

IN THE I ADDITIONAL CITY CIVIL COURT, CHENNAI

**Present: Thiru. R. Shanmuga Sundaram, B.Com., L.L.B.,
I Additional Judge.**

This Tuesday, the 6th day of January 2026

I.A.No.4 of 2025

in

OS.No.1134 of 2022

Mr. Narendra Kumar Kawad,
Son of Mr. Kukandchandkawad.

...Petitioner/ 3rd party

/versus/

1. Mr. R. Mahalakshmi (Deceased)
W/o. A. Ramachandran,

2. A. Ramachandran S/o. Amirthalingam

3. R. Mohan S/o. A. Ramachandran

4. Revathi Mahendaran D/o. A. Ramachandran

5. Chandrika D/o. A. RamachandranRespondents / Plaintiffs

6. Mr. Juraj Hiraji Jain (Deceased)
S/o. Hiraji.

7. J. Kishore Kumar Jain,
S/o. Late Juraj Hiraji JainRespondents / Defendants

This petition came up before me for final hearing on 10.12.2025 in the presence of M/s. C. Krishna Karthi, E. Vignesh, P. Seenuvasan and A. Kirupanethi, Counsel appearing for the Petitioner / 3rd party and of M/s.V. Vijay Shankar, N. Balamuralikrishnan and K.S. Saravanan, Counsel appearing for the Respondents 2 to 5 / Plaintiffs 2 to 5 and upon hearing the arguments from both side, upon perusing the entire records of this case and having stood over for consideration till this day, this Court passed the following:-

ORDER

This petition has been filed under Order 38 Rules 8 to 10 read with Section 151 of CPC to raise the order of attachment dated 11.12.2018 passed in A.No.5209 of 2015 in O.S.No.1134 of 2022.

1. The averments found in the affidavit filed along with the petition are as follows:-

1(i) The petitioner is 3rd party in the petitioner. The petitioner purchased a residential flat bearing Flat No.1, at Old No.25, New No.20, Ponnappachetty Street, 1st Floor, Muthialpet, Chennai – 79 which is morefully described in the schedule hereunder to an extent of 1300 Sq.ft. of constructed area along with undivided share of 250 sq.ft. of land in the total extent of 2170 sq.ft of land from M/s. Jugraj Heeraji and Mrs. Suki Devi under a registered sale deed dated 05.04.2013 in Document No.443 of 2013 at SRO, Sowcarpet. The petitioner has been exercising his rights of ownership over the said property by mutating his name in the revenue records and other relevant records. Recently, when the petitioner intended to sell his property. The petitioner has discussions and negotiations with the proposed purchaser and when they applied for encumbrance certificate for his said property. The petitioner found that there is an entry in the encumbrance certificate over his property which shows attachment made by the way of court in Application No.5209 of 2015 in C.S.No.632 of 2015 by order dated 11.12.2018. It was a great shock to him

because he has no role to play in the above suit. At the outset, he thought that it was a mistake on the part of Registering Authorities and he verified with them and finally found that his property was attached. On verification it was found that the said suit C.S.No.632 of 2015 was transferred to this Hon'ble Court and renumbered as O.S.No.1134 of 2022. Hence upon legal advice the petitioner has filed the present petition to raise the order of attachment passed in Application No.5209 of 2015.

1(ii) The petitioner has filed relevant documents which may kindly be looked into for better appreciation of the case. If the title to the property which he purchased, is traced it can be seen that Mr. Jugraj Heeraji and Mrs. Suki Devi, his vendors have purchased whole of first floor measuring 2160 sq.ft. and 396 sq.ft of undivided shares in the land by virtue of a document registered sale deed dated 30.11.2010 in document No.4 of 2011 registered at SRO, Sowcarpet. The petitioner has further stated that the first floor there are two flats measuring 1300 sq.ft and 860 sq.ft. The petitioner has purchased 1300 sq.ft from his vendors by virtue of registered sale deed dated 05.04.2013 at SRO, Sowcarpet. The attachment order passed by order of High Court, Madras was dated 11.12.2018 in Application No.5209 of 2015 in C.S. No.632 of 2015. The present suit is seem to be for recovery of money from his vendors by the plaintiff Mrs. R. Mahalakshmi. The petitioner has not concerned with the property or with the money transaction. Even before the suit was filed the petitioner has

