

**IN THE COURT OF THE ADDITIONAL SUBORDINATE JUDGE,
TIRUCHENGODE**

**Present: Mrs.G.Rubana, B.Sc., M.L.,
Additional Subordinate Judge, Tiruchengode.**

On Tuesday, this the 11th day of November 2025

R.E.A.No: 02 of 2024

in

R.E.P.No: 36 of 2013

1. Mr.S.R.Venkatachalam,
2. Mr.M.Thangaraj,
3. Mrs. M. Palaniyammal,
4. Mrs. K.Kalaivani,
5. Ms.M.V.Thakshana,
6. Mr.M.V.Suba Varshan,

... Petitioners/ Claimants.

//Versus//

- 1.Mr.S.Sundararaj,
2. Mr.C.Rajavel,

..... Decree Holder, }

.....JudgmentDebtor, } Respondents.

This petition having been filed on 29.08.2024 and coming on 04.11.2025 for final hearing before me, in the presence of Mr. K. Manivel, B.A., B.L., learned counsel for the Petitioners/Claimants and Mr. S. Palanivelu, B.Sc., B.L., learned counsel for the 1st Respondent and the 2nd Respondent having been called absent and set exparte, and having stood over for consideration till this day, upon perusing the connected records and hearing the arguments on both sides, this Court doth deliver the following:

Order

The present application is filed by the Petitioner under Order XXI Rule 58 read with Section 151 of the Code of Civil Procedure, 1908, praying that this Hon'ble Court may be pleased to adjudicate the claim of the Petitioner in respect of the

petition-mentioned property and consequently raise the order of attachment made in I.A. No. 382 of 2004 and in the above Execution Petition dated 22.05.2017.

(II).The gist of the affidavit filed by the Petitioners is as follows :-

(i). The Petitioners respectfully submit that they are the absolute owners of the property comprised in Survey No. 184/1C, Elandakutty Village, measuring an extent of 0.04.00 hectares. The first petitioner is entitled to a common moiety share, the second petitioner is entitled to 1/4th share, and the petitioners 3, 5, and 6 are collectively entitled to the remaining 1/4th share in the petition-mentioned property.

(ii). The first and second petitioners, along with one Venkatachalam, purchased the entire land in Survey No. 184/1C under a registered sale deed dated 13.05.1998 for valid consideration from the second respondent. Subsequently, the revenue records were mutated in their names, and they have been in peaceful possession and enjoyment of the said property, through and under the said Venkatachalam.

(iii). The said Venkatachalam passed away on 24.04.2008, leaving behind the third petitioner (his mother), the fourth petitioner (his wife), and the fifth and sixth petitioners (his children) as his legal heirs. The Petitioners further submit that, after the demise of the said Venkatachalam, they have been in continuous possession and enjoyment of the petition-mentioned property. The Petitioners recently decided to effect a partition among themselves and to make certain improvements over the said property. Accordingly, they approached a document writer on 29.07.2024 for the preparation of a partition deed.

(iv). During the verification of the Encumbrance Certificate, the Petitioners were surprised to find that an order of attachment had been recorded over the petition-mentioned property. Upon further enquiry, the Petitioners came to know that the first respondent had filed a suit in O.S. No. 177 of 2004 against the second respondent on the file of the Hon'ble Subordinate Judge, Chachinamakal, and that in I.A. No. 382 of 2004, an order of attachment had been made, which was subsequently

communicated to the Sub-Registrar on 26.02.2016, and the same was reflected in the Encumbrance Certificate.

(v). The Petitioners further submit that the said suit was filed for recovery of a sum of Rs. 2,00,000/- borrowed by the second respondent from the first respondent under a promissory note dated 11.12.2003. It is further submitted that the said suit was later transferred to this Hon'ble Court in the year 2008 and re-numbered as O.S. No. 195 of 2008, and that an ex parte decree was passed therein on 30.10.2018.

(vi). The Petitioners further submit that, on perusal of the case records, it is revealed that instead of attaching the property belonging to the second respondent (the judgment debtor), the first respondent/decreed holder has wrongly caused the attachment of the Petitioners' property situated in Survey No. 184/1C, while passing orders in I.A. No. 382 of 2004 dated 30.12.2004, and again by order dated 04.04.2017 in E.P. No. 36 of 2013, resulting in a further attachment on 27.05.2017. The Petitioners submit that the property in Survey No. 184/1C measures about 4,383 square feet, whereas in the execution proceedings, it has been wrongly described as 5,300 square feet. The Petitioners further submit that Survey Nos. 184/1C and 184/4C are distinct and situated at different locations. In fact, to the south of Survey No. 184/1C lies Survey No. 184/1D2, and further south of 184/1D2 lies Survey No. 184/4B2, and only beyond that lies Survey No. 184/4C.

