Leave Petition being filed before the Hon'ble Supreme Court. Therefore, on facts, the trial Court as well as the first appellate Court had rightly found that the only relationship subsisting between the plaintiff and the defendants was that of mortgagor and mortgage, which also came to an end with the entire money being deposited before the trial Court and the counter claim for redemption of mortgage also came to be allowed. The suit filed by the appellant was only for the relief of permanent injunction that his possession should not be disturbed till the defendant redeemed the mortgage. When the defendant has been able to establish that entire mortgage money was paid was also entitled to relief



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by way of redemption of mortgage, the Courts below have rightly applied the settled legal position and held that the plaintiff is not entitled to the equitable or discretionary relief sought for.

9. I do not see any perversity in the appreciation of the evidence, by the trial Court and the first appellate Court in considering the factual matrix and the entitlement of the plaintiff to the relief of permanent injunction before proceeding to non-suit him to the relief of permanent injunction.

10. The only other question of law that was argued by Mr.H.Arumugam is with regard to the procedure adopted by the trial Court in dealing with the relief of redemption and straight away passing a final decree, without passing a preliminary decree. The said issue is no longer res integra. This Court in Marimuthu Muthiriar v. Ayyathurai, reported in AIR1978-Madras-246, in almost a similar case, finding that the mortgagor had deposited the mortgage money, even on the date of filing of the suit, held that the trial Court did not commit any error in passing the final decree, without passing a preliminary decree. A



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judgment of the High Court of Himachal Pradesh, in Prem Singh v. Prakash Chand reported in 2016-HHC-7925, has also been relied on by the learned counsel for the respondent.

11. The learned Single Judge of the High Court of Himachal Pradesh held that though Order 34 Rules 7 and 8 of the Code of Civil Procedure contemplates the passing of a preliminary decree before the passing of a final decree at a later stage, the purpose of such a procedure is to afford the mortgagor an opportunity to deposit the mortgage money due and payable. When the amount due and payable to the mortgagee was deposited and the mortgagor was ready and willing to deposit the said amount, the High Court of Himachal Pradesh held that there is no necessity for the Court to pass a preliminary decree and thereafter independently pass a final decree. A decision of the High Court of Allahabad in Ghulam Ashraf v. Abdul Khalik reported in 2006-Allahabad-149 was also relied on by the High Court of Himachal Pradesh. The said ratio would also squarely apply to the facts of the present case, where the mortgagor himself did not dispute the amount due and he has deposited the amount before the trial Court. I, therefore,



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do not see any infirmity in the procedure adopted by the Courts below.

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The contention that the Trial Court and the First Appellate Court erred in entertaining the final decree proceedings for redemption without first passing a preliminary decree does not arise for consideration, as the procedure adopted by the Courts below is in accordance with law.

12. In fine, these Second Appeals are dismissed and the judgment and decree passed in A.S.Nos.5 & 6 of 2023 dated 10.02.2026, on the file of the Sub Court, Kulithalai confirming the judgment and decree passed in O.S.No.8 of 2012, dated 15.12.2022 on the file of the District Munsif Court, Kulithalai, is hereby confirmed. There shall be no order as to costs. Consequently, connected Miscellaneous Petitions are closed.

The learned counsel for the respondent made a mention seeking a direction regarding the appellant vacating and handing over the vacant possession. Mr.H.Arumugam, learned counsel for the appellant, on instructions states that the construction has been put up and the appellant may require reasonable time to handover the vacant possession.

Considering the above, it is made clear that the appellant shall file



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an affidavit of undertaking within 10 days stating that he would vacate and hand over vacant possession by 31.12.2026 to the respondents. It is made clear that if no such affidavit of undertaking is filed, it shall be open to the respondents to execute the decree forthwith.

03.07.2026

Internet : Yes

Index: Yes/No

NCC: Yes/No

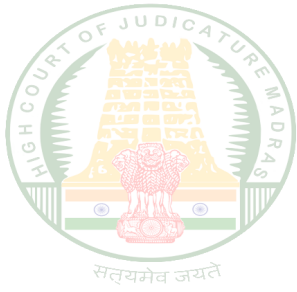
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TO

1. The Sub Court,
Kulithalai.

2. The District Munsif Court,
Kulithalai.

3. The Section Officer,
Madurai Bench of Madras High Court,
Madurai.



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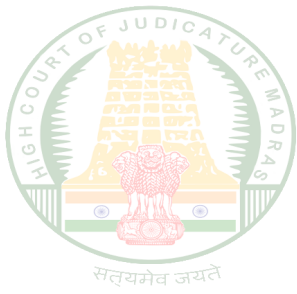
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P.B.BALAJI,J

LS

Pre- delivery Judgments made in
SA(MD) Nos.283 & 284 of 2026

03.07.2026



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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 07.07.2026
CORAM

THE HONOURABLE MR. JUSTICE P.B.BALAJI

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and
CMP(MD)Nos.7359, 7360 & 7361 of 2026

Nagarajan

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... Respondents / Respondents /
Defendants in both SAs.

For Appellant : Mr.H.Arumugam

For Respondents : Mr.K.Govindarajan
for Mr.S.Pon Senthil Kumaran.

ORDER

Today, the case is listed under the caption “for being mentioned”
at the instance of the learned counsel for the appellant, Mr.H.Arumugam.

12/15



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2. According to the learned counsel for the appellant, three daughters in the family of the appellant are pursuing MBBS and hence, they require reasonable time to vacate and handover possession to the respondents, upto 31.03.2026.

3. Mr.K.Govindarajan, learned counsel appearing for the respondent however strongly opposed the said request and would state that even time upto December 2026 is on the higher end and can be reduced.

4. In view of the fact that the respondents are not agreeable to give time beyond 31.12.2026 and I am inclined to direct the appellant to file an affidavit of undertaking that he would vacate and handover vacant possession peacefully by 31.12.2026, without driving the respondents to initiate Execution Proceedings and take forcible possession. Affidavit of Undertaking shall be filed within a period of one (1) week from today.

5.It is made clear that in the event of there being any default in



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filing the affidavit of undertaking within a period of one(1) week from today, that is on or before 14.07.2026, then, the respondents are at liberty to proceed to execute the decree in their favour.

07.07.2026

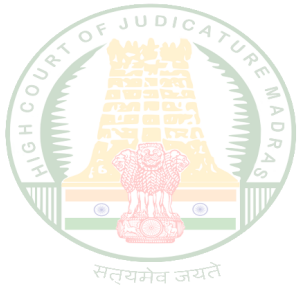
RKP

TO

1. The Sub Court,
Kulithalai.

2.The District Munsif Court,
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3.The Section Officer,
Madurai Bench of Madras High Court,
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