purchased the property more fully described in the schedule hereunder. Hence, the said property is not the property of his vendors on the date of passing of the said attachment order. In short, it is stated that the attachment order is erroneously passed and erroneously attached. Hence, this petition.

02. The averments found in the counter affidavit filed by the 2nd respondent are as follows:-

2(i) The respondent is the plaintiff and he denied each and every averments made in the present application as false. There is a huge delay of 10 years in filing the present application to raise the attachment of the petition schedule mentioned property. The present application is filed at a very belated stage, where the main suit have reached the stage of trial. The third party has presented an application filed with a malafide intention and in collusion with the defendant to defeat the right of the plaintiff and further delay the suit. Obviously the defendant has instigated the third party to file the present application to raise the attachment. The defendant in the original suit and original owner of the petition attached property filed a detailed counter in A.No.5209 of 2015, but it has nowhere stated anything about the third party herein and consequential sale. Therefore, it is clear that the reason for the present application is only to defeat the right of plaintiff. The defendant, along with the third party, is now misleading the court by presenting a setup document for sham and nominal consideration. Hence, the third party sale deed is null and void. The third

party's averment that they are not aware of the attachment order by this Hon'ble Court, the same is denied as false. It is the usual practice that the order of attachment is judgment is pasted on the front door of the house and the front door of the building. In this case, it was also done. So that the parties interested and the party to the suit are made aware. In the circumstance, the third party pleading ignorance is not acceptable. At any rate, the third party has admittedly stated that he has only purchased 250 sq.ft of UDS and 1300 sq.ft of building on the first floor, and there is a remaining portion of the house comprising 146 sq.ft of UDS and 860 sq.ft of Super built-up area. Therefore, the original order of attachment dated 11.12.2008 in A.No.5209 of 2015 is still valid in the eye of the law and thus the present omnibus prayer for raising the order of attachment is not maintainable.

03. Point for consideration :

Whether this petition is to be allowed or not?

04. To the Point:-

5. The petitioner is the 3rd party to the suit and he has filed the petition under order 38 Rule 10 of CPC seeking to raise the order of the judgment dated 11.12.2018 passed in A.No.5209 of 2015 in O.S.No.1134 of 2022. The petitioner has filed an affidavit in support of this petition stating that he has purchased a residential flat bearing Flat No.1, at Old No.25, New No.20,

Ponnappachetty Street, 1st Floor, Muthialpet, Chennai – 79 which is morefully described in the schedule in petition to an extent of 1300 Sq.ft. of constructed area along with undivided share of 250 sq.ft. of land out of the total extent of 2170 sq.ft of schedule of the property from M/s. Jugraj Jeeraji and Mrs. Suki Devi under a registered sale deed dated 05.04.2013 in Document No.443 of 2013 at SRO, Sowcarpet. Further, the petitioner has stated that ever since the purchase he has been exercising his rights of ownership over the property and he has also effected mutuating on his name in the revenue records and other relevant records. Further, he has stated that recently when he intended to sell the property, applied for encumbrance certificate for the said property and he found that there is an entry in the encumbrance certificate over his property which shows the attachment made in Application No.5209 of 2015 in C.S.No.632 of 2015 by order dated 11.12.2018 and further he has stated that the was property was attached in the above said suit and further the above said C.S.No.632 of 2015 was transferred to this Court on the point of pecuniary jurisdiction and the same was renumbered as O.S.No.1134 of 2022. Further, he has stated that there are two flats measuring 1300 sq.ft and 860 sq.ft in the 1st Floor was purchased by his vendors and the petitioner has purchased one Flat measuring 1300 sq.ft even before the suit filed by the deceased 1st respondent. Hence the attachment order is erroneously passed and hence, he prays to raise the order of attachment in respect of the property described in the schedule of the petition.

