

**IN THE COURT OF SUBORDINATE JUDGE,
MADURANTAKAM.**

**Present: Mr. T. GANESH, B.A., B.L.,
Subordinate Judge,
Madurantakam.**

**Friday, this 05th day of June, 2026
E.A.No. 2/2025
in
E.P No. 23/2017
in
O.S No. 101/2014
(CNR.No.TNCG13 – 000229-2017)**

1. R. Elumalai

2. V. Pushpavalli

3. T. Rajakumari

4. E. Vijaya

5. A. Santhakumari

6. R. Lakshmi

7. Sutha

8. R. Kavitha

....Petitioners/3rd parties

..Vs..

1. K. Elumalai

...1st Respondent/Decree Holder

2. S. Sundari

... 2nd Respondent/Judgment Debtor

This petition coming up for final hearing on 20.04.2026 in the presence of M/s.M.Sasikumar and M.Chandrasekar Counsels for Petitioners/ 3rd Parties, Mr.V.Agoram, Counsel for the respondent/Decree Holder and having heard the arguments on both sides and having perused the records, having stood over for the consideration of this court till date, this court delivered the following;

ORDER

This petition is filed by the petitioner under Order XXI Rule 58 of Civil Procedure Code and Rule 175 of Civil Rules of Practice and Section 47 of Civil Procedure Code to set aside the order of attachment dated 27.01.2025 and raise the attachment effected in respect of the schedule mentioned property and direct the 1st respondent to pay the costs of this proceedings.

2. Petition in brief:

Petition mentioned property was purchased by Ramalingam, under a sale deed dated 15.03.1971. Patta for the same stands in his name under Patta No.212. Ramalingam died intestate on 20.10.1992 leaving behind the petitioners 1 to 5, late Ravi and R. Srinivasan, husband of 2nd respondent, as his legal heirs. His wife Chandra predeceased him. The said Ravi died intestate on 17.08.2020 leaving behind the petitioners 6 to 8 as his legal heirs. Petitioners and said Srinivasan, are the absolute and exclusive owners of the petition mentioned property.

Hence, the petitioners 1 to 5 are each entitled to 1/7 petitioners 6 to 8 together entitled to 1/7 share and Srinivasan entitled to 1/7 share. While so, with a view to grab the petition mentioned property from the petitioners, the said Srinivasan created a sham and nominal deed styled as settlement deed in favour of the 2nd respondent dated 05.05.2010, without the knowledge of the other sharers, as if he was the absolute and exclusive owner of the petition mentioned property. But the said deed was not accepted and acted upon. The petitioners are continues to be in joint possession and enjoyment of the petition mentioned property. The recitals in the said alleged settlement deed are false.

The said Srinivasan had no exclusive right, or he never purchased or patta No.212 was stands in his name, in respect of the petition mentioned property, as alleged in the said settlement deed. This will conclusively proves that the said settlement deed is a fraudulent document created to cheat the petitioners' legitimate share in the petition mentioned property. As per settled law, one coparcener has no right to execute a gift deed in respect of entire property. Hence the said settlement deed is also void document. Since the petitioners are not parties to the said settlement deed the same will not bind them and they can ignore the same.

After knowing the about the said fraudulent settlement deed by the petitioners, they have questioned the Srinivasan. Hence, the said Srinivasan, cancelled the said settlement deed by a deed of cancellation dated 04.08.2014. The recitals in the said cancellation deed specifically admits that the said Srinivasan had no title to the petition mentioned property.

In view of the said cancellation deed, the petitioners and said Srinivasan, are the absolute and exclusive owners of the petition mentioned property and the 2nd respondent has no title for the same. The 2nd respondent has no title or possession in respect of the schedule mentioned property. Even if the said cancellation is not true (which is not admitted by the petitioners), the 2nd respondent will get only undivided 1 / 7 share in the property. While so, the 1st respondent alleged to have obtained collusive decree against the 2nd respondent has attached the schedule mentioned property by suppressing material facts of cancellation of settlement deed by Srinivasan reflected in the encumbrance certificate, for the alleged recovery of decree amount, as if the 2nd respondent is the owner of the petition mentioned property. 2nd respondent has no manner of right, title or interest in or over the petition mentioned property, as on the date of E.P or attachment. The encumbrance certificate reveals that the settlement deed in favour of 2nd respondent was duly cancelled on 04.08.2014, long before filing of the above suit and E.P.