(vii). However, in the execution petition, it has been erroneously shown as though both Survey Nos. 184/1C and 184/4C are situated in the same block, which is factually incorrect. The decree holder (first respondent) has failed to produce any document to substantiate the identification of the property, and has deliberately furnished wrong particulars, thereby clandestinely including the Petitioners' property, which they had lawfully purchased under a registered sale deed dated 13.05.1998 long prior to the filing of the suit in O.S. No. 177 of 2004.

(viii). Hence, the Petitioners most respectfully submit that the order of attachment made in I.A. No. 382 of 2004 and E.P. No. 36 of 2013 is wholly erroneous, illegal, and not binding on them, and therefore, this Hon'ble Court may be pleased to raise and set aside the attachment made over the petition-mentioned property.

(III). The gist of the counter statement filed by the 1st Respondent is as follows: -

(i). The 1st respondent submits that the petition is false, frivolous, and not maintainable in law or on facts, and the burden lies upon the petitioners to prove their alleged claim. Except for a few admitted facts, all other allegations contained in the petition are denied as false. The respondent further submits that, at the instigation of the second respondent (judgment debtor), the petitioners have filed the present petition only with a view to delay the execution proceedings. The first respondent has not committed any illegality or irregularity in obtaining the order of attachment.

(ii). It is further submitted that, while borrowing the loan from the first respondent, the second respondent had shown the petition-mentioned property as his own, on the strength of which the first Respondent advanced the loan amount. Hence, it is false and baseless to allege that the attachment was made without any supporting documents. If truly the attachment had been wrongly made, the second respondent himself could have raised an objection before this Hon'ble Court, but he remained silent all along and never disclosed any such claim.

(iii). The respondent further states that, although the attachment order could not be served on the Sub-Registrar's Office in time, the same was duly communicated once the omission was noticed. Upon verification of records, the first respondent became aware of the said fact and took necessary steps in accordance with law. If the Petitioners had any genuine right over the property under the alleged sale deed dated 13.05.1998, they ought to have produced relevant documents and asserted their rights

earlier. Their long silence for nearly 27 years clearly shows that the present claim is an afterthought. The execution sale was fixed in September 2017, and, with the help of the second respondent, the Petitioners have now filed this petition only to stall the sale proceedings.

(iv). It is further submitted that the second respondent's family members, including his mother and sister, had earlier filed a similar petition in R.E.A. No. 189 of 2017, which was partly allowed on 21.03.2024; yet, even at that time, they did not reveal any of the present facts to this Hon'ble Court. The execution proceedings were thereby delayed for nearly seven years, and now, when the first respondent has taken further steps for auction, this petition has been filed solely to prevent the first respondent from enjoying the fruits of the decree.

(v). The Petitioners have not approached this Hon'ble Court with clean hands, and the present petition is mala fide and vexatious, intended only to obstruct the lawful execution of the decree. Hence, the Respondent respectfully prays that this Hon'ble Court may be pleased to dismiss the petition with costs.

(IV) Witnesses and documents on produced on the side of the petitioner: -

(i). The first petitioner/claimant, Mr. S.R. Venkatachalam, was examined as P.W.1, and on the side of the petitioner, Ex.P1 to Ex.P10 were marked. The petitioner has produced the following documents in support of his claim:

1. Ex.P1 – Office copy of the Sale Deed dated 13.05.1998 executed in favour of the first and second petitioners and one Venkatachalam.
2. Ex.P2 – Xerox copy of the Death Certificate of Venkatachalam dated 13.05.2008.
3. Ex.P3 – Legal Heirship Certificate of Venkatachalam dated 17.06.2008.
4. Ex.P4 – Patta in respect of Survey No. 184/1C, Elanthakuttai Village, dated 29.07.2024.

5. Ex.P5 – Field Measurement Book (FMB) extract for Survey No. 184, Elanthakuttai Village, dated 05.08.2024.
6. Ex.P6 – FMB extract for Survey No. 184/1C, Elanthakuttai Village, dated 05.08.2024.
7. Ex.P7 – FMB extract for Survey No. