



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on :10.10.2025

Pronounced on :28.10.2025

CORAM

**THE HONOURABLE Dr. JUSTICE G.JAYACHANDRAN
and
THE HONOURABLE MR.JUSTICE MUMMINENI SUDHEER KUMAR**

**Appeal Suit No.814 of 2009 and
C.M.P.No.1480 of 2020**

1.Valliammal,
W/o Late K.Krishnasamy Gounder,
D/o Late Sellappa Gounder,
Thandakaran Thottam,
Sundakkampalayam,
Nambiyampalayam,
Avinashi.

2.M.Govindammal,
W/o Late S.Muthusamy,
D/o Late Sellappa Gounder,
11/108, Puthupalayam,
Nachipalayam, Tiruppur.

3.V.Sornambal,
W/o Late T.Velusamy,
D/o Late Sellappa Gounder,
28, Bungalow Road Extension,
Tiruppur-2.

4.N.S.Nallimuthu,
S/o Late T.Velusamy,
D/o Late Sellappa Gounder,
1/108, Kidangu Thottam,
Mangalam, Tiruppur.



5.N.S.Vellingiri,
S/o Late Sellappa Gounder,
1/118, Kidangu Thottam,
Mangalam, Tiruppur.

6.N.S.Kandasamy,
S/o Late Sellappa Gounder,
1/119, Kidangu Thottam,
Mangalam, Tiruppur.

7.K.Saraswathi,
W/o Late R.Kuppusamy Gounder,
D/o Late N.S.Kandasamy Gounder,
22A, Second Street,
Town Extension, Sheriff Colony,
Tiruppur.

8.N.Palaniammal,
W/o S.P.Nachimuthu Gounder,
D/o Late N.S.Kandasamy Gounder,
First Street, Petchachettipuram,
Royapuram, Tiruppur.

9.N.K.Subramaniam,
S/o Late N.S.Kandasamy Gounder,
11, Patel Street, Palladam.

10.N.K.Palanisamy,
S/o Late N.K.Kandasamy,
797, N.S.K.Compound,
Tiruppur Road, Palladam.

11.N.K.Kumarasamy,
S/o Late N.S.Kandasamy Gounder,
11, Patel Street, Palladam.

12.R.Padmavathy,
W/o E.R.R.Rangasamy,



D/o Late N.S.Kandasamy Gounder,
1, Stanes Road, Fifth Street,
Tiruppur.

13.N.R.Thiruvengadam,
S/o Late Ramasamy Gounder,
Nallagoundampalayam,
Rakkampatti Village,
Gobichettipalayam.

14.T.Gobikrishnan,
S/o R.Thiruvengadam,
Nallagoundampalayam,
Rakkampatti Village,
Gobichettipalayam.

15.T.Ramamurthy,
S/o N.R.Thiruvengadam,
Nallagoundampalayam,
Rakkampatti Village,
Gobichettipalayam.

16.P.Jayasudha,
D/o N.R.Thiruvengadam,
Chettipalayam,
Appiapalayam, Karur.

17.R.Dheenadhayalu,
S/o Late Ramasamy Gounder,
C30, Third Loop Road,
IIT Campus, Chennai.

18.D.Yogesh Kandasamy,
S/o R.Dheenadhayalu,
C30, Third Loop Road,
IIT Campus, Chennai.

19.S.Kavitha,
W/o Dr.L.Suresh,



C30, Third Loop Road,
IIT Campus, Chennai.

20.Dr.A.Balasundari,
W/o Dr.K.Arumugam,
N.S.K.Hospital,
Town Extension First Street,
Tiruppur.

21.R.Dhanalakshmi,
W/o S.Rangasamy Gounder,
Tobacco Merchant,
ML Road, Kottayam.

22.C.Balamani,
W/o Chinnasamy,
14, A.S.Nagar,
Kangayam Road,
Tiruppur.

23.S.P.Shanmugha Sundaram,
S/o Periasamy Gounder,
11/108, Pudupalayam,
Nachipalayam Post,
Tiruppur.

24.S.Sandhya,
D/o S.P.Shanmugasundaram,
11/108, Pudupalayam,
Nachipalayam Post,
Tiruppur.

25.S.Muruganandam,
S/o S.P.Shanmugasundaram,
11/108, Pudupalayam,
Nachipalayam Post,
Tiruppur.