The schedule mentioned property does not belong to judgment debtor-Sundari. Hence the EP No.23/2017 itself is not maintainable. Therefore the order of attachment passed by this Hon'ble Court on 27.01.2025 is unsustainable and the same is liable to be raised. The schedule mentioned property attached by this Court, is the exclusive property of the petitioners and Srinivasan. As the schedule mentioned property vested with the petitioners and Srinivasan, long before suit and decree, the same cannot be proceeded for the alleged decree obtained by the 1st respondent. Hence, it is submitted that the order of attachment is void and abinitio and liable to be raised. Otherwise, the petitioners will be put to irreparable loss and hardship. Balance of convenience lies in raising the attachment. Hence this petition.

3. Counter of 1st respondent in brief:

The 1st respondent/deed holder denies all the above said averments set out in affidavit. Petitioner has no locus standi to file the claim application. If at all they have got any right, they should have filed a proper suit. Respondent Sundari obtained loan of Rs.5,00,000/- and executed a promissory note in favour of the Respondent/Plaintiff. At the time of getting loan the Sundari was owner of the property and the said Sundari got the property by way of registered settlement deed dated 05.05.2010. The execution of the settlement deed is admitted by the petitioners in para No.4 of the petition. It cannot be said to have been executed nominally. The cancellation deed of the settlement deed dated 04.08.2014 is also said to be not valid by the petitioners. As per the settlement deed the loan was given Rs.5,00,000/- on seeing the encumbrance the Sundari was owner of the property. The decree is contested decree. The attachment before Judgment was pending at the time of trial of the suit. Knowing the promissory note executed in favour of the Respondent/Decree Holder, the alleged settlement deed in favour of Sundari wantonly cancelled by her husband with view to defeat a delay for claim of the property. The cancellation of the settlement is not valid.

In order to cheat the creditor the alleged settlement is fraudulently cancelled. The cancellation deed is non-est in the eye of law. Even the claim petitioners have admitted in para No.5, that even if the cancellation was not proved, the judgment debtor is entitled to 1/7 share in the petition mentioned property. Petitioners are instigated by Sundari and Srinivasan. They are all collusively to file this application, in order to defeat the lawful rights of the decree holder. Even any one of the sharers obtained decree on the basis of the property is bind upon other sharers, if at all they got share in it. The decree holder did not admit the share of the petitioners. Hence, the claim petition to be dismissed in limini.

The petition to set aside the attachment is not maintainable. The petitioner under order 21 rule 58 is not at all entertainable. Same Respondent/JD obtained decree given loan Arulmozhi, in which attachment also made. Present petitioners did not file any application and the amount was settled to Arulmozhi before this Hon'ble court and the attachment was subsisting till three months back. No claim petition filed against Arulmozhi. In order to cheat the Respondent/DH this vexatious petition is filed. The petitioner has no locus standi to file application. The documents are filed along with the petition are to be proved by the Petitioner. Hence this petition is liable to be dismissal with cost.

4. Petitioners examined the 1st petitioner as Pw1 and through him Exhibits P1 to P10 marked. On the other hand the 1st respondent examined himself as Rw1. No documentary evidence adduced by 1st Respondent.

5. Heard both sides and perused the records.

6. Point:

“Whether this application can be allowed?”

The petitioners have filed this application under Order XXI Rule 58, Civil Procedure code seeking to set aside the order of attachment dated 27.01.2025 and to

raise the attachment effected in respect of the schedule mentioned property, and to direct the 1st respondent to pay the costs of the proceedings.

At the outset, this Court has to determine whether the petitioners have established that they have a valid right, title or interest in the schedule mentioned property and that the attachment effected on 27.01.2025 is liable to be raised.

In a nutshell, the petitioners claim that the schedule mentioned property originally belonged to Ramalingam, who purchased the same under a registered sale deed dated 15.03.1971 marked as Ex.P1. It is their case that Ramalingam died intestate on 20.10.1992, as evidenced by his death certificate marked as Ex.P3, leaving behind the petitioners 1 to 5, late Ravi, and one Srinivasan (husband of the 2nd respondent/judgment debtor) as his legal heirs. They further contend that the said Ravi died intestate on 17.08.2020, as evidenced by his death certificate marked as Ex.P6, leaving behind petitioners 6 to 8 as his legal heirs. The petitioners also rely upon the legal heir certificates marked as Ex.P5 and Ex.P7 to establish the succession. According to the petitioners, they and the said Srinivasan are the absolute and exclusive owners of the petition mentioned property, with petitioners 1 to 5 each entitled to 1/7th share, petitioners 6 to 8 together entitled to 1/7th share, and Srinivasan entitled to 1/7th share.

