

**IN THE COURT OF PRINCIPAL DISTRICT MUNSIF
PADMANABHAPURAM.**

**Present: Thiru.R.Karthikeyan, B.A., B.L.,(Hons.)
Principal District Munsif.**

Wednesday, the 24th day of June 2026

E.A.No.06 /2025

in

E.P.No.02/2023

in

O.S. No. 89 of 2020

1.Thasaran
(Insane Rep.by the 2nd claim petitioner)

2. Thasal
(2nd petitioner as guardian of 1st petitioner appointed as per order
E.A.No.05/2025 on dated 15.09.2025) ... Claim Petitioner /
3rd parties)

Vs.

1. Maria Barnabas ..Respondent/decreed holder/plaintiff
2. Sree Devi ..Respondent/ Judgment debtor/defendant

This petition is coming before me for final hearing, in the presence of Mr.Jeya Singh, learned counsel for the Claim Petitioners/ 3rd parties and Mr.Edwin Victor, learned counsel for the Respondent R1 and Respondent R2 called absent and set exparte. Upon hearing the both side counsel and on perusal of the records stood over for consideration till this day, this court passed the following :

ORDER

This petition is filed under order 21 Rule 58 and section 151 of the Civil procedure Code to declare the right of claim petitioners and raise the attachment in I.A.No.01/2020 in O.S.No.89/2017 dated 21.12.2021 on the petition schedule property.

2. THE AVERMENTS IN THE PETITION IN BRIEF :-

i) The 1st claim petitioner D.Thasaran is his brother who is an insane person. The respondent/Judgment debtor/defendant in this execution petition Mrs. Sreedevi agreed to sell the 21 cents on land in Re.Sy.No.249/1 including the execution petition schedule property for the sale consideration of Rs.1,60,000/- to his father Dhas and she received an advance amount of Rs.1,00,000/- from our father on 28.03.2019. In this connection his father C.Dhas and 2nd respondent/defendant entered a registered sale agreement on 28.03.2019 which is registered before the Palliyadi Sub Register Office as Doc.No.904/2019 dated 28.03.2019. As per the said registered sale agreement the 2nd respondent/defendant will execute the sale deed infavour of his father C.Dhas within a year from the date of sale agreement by receiving the balance consideration sum of Rs.60,000/- from his father. But the 2nd respondent/defendant did not executed the sale deed by receiving the balance consideration from his father as promised. The suit for specific performance before the Hon'ble

Subordinate Judge's Court at Padmanabhapuram as O.S.No.75/2020. On 07.05.2021 his father died. So we are impleaded in the above suit as addl.2 and 3rd defendants and filed an amended plaint copy to the Hon'ble Subordinate Judge's court at Padmanabhapuram on 22.03.2025. After filing the said suit for specific performance in O.S.No.75/2020 by his father the 2nd respondent/defendant and the execution petitioner have colluded and executed a pre dated promissory note dated 28.10.2017 and the execution petitioner filed a suit for recovery of money in O.S.No.89/2020 dated 21.12.2021. Then the petitioner/plaintiff got an exparte decree on 12.08.2022 from this court. The 2nd respondent/defendant Sree Devi is directed to pay sum of Rs.1,00,000/ with interest at the rate of 7.5 % per annum for the principal amount from the date of filing the suit till the date of decree till the date of realization of an entire amount with cost.

ii) The execution petitioner Mr. Maria Barnabas to sale the petition schedule property to recover the execution petition sum of Rs, 1,20,005/- and got exparte order for sale the petition schedule property on 27.02.2025. But the execution petitioner suppressed the registered sale agreement infavour of him and the suit for specific performance in O.S.No.75/2020. On 02.04.2025 the petitioner have visited the petition schedule property the sale proclamation notice stick on a tree. As per

the said proclamation, the sale dated was fixed on 16.04.2025. Hence, it is highly necessary to raise attachment on the execution petition schedule property by this court. Hence, this petition.

