BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 16.03.2026

DELIVERED ON : 12.06.2026

CORAM:

THE HONOURABLE MR.JUSTICE P.B.BALAJI

S.A.(MD)No.293 of 2021
and
C.M.P.(MD)No.4001 of 2021

Manoharan ... Appellant

Vs.

1.Ebanesar
2.Suma Bai
3.Latha Florence
4.John Andreesan ... Respondents

PRAYER: Second Appeal filed under Section 100 of the Civil Procedure Code, against the judgment and decree dated 06.11.2020 of the learned Subordinate Judge, (Camp at) Kuzhithurai, made in A.S.No.133 of 2014, reversing the judgment and decree dated 11.08.2014 of the learned I Additional District Munsif, Kuzhithurai, made in O.S.No.374 of 2009.

For Appellant : Mr.K.N.Thampi
For Respondents : Mr.H.Arumugam

JUDGMENT

The second defendant is the appellant herein, aggrieved by the reversal findings rendered by the First Appellate Court in A.S.No.133 of 2014.

2.The above Second Appeal was admitted on 23.04.2021, on the following substantial questions of law:

> *"1)Whether the lower appellate court is right in placing on the appellant / second defendant, the burden of proving that the first respondent / plaintiff in the suit is not an agriculturist, not entitled to the benefit as such?*
>
> *2)Whether the lower appellate court is right in holding that the first respondent / plaintiff is an agriculturist entitled to benefits as such, in view of Exhibits A.11, executed by him, wherein he has categorically stated that he is a businessman and that he has received*

the consideration for the said Exhibit A.11 for improvement of the business run by him?"

3.The respondents 2 to 4 have chosen to remain away from the proceedings. The first respondent who is the contesting respondent entered appearance through Counsel.

4.I have heard Mr.K.N.Thampi, learned Counsel for the appellant and Mr.H.Arumugam, learned Counsel appearing for the first respondent.

5.The facts of the case are briefly set out hereunder:

5.1. The 'A' schedule property measuring 47 cents comprised in Old S.No.2394, was allotted to the plaintiff's father on a partition executed on 19.11.1942. As per re-survey, 'A' schedule property is now comprised in R.S.No.208/10 and measures 16.5 ares equal to 41 cents. The father of the plaintiff died on 26.02.1995, leaving behind five children. The first defendant, brother of the plaintiff purchased the shares of the sisters and resultantly, plaintiff and first defendant alone own plaint 'A' schedule property. The father, during his lifetime has executed a mortgage in respect of 10 cents in 'A' schedule property in Document No.5126 dated 07.09.1961, in favour of plaintiff's sister Sicily and her husband Muthunayagam Nadar, at the time of their marriage.

5.2. The mortgaged property is described as Schedule 'B' property. Under the said mortgage, possession is stated to have been given to the mortgagee. The first defendant obtained the mortgage right from one of the mortgagees namely Sicily Nadathi and the same merged with the equity of redemption. The other mortgagee, husband of Sicily Nadathi namely Muthunayagam Nadar, has assigned one half of the mortgage right in favour of the second defendant. However, the document was mischievously styled as a sale deed. The said document pertained only to the mortgage right and nothing more and that the second defendant stepped into the shoes of the mortgagee, Muthunayaga Nadar.

5.3. The plaintiff contends that having inherited the right from the original mortgagor, he is entitled to redeem the remaining one half of the mortgage right from the second defendant. The plaintiff claims that he is an agriculturist and the mortgage is over 30 years and by operation of the Madras Agriculturists Relief Act, 1938, the plaintiff contends that the plaintiff has got a period of 30 years for redemption commencing from 07.09.1991 and by efflux of time, namely first period of 30 years, the plaintiff claims that he is entitled to the benefits of the Agriculturists Relief Act and thus, he can redeem one half of the mortgage, without payment of the mortgage amount. The plaintiff made demands to the second defendant to execute necessary release deed, with the last demand being made on 31.07.2009. However, the second defendant did not come forward to execute the release deed. Hence, the suit came to be filed.