It is further the case of the petitioners that the said Srinivasan created a sham and nominal settlement deed dated 05.05.2010 marked as Ex.P8 in favour of the 2nd respondent without the knowledge of the other sharers, as if he was the absolute owner of the property. The petitioners contend that since Srinivasan had no exclusive right over the property, the settlement deed is fraudulent and void, and that one coparcener has no right to execute a gift deed in respect of the entire property. They also rely upon the cancellation deed dated 04.08.2014 marked as Ex.P9 executed by Srinivasan cancelling the said settlement deed. The petitioners further contend that despite the cancellation of the settlement deed, the 1st respondent obtained a collusive

decree against the 2nd respondent and attached the schedule mentioned property on 27.01.2025, as if the 2nd respondent was the owner of the property. They argue that the encumbrance certificate marked as Ex.P10 clearly shows that the settlement deed was cancelled on 04.08.2014, long before the filing of the suit and execution proceedings. Hence, the petitioners pray that the attachment be raised.

Per contra, the 1st respondent/decree holder denies the averments of the petitioners. It is his specific defence that the petitioners have no locus standi to file the claim application and that they ought to have filed a proper suit. He contends that the 2nd respondent Sundari obtained a loan of Rs.5,00,000/- and executed a promissory note in his favour, and at the time of obtaining the loan, the 2nd respondent was the owner of the property having obtained the same under the registered settlement deed dated 05.05.2010 marked as Ex.P8. He further contends that the execution of the settlement deed is admitted by the petitioners themselves in paragraph No.4 of the petition, and therefore it cannot be said to have been executed nominally. It is his case that the cancellation deed dated 04.08.2014 is not valid in law and was executed with a view to defeat the claim of the creditor. The 1st respondent also points out that the petitioners themselves have admitted in paragraph No.5 of the petition that even if the cancellation is not true, the 2nd respondent would get only 1/7th undivided share in the property. He argues that the claim petition is collusive and vexatious, filed only to defeat the lawful rights of the decree holder. Hence, he prays for dismissal of the petition.

This Court has carefully perused the averments of the affidavit, counter affidavit, the oral evidence of PW1 and RW1, and the documents marked on either side.

At the outset it is pertinent to note that the petitioners claim only 6/7 share in the petition mentioned property as the other 1/7 belongs to Srinivasan, who is not a party to the petition. So, the petitioners cannot claim absolute or exclusive right over

the petition mentioned properties. If at all the petitioners wants to raise attachment, then they can do only for their share namely 6/7 alone. So, on this aspect itself this application was maintainable only in respect of 6/7 share in the petition mentioned properties.

Next on a careful consideration of the evidences available on record, this Court finds that the petitioners have produced the registered sale deed dated 15.03.1971 (Ex.P1) to show the original title of Ramalingam. The death certificate of Ramalingam (Ex.P3) and the legal heir certificates (Ex.P5 and Ex.P7) prima facie establish that the petitioners are the legal heirs of the deceased Ramalingam. The petitioners have also produced the settlement deed dated 05.05.2010 (Ex.P8) and more importantly, the cancellation deed dated 04.08.2014 (Ex.P9) by which Srinivasan himself cancelled the settlement deed executed in favour of the 2nd respondent. The recitals in the cancellation deed, as extracted by the petitioners in the affidavit, specifically state that Srinivasan did not wish to enforce the settlement and that he had executed the settlement deed for property which does not belong to him. The encumbrance certificate (Ex.P10) also reflects the cancellation of the settlement deed.

There is no dispute by both parties that the petition mentioned properties belonged to Ramalingam and that after his death it devolves upon his legal heirs. Srinivasan is also one of the legal heir. Here by way of Ex P9, the petitioners admitted the execution of settlement deed, Ex P8 in favour of the 2nd respondent/judgment debtor by her husband namely the said Srinivasan. But the said Srinivasan settled the entire extent under Ex P8, where he had right of 1/7 share alone. So, even though the said Srinivasan settled entire extent, the 2nd respondent can at the best claim right of 1/7 share in the property. So, even as per case of petitioners themselves the 2nd respondent had right of 1/7 share in the petition mentioned property.