26.S.Dheepa,



D/o S.P.Shanmugasundaram,
11/108, Pudupalayam,
Nachipalayam Post,
Tiruppur.

27.V.Saradha,
W/o Vellingiri,
44, Jain Nagar Second Street,
Kangayam Road, Tiruppur-4.

28.E.Sivagami,
W/o N.Easwaramurthi,
7, Kadhira Nagar, Kangayam Road,
Tiruppur-4.

29.E.Govindammal,
W/o Late N.S.Eswaramurthy Gounder,
9/114, Patel Street,
Palladam.

30.N.E.Sivasubramaniam,
S/o Late N.S.Easwaramurthy Gounder,
9/114, Patel Street, Palladam.

31.N.E.Palanisamy,
S/o Late N.S.Easwaramurthy Gounder,
9/114, Patel Street, Palladam.

32.Dr.E.Kalavathy,
W/o K.Swaminathan,
87C, Aravindan Nursing Home,
Sathi Road, S.S.Kulam,
Coimbatore.

33.G.Leelavathy,
W/o P.Gopalakrishnan,
127-T-1, K.K.Nagar,
Podanur, Coimbatore.



34.Dr.E.Ramadevi,
W/o Dr.R.Sivashanmugham,
R.V.Hospital,
Venkitakrishna Road,
Udumalpet.

35.Dr.N.E.Loganathan,
S/o N.S.Eswaramurthy Gounder,
9/114, Patel Street, Palladam.

36.E.Indiradevi,
D/o N.S.Eswaramurthy Gounder,
9/114, Patel Street, Palladam.

37.Dr.E.Saraswathy,
W/o Dr.K.Swaminathan,
Poonthottam, Kariampalayam,
Annur.

38.R.Padmavathy,
W/o Late Rathinasamy,
9/114, Patel Street,
Palladam.

39.R.Chandrasekar,
S/o Late Rathinasamy,
9/114, Patel Street,
Palladam.

40.P.Charanya,
W/o Palanisamy,
9/114, Patel Street,
Palladam.

..Appellants/Plaintiffs 1 to 30 & 32 to 41

/versus/

1.N.Lakshmi,
W/o Late S.K.Natarajan,



WEB C

Behind Elementary School,
Vijayapuram, Kangayam Road,
Tiruppur 641 606.

2.G.Balamani,
W/o N.Gurusamy,
Guhan Printers,
Dharapuram Road,
K.Chettipalayam,
KNP Colony Post,
Tiruppur 641 608.

3.Palaniammal(died)
W/o M.Narayanasai,
Chetti Thottam,
Punnangalpalayam,
Karaipudur, Arulpuram,
Tiruppur 641 605.

4.T.Saraswathy,
W/o R.Tamilselvan,
Babu Medicals,
Trichy Road, West Palladam,
Palladam.

5.K.Subramaniam,
S/o Late S.Kandasamy Gounder,
Behind Elementary School,
Vijayapuram, Kengayam Road,
Tiruppur 641 606.

6.M.Mynavathi,
W/o Venkatachalam,
Edakkalakadu Thottam,
Kovilpalayam, Alagumalai
Avinashipalayam, Tiruppur.

7.Narayanasami,
H/o Late Palaniammal (died)



8.Balakrishnan,
S/o Late Palaniammal

9.Divya Rajeswari,
D/o Late Palaniammal

R7 to R9 residing at
Chetti Thottam, Punnangalpalayam,
Karaipudur, Arulpuram,
Tiruppur 641 605.

(R3 died, R7 to R9 are brought on record as
LRS of deceased 3rd respondent viz.,
Palaniammal, vide order of Court dated
21.02.2023 made in C.M.P.Nos.496,497 and
498 of 2023 in A.S.No.814 of 2009)

(R7 Died as per memo dated 22.09.2025, R8 and R9 are LRs
of deceased R7. They are already on record. Memo recorded
vide Court Order dated 25.09.2025(GJJ & MSKJ)

....Respondents/Defendants

Prayer: Appeal Suit has been filed under Section 96 of C.P.C., against the
judgment and decree dated 17.12.2008 made in O.S.No.401 of 2005 on the
file of the Additional District Court/Fast Track Court No.V, Coimbatore at
Tirppur.

For Appellants :Mr.S.Parthasarathy, Senior Counsel for
Mr.V.Anandhamoorthy



WEB COPY



For Respondents :Mr.M.S.Krishnan, Senior Counsel for
Mr.Ananda Gomathy for R1, R2 & R4

Mr.J.Antony Jesus for R8 & R9

No appearance for R6
R3, R5, R7-died

JUDGMENT

Dr.G.Jayachandran, J.

Judgment and decree dated 17.12.2008 passed in O.S.No.401 of 2005 challenged by the plaintiffs, on being aggrieved by its dismissal.

2. Gist of the plaint is as follows:-

Thiru.Nalli Gounder (late) had a vast extent of land including the suit property. On his death, the property devolved on his four sons namely Subbia Gounder, Palani Gounder, Arumuga Gounder and Vinayaga Gounder. On 01.03.1918, they entered into a partition deed in respect of the property left by their father, Nalli Gounder and got registered. Under the deed of partition, for their convenient sake, they divided the properties into “A” schedule and “B” schedule. The “A” Schedule consisting of 49.27 acres, jointly allotted to Subbia Gounder and Vinayaga Gounder. The “B” schedule



WEB COPY

consisting of 50.89 acres jointly allotted to Palani Gounder and Arumuga Gounder.

3. The “A” schedule consists of 28.09 acres of dry land and 21.18 acres of garden lands. Subbia Gounder and his sons sold away their half share in 21.18 acres of garden land and enjoying the $\frac{1}{2}$ share in 28.09 acres of dry land. After the death of Subbia Gounder in the year 1938, the property devolved on the five sons of Subbia Gounder, who were in joint enjoyment of the half share in 28.09 acres of dry land and sharing the income. The dispute is in respect of $\frac{1}{2}$ share in the dry land measuring 28.09 acres.

4. The further case of the plaintiffs is that, the suit property was administered by Subbia Gounder and his eldest son Sennimalai Gounder. His other two sons, by name, N.S.Kandasamy Gounder and N.S.Eswaramuthy Gounder, were carrying on tobacco business independently and contributing fund periodically for its improvement and sharing the income derived from the property. Yet, another son by name Sellappa Gounder is living in the nearby village used to frequently visit the property.



WEB COPY

5. Subbia Gounder in the year 1938 leaving his five sons. His elder son Sennimalai Gounder died on 09.09.1974, leaving behind a son by name Kandasamy and two daughters. Kandasamy had four daughters and two sons. The first daughter of Sennimalai Gounder died unmarried. The Second daughter died leaving behind one son by name S.K.Natarajan. The said S.K.Natarajan was married to Lakshmi, the daughter of his maternal uncle Kandasamy, later, he died issueless leaving his widow Lakshmi as his sole legal heir.

6. Sellappan, the second son of Subbia Gounder, died on 27.08.1982 leaving behind three daughters and three sons.

7. N.S Kandasamy Gounder, the third son of Subbia Gounder died on 19.05.1975, leaving behind his wife, three sons and six daughters, N.S.Ramasamy, the fourth son of Subbia Gounder died on 18.11.1974, leaving behind his wife, five daughters and one son by name Jegannathan. His wife and son died later. His son died bachelor.

8. N.S.Eswaramurthy, the last son of Subbia Gounder, died on



WEB COPY

11.10.1993 leaving behind his wife, four sons and five daughters.

9. According to the plaintiffs, Kandasamy, S/o Sennimalai Gounder died in the year 1988, till his death he along with his paternal uncle N.S.Eswaramurthy and the legal heirs of the other three sons of Subbia Gounder were jointly enjoying the suit property. Thus, each of the 5 branches of Subbia Gounder are entitled for 1/5th share in the suit property. When they sought for division of the suit property, the legal heirs of Kandasamy constituting one branch among the 5 branches, started claiming exclusive right are not ready for partition. Therefore, the plaintiffs caused notice to the defendants on 16.06.2005 calling upon them for amicable division of the property, the defendants refused to come forward for division and gave a reply dated 05.07.2005 making a false claim that, the suit property, which originally belongs to Subbia Gounder and his sons, was mortgaged with one Peria Gounder on 09.06.1927 for Rs.1000/-. The possession was given to Peria Gounder and it was an usufructuary mortgage for a period of 10 years. Since Subbia Gounder failed to redeem the mortgage, after the expiry of the mortgage period and within the period of limitation, it has become the absolute property of Peria Gounder. During his life time, Peria Gounder



adopted Kandasamy, S/o Sennimalai Gounder. On the death of Peria Gounder, the property devolved on his adopted son Kandasamy Gounder, who continues to enjoy the property absolutely till his death. The property thereafter, devolved on his 4 daughters and 2 sons.

