

IN THE COURT OF THE SUBORDINATE JUDGE OF MELUR.

Present: Thiru.M. SAMUNDEESWARI PRABHA, M.A., M.L.,

Subordinate Judge, Melur,

Friday the 24th day of April 2026

E.A.No.2/2024

in

E.P.No.59/2021

in

O.S.No.591/2017

D.Nallathambi

.... Petitioner/Claimant/3rd party

// Vs //

1. M/s.Shriram City Union Finance,

Madurai represented through its

Authorized person C.Ganesh

2. D.Asaithambi

3. A.Thangam

4. A.Dhiraviyam

5. D.Amsavalli

6. D.Jegan

.... Respondents/Petitioners/ Respondents

This petition is came up on 07.04.2026 for final hearing before this court in the presence of Advocate.Thiru.E.Pradeepraj, Advocate for the Petitioner and Advocate.Thiru.P.Muthukumar, Advocate for the 1st respondent and the 2nd to 5th respondents were called absent and set exparte on 21.10.2024 and 6th respondent was called absent and set exparte on 12.03.2026 and upon hearing enquiry not made and having stood over for consideration till this day, the court delivered the following :-

//ORDER//

This petition has been filed Under Order 21 Rule 26(1) and Section 151 of CPC to pass an order to stay all the further proceedings of the above execution petition pending disposal of the claim petition filed by the petitioner.

1. Brief averments of the petition:-

(I) The petitioner/Petitioner/3rd Party herein. The 4th and 5th respondents herein are parents of the petitioner and 2nd and 6th respondents are brothers of petitioner and the 3rd respondent is wife of the 2nd respondent. We are living as Hindu joint family and the respective addresses mentioned above. The schedule mentioned property originally belongs to 4th respondent herein who is none other

than petitioner's father. The schedule mentioned property was purchased in the name of the 4th respondent through the income of the other properties belongs to the family of the petitioner since the 4th respondent is the senior member of the family. The petitioner having equal rights with the schedule mentioned property along with the 2 to 6 respondents since the petitioner also a legal heir of the 4th respondent.

(ii) The 2nd respondent herein obtained an agriculture loan a sum of Rs. 10,00,000/- from the 1st respondent herein and the 3 to 6 respondents are guarantor of the 2nd respondent. For the purpose of the above said loan, all the respondents were pledged the schedule mentioned property with the 1st respondent without the knowledge of the petitioner. The petitioner further learned that due to some default of payment of monthly installments, the 1st respondent/Finance Company initiated a arbitration proceedings against the 2 to 6 respondents and obtained a decree and in order to recover the said decree amount, the 1st respondent filed the above execution petition before this court for attachment and sale of schedule mentioned property. The petitioner having knowledge about the above said facts when this court amins came to the schedule mentioned property for the above said attachment

proceedings. After that only the petitioner had traced out the above said case details and having knowledge about the above said details.

(iii) The petitioner having equal rights with the schedule mentioned property and in order to cheat the equal rights of the petitioner with the property, the 2nd to 6th respondents were obtained loan from the 1st respondent and pledged the schedule mentioned property without the knowledge of the petitioner. The 1st respondent also sanctioned the loan to the 2nd respondent without verification of the title of the schedule mentioned property and equal rights of the petitioner with the above said property. The petitioner prays to pass an order to stay all the further proceedings of the above execution petition pending disposal of the claim petition filed by the petitioner. Hence this petition has to be allowed.

2. Brief averments of the counter affidavit filed by the 1st respondent/petitioner/respondent :-

(I) The 1st respondent herein is the 1st petitioner in the execution petition. The respondent admitted averments hereunder, all the other averments are denied and the petitioner are put to strict proof of the same. The 1st respondent was working as Manager of the Finance Company. The 2nd respondent (D. Aasaithambi) of the above

interlocutory petition has filed the above enforcement petition on the basis of the decree obtained on the petition filed by the 1st respondent company in the Consent Tribunal on the grounds that he had obtained a loan from the 1st respondent company on 30.07.2016 as per loan agreement No. MELUTF1607290001- Rs.10,00,000/- and had not repaid it properly. But the petitioner has made a false statement in his affidavit that the above loan is an "agricultural loan". The 3rd to 5th respondents of this petition are guarantors for the loan so obtained. Further, for the above loan amount, the 4th respondent (father of the 2nd respondent) has registered the property entrusted to him (the property mentioned in the property details in the execution petition) as a mortgage as per Karungalakudi Sub-Registrar's Office Document No. 1398/2016 dated 28.07.2016. The petitioner of this petition has signed the mortgage deed so registered as the first witness.

(ii) In that situation, it is easy to see that all the allegations made by the petitioner in his affidavit are false, as respondents 2 to 6 have registered the said property as a mortgage to the 1st respondent's company without the knowledge of the petitioner. Further, the 4th respondent has registered the above property as a mortgage for the loan received by the 2nd respondent of this petition, which is based on his

possession. That is, he has mortgaged the property, clearly stating that if the loan is not paid, the loan can be settled with the proceeds from the sale of the property. No member of the family except the 4th respondent has any right or interest in the property registered as a mortgage for the loan. Because the mortgaged property is a property purchased in the name of the 4th respondent with his income. The 4th respondent himself has very clearly mentioned this in the first paragraph of page No. 3 of the mortgage registered document as a property purchased with his own money. The petitioner, in collusion with 2 to 6 respondents, has filed this petition with some ulterior motive of not paying the debt owed to the 1st respondent. Hence this petition has to be dismissed with costs.

3. The point for consideration aroused is that :-

Whether the petition has to be allowed or not?

4.Point.

4.1 Both sides heard. Records perused. This petition has been filed by the petitioner who is the 3rd party to the EP proceedings. He claims right over the petition mentioned property and filed EA.No.1/2024 for obstruction Under Order 21, Rule 97 CPC.

4.2 Hence already the EA.No.1/2024 is pending for raising obstruction in EP. Proceedings and so staying the main EP is not at all

necessary. Hence the present petitioner can very well proceed with the EA.No.1/2024 to prove his claim in the petition mentioned property. Hence this petition deserves to be dismissed.

5.Result:-

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

Dictated to the Steno Typist by me, and typed by her directly, corrected and pronounced by me in open court, this the 24th day of April 2026.

Sub Judge,
Melur.

Both sides of witness and document :- Nil

Sub Judge,
Melur.

**Draft/Fair Order
in
EA.No.2/2024
in
EP.No.59/2021
in
OS.No.591/2017
Dt : 24.04.2026
Sub Court, Melur.**