

Principal Sub-Court, Karur.

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

Principal Sub-Judge, Karur.

Thiruvalluvarandu 2057, Sri Parabava year, day of Month of Aani

Friday, the 19th day of month of June 2026

I.A.No.02/2025

in

O.S.No.779/2025

S.Saravanan

....Petitioner/Plaintiff

// versus //

1. Indharani

2. Janagaraj

3. Prema

... Respondents/ Defendants

This Interlocutory Application came before me on 08.06.2026 for final hearing in the presence of S. Kanitha Sree, Advocate for the Petitioner/Plaintiff, R1 to R3 counter not filed and called set exparte and having stood over for consideration till this day, this court doth issuing this

ORDER

This petition is to direct the respondents/ Defendants 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, have filed the above suit for recovery of Rs.4,13,700/- with subsequent interest, from the respondents/defendants based upon the promissory note and undivided share in the petition mentioned property belonged to the respondents/ defendants. The petitioner came to know that the respondents/defendants is making hectic attempt to encumber the petition mentioned property. In order to delay and defraud the lawful claim of the petitioner/plaintiff and hence the petitioner/plaintiff has come forward with this petition.

3) The respondent remained exparte.

4) **BRIEF FACT OF AFFIDAVIT FILED BY THE THIRD PARTY**

One B.Kumaravel, S/o. Bomma Naikar 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 respondents/defendants 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 is that the husband of the 1st respondent/1st defendant namely V.Ganesan borrowed a sum of Rs. 3,00,000/- from the petitioner/plaintiff and having executed a promissory note, failed to repay the principal or interest 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 he is 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 3 of 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 belong 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 patta in the name of one Velliyapan as Ex.P1 in respect of petition mentioned property. The petitioner/plaintiff has also produced Online Encumbrance Certificate dated 17.11.2025 as Ex.P2 in respect of petition mentioned property. Though the petitioner/plaintiff has pleaded that the respondents/defendants have share in the petition mentioned property, no document of title has been produced. Therefore, having failed to elucidate that the respondent/defendant has title over the petition mentioned property, and having failed to elucidate the quantum of share of the respondents/Defendants in the petition mentioned property, this court finds that the petitioner/plaintiff has failed to prove the title of the respondents/ defendants in respect of the petition mentioned property. Also on considering that the petitioner/plaintiff has failed to prove the provisions enumerated in the above said provision of law, this court finds that the petitioner is not entitled to the relief as prayed for . Therefore this court is not inclined to allow this petition.

9) **RESULT:**

In the result, this petition is dismissed. No cost.

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 19th day of June 2026.

**Principal Sub-Judge,
Karur.**

Witnesses Examined on the side of the Petitioner- Nil.

Document Marked on the side of the Petitioner:-

Ex.P.1 14.11.2025 Patta - Online Copy

Ex.P2 17.11.2025 Encumbrance Certificate - Online Copy

Witnesses and Document on the side of the Respondent:-

**Principal Sub-Judge,
Karur.**