5.4. The second defendant resisted the suit claim, contending that the suit is an abuse of process and has been filed only to block the progress of O.S.No.649 of 2004, pending on the file of the District Munsif Court, Kuzhithurai, where the plaintiff is the second defendant and the second defendant has filed the suit. The second defendant also contends that the description of the property is vague and misleading and suit is filed only at the instigation of the first defendant. The mortgage became time barred and Muthunayagam Nadar became the absolute owner. The second defendant purchased 5 cents from Muthunayagam Nadar on 08.06.2006 and is using the said 5 cents for pathway purposes to reach his house. The second defendant has already mutated the revenue records and has been paying land tax for the said extent of 5 cents, which is now converted as a pucca motorable road.

5.5. The plaintiff's claim is time barred and first defendant being a Government servant cannot claim the benefits of the Debts

Relief Act. The first defendant never obtained the mortgage right of Sicily Nadathi as claimed by the plaintiff. The mortgage right was only resting with Muthunayagam Nadar and that has also become time barred. Hence, the plaintiff is not entitled to redeem the mortgage. The first respondent has failed to redeem the mortgage within the period of limitation and having failed to do so, he has now set up his brother claiming the benefits of the Tamil Nadu Debt Relief Act, 1979. There was no demand as alleged in the plaint. The suit is without any cause of action and the defendant prays for dismissal of the suit.

5.6. The trial Court, after framing necessary issues, ultimately, after elaborate trial, dismissed the suit. Aggrieved by the dismissal, the plaintiff preferred A.S.No.133 of 2014. The First Appellate Court on re-appreciation of the oral and documentary evidence, allowed the appeal and set aside the judgment and decree of the Trial Court, as against which, the second defendant is on Second Appeal.

6.Arguments of Mr.K.N.Thampi, learned Counsel for the appellant:

6.1. Learned Counsel for the appellant having taken me through the pleadings, would contend that Schedule 'A' property measuring 47 cents was originally belonging to the father of the plaintiff and pursuant to his demise, the first defendant purchased the shares of his sisters. Resultantly, the Schedule 'A' property was owned by the plaintiff and the first defendant alone. He would further contend the Schedule 'B' property measuring 10 cents is a portion of Schedule 'A' property in respect of which, an Othi was created in favour of the husband of the first defendant's sister Sicily Nadathi on 07.09.1961. It is the contention of Mr.K.N.Thampi, that the limitation period available for redemption of said Othi is only 30 years and the same also expired on 06.09.1991 and thus, the claim was hopelessly time barred.

6.2. As regards the plaintiff falling back on the Agriculturist Relief Act, Mr.K.N.Thampi, learned Counsel for the appellant would contend that the plaintiff is not entitled to the benefits of the Agriculturists Relief Act, 1938, as the plaintiff is not an agriculturist and he has been doing other businesses, in respect of which evidence was also adduced before the trial Court. He would further refer to Section 58(a) of the Transfer of Property Act, 1882 and contend that Othi is a transaction in the nature of an anomalous mortgage. Inviting my attention to the relevant paragraphs in Mulla's Transfer of Property Act, 14th Edition as well as the Advanced Law Lexicon, by Mr.Ramanatha Aiyar, Mr.K.N.Thampi, would contend that Othi is different from mortgage and can only be brought within the definition of an anomalous mortgage. Hence, the period of limitation could only be 30 years from the date of the mortgage, namely 07.09.1961 and nothing more. Mr.K.N.Thampi, learned Counsel for the appellant states that it is a clear case that the plaintiff has been set up by the first defendant for achieving what the first defendant could not directly achieve.