10. The plaintiffs, refuting the content of the reply notice, claims that, though the mortgage with Peria Gounder is admitted, it was not a usufructuary mortgage. The possession was not given to Peria Gounder. The mortgage was redeemed within 5 years. That is why, when Periya Gounder who executed a Will on 24.05.1934 covering all his property including the properties under his mortgage, he did not mention about the suit property in the Will. The recital of the mortgage deed, speaks about the right of redemption. As per the mortgage deed, the property shall be redeemed soon after the expiry of 10 years on payment of Rs.1000/- or in the month of Chitirai of any year thereafter. Thus, the mortgage is redeemable any time during the month of Chitirai and there is no limitation. The mortgage in perpetuity without any limitation for redemption.

11. Defendants 1 to 5 are the 4 daughters and one son of



WEB COPY

Kandasamy. Yet, another son by name, Venkatachalam, died and his widow is the 6th defendant. Defendant 1 to 5 had filed common written statement. The sixth defendant, who is wife of Venkatachalam, the deceased son of Kandasamy, had filed statement separately.

12. The written statement of the defendants 1 to 5 is reiteration of their reply notice, which form part of the plaint averments, as stated above. The defendants admit the relationship of the parties and the fact is that the suit property originally came to the share of Subbia Gounder in the partition, after his death devolved on his five sons. They deny the plaintiffs claim of share in the property, on the premise that, Subbia Gounder lost his right in the property on his failure to redeem the mortgage of the property. Neither the plaintiffs nor their predecessors were in joint possession or enjoyment of the said property. The income from the suit property never shared to them. Long back, the 4 sons of Subbia Gounder left the family and having their independent business and income. Subbia Gounder eldest son Senniamali along with his father alone looking after the suit property. Subbia Gounder during his life time, executed an usufructuary mortgage on 09.06.1927 in favour of Peria Gounder for a sum of Rs.1000/-. The possession of the



property was handed over to Peria Gounder to enjoy the usufructs in lieu of interest with right of redemption on expiry of 10 years, or during the Tamil month of Chitirai, any year thereafter.

13. Ammakal is the adopted daughter of Peria Gounder. She was married to Sennimalai Gounder, the eldest son of Subbia Gounder. Kandasamy, is the son born to Sennimalai -Ammakal. The defendants 1 to 5 are the children of said Kandasamy. The plaintiffs had deliberately suppressed their fact that Sennimalai and Ammakal are husband and wife to create confusion about the identity of their son Kandasamy. The suit property initially held by Peria Gounder as mortgagee, became his absolute property over a period of time, due to the failure to redeem by the mortgagor within the period of limitation, which expired in the year 1974 after the amendment to the Law of Limitation in the year 1963, Kandasamy became the owner of the suit property as legatee under the Will of Peria Gounder executed on 24.05.1934. In the Will, obviously there is no mention about the suit property, since the mortgage was still alive and the period of 10 years not expired. The possession and enjoyment of the suit property by Kandasamy was not as son of Sennimalai Gounder. It was in the capacity of legatee under



WEB COPY

the Will of Peria Gounder and as heir of Peria Gounder. Hence, the members of the branches headed by the other four brothers of Subbia Gounder, have no right in the suit property.

14. Vinayaga Gounder, the brother of Subbia Gounder, on 10.06.1974, sold his share in the property given under 1918, partition to one Palanisamy Gounder. Since division of the properties were not formally done, there was a partition deed dated 06.03.1980 between Kandasamy and Palanisamy,

15. The contentions of the plaintiffs that the possession of the suit property was not given to the mortgagee and the mortgage was redeemed within 5 years on payment of mortgage money, are false. After, Peria Gounder, the suit property was in the absolute enjoyment of Kandasamy and the improvements to the suit property was made by Peria Gounder and Kandasamy. After the death of Kandasamy, the suit property devolved on the defendants alone, since the deceased son Venkatachalam, who married the sixth defendant during his life time, executed a Will dated 22.01.1990, bequeathing his share in the property to the defendants 1 to 5.



