

1 Of 4

Principal Sub-court, Karur.

Present:- Tmt. K.L. Priyanga, B.A.,B.L., (Hons)

Principal Sub-Judge, Karur.

Thiruvalluvarandu 2057, Sri Parapava year, 15th day of Month of Aadi
Friday, the 31st day of month of July 2026

I.A.No. 01/2024

in

O.S.No.241/2024

K. Periyasamy

....Petitioner/Plaintiff

// versus //

K. Velusamy

..... Respondent/Defendant

This Interlocutory Application came before me on 08.07.2026 for final hearing in the presence of Thiru.Ramaguru, Advocate for the petitioner/defendant and Thiru.K.Senthilkumar, Advocate for the Respondent/Defendant and having stood over for consideration till this day, this court doth issuing this

ORDER

This petition is to direct the respondent/Defendant to furnish the security for the suit claim within the time to be specified by this court and if he failed to do so, to pass an order of attachment before judgment in respect of the petition mentioned property .

2. AVERMENTS IN THE AFFIDAVIT

The petitioner is the plaintiff in the above suit, has filed the above suit for recovery of Rs.8,30,900/- with subsequent interest against the respondent/defendant and the case of the petitioners/plaintiffs is that on 06.09.2022, the respondent/defendant had borrowed a sum of Rs.5,00,000/- (Rupees Five Lakhs only) for his urgent needs and family expenses from the petitioner, agreeing to repay the said amount along with interest either to the petitioner or to the petitioner's order on demand. On the same date, after receiving the entire consideration from the petitioner, in evidence of the above said borrowal, the

respondent/defendant had executed on demand promissory note. Despite the petitioner's repeated requests and demands, he has not repaid. Hence, the defendant is liable to pay the above said amount. Despite his repeated requests, the defendant has not paid any amount either towards principal or towards interest, due under the above said promissory note. Hence, the petitioner/plaintiff has filed a suit against the defendant. The petition mentioned property was originally owned by respondent/defendant. Now the petitioner came to know from one third party that the respondent/defendant with the intention to defeat and defraud his lawful suit claim, is attempting to dispose off the petition mentioned property. Hence this petition.

3) Brief fact of the counter filed by the Respondent/Defendant .

All the allegation stated in the Petition are false, frivolous, vexatious and highly speculative. This is unsustainable either in law or on facts. All are strongly denied by the respondent. The promissory note is the forged one. That the petition U/o 38 Rule 5 does not comply with requirements as under the section and hence this petition is liable to be dismissed.

4) BRIEF FACT OF AFFIDAVIT FILED BY THE THIRD PARTY

One S.Aravinth, S/o. Selvaraj submits, that he is the 3rd party to the above suit and that he know the parties to the suit and that the petition mentioned properties belongs to the respondent/defendant and he has proposed to sell the same.

5) The point for determination is whether the petitioner/plaintiff is entitled to the relief as prayed for or not?

6) DISCUSSION:-

This petition has been filed by the petitioner/plaintiff seeking an order of attachment before judgment in respect of the petition mentioned property. The contention of the petitioner/plaintiff had borrowed a sum of Rs.5,00,000/- (Rupees Five Lakhs only) for business purpose from the petitioner, agreeing to repay the said amount along with interest

either to the petitioner or to the petitioner's order on demand and On the same date, after receiving the entire consideration from the petitioner, in evidence of the above said borrowal, the respondent/ defendant had executed on demand promissory note and despite the petitioner's repeated requests and demands, the respondents have not repaid and the petitioner/plaintiff has filed a suit for recovery of money in which the petitioner/plaintiff has come forward with this petition with respect of petition mentioned property belonging to the respondents/defendants, which they are attempting to encumber with a view to delay and defraud the lawful claim of the petitioner/plaintiff.

7) In this connection, this court is inclined to state the necessary provision of law which is reiterated as hereunder.

ORDER XXXVIII RULE V CIVIL PROCEDURE CODE: - WHERE DEFENDANT MAY BE CALLED UPON TO FURNISH SECURITY FOR PRODUCTION OF PROPERTY:-

1) Where, at any stage of a suit, the Court is satisfied, by affidavit or otherwise, that the defendant, with intent to obstruct or delay the execution of any decree that may be passed against him,-

a) is about to dispose of the whole or any part of his property, or

b) is about to remove the whole or any part of his property from the local limits of the jurisdiction of the Court,

the Court may direct the defendant, within a time to be fixed by it, either to furnish security, in such sum as may be specified, in the order, to produce and place at the disposal of the Court, when required, the said property or the value of the same, or such portion thereof as may be sufficient to satisfy the decree, or to appear and show cause why he should not furnish security.

2) The plaintiff shall, unless the Court otherwise directs, specify the property required to be attached and estimated value thereof.

3) The Court may also in the order direct the conditional attachment of the whole or any portion of the property so specified.

4) If an order of attachment is made without complying with the provisions of sub-rule(1) of this rule, such attachment shall be void.

8) With this provision of law in mind, this court is inclined to look in to whether the petition mentioned property actually belonged to the respondents/defendants, as the same is the main criteria to decide whether the property can be attached or not? The petitioner/plaintiff has produced the partition deed between the respondent/defendant and one Velusamy as Ex.P1 and Encumbrance certificate for the petition mentioned properties

as Ex.P2. On perusal of Ex.P1 to Ex.P2, it is clear that the respondent/defendant acquires title over the petition mentioned properties.

9) From the aforesaid documents produced on the side of the petitioner/plaintiff and also considering that there is no case put forward by the respondent/defendant, this court, on considering the affidavit filed by the 3rd party which is clear as to be point that the respondent/defendant is making all efforts to encumber the petition mentioned property and also considering that the respondent/defendant has not even taken pain to furnish security to put forth his case, this court has no hesitation to hold that an order of attachment before judgment of the petition mentioned property is necessitated. Therefore, this court finds that this petitioner/plaintiff is entitled to the relief as prayed for.

10) **RESULT:**

In the result, this petition is allowed. For attachment of Item 1 to 3 petition mentioned properties. Call on 21.09.2026. Batta in three days.

This order is dictated to Steno Typist, typed by her on computer after carrying corrections and pronounced by me in the open court on this the 31st day of July 2026.

**Principal Sub-Judge,
Karur.**

WITNESSES EXAMINED ON THE SIDE OF THE PETITIONER- Nil.
DOCUMENTS MARKED ON THE SIDE OF THE PETITIONER-

Ex.P.1	27.09.2023	Registered Partition Deed	Online Copy
Ex.P.2	17.03.2024	Encumbrance Certificate	Downloaded Copy

**WITNESSES AND DOCUMENTS EXAMINED ON THE SIDE OF THE
RESPONDENT –** Nil.

**Principal Sub-Judge,
Karur.**