6.3. He would also invite my attention to the evidence of D.W. 2 and would state that when the appellant was able to demonstrate that the plaintiff was only a trader, the plaintiff cannot seek the benefits of the Agriculturists Relief Act, 1938 and file the suit beyond the period of limitation provided for an anomalous mortgage. Also as an argument in demurrer, Mr.K.N.Thampi, learned Counsel for the appellant would state that the father Muthunayagam Nadar, had to be an agriculturist, on the date of the mortgage and admittedly, in the present case, it is not so and hence, applying the ratio laid down by the Full Bench in the case of ***Lakshmi Aachi and another*** *Vs.* ***Parvathi Achi (died) Alagappa Chettiar (a) Alagn Chettiar,*** *reported in* ***1999 II CTC 40,*** in this regard, Mr.K.N.Thampi, learned Counsel would state that even if the plaintiff could be treated as an agriculturist, the plaintiff cannot be entitled to the benefits, even if the Agriculturists Relief Act is applicable to the plaintiff. Even then, the plaintiff not being able to establish that the father Muthunayagam was an agriculturist on the date of the mortgage as well as on the date of the redemption, the plaintiff cannot take shelter under the beneficial provisions providing a further 30 years period of limitation.

6.4. Mr.K.N.Thampi, would further contend as an alternate plea that Muthunayagam Nadar, was only a guardian and on his death, his wife was entitled to 1/3rd share and the five children were entitled to the remaining 2/3rd share and the right of redemption fell to the share of the wife and all the five children. However, the first defendant purchased only 3 shares of the sisters and the plaintiff was entitled to only 2/5th right and not the entire property. Therefore, the right of redemption could not have been exercised in respect of the entire property and hence, the suit in this regard was clearly not maintainable. In respect of 8/5th share, the suit was clearly barred, having not been filed on or before 06.09.1991.

6.5. In support of his submissions, Mr.K.N.Thampi, learned Counsel has also relied on the following decisions:

1) Pappathi Ammal alias Nallammal *Vs.* ***Nallu Pillai,*** *reported in* ***77 L.W.14;***

2) Kaleeswara Mills Limited *Vs.* ***Lakshmi Steels and another,*** *reported in* ***(2006) 4 M.L.J. 419;***

3) Lakshmi Achi and another *Vs.* ***Parvathi Achi (Died),*** *reported in* ***1999 (II) CTC 40;***

4) Muthulakshmi *Vs.* ***Arumuga Padayachi and another,*** *reported in* ***(1983) I MLJ 59;***

5) Pitchi and others *Vs.* ***Parameswaran Pillai and others,*** *reported in* ***2022 (4) CTC 436;***

6) Mathew *Vs.* ***Alexander Muthalali,*** *reported in* ***AIR 1973 KERALA 270;***

7) Thankamma and others *Vs.* ***Santhakumari Amma and another,*** *reported in* ***(1998) I MLJ 129.***

7.Arguments of Mr.H.Arumugam, learned Counsel for the first respondent:

7.1. Per contra, Mr.H.Arumugam, learned Counsel appearing for the contesting first respondent would firstly contend that in the written statement, the appellant had not taken a plea regarding anomalous mortgage. In fact, the second defendant did not even dispute the claim of the plaintiff that he was an agriculturist. In this regard, learned Counsel for the first respondent, Mr.H.Arumugam has taken me through the plaint as well as the written statement and contends that under Order VIII Rule 5 of CPC, a specific denial has to be made which is conspicuously absent in the present case and hence, without any pleadings, the appellant cannot now contend that the plaintiff is not an agriculturist and that he is not entitled to the benefits of the Agriculturist Relief Act.

7.2. Mr.H.Arumugam, learned Counsel taking me through the provisions of the Agriculturists Relief Act, 1938 and specifically referring to Section 9-A, would contend that the Act would apply to all kinds of mortgages and therefore, he would contend that the argument of Mr.K.N.Thampi that the mortgage being an anomalous mortgage, even if accepted, would not make much difference. Learned Counsel also relied on the Full Bench decision of this Court in the case of ***Konthalavalli Achi*** *Vs.* ***T.S.Ayyadurai Odayar & others,*** *reported in* ***1962 AIR (Mad) 21.***

8.In reply, Mr.K.N.Thampi, learned Counsel for the appellant would state that the written statement has to be read as a whole and if done so, it would clearly evidence the fact that there is a reference to a mortgage. He would refer to Order VIII Rule 5 of

CPC and contend that the Rule provides for a denial by implication as well and he would further state that trial Court has in fact, framed an issue specifically in this regard, as to whether the plaintiff is an agriculturist and he would therefore, state that the plaintiff has adduced satisfactory evidence that he is an agriculturist and consequently, entitled to the benefits of the Act. He would further state that the Court has to give leverage for mofussil pleadings and specific denial of the claim in the plaint regarding plaintiff being an agriculturist should not be viewed as a fatal omission on the part of the appellant.