WEB COPY

16. The sixth defendant is not a necessary party to the suit. She had been impleaded unnecessarily with a mischievous intention. In fact, the sixth defendant filed a suit in O.S.No.223 of 1994 before the Subordinate Court at Tiruppur seeking partition. The defendants filed O.S.No.233 of 1995 before the District Munsif Court, Tiruppur, asserting their right in the property based on the Will of Venkatachalam. The suit filled by the defendants was allowed and the suit filed by the sixth defendant was dismissed.

17. The sixth defendant had filed written statement, wherein she has stated that the averments in the plaint are false and untenable. The plaintiffs have lost their right to claim share in the suit property, since they failed to redeem the property within the time prescribed. They were never in joint possession with Kandasamy and neither enjoying the income from the suit property. Kandasamy is the absolute owner of the property and she, as the daughter-in-law of Kandasamy, married to his son Venkatachalam, is entitled for a share in the property along with other legal heirs of Kandasamy. She allowed her suit to go for dismissal, since on the advice of elders she entered into compromise with the defendants 1 to 5 on their promise that they



WEB COPY

will allot her share later. She is ready to pay necessary Court fees and prays to allot appropriate share as per law.

18. Based on the above pleadings, the following Issues were framed:-

- 1) Whether the plaintiff is entitled to a decree of partition as prayed for ?.
- 2) Whether they alleged Will is true, valid and binding ?.
- 3) To what relief ?

19. K.Palanisamy, the 10th plaintiff in the suit mounted the witness box and deposed as PW1. 18 documents were marked as Ex.A1 to Ex.A18. On behalf of the defendants, 4 witnesses were examined as DW-1 to DW-4. 102 documents were marked as Ex.B1 to Ex.B102.

20. The Trial Court, appreciating the evidence, particularly, the recital of the mortgage deed dated 09.06.1927 marked as Ex.B-1, the revenue records like adangal, kist receipts as well as deeds of sale, deed of partition



and registered Will entered between the siblings of Subbia Gounder in respect of the suit properties, held that the plaintiffs have lost their right in the property due to their failure to redeem it in time. Hence, they are not entitled to seek partition. They have been ousted and never in possession of the property as claimed.

21. Regarding the claim of the sixth defendant (Mynavathi), the Trial Court held that, Venkatachalam, the husband of the sixth defendant, during his life time, had bequeathed his share in the property to the defendants 1 to 5 under Ex.B5 and Ex.B24. Therefore, she has no right in the suit property.

22. Being aggrieved by the dismissal of their suit for partition, the plaintiffs 1 to 30 and 32 to 41 had filed the Appeal Suit under consideration. The judgment of the Trial Court in O.S.No.401 of 2005 is impugned on various grounds. The main contention of the Learned Senior Counsel appearing for the appellants is that, in a suit for partition, while the relationship and right of the plaintiffs is admitted, the same ought not to have been dismissed on the ground of ouster. The original of the alleged deed of



mortgage was not produced by the defendants. While so, the Trial Court without satisfactory explanation as required under Section 65 of the Evidence Act, 1872, erroneously allowed the defendants to adduce secondary evidence (Ex.B-1). In a suit for partition, both the plaintiffs as well as the defendants are liable to prove their respective case. The failure of the plaintiffs to establish that the mortgage of the year 1927 got redeemed will not inure any absolute right to the defendants. The Trial Court failed to consider the settled legal principle that a Mortgage is always a mortgage. Till the mortgage is legally terminated either by redemption or by foreclosure or come to an end in a manner known to law, the right of the mortgagor will not get extinguished. In case of usufructuary mortgage, the right of the mortgagor is dealt under Section 62 of the Transfer of Property Act, 1882. Under Ex.B-1, the right to redeem is not limited by any time. End of any Tamil month 'Chitirai', the mortgage is redeemable. Hence, Article 61 of the Limitation Act, 1963, has no application to the facts of the case. It is further contented by the learned Senior Counsel for the appellants that, the Trial Court ignored the fact that if the mortgage of the suit property with Peria Gounder was in existence in the year 1934, certainly, Peria Gounder would have mentioned about this mortgage in his Will dated 14.05.1934 (Ex.B97) as he had done in respect of



WEB COPY

other property, which were under his mortgage. He also, questioned the Will for not examining the attesting witness as required under Section 68 of the Evidence Act, 1872.

