

IN THE COURT OF THE ADDITIONAL DISTRICT JUDGE, DHARMAPURI

Present: Tmt.U.Monica,M.L.,
Additional District Judge,
Dharmapuri.

Saturday, this the 19th day of July 2025

I.A.No.3/2024
in
O.S.No.12/2024

V.Parvathi
(rep by power of attorney V.Sugumaran) Petitioner / Plaintiff
/versus/

P.K.Pounraj Respondent/defendant.

This petition is coming on 2.7.2025 for final hearing before me in presence of Thiru.A.Kannadasan, Advocate for petitioner and Thiru.I.Veerassamy, Advocate for respondent and upon hearing both side arguments and on perusal of the entire case records and having stood over till this day, this court pronounces the following:

ORDER

This petition has been filed under Order-38, Rule-5 and section 151 of CPC to attach the petition mentioned properties before judgment.

2. The averments in the petition in brief is as follows:

i) According to the petitioner, he is the youngest son/ power agent of the plaintiff. The Government acquired the properties allotted to petitioner's father by way of partition deed dated 16.10.1986. Therefore the petitioner's father filed LAOP.No.15/1994 for compensation and same was allowed on 7.4.1999. The

Government preferred A.S.No.650/2002 and the petitioner's father preferred Cross objection and Judgment was passed on 12.11.2009. The father out of the compensation amount deposited Rs.35,00,000/- in his name and Rs.40,00,000/-in the plaintiff's fixed deposit account in Tamil Nadu Mercantile bank, Dharmapuri.

ii) The respondent purchased first item of the suit property by way of Sale deed dated 6.8.2009, second item of the suit property by way of Sale deed dated 15.9.2009 and third item of the suit property by way of Sale deed dated 2.9.2011. The respondent is the son of petitioner's father, sister. The respondent represented that he was running P.K.P Grand hotel, P.K.P Spinning mill, P.K.P Poultry, P.K.P Minerals business and other business and requested the petitioner's parents to lend loan and seduced them to lend him loan of Rs.67,00,000/-.

iii) The respondent even without the knowledge of the petitioner's parents conspired with the bank manager and obtained loan from deposit made by their parents and transferred by RTGS to his account Rs.36,00,000/- and Rs.31,00,000/-. The respondent failed to repay amount. The petitioner's father has executed a registered Will dated 22.12.2015 appointing his wife, the plaintiff as his legal heir to the compensation amount for the land acquired by the Government in the A.S.No.652/2002. On 19.7.2022, when the petitioner demanded the respondent to pay the money, the respondent issued a cheque for Rs.10,00,000/- towards interest. The respondent is a influenced person. Hence the petitioner's mother preferred to Superintendent of Police on 27.2.2023, Chief

Minister cell, TamilNadu. The respondent used his influence and closed the complaint in Dharmapuri Town Police station. The petitioner's elder brother under the influence of alcohol used to sell all the things in the house and demand money from his mother by physically assaulting her. Taking advantage of the petitioner's brother Manoharan alcohol addiction, the respondent declared that he has spent the money given by the petitioner's father for the medical expenses of Manoharan. He also issued legal notice dated 10.8.2023 containing defamatory allegation. The petitioner's mother preferred complaint based upon it First Information Report in Cr.No.447/2023 under section 420, 506(i) was registered against respondent in Dharmapuri Town Police Station. However the police did not take any further action. The petitioner is attempting to sell his properties to defraud plaintiff. Hence attachment before Judgment has to be ordered.

3.The averments in the counter filed by respondent in brief is as follows:

The petitioner is doing granite quarry business, transport business, poultry farm, spinning mill, owning three star hotel and lodge, more than 700 persons are employed under him. It was the respondent who maintained power agent's parents and took care of their family expenses and medical expenses. The power agent without the knowledge of his parents had deposited Rs.35,00,000/- and Rs.40,00,000/- in his parent's account and swindled Rs.5,00,000/-, he harassed his parents, he also obtained power deed and sold nine plots. Upon request of the petitioner's husband, petitioner spent money for the treatment of Manoharan. The petitioner requested him to lend money, he gave Rs.10,00,000/-by way of cheque and Rs.2,00,000/- in cash after getting signature in

voucher from power agent. The respondent has given Rs.42,00,000/- for the cancer treatment of Manoharan and family expenses of power agent parents, he has paid Rs.42,000/- to Manoharan on 9.8.2023 and obtained receipt for it. The respondent is not liable to pay any amount as stated in the plaint. It was the power agent who had been making defamatory statements in social media. The power agent parents had transferred through RTGS a sum of Rs.67,00,000/-, respondent has issued a cheque of 19.7.2022 for Rs.10,00,000/- he has given Rs.2,00,000/- to power agent, he has paid Rs.10,000/-, Rs.2,15,000/- as advance and spent Rs.42,00,000/- for the medical and family expenses, Rs.42,000/- for the family expenses and Rs.40,000/- to Manoharan on 9.8.2022. There is no merits in the petition and petition is liable to be dismissed.

