



WEB COPY

S.A(MD)No.435 of 2025

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 03.11.2025

Pronounced on : 29.01.2026

CORAM

THE HONOURABLE MR.JUSTICE P.VADAMALAI

S.A(MD)No.435 of 2025

and

C.M.P(MD)No.15281 of 2025

S.R.Balachandar,
S/o.S.Ramamoorthy,
Door No.7/167 A,
Periyakadai Veethi,
Paramakudi Town.

...Appellant/Appellant/
Defendant

Vs.

R.Rajasekaran,
S/o.M.S.Rathinam Chettiyar,
5/282, Kottapuli Street,
Paramakudi.

...Respondent/Respondent/
Plaintiff

PRAYER :- This Second Appeal is filed under Section 100 of the Civil Procedure Code, to set aside the judgment and decree passed in A.S.No.45 of 2023 on the file of the Additional District Court, Paramakudi, dated 12.08.2025, confirming the judgment and decree passed in O.S.No.38 of 2022 on the file of the Sub Court, Paramakudi, dated 30.10.2023 and allow the above Second Appeal.



S.A(MD)No.435 of 2025

For Appellant : Mr.Anand Chandrasekar
for Mr.D.Senthil

For Respondent : Mr.M.Rajaraman

JUDGMENT

This Second Appeal is preferred against the judgment and decree, dated 12.08.2025 passed in A.S.No.45 of 2023 on the file of the Additional District Court, Paramakudi, confirming the judgment and decree, dated 30.10.2023 passed in O.S.No.38 of 2022 on the file of the Sub Court, Paramakudi.

2. The appellant is the defendant in O.S.No.38 of 2022 on the file of the Sub Court, Paramakudi. The respondent is the plaintiff in that suit for directing the defendant to hand over vacant possession of suit property on receipt of Rs.9,00,000/- and directing him to pay Rs.15,000/- p.m. for use and occupation from the date of plaint till the delivery of possession.

3. For the sake of convenience, the parties are referred as plaintiff and defendant as arrayed in O.S.No.38 of 2022 on the file of the Sub Court, Paramakudi.



S.A(MD)No.435 of 2025

WEB COPY

4. It is the case of the plaintiff that the suit property comprised in Door No.7/267A, Periyakadai Veedhi, Paramakudi Town, belonged to the plaintiff by virtue of registered sale deed, dated 12.05.2014. The defendant paid Rs.9,00,000/- to the plaintiff and in lieu of interest, he was put in possession of a portion of the building measuring 6 ¼ feet x 13 feet for running his gold jewellery business. The plaintiff and the defendant entered into unregistered deed, dated 27.08.2020. It was agreed by the defendant to hand over possession to the plaintiff on payment of above sum. Since the building became unfit for habitation, the plaintiff wanted to demolish the building and to put up new construction. He started to demolish the building from October, 2021. The plaintiff requested the defendant to vacate the building on receipt of amount. The defendant evaded to vacate and filed the police complaint, then filed a suit in O.S.No.19 of 2022 for injunction. The defendant represented that he would vacate the building if the plaintiff pays Rs.40,00,000/-. Hence, the plaintiff issued a legal notice on 04.03.2022 to the defendant. The defendant received it on 07.03.2022, but has not chosen to send a reply and vacate the building. Hence, the plaintiff filed this suit.



S.A(MD)No.435 of 2025

WEB COPY

5. It is the case of the defendant that the suit property originally belonged to one Venkatesan. The defendant entered into Othi deed in 2005 with the said Venkatesan for three years and paid Othi amount Rs.1,60,000/-. Thereafter, the defendant had been paying additional Othi amount viz., Rs.1,40,000 on 02.02.2008. On 01.04.2013, Othi was entered into between them for Rs.5,00,000/-. The defendant has been running jewellery shop by obtaining proper permission. The Othi was renewed for Rs.14,00,000/- on 01.01.2014. On 12.05.2014, the said Venkatesan sold the suit property to the plaintiff herein, who is his own brother. After purchase, the plaintiff repaid Rs.5,00,000/- out of Rs.14,00,000/- and Othi was entered for Rs.9,00,000/- between the plaintiff and the defendant on 27.08.2020 for two years ending on 26.08.2022. One Baluchamy signed as witness. The plaintiff was doing jewellery business near the suit property. The plaintiff started to demolish the building in order to vacate the defendant, whileso the roof and southern wall of the suit property got damaged and rainwater fell in the shop. The laptop, inverter, camera and DVR worth Rs.2,00,000/- got damaged. The defendant is doing jewellery business for 16 years with possession of gold jewels worth Rs.55 lakhs. So, the defendant filed the suit in O.S.No.19 of 2022 for granting injunction, not to dispossess except due process of law. The plaintiff can file