23. According to the appellants, among the co-sharers the principle of ouster cannot be applied. The revenue records relied by the defendants to show that their possession has to be construed as joint possession of all the sharers. Contrary to the settled principle of law that possession by one sharer, constitutes constructive possession of all other co-sharers, the trial Court failed to apply this principle.

24. The Learned Senior Counsel for the Respondents/Defendants submitted that the ill-conceived and motivated suit, was rightly dismissed by the Trial Court. The possession of the suit property by Kandasamy and his children was not as co-sharer of the plaintiffs' predecessors. He was in possession as the legatee and legal heir of Peria Gounder, who had perfected his title over the property by default of the mortgagor. It is incorrect to claim, law of limitation not applicable to 'usufructuary mortgage'. Though in Transfer of Property Act, 1882, right of mortgagor in usufructuary mortgage



WEB COPY

is dealt separately under Section 62, as far as law of limitation, the time prescribed for redemption is same for all kind of mortgage in respect of immovable property. The plaintiffs or their predecessors had never had any right or interest in the property after they failed to redeem the property after the expiry of 10 years from 1927. The plaint averments is that the mortgage was redeemed with five years and the possession of the property was with them along with Kandasamy. Having failed to establish the said averments, in the appeal, an entirely new plea is projected as if, their right to redeem the property survives. Even assuming, there is any iota of right to redeem is left, the suit for partition, without expressing the intention to redeem, will not survive. The plaintiffs one hand pleaded that the mortgage already redeemed and possession is with them jointly. On the other hand, in the appeal he submitted that their right to redeem is not limited by time, therefore the suit for partition is sustainable. The plaintiffs cannot take mutually destructive stand. Either way, they have no right or interest in the suit property.

25. The respondents have also filed C.M.P.No.1480 of 2020 an application under Order 41 Rule 27 of C.P.C. to receive the registered release



WEB COPY

deed dated 02.11.1955 executed in favour of N.S.Kandasamy Gounder by his three brothers namely Sellappa Gounder , N.S.Ramasamy Gounder and N.S.Eswaramoorthy Gounder, wherein they have clearly stated that they hold no ancestral property among themselves and what is held in their name are the properties earned in the tobacco business and purchased in their name. This document, according to the Learned Senior Counsel for the Respondents, is sufficient to disprove all the claims made by the appellants in the suit.

26. The point for determination:

Whether the possession and enjoyment of the suit property by the Respondents/ Defendants as legal heirs of Kandasamy, who according to them, got the property as legatee and heir of Peria Gounder, the mortgagee, should be construed as the joint family property of Subbia Gounder and his sons, as claimed by the plaintiffs/appellants. ?

27. To determine the above point, it is first necessary to examine the recital in the mortgage deed dated 09.06.1927 marked as Ex.B-1. This



mortgage deed registered at Joint Sub-Registrar Office at Tiruppur as document No:674 of 1927. The recital in this documents indicates, it is an usufructuary mortgage. Peria Gounder, as the mortgagee and Subbia Gounder and his sons Sennimalai Gounder and Sellappa Gounder as the mortgagors have entered into the deed of mortgage wherein the possession is given to the mortgagee Peria Gounder, after receiving a loan of Rs.1000/- with specific recital that he will be enjoying the usufructs for 10 years and at the end of the 10th year, the mortgagor will repay Rs.1000/- and redeem the property. Failing which, they have right to redeem it at expiry of Chitirai month of the ensuing years, the mortgagor shall pay the money and get back the possession.

28. The appellants specific plea is that the property was redeemed within 5 years and that is why, in the Will Ex.B97, there is no reference about this mortgage. To establish this averment, the plaintiffs' side witness PW-1 (N.K.Palanisamy) or the documents relied by them lend any support. The mortgage deed being a registered deed, its redemption ought to have been registered to clear the encumbrance. Atleast there should have been some evidence to show, the property was in joint possession of the plaintiffs and



the defendants. The suit laid on the specific plea that the mortgage was redeemed and in joint possession, but without any proof for the redemption or for joint possession. Contrarily, the revenue documents like kist receipts, adangal relied by the respondents/defendants provides overwhelming evidence of their exclusive possession of the suit property.

29. In the appeal, it is contented that, their right to redeem is perpetual, since the recital in the mortgage deed says, the mortgage is redeemable at the expiry of Chitirai month ensuing years. To avail the benefit of this Clause, the appellants ought to have first exercised this right or should have expressed their intention to redeem. Contrarily, they have falsely pleaded that the mortgage already redeemed and possession with them jointly.