6. The respondent has filed a counter stating that there is a huge delay of 10 years in filing the present petition to raise the order of attachment of the and further the same is filed at a very belated stage, with a malafide intention and in collusion with the defendant to defeat the right of the plaintiff and further delay the suit and further the respondent contended that the defendant has filed a detailed counter in A.No.5209 of 2015, and nowhere in the above said counter stated anything about the sale in favour of the petitioner. Therefore, the sale deed in favour of the petitioner is null and void. Further, he has stated that the petitioner has purchased 250 Sq.ft of UDS and 1300 Sq.ft of building on the first floor, and there is a remaining portion of the house comprising 146 Sq.ft of UDS and 860 Sq.ft of super built-up area and hence the order of attachment dated 11.12.2008 in A.No.5209 of 2015 is still valid in the eye of law and hence he prays to dismiss the petition.

7. Heard both sides. The petitioner has filed original registered sale deed dated 05.04.2013 in Document No.443 of 2013 along with a memo on 24.11.2025. I have perused the above said original registered sale deed. Upon perusal of the above said sale deed it reveals that the 1st defendant in the suit namely Mr. Jugaraj Hiraji Jain and his wife Mrs. Suki Devi have sold the property which is morefully described in the schedule of the petition to an extent of 1300 sq.ft of built up area was sold infavour of the petitioner by a registered sale deed dated 05.04.2013. Upon perusal of the records it reveals

that the respondent/1st plaintiff has filed the suit for arrears of rent to the tune of Rs.77,87,255/- before the Hon'ble High Court in its original jurisdiction on 14.07.2015 and further the 1st plaintiff has also filed an attachment application before the judgment under Order 38 Rule 5 of CPC in A.No.5209 of 2015 and the Hon'ble High Court was pleased to pass an order of attachment dated 11.12.2018 and the same was effected on 06.02.2019. As per the report filed by the Bailiff, the order of attachment was passed on 11.12.2018 and the same was effected on 06.02.2019. The petitioner has purchased the property described in the schedule of the petition on 05.04.2013 much earlier than the date of filing the suit and date of order of attachment. From the Sale Deed filed by the petitioner, it could be seen that the petitioner has purchased the property on 14.07.2015 i.e. 27 months prior to filing the suit. The respondent herein has raised a contention that the present petition is filed with delay of the case with collusion of the defendant and hence the sale is null and void.

8. Admittedly, on the date of filing the suit or on the date of the order of the attachment, the defendant is not the owner of the property. On the date of filing the suit and on the date of attachment of the order, the petitioner is the absolute owner of the property for an extent of 1300 sq.ft more particularly described in the petition, as per Sale Deed dated 05.04.2013. Therefore, the genuineness of the sale and the collusion between the petitioner and the defendant and fraudulent act if any cannot be decided in the enquiry under

Order 38 Rule 10 of CPC. The Hon'ble Supreme Court in “***L.K.Prabhu @ L. Krushna Prabju (Died) Through LRs. Vs. K.T. Mathew @ Thampan Thomas & Others***” made in SLP (C) No.15592 of 2023 dated 28.11.2025) held that the fraudulent transaction between purchaser and the defendant can be decided by the creditors in a suit filed under Section 52 of the Transfer of Property Act and not in a proceedings under Order 38 Rule 10 of CPC as follows:-

“12. Applying the above legal framework to the facts of the present case, it is apparent that the registered sale deed in favour of the original applicant was executed on 28.06.2004 i.e., several months prior to the institution of the suit in O.S.No.684 of 2004. Consequently, at the time of filing of the suit, the property stood transferred and was no longer in the possession or ownership of defendant No.3. In such circumstances, the essential condition for invoking attachment before judgment under Order XXXVIII Rule 5 CPC – that the property belongs to the defendant on the date of institution of the suit – is absent. The plaintiff’s remedy, if any, lies exclusively under Section 53 of the Transfer of Property Act, which provides for setting aside a transfer made with intent to defraud creditors.