S.A(MD)No.435 of 2025

only suit for redemption of mortgage, the present suit is filed for recovery of possession, which is liable to be dismissed in limini. The plaintiff has not properly valued the suit property and has not paid the proper Court fee with the correct provision of law. The plaintiff has to value the suit property based on the present market value and has to pay the Court fee. Hence, the suit is not maintainable.

6. The Trial Court has framed the following issues:

(1) Whether the plaintiff is entitled to the possession of suit property?

(2) Whether the plaintiff is entitled to damages at the rate of Rs.15,000/- per month?

(3) Whether the suit has been correctly valued and correct Court fees paid thereon?

(4) To what other relief the plaintiff is entitled to?

7. During trial, the plaintiff was examined as P.W.1 and Ex.A.1 to Ex.A.6 were marked. On the defendant's side, the defendant was examined as D.W.1 and marked Ex.B.1 to Ex.B.21.



S.A(MD)No.435 of 2025

WEB COPY

8. After hearing both sides, the learned Subordinate Judge, Paramakudi decreed the suit and directed the defendant to vacate the property within two months and the plaintiff shall file separate petition for damages under Order 20 Rule 12 of CPC.

9. Aggrieved by the judgment and decree, the defendant preferred the Civil Appeal in A.S.No.45 of 2023 before the Additional District Court, Paramakudi. The first Appellate Court has framed the following points for consideration.

(1) Whether it is correct that the plaintiff's suit for delivery of possession instead of redemption of the mortgage is not maintainable as alleged by the appellant?

(2) Whether it is correct that the suit was not properly valued under Section 30 of the Tamil Nadu Court Fees and Suits Valuation Act based on the market value of the suit property?

(3) Whether the suit is barred by limitation? And

(4) Whether this appeal liable to be allowed or not?



S.A(MD)No.435 of 2025

After hearing both sides and after perusing the records, the first Appellate Court passed judgment, dated 12.08.2025, dismissing the appeal by confirming the judgment and decree of the Trial Court.

10. Challenging the concurring finding of the Courts below, the defendant has preferred this Second Appeal and the same has been admitted on 22.09.2025 on the following substantial questions of law:-

“Whether the Courts below were right in law and whether decree can be granted even though the suit is not properly valued under the T.N. Court Fees Act?”

11. The learned counsel for the appellant/defendant has argued that the original Othi amount is Rs.15,00,000/- as per the new agreement of the year 2020, however, the Othi amount is admitted for Rs.9,00,000/- as the plaintiff repaid Rs.6,00,000/-. The defendant has been in possession of the suit property for the past 15 years, upon Othi even from the predecessor in title of the plaintiff, namely Venkatesan. So, the suit for recovery of possession is not maintainable, the plaintiff had to file the suit for redemption. However, the plaintiff filed the suit for recovery of possession mentioning the Othi amount.



S.A(MD)No.435 of 2025

WEB COPY

The defendant strongly objected that the value of the suit property must be valued on the basis of market value. The trial Court has also framed an issue, but held that the Court fee paid is correct. The very same issue has been putforth before the first Appellate Court. The first appellate court has also held that the contention of the appellant/defendant that the Court fee must be paid on the market value of the suit property is legally valid. But, the first Appellate Court has further held that the defendant failed to produce any documentary evidence to establish the market value of the suit property. Moreover, the damages could be computed only from the date of deposit of the Othi amount, but the plaintiff has not deposited the Othi amount. The defendant filed a separate application to receive additional evidence, but the first Appellate Court, without considering the same, simply dismissed without any finding. Therefore, the case may be remanded back to the trial Court to ascertain the market value.

