

IN THE COURT OF THE PRINCIPAL SUBORDINATE JUDGE, KARUR

PRESENT: THIRU. M. SHUNMUGAVELRAJ, B.A., B.L., L.L.M.,

PRINCIPAL SUBORDINATE JUDGE, KARUR.

THURSDAY THE 11th DAY OF JULY - 2024

I.A. No.1/2022

IN

Original Suit No.179/2022

Thiru. S. Thiyagarajan

...Petitioner/Plaintiff

/VS/

Thiru. M. Sivasamy

...Respondent/Defendant

This petition coming on 11.07.2024 before me for final hearing in the presence of Thiru. N. Prakash, Advocate for the petitioner and Thiru. T. Saravanan, Advocate for Respondent and upon perusing the records and upon perusing the records and having stood over till this day for consideration, this court delivered the following...

ORDER

1. The Petitioner is the plaintiff in the suit. Who have filed the present petition under Order 38 Rule 5 and Section 151 of CPC praying this court to pass an order to attach the petition mention properties belonging to the respondent as attachment before Judgment in the original suit and other reliefs.

2. The Petitioner states original suit has been filed to recover sum of Rs.6,61,458/- together with subsequent interest and cost. The petitioner further states one Balakrishnan son of Subramaniyan residing at Kanthasarapatti, Mukanakuruchi Post, Karur Taluk, Karur District informed him, the respondent are making arrangement to sell his property; if the respondent to do so, it will be very difficult for him to realize the decree amount that will be passed in his favor. Hence, the petition for attachment before Judgment. Unless, the petition is allowed, he will be put to too much loss and hardship.

3. The respondents contested the petition by filing his counter and specifically denied the facts stated in the affidavit. The respondents have no idea of selling their property and also has not furnished details of the third. The petition has been

filed for attaching the respondents property based on false suit against the respondent. The respondents have not borrowed any amount from the petitioner. The suit is false and not maintainable. Hence, prays to dismiss the petition with costs.

4. On the side of petitioner Ex.P.1 to 5 Marked. No oral evidence adduced on Petitioner Side. Neither oral nor documentary evidence adduced on either side.

5. Now, the point for determination is whether the petition under Order 38 Rule 5 and Section 151 of CPC has to be allowed or not?

The point;

Admittedly, the petitioner has laid a money suit against the respondent for recovery of money. Along with the suit, the present petition has been filed for relief of attachment of properties belonging to the Respondent before judgment.

Rival submissions heard. The learned counsel for petitioner argued as the respondent is the owner of the property mentioned in the petition and one 3rd Party informed him, the respondent are making arrangement to sell their property; if the respondent to do so, it will be very difficult for him to realize the decree amount that will be passed in his favour. Hence, prayed to allow the petition. In response, the learned counsel for the respondent argued as the petitioner did not lead any positive evidence to establish his contention. The respondent are not having any plan to alienating the property or to create false and fraudulent encumbrances over the immovable property belongs to her, the attribute of petitioner is false and same is invented for case, there is no iota of truth in it.

Rival submissions considered. Before going into the merits of the instant case, On perusal of Ex.P.1 that the Original pronote dated 09.01.2020 and Ex.P.2 revealed that the Legal Notice dated 14.08.2021 sent to the respondent and Ex.P.3 revealed that the acknowledgment card served to the respondent and Ex.P.4 revealed that the mentioned property belongs to the respondent by way of Partition deed dated 12.06.2013 and

Ex.P.5 revealed that encumbrance certificate of the mentioned property. On perusal of Ex.P.5 revealed that there is no entry to attempt to create false and fraudulent encumbrances by way of any Deed to any other Person. At this juncture it is appropriate to having a glimpse into the settled law relating to attachment before judgment.

In AIR 2000 MADRAS 213 [Renox Commercials Ltd., Vs. Inventa Technologies Pvt. Ltd.], wherein in paragraphs 25, 30 and 31, it has been held as follows:

"25. Therefore, the jurisdiction of this Court to order attachment before judgment arises only when it is satisfied by the affidavit, supported by the particulars that the defendant is about to dispose of the whole, or any part of his property with the intention to obstruct or delay the execution of the decree that may be passed against him. Hence, the essential requirement for an order of attachment before judgment is the mala fide intention and the conduct of the defendant in disposing of or about to dispose of his property with the dishonest intention of defeating or delaying the decree that may be passed in the suit.

30. As indicated above, the applicant/ plaintiff should clearly establish two essential requisites. They are :-- (i) the defendant is about to dispose of the whole or any part of his property; (ii) that the said disposal is being done with an intention to obstruct or delay the execution of the decree that may be passed against him.

31. Thus, in this case, the sine qua non for an order of attachment before judgment, namely, the mala fide intention and the conduct of the defendant in disposing of or about to dispose of his property with the dishonest intention of defeating or delaying the decree that may be passed in the suit, is conspicuously absent."

(ii) 2014 (3) CTC 792 [M.Padmini Vs. M.Anandhan], wherein in paragraph 13, it has been held as follows:-

"13. It is a trite proposition of law that merely making a bald allegation that the plaintiff is given to understand that the Defendant is going to sell the property through real estate agents may not be sufficient and there must a specific averment or allegation made. In the absence of any specific allegation it is well settled by the Hon'ble Apex Court as well as by this Court that extraordinary remedy should not be granted. It is true that the Court

is vested with powers to exercise power under Order 38, Rule 5, C.P.C. But, it remains to be stated that if it is a fit case, it should be exercised. It is an extraordinary power and such power should not be exercised mechanically. The Courts have held that it must be used strictly in accordance with the rules. The purpose of Order 38, Rule 5, is not to convert an unsecured debt into a secured debt."

Coming to the instant case, the petitioner did not plead as to how and to whom the respondents are making dishonest arrangements to alienate their property to defraud him. The affidavit lacks material particulars. Literally, the petition allegations are very bald. In the considered view, on the light of the above citations, this court comes to a conclusion the petitioner miserably failed to make out a case to pass an order as prayer for. Hence, this court not inclined to allow the petition.

On considering facts and circumstances of the case, the petition is dismissed. There will be no order as to costs.

Dictated by me to the Typist, typed by her, and corrected by me, Pronounced by me in open court, on this the 11th day of July - 2024.

S/d.Shunmugavelraj,

**PRINCIPAL SUBORDINATE JUDGE,
KARUR.**

Petitioner side Witness:- Nil

Petitioner side Documents:-

Sl.No.	Date	Documents
1	09.01.2020	Original pronote
2	14.08.2021	Legal Notice sent to the respondent
3	-	Acknowledgment card served to the respondent
4	12.06.2013	Certified Copy of Partition deed in the name of the respondent
5	01.10.2021	Online Copy of Encumbrance Certificate.

Respondent side Witness and Documents:- Nil

S/d.Shunmugavelraj,

**PRINCIPAL SUBORDINATE JUDGE,
KARUR.**