9.I have carefully considered the submissions advanced by the learned Counsel for the parties and I have also gone through the judgments of the Trial Court as well as the Appellate Court and I have also gone through the decisions relied on by the learned Counsel for the parties.

10. The substantial questions of law that have been framed are revolving around whether the plaintiff is an agriculturist or not and if so, would he be entitled to the benefits of Act 4 of 1938.

11. In paragraph No.9 of the plaint, the plaintiff has specifically asserted that he is an agriculturist and though the mortgage is more than 30 years old and would be normally wiped off by the efflux of time, however, by operation of the Agriculturist Relief Act, 1938, it was extended to Kanyakumari District, plaintiff has got a further 30 years for redemption, commencing from 07.09.1991. In the written statement, paragraph No.9 of the plaint has been dealt with at paragraph No.17 which is extracted hereunder:

> *"17.Since the first defendant failed to redeem the mortgage within the period of limitation, he can not set up his brother to redeem the mortgage claiming the benefits of Debt Relief Act. So the averments in para 9 is unwarranted."*

12. On a reading of the above passage, it is clear that there is no denial, leave alone the specific denial of the claim of the plaintiff that the land is an agricultural land. In paragraph No.9, it has been specifically stated that he is an agriculturist and therefore, he is entitled to the benefits of the Agriculturist Relief Act, 1938, and therefore, the suit is in time. The appellant / second defendant has only stated that the plaintiff has been set up by his brother to redeem the mortgage, claiming the benefits of the Act. Therefore, reading paragraph No.11 as well, I can only see that the appellant has admitted that the plaintiff is an agriculturist. There is no express or was implied denial.

13. Though Mr.K.N.Thampi contended that specific issue has been framed by the Trial Court, on going through the issues framed in the Trial Court, I do not find any issue framed as to whether the plaintiff is an agriculturist or not. The following issues were framed by the trial Court:

> *"1. 07.09.1961 தேதியிட்ட கடன் நிவாரண சட்டப்படி வாதிக்கு அடமான ஆவணம் திரும்ப கிடைக்கக் கூடியதா?*
>
> *2. வாதிக்கு தாவா அடமான ஆவணத்தில் உள்ள ½ பங்கு 2ம் பிரதிவாதியிடமிருந்து மீட்டு கிடைக்கக்கூடியதா?*
>
> *3. வாதிக்கு கிடைக்கக்கூடிய வேறு பரிகாரங்கள் என்ன?"*

14. Therefore, the Trial Court has not framed any issue with regard to whether the plaintiff is an agriculturist or not, since it was not at issue. However, on examining the oral and documentary evidence, the Trial Court came to the conclusion that the plaintiff has not established that he is an agriculturist and secondly, he cannot claim the benefit of Act 4 of 1938, to bring the suit for redemption, within the extended period of limitation. I am unable to approve the procedure adopted by the Trial Court in this regard. Firstly, there was no issue framed as to whether the plaintiff is an agriculturist or not. The first issue framed by the trial Court was only whether the plaintiff is entitled to the benefits of Act 4 of 1938.

15. Elaborate submissions were made on the various developments in Act 4 of 1938 and hence, it has become necessary for me to deal with the same. The Agriculturists Relief Act, 1938 [Act 4 of 1938], defines an agriculturist in Section 3 (ii) to mean a person who -

> *"(a) has a saleable interest in any agricultural or horticultural land in the [State of Tamil Nadu], which is assessed by the (State) Government to land revenue (which shall be deemed to include peshkash and quitrent), or which is held free of tax under a grant made, confirmed or recognized by Government ; or*
>
> *(b) holds an interest in such land under a landholder under the [Tamil Nadu] Estates Land Act, 1908, as tenant, ryot or tenure holder ; or*
>
> *c) holds an interest in such land, recognized in the Malabar Tenancy Act, 1929;*
>
> *(d) holds a lease of such land from any person specified in sub-clause (a), (b) or (c) or is a sub lessee of such land"*