12. Per contra, the learned counsel for the respondent/plaintiff has submitted that the defendant has not stated what is the actual market value for the suit property, moreover, the issue regarding court fee is between the Court and party, when the suit has been taken on file on jurisdiction, the defendant



S.A(MD)No.435 of 2025

has no locus standi to object the value of the suit. As per Section 12(2) of the TN Court Fees & Suits valuation Act, the defendant can raise such objection by filing separate petition to decide as preliminary issue before recording evidence, but the defendant failed to file separate application to decide the same. The plaintiff has established that the guideline value is Rs.2,010/- per sq.feet. The suit property is measuring only 78 sq.feet. The plaintiff filed the report regarding the value of the property evaluated by a competent engineer, who gave value at Rs.3,46,000/-. The value of the sale price mentioned in the sale deed relating to the suit property is Rs.4,00,000/-. The plaintiff valued the suit for Rs.9,00,000/-, much more than the said market value. The plaintiff has deposited the Othi amount immediately after filing of the suit. Both the Courts below gave concurrent findings and hence, the facts of the case need not be gone into again. The Courts below correctly decreed the suit in favour of the plaintiff, and there is no need for interference in the said findings. Therefore, this second appeal may be dismissed.

13. In support of his argument, the learned counsel relied on the decision of the Division Bench of this Court reported in **2012 (5) CTC 705** in the case of “**S.N.S.Sukumaran /v/ C.Thangamuthu**”, in which it has been held in



S.A(MD)No.435 of 2025

paragraph Nos.13 and 16(2) & (3) as follows:

“13. From the above provision, it is submitted that, it is the duty of the Court to collect the appropriate Court-fee payable under the Court-fees Act and in order to arrive at the correct valuation, the Court is empowered to conduct such inquiry under Sections 19 & 20 of the Act. Besides, the Court is also bound to correct any errors upon determination of the correct Court-fee payable, by the Court-fee Examiners appointed by the High Court under Section 18 of the Act. According to the learned counsel, valuation of suits and determination of Court-fee is akin to the duty finding of facts enjoined upon the Courts, to facilitate collection of appropriate Court fee on the plaint before it. Even if the Court of first instance has committed a mistake as to the payment of the Court fee or its valuation, the Appellate forum can still decide it and call upon the parties to pay the correct Court-fee, for which provision is made in the Act, the overall object being that the Courts have to ensure collection of correct Court-fee due to the State. In the whole exercise, the Defendant has no say whatsoever except assisting the Court to determine the appropriate Court-fee and leave the decision to the subjective satisfaction of the Court.



WEB COPY



S.A(MD)No.435 of 2025

16(1).

(2) If the defendant raises an issue of jurisdiction of the Court due to undervaluation or improper valuation of the relief claimed by the plaintiff by way of his written statement or by an application under Section 12(2) of the Tamil Nadu Court Fees and Suits Valuation Act, then the Court shall proceed to decide the same based on the allegations in the plaint alone for computing the proper valuation of the relief claimed.

(3) If the Court is satisfied that there has been gross undervaluation affecting the jurisdiction of the Court in regard to the subject matter of the suit based on the allegations in the plaint, it can order the return of the plaint for being present to the appropriate Court having jurisdiction in the subject matter of the suit.”

14. In reply, the learned counsel for the appellant argued that the provision of Section 12(2) of the TN Court Fees Act is not mandatory for the defendant. The defendant raised contention regarding the value of the suit in the written statement itself and also the trial court framed relevant issue. The plaintiff has filed a guideline value which cannot be taken into consideration. Therefore, the suit may be remanded back for fresh trial.