3. THE AVERMENTS IN THE COUNTER FILED BY 1st RESPONDENT IN BRIEF:

i) The petitioner have filed a suit for specific performance as O.S.No.75/2020. The agreement was dated 28.03.2019. The 2nd respondent in this petition and the defendant in O.S.No.75/2020 filed a written statement stating that the claim petitioner's father namely one Dhas used to provide money for the urgent needs of the defendant namely Sree Devi and she used to repay the amount then and there regularly. For which the claim petitioner's father used to get a unregistered document styled as agreement for sale and thereafter upon repayment of the borrowed amount to the claim petitioner's father cancel the agreement for sale which is the practice followed by the for years together. The claim petitioner's father lent a sum of Rs.1,50,000/- to the 2nd respondent Sree Devi on 06.04.2018 an agreement for sale vide document No.999/2018 in respect of property comprised in Resurvey No.249/1 for an extent of 21 cents. After settlement of the borrowed amount the claim petitioner's father cancelled the above said agreement for sale dated 06.04.2018 vide

cancellation deed NO.903/2019 dated 28.03.2019 on the file of the Sub Registrar palliyadi. The 2nd respondent entered to another registered sale agreement dated 28.03.2019 as deed No.904/2019 on the same date within the claim petitioner's father.

ii) The 2nd respondent borrowed a sum of Rs.1,00,000/- from the 1st respondent on 28.10.2017 and pronote infavour of 1st respondent decree holder on 02.05.2020 to 1st respondent/decreed holder issued a legal notice and he filed a suit as O.S.No.89/2020 before this court and obtained a decree on 16.08.2021. The decree holder/1st respondent filed interim attachment petition before this court in I.A.No.01/2020. The charge has been created on the petition schedule property on 28.10.2017. The respondent need not want to collude with the 2nd respondent for a meager amount of Rs.1,00,000/-. Since the 10 cents of land remains for the claim of Rs.1,00,000/-. Hence, this petition is liable to be dismissed.

4. POINTS FOR DETERMINATION :-

Whether the claim petitioners are entitled to the relief as prayed for or not?

5. EVIDENCES :-

To prove the case, on the side of Petitioners, the 2nd petitioner

was examined as P.W.1 and one Rajeshkumar was examined as P.W.2. and Ex.P1 to P8 were marked. On the side of respondents no witness was marked and EX.R1 and Ex.R2 were marked through PW.1 ,

6. **DISCUSSION AND ANALYSIS** :-

Heard Both sides. Records Perused carefully.

i) Petitioner have filed this petition to raise the attachment over the execution petition schedule property on the ground that suit for specific performance O.S.No.75/2020 was pending before Hon'ble Sub Court Padmanabhapuram and still suit is pending. The contention of the petitioner is that respondent Mrs.Sree Devi agreed the sale of 21 cents of land in Re-survey No.249/1 of Valvachagostam 'B' village including the execution petition schedule property for the sale consideration of Rs.1,60,000/- to claim petitioners father Mr.Dhas and she received an advance amount of Rs.1,00,000/- on 28.03.2019. In connection to this claim petitioners father executed to registered sale agreement on 28.03.2019 namely document No.904/2019. As per the sale agreement respondent have to execute the sale agreement infavour of the father within a year from the date of sale agreement by receiving balance consideration of Rs.60,000/-. But respondent failed to execute the sale deed even after receiving the balance consideration and hence the suit for specific performance filed before Hon'ble Sub Court Padmanabharam as O.SNO.75/2020 and same was pending.

ii) In the mean time respondent colluded with the execution petitioner executed a pre dated promissory note dated 28.10.2017 filed suit for recovery of money as O.S.No.89/2020 and same was decreed infavour of the execution petitioner on 12.08.2022. Based on the support of the above decree respondent have filed this execution petition. On the other hand respondent raised strong objection to allow this petition on the ground that the sale agreement was not executed for sale of the property it was executed only as a security bond for the debt amount received by the respondent and same was repaid by them. Since the claim petitioners father was in involved in money lending business its his nature to receive sale agreement infavour of himself for debt amount. Hence, prays to dismiss this petition.

iii) When the claim petitioners seek for the relief to raise the attachment the initial burden of proof lies upon. The claim petitioners was examined as PW.1 and marked Ex.P1 to Ex.P8. PW.2 supported the petitioners contention. Though PW.2 supported the petitioner contention Pw2 have deposed he doesnot know the money transaction existing between them hence Pw2 evidence can be wholly relied. On perusal of Ex.P1 it is clear that respondent Mrs.Sree Devi bears the title over the execution petition schedule property as per the sale agreement No.1911/2017. The prime document relied by the claim petitioners is

that registered sale agreement No.904/2019 dated 28.03.2019. Ex.B3 was adduced to support that O.S.No.75/2020 was filed before Hon'ble Sub Court, Padmanabhapuram and same was pending. Ex.B5 the legal heirs certificate was adduced to support that claim petitioners were the only legal heirs to the deceased Dhas.