30. The Hon'ble Supreme Court in ***Singh Ram –vs- Sheo Ram*** reported in ***[2014(9) SCC 185]***, after extracting Sections 58, 60 and 62 of the Transfer of property Act, 1882, and Article 60 of the Limitation Act, 1963 had clarified the right of the usufructuary mortgagor and how to reckon limitation, in case of usufructuary mortgage in the following words:- :-



WEB COPY



“12.A perusal of the above provisions shows that Article 61 refers to the right to redeem or recover possession. While right of mortgagor to redeem is dealt with under Section 60 of the TP Act, the right of usufructuary mortgagor to recover possession is specially dealt with under Section 62. Section 62 is applicable only to usufructuary mortgages and not to any other mortgage. The said right of usufructuary mortgagor though styled as “right to recover possession” is for all purposes, right to redeem and to recover possession. Thus, while in case of any other mortgage, right to redeem is covered under Section 60, in case of usufructuary mortgage, right to recover possession is dealt with under Section 62 and commences on payment of mortgage money out of the usufructs or partly out of the usufructs and partly on payment or deposit by the mortgagor. This distinction in a usufructuary mortgage and any other mortgage is clearly borne out from the provisions of Sections 58, 60 and 62 of the TP Act read with Article 61 of the Schedule to the Limitation Act. Usufructuary mortgage



WEB COPY



cannot be treated on a par with any other mortgage, as doing so will defeat the Scheme of Section 62 of the TP Act and the equity. This right of the usufructuary mortgagor is not only an equitable right, it has statutory recognition under Section 62 of the TP Act. There is no principle of law on which this right can be defeated. Any contrary view, which does not take into account the special right of usufructuary mortgagor under Section 62 of the TP Act, has to be held to be erroneous on this ground or has to be limited to a mortgage other than a usufructuary mortgage. Accordingly, we uphold the view [Ram Kishan v. Sheo Ram, AIR 2008 P&H 77 : (2008) 64 AIC 352] taken by the Full Bench that in case of usufructuary mortgage, mere expiry of a period of 30 years from the date of creation of the mortgage does not extinguish the right of the mortgagor under Section 62 of the TP Act.”

31. In our considered opinion, the above dictum of the Hon'ble Supreme Court will have no help for the appellants, who have pleaded that mortgage already redeemed and being in their possession and enjoyment



jointly along with the defendants. Further, the suit is filed for partition and not for redemption of mortgage. Having lost the suit for partition for their failure to prove the redemption and possession, it is not open to the appellants to go back and claim that their right of redemption still survives. An attempt to convert a suit for partition into a suit for redemption at the appellate is made after unsuccessful before the Trial Court.

32. We hold that the appellants/plaintiffs had not come with clean hands. They having lost their possession and right in the property after the period prescribed in the mortgage deed, had come out with a false plea of joint possession and enjoyment. Their ouster from the suit property with their knowledge is proved by the defendants through the will of Chellappan marked as Ex.B-26, Partition deed among Govindammal and others marked as Ex.B-27, the Partition deed among Dhanalakshmi and others marked as Ex.B-28 and Partition Deed of Padmavathi and others marked as Ex.B-29. The recital in the release deed of the year 1955 among the other brothers excluding Sennimalai, which is sought to be taken as additional evidence fortifies the fact that the right of the plaintiffs in the property had extinguished by ouster and acquiescence. Therefore, we find no error in



WEB COPY

dismissal judgment of the Trial Court.

33. As a result, **this Appeal Suit stands dismissed with costs through out.** The Judgment and decree of the trial Court in O.S.No.401 of 2005 dated 17.12.2008 is hereby confirmed. Consequently, C.M.P.No.1480/2020 is closed.

(Dr.G.J.J.) & (M.S.K.J.)
28.10.2025

Index:yes
Internet:yes
Speaking order/non speaking order
Neutral citation:yes/no
ari

To
The Additional District Court/Fast Tract Court No.V,
Coimbatore at Tiruppur.

Dr.G.JAYACHANDRAN, J.
and
MUMMINENI SUDHEER KUMAR, J.

ari



WEB COPY



delivery Judgment made in
A.S.No.814 of 2009
and
C.M.P.No.1480 of 2020

28.10.2025