S.A(MD)No.435 of 2025

WEB COPY

15. Heard the arguments of both and perused the material records of the case. The plaintiff is the title holder of the suit premises, including the suit property, which is a portion. The suit property is measuring 13 x 6 ¼ feet i.e., 78 sq feet. The defendant has been running jewellery shop in it even prior to the predecessor in title. After purchase by the plaintiff, the othi was renewed at Rs.15,00,000/- in the year 2020 and thereafter, the plaintiff repaid Rs.6,00,000/-, the present othi amount is Rs.9,00,000/-. There is no dispute in the above facts.

16. It is admitted fact that the Othi deed is unregistered one. Hence, according to the unregistered Othi deed, the plaintiff cannot file redemption suit. The plaintiff is the title holder of the suit property. The remedy is to file suit for recovery of possession. The plaintiff has filed the suit for recovery of possession, which is maintainable one.

17. The defendant mainly argued that since the suit is filed for recovery of possession the value of the suit ought to have been valued on market value, but the plaintiff valued the suit as Othi amount. The trial Court has also framed



S.A(MD)No.435 of 2025

WEB COPY

an issue regarding the same and held that the Court fee paid by the plaintiff is correct. On perusal of judgments of the Courts below, which have held that the defendant has not produced any material to show the actual market value of the suit property. On perusal of the records, the defendant has not produced any document to show the market value of the suit property. On the side of the respondent/plaintiff, the guideline value and the engineer's report have been filed by way of additional typed set. This was served to appellant's side also. From the guideline value, which is issued by the Sub Registrar of Paramakudi, it is clear that the guide line value for suit property Rs.2,010/- per sq.ft. On perusal of the engineer's detailed estimate and abstract for the suit property, the total value is Rs.3,46,000/-. The plaintiff purchased the suit property in the year 2014 by virtue of Ex.A.1 sale deed. The plaintiff has stated that the sale consideration of the suit building was mentioned as Rs.4,00,000/-. The plaintiff valued the suit at Rs.9,00,000/-, mentioning the Othi amount. Therefore, the suit value is more than the market value, as rightly argued by the learned counsel for the plaintiff.

18. The appellant/defendant has not produced any material before the courts below to show that the suit property would fetch the market value more



S.A(MD)No.435 of 2025

than Rs.9,00,000/-. Even in this second appeal, there is no additional reply typed set against the guideline value and the engineer's report. The suit property is only 78 sq.ft. portion. Therefore, when sufficient materials are filed in this second appeal, in the absence of any material filed by the defendant before the Courts below, the prayer for remand back the suit for fresh trial need not necessary, which would lead second round of litigation between the parties in respect of the suit property, which is only 78 sq.ft. Moreover, the plaintiff has stated that the Othi amount was deposited after filing of the suit and the same is not objected by the defendant. The ruling relied on by the respondent/plaintiff's side is squarely applicable to the facts of this case.

19. From the above facts and circumstances, the Courts below found concurrent finding based on evidences adduced in the case. The questions of law could not be decided in favour of the appellant/defendant as the suit was factually decided by the Courts below. The said findings need not be interfered by this Court by way of second appeal. Hence, the question of law framed in this appeal is answered against the appellant/defendant. Thus, this second appeal fails.



S.A(MD)No.435 of 2025

WEB COPY

20. In the result, the Second Appeal is dismissed. The judgment and decree, dated 12.08.2025 passed in A.S.No.45 of 2023 on the file of the Additional District Court, Paramakudi, confirming the judgment and decree, dated 30.10.2023 passed in O.S.No.38 of 2022 on the file of the Sub Court, Paramakudi, is confirmed. No costs. Consequently, the connected Civil Miscellaneous Petition is closed.

29.01.2026

NCC : Yes / No
Internet : Yes / No
Index : Yes / No
VSD

To

- 1.The Additional District Judge,
Paramakudi.
- 2.The Sub Court,
Paramakudi,
- 3.The Record Keeper,
Vernacular Records,
Madurai Bench of Madras High Court,
Madurai.



WEB COPY



S.A(MD)No.435 of 2025

P.VADAMALAI, J.

VSD

**Pre-Delivery Judgment made in
S.A(MD)No.435 of 2025
and
C.M.P(MD)No.15281 of 2025**

29.01.2026