16. Both the learned Counsel for the appellant as well as the first respondent have fallen back on the said definition of agriculturist to fortify their respective submissions. On a careful examination of the definition of an agriculturist under the said Act, the requirement is only that a person should have a saleable interest in any agricultural or horticulture land, which is assessed by the State Government or is held free of tax under any grant made, confirmed or recognized by Government, or a person holding interest in such land under land holders under the Tamil Nadu Estates Land Act, 1908, as tenant, ryot or tenure holder or holds an interest in interest in such land, recognized in the Malabar Tenancy Act, 1929 or holds a lease of such land from any person specified in sub-clause (a), (b) or (c) or is a sub lessee of such land. The proviso deals with a cap of income tax under the Income Tax Act, 1961, to take it outside the definition of an agriculturist. The explanation deals with the annual rental value of any building or land for the purposes of arriving at the taxation in proviso (c).

17.A careful perusal of the definition only requires a land. Therefore, there is no bar that such person should not carry out any other business activities or operations to come within the definition of agriculturists as defined under Section 3(b) of the Act.

Even if the appellant had been able to establish the factum of the plaintiff being a trader, there is no bar for him to claim to be an agriculturist under Act 4 of 1938.

18. Now coming to whether the mortgage being an anomalous mortgage would be covered under Act 4 of 1938, Section 9-A of the said Act deals with special provisions in respect of usufructuary mortgages. Though, the title to Section 9-A states that it is a special provision in respect of usufructuary mortgages, Section 9-A (1) states that Section applies to all mortgages executed at any time before 1st of March, 1972, by virtue of which mortgagee are in possession of the property mortgaged to him or in possession thereof. Relying on the said provisions, Mr.H.Arumugam, would contend that Section 9-A is not limited to usufructuary mortgages alone but all mortgages, where mortgagee is put in possession of the property.

19. Mr.H.Arumugam, learned Counsel relied on a Full Bench decision, where the Full Bench has held as follows:

> *"9. .... The first of the questions set out above concerns the interpretation of Section 9A(1) which makes the provisions of the section applicable to all mortgages by virtue of which the mortgagee is in*

possession of the property. The terms of the section are wide enough to bring within its ambit not merely the usufructuary mortgage as defined in Section 58(d) of the Transfer of Property Act but other mortgages which involve a transfer of possession of the property to the mortgagee, e.g. mortgage by conditional sale, simple mortgage usufructuary etc. ....”

20. Thus, in view of the dictum of the Full Bench, I foresee no difficulty in holding that irrespective of the mortgage, Section 9-A would still apply. Thus, I see no purpose in further deliberating on the nature of the mortgage in question in the present suit.

21. In view of the above, the plaintiff having been held to be an agriculturist which was not even denied by the appellant / second defendant and in view of the fact that the mortgage in question is also covered by Act 4 of 1938, the plaintiff was certainly entitled to the extended period of limitation and admittedly, the suit has been filed within extended period of limitation and therefore, plaintiff was certainly entitled to seek redemption.

22. Though Mr.K.N.Thampi, learned Counsel for the appellant has also argued that the portion of the right is time barred and he would elaborate on the ratio in which the parties succeeded to their respective shares, I do not see how these matters which are not even subject matter of trial or even pleading before the trial Court could be raised for the first time in the Second Appeal. In any event, it is a matter between the plaintiff and the first defendant and their legal heirs and the second defendant cannot now, for the first time in the Second Appeal, take a stand that the plaintiff is not entitled to the redemption of the entire property which was subject matter of the mortgage, but only entitled to a portion of the same.