4. The point for consideration:

Whether the petition is to be allowed or not?

5. No oral evidence adduced on both side. Ex.P1, Ex.P2 were marked on the petitioner's side. Heard both side arguments.

6. Point:

6.1) It is the case of the petitioner that respondent borrowed Rs.67,00,000/- from petitioner's husband and he is liable to pay the said amount. The learned petitioner counsel relied upon Ex.P2-Encumbrance certificate and alleged that respondent has been creating encumbrance over properties during pendency of this petition, hence attachment has to be ordered.

6.2) The respondent resisted the petition by contending that, he has not borrowed

any amount as alleged by the petitioner and he has paid the amount given to him by petitioner's husband and suit is barred by limitation.

6.3) This is a suit for recovery of money. The parties are close relatives and there are litigation pending among them in various forums. The respondent alleges that he has not borrowed any amount has loan, it was petitioner husband who transferred money in his account for treatment of his son Manohar, he has spent Rs.42,00,000/- for treatment and also paid balance amount and he is not liable to pay suit amount.

6.4) The hon'ble Supreme Court judgment in Raman Tech. & Process Engg. Co. & Anr. Vs. Solanki Traders, (2008) 2 SCC 302, as held as follows:-

"5. The power under Order 38 Rule 5 CPC is a drastic and extraordinary power. Such power should not be exercised mechanically or merely for the asking. It should be used sparingly and strictly in accordance with the Rule. The purpose of Order 38 Rule 5 is not to convert an unsecured debt into a secured debt. Any attempt by a plaintiff to utilise the provisions of Order 38 Rule 5 as a leverage for coercing the defendant to settle the suit claim should be discouraged. Instances are not wanting where bloated and doubtful claims are realised by unscrupulous plaintiffs by obtaining orders of attachment before judgment and forcing the defendants for out-of-court settlements under threat of attachment.

6. A defendant is not debarred from dealing with his property merely because a suit is filed or about to be filed against him. Shifting of business from one premises to another premises or removal of machinery to another premises by itself is not a ground for granting attachment before judgment. A plaintiff should show, prima facie, that his claim is bona fide and valid and also satisfy the court that the defendant is about to remove or dispose of the whole or part of his property, with the intention of obstructing or delaying the execution of any decree that may be passed against him, before power is exercised under Order 38 Rule 5 CPC. Courts should also keep in view the principles relating to grant of attachment before judgment. (See Premraj Mundra v. Md. Manech Gazi [AIR 1951 Cal 156] for a clear summary of the principles.)"

The Supreme Court has observed as aforesaid that the provisions of Order XXXVIII Rule 5 of the CPC have to be used sparingly and that the plaintiff has to satisfy the Court that the defendant is seeking to remove or dispose of whole or part of his property with the intention of obstructing or delaying the execution of the decree that may be passed against him.

6.5) The learned petitioner counsel relied on the authority of A.Chinnasamy (vs) 1.Syedshan, 2) Senthilkumar in the Hon'ble High Court of Madras, dated 5.3.2024, - 2024 (5) CTC 395, wherein it has been dealt with fraudulent transfers is not applicable to facts of case.

6.6) The liability of respondent is disputed. It is not the case of the petitioner that respondent is in acute financial embarrassment. It is settled position of law that attachment before judgment cannot be passed merely for the sake of asking or because respondent owes a huge amount to petitioner. The intention of the respondent is most important one and attachment cannot be ordered upon the mere apprehension of the petitioner and petitioner cannot be allowed to convert unsecured debt into a secured debt.

6.7) In view of foregoing deliberations, this court concludes that petitioner has not made out any prima facie case for ordering attachment before judgment. Hence petitioner is not entitled to any relief in this petition. Hence point for consideration is answered against petitioner.

In the result, the petition is dismissed. Both the parties to bear their own costs.

Dictated by me, typed by the Steno-typist, corrected and pronounced by me in Open Court on this the 19th day of July 2025.

Additional District Judge,
Dharmapuri.

Petitioner Side Exhibits:

Ex.P1	--	Encumbrance certificate - online extract.
Ex.P2	5.3.2017	Computerized Patta No.6887.

Respondents Side witness, Exhibits: Nil

Additional District Judge,
Dharmapuri.

Fair Order
I.A.No.3/2024 in
O.S.No.12/2024
Dated:19.7.2025.