20. In view of the foregoing, it is evident that:

(a) The original applicant’s sale deed dated 28.06.2004 pre-dates the institution of the suit, and therefore, the property did not belong to the

defendant on the date of filing of O.S.No.684 of 2004;

(b) Attachment before judgment under Order XXXVIII Rule 5 CPC could not be extended to the property already transferred;

(c) Any claim under Order XXXVIII Rule 8 read with Order XXI Rule 58 CPC must be adjudicated recognizing the protective and procedural nature of attachment before judgment, without prejudicing the pre-existing rights of bonafide third parties;

(d) Determination of whether the sale deed is fraudulent is exclusively governed by Section 53 of the Transfer of Property Act and the claim petition procedure under Rule 8 cannot substitute or override the statutory safeguards and requirements of such substantive proceedings.

21. Thus, this court holds that the registered sale deed dated 28.06.2004 executed in favour of the original applicant is valid. Consequently, the attachment before judgment ordered on 13.02.2005 could not legally extend to the said property. The claim petition filed by the original applicant under Order XXXVIII Rule 8 of CPC read with Order XXI Rule 58 CPC is therefore sustainable. Accordingly, the impugned judgment and order passed by the courts below are set aside.”

9. Further, the petitioner has purchased the property much earlier than the date of filing the suit and attachment. Therefore, the scope of Order 38 Rule 10 of CPC is clearly applicable to the facts of the case and hence the attachment

order dated 11.12.2018 is not bind on the plaintiff in view of the Order 38 Rule 10 of CPC. The respondent/plaintiff in his counter contended that the petitioner has purchased the property measuring 250 Sq.ft of UDS and 1300 Sq. ft of building on the first floor, and there is a remaining portion of the house comprising 146 Sq.ft of UDS and 860 Sq.ft of Super-built up area.

10. Upon perusal fo the description of the schedule property in A.No.5209 of 2015 and the attachment order it reveal that, the petitioner has taken out the petition for attachment of property in respect of the property in New Door No. 20/2, Old No.25/2, Ponnappa Chetty Lane/Street, 1st Floor, Muthialpet, Chennai – 600 079, in Survey No.857, 9471 bounded on the

North by : R.S.No.9458 Ponnappa Chetty Street,

South by: R.S.No.9482 and Kashmir Lodge

East by: R.S. No.9472

West by: R.S.No.9470 & Ramalingam Property

measuring total extent of 1300 Sq.ft alone.

11. Therefore, the contention of the respondent is not accepted as the remaining portion of the house comprising 146 sq.ft of UDS and 860 Sq.ft of Super-built up area are not covered in the schedule of the petition in A. No.5209 of 2015. The respondent one at liberty to take steps in respect of that property in accordance with law if they are so advised. Therefore, in view of the above

stated reason that the petition filed by the petitioner deserves to be allowed. Accordingly, the petition is allowed and the attachment order passed in A.No.5209 of 2015 on O.S.No.1134 of 2022, dated 11.12.2018 attachment is raised.

12. In the result, the petition is allowed and the attachment order passed in A.No.5209 of 2015 in O.S.No.1134 of 2022, dated 11.12.2018 is raised. Attachment raise batta within 3 days.

This Order has been dictated by me to the steno typist, transcribed and computerized by her, corrected and pronounced by me in the open Court on this Tuesday, the 6th day of January 2025.

I Additional Judge,
I Additional City Civil Court, Chennai.

I Additional City Civil
Court, Chennai
Draft/Fair Order in
I.A.No.4/2025
in
OS.No.1134/2022
Date:06.01.2026