23. Dealing with the decisions that have been relied on by the learned Counsel on either side, I have already discussed the ratio laid down by the Full Bench to the effect that to take advantage of the benefits of the Agriculturist Relief Act, the person claiming benefit should be an agriculturist on the date of incurring debt and so also when the Act was amended and there can be no quarrel with regard to the said proposition. However, when the plaintiff has specifically asserted that he is an agriculturist, there has been no denial in the first place and there is no evidence, insofar as the plaintiff not being an agriculturist on the relevant dates. The only evidence let in was to show that plaintiff had other avocation and doing trade and therefore, is not an agriculturist. I have already dealt with this aspect and held that there is no bar for the person doing other avocation but also qualifying as agriculturist under Act 4 of 1938. Hence, I do not see how the two Full Bench decisions in ***Pappathi Ammal's*** case and ***Lakshmi Aachi's*** case could be to the benefit of the appellant.

24. In ***Muthulakshmi's*** case, also this Court dealt with the definition of agriculturist and the qualifications for being an agriculturist. This decision is again not of any assistance to the appellant. This Court in ***Thankamma's*** case and ***Pitchi and others'*** case and the Kerala High Court in ***Mathew's*** case dealt with the nature of 'Othi' transaction. However, in view of the aforesaid Full Bench decisions, I do not see any necessity in the first place to delve upon the character of the mortgage to distinguish it from Othi, to take it outside the scope of Act 4 of 1938, in the instant case, since all mortgages are covered under Section 9-A. Therefore, these judgments would not apply to the present case.

25. Insofar as ***Kaleeswara Mills'*** case, that was a case where this Court dealt with Order 8 Rules 4 & 5(1) of CPC and held that pleadings in India particularly in mofussil and lower courts are not artistically drafted. Laxity is therefore tolerable in the interest of justice. However, that was a case arising out of an agreement of sale which was sought to be specifically enforced and from the written statement, this Court was able to find that though there was no specific admission that time is not the essence of the contract, by necessary implication, reading the entire written statement in whole, the defendants have denied the stand of the plaintiff that time is not the essence of the contract. I do not see how this decision can be applied, especially in the light of my discussion to paragraph No.9 of the plaint and paragraph No.19 of the written statement.

26. Learned Counsel for the respondent has relied on the decision of the Hon'ble Supreme Court in ***Thangam's*** case, where the Hon'ble Supreme Court summarised the law with regard to denials in the written statement and held that specific admission and denial of pleadings in plaint is necessary and all allegations in the plaint must be dealt with para wise. It was further held that in the absence of the specific admissions, it would become a roving enquiry for the Court to find out as to which line in some paragraph in plaint is either admitted or denied in written statement filed, as there is no specific admission or denial with reference to allegation in different paragraphs.

27. In fact, Order 8 Rules 3 & 5 of CPC, provides that every allegation of fact in the plaint, if not denied in the written statement, shall be taken to be admitted by the defendant. Therefore, in the absence of specific denial or a denial by implication as well, to the claim of the plaintiff that he is an agriculturist and therefore, entitled to further 30 years period for redemption of the mortgage, having not been denied specifically or even impliedly, as held by the Hon'ble Supreme Court, the stand taken in the written statement would have to be treated as an admission of the plaintiff's case in this regard. The First Appellate Court has rightly analysed the oral and documentary evidence and applied the settled legal principles to the facts of the case and found the plaintiff entitled to seek redemption and being an agriculturist and also being entitled to the benefits of Act 4 of 1938. I do not see any justifiable grounds to interfere with the said findings which are neither perverse nor improper, but based on pleadings as well as oral and documentary evidence adduced by the parties before the trial Court.

28. In view of the above, there is no case for interference under Section 100 of CPC. Accordingly, the questions of law are answered against the appellant and in favour of the respondents.

29. In the result, this Second Appeal stands dismissed. There shall be no order as to costs. Consequently, the connected miscellaneous petition is closed.

12.06.2026

Index : Yes / No
Internet : Yes / No
MR

To

1.The Subordinate Judge,
(Camp at) Kuzhithurai,

2.The I Additional District Munsif,
Kuzhithurai.

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

P.B.BALAJI, J.

MR

PRE-DELIVERY JUDGMENT MADE IN
S.A.(MD)No.293 of 2021

12.06.2026