iv) Thus it is clear that claim petitioners claims the right over the petitioner schedule property based on the sale agreement executed in the year 2019. Though PW.1 have deposed that the entire sale consideration was paid to the respondent Mrs.Sree Devi. No exhibits was adduced to support this contention. The defence is that mere executing a sale agreement will not take away right of the respondent and moreover the sale agreement was executed only as security for the debt amount accrued by the respondent from the deceased Dhas. Usually there was previous money transactions between this claim petitioners father Dhas and respondent Mrs.Sree Devi. in such cases sale agreement was executed in 2018 the subsequent sale agreement executed in 2019 namely Ex.P2, Ex.R1 and Ex.R2. Thus it is clear that on the same day of canceling previous sale agreement a new sale agreement was executed by the claim petitioners father deceased Dhas Respondent Mrs.Sree Devi for the sum of Rs.1,60,000/- the only difference from the both sale agreement was the difference amount of

Rs.10,000/- alone. Even if the sale agreement executed as Ex.P2 was taken into consideration mere execution of sale agreement will not cause any right over the property until the sale deed was executed nor decree was obtained for specific performance infavour this claim petitioners.

v) At this juncture it is pertinent to rely upon the decision Held in “Narandas Karsondas V. S.K.Kamtam [(1977) 3 SCC 247: AIR 1977 SC 774} the Hon’ble Supreme Court also considered the nature of the right created on the immovable property by a contract for sale. It has been stated that contract of sale in view of section 24 of T.P.Act does not of itself create any interest in or charge on the property. The personal obligation created by a contract of sale (as recognized in Section 3 of the Specific relief Act and section 91 of the Trust Act is described in section 40 of the T.P.Act) as an obligation arising out of contract. An annexure to the ownership of the property, but not amounting to interest of easement therein”.

vi) In N.Ramayee Vs. Sub Registrar and another reported in 2020 (6) CTC 697, has clarified that registering an entry relating to the previous agreement will not be a bar for dealing with the property. In such view of the matter, the entry relating to the agreement will not be a bar for the petitioner to deal with his property. Held that more agreement for sale will not create any charge or interest over the immovable property.

Based on the above discussion , decisions and evidence adduced , this court is of considered view that claim petitioners are not entitled for the relief as prayed.

DECISION:

In the result, considering the nature and circumstance of the petition, in the interest of justice, this claim petition is dismissed. No costs.

Dictated to the steno-typist and typed by her in computer, corrected and pronounced by me in open court, on this 24th day of June 2026.

Principal District Munsif,
Padmanabhapuram.

Petitioners' side Witnesses :-

- 1.PW.1. - Mr. Thasal
- 2.PW.2. - Mr. Rajeshkumar

Respondents' side Witnesses :-

- Nil -

Petitioner's side Documents :-

1 .Ex.P.1	-	19.09.2017	-	Certified copy of sale deed No.1911/2017
2. Ex.P.2	-	28.03.2019	-	Certified copy of registered Sale agreement No.904/2019
3. Ex.P.3	-	—	-	True copy of amendment plaint in A.S.No.75/2020

4. Ex.P.4	-	03.06.2021	-	Online copy of death certificate of Mr. Dhas
5. Ex.P.5	-	25.07.2021	-	Online copy of legal heirs certificate
6. Ex.P.6	-	19.12.2017	-	Copy of Disability certificate of 1 st petitioner Thasaran
7. Ex.P.7	-	18.05.2022	-	Copy of unique disability ID Card of 1 st petitioner Thasaran
8. Ex.P.8	-	17.11.2023	-	Certificate of Appointment of legal guardian of 1 st petitioner Thasaran

Respondents' side documents :-

1. Ex.R.1	-	06.04.2018	-	Certified copy of sale agreement deed No.799/2018
2. Ex.R.2	-	28.03.2019	-	Certified copy of sale agreement cancellation deed No.903/2019

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O.S.No.89/2020.
Order:
Dt: 24.06.2026