Next the petitioners contend that the said Srinivasan cancelled the settlement deed, Ex P8 by way of cancellation deed, Ex P9 and hence the 2nd respondent lost her title over the petition mentioned property. So, the petitioners claim that the attachment is illegal as the petition mentioned property does not belongs to the 2nd respondent on the date of attachment. Now it has to be seen whether the cancellation of settlement deed unilaterally is valid under law. On this context this court wants to rely upon a recent decision in *Periyasamy and another Vs Vijaya Kumar and others*, reported in, **2025- 2 – MLJ- 456**, where it is held that Unilateral cancellation of settlement deed is against public policy and the remedy is to approach civil court to have settlement deed set aside. Ex P9 was cancelled unilaterally by the said Srinivasan. So, the said cancellation is nothing but against public policy and that the said Srinivasan should cancel the same only by way of court. But it is not the case of petitioners that the said Ex P8 was cancelled by an order of court. At this juncture the said cancellation deed, Ex P9 cannot be looked into and that the right of the 2nd respondent in petition mentioned property still exist.

Next there is no doubt that the petitioners themselves admitted in their petition in para 5 that if the cancellation deed was not accepted, then the 2nd respondent would get only 1/7 share in the petition mentioned property. This court also already decided that the said cancellation, Ex P9 is unilateral one and hence the 2nd respondent as per Ex P8 is entitled to the share of 1/7 in the petition mentioned property. Further it is pertinent to note that the said Srinivasan didn't joined with the petitioners to file this application. Naturally the petitioners entitled to 6/7 share in the petition mentioned properties. If it so, they cannot claim to raise the attachment of entire extent of properties as they had only 6/7 share in the petition mentioned property. So, there is no doubt that the petitioners are entitled to 6/7 share alone in the petition mentioned properties.

At the outset it is pertinent to note that the entire extent was attached by this court as if the 2nd respondent/ Judgment debtor had exclusive right over the petition mentioned properties. But as decided above the 2nd respondent had right of 1/7 share alone in the petition mentioned property. Hence the attachment in respect of 6/7 share in the petition mentioned property alone is liable to be raised, as 2nd respondent had right of 1/7 share in the same.

It is pertinent to note that this execution petition is of more than **nine years old**. Petitioners who claims that Ex P9 was executed in the year 2014, very well known about the suit and execution petition. But they simply kept quiet and filed this application at this stage to protract the proceedings. Anyhow the share of petitioners namely 6/7 was not disturbed and that the attachment in respect of the same shall be set aside. At the same time the attachment in respect of 1/7 share of the 2nd respondent holds good and the said share alone be attached and sell in execution. Hence this point is decided accordingly.

7. Result:

In fine this application is partly allowed, where the attachment of petition mentioned property in respect of petitioners share of 6/7 alone raised and the application is dismissed in respect of 1/7 share in the attached property. No costs.

Directly typed in my personal lap-top, corrected and pronounced by me in the open court, this 05th day of June, 2026.

Subordinate Judge,
Madurantakam.

I. Petitioner side evidence:

Pw1 : R. Elumalai (1st Petitioner)

II. Petitioner side Exhibits :

Ex.P1	15.03.1971	Registered Sale Deed executed by Perumal in favour of Ramalingam.	Original.
Ex.P2	02.04.2025	Patta Extract.	E-Receipt.
Ex.P3	20.10.1992	Death Certificate of Ramalingam.	Original.
Ex.P4	02.09.2020	Death Certificate of Chandra.	E-Receipt.
Ex.P5	04.11.2020	Legal Heir Certificate.	E-Receipt.
Ex.P6	23.08.2020	Death Certificate of Ravi.	E-Receipt.
Ex.P7	16.09.2020	Legal Heir Certificate.	E-Receipt.
Ex.P8	05.05.2010	Registration copy of Sale Deed executed by Srinivasan in favour of S.Sundari.	Certified Online Copy.
Ex.P9	04.08.2014	Registration copy of Cancellation of Settlement Deed executed by Srinivasan in favour of S.Sundari.	Certified Online Copy.
Ex.P10	02.03.2025	Encumbrance Certificate.	Web Copy.

III. Respondent side Evidence :

Rw1 : K. Elumalai (1st Petitioner)

IV. Respondent side Exhibits : Nil

Subordinate Judge,
Madurantakam.

**Fair / Draft order
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in
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in
O.S No. 101/2014
D.D: 05.06.2026
Sub court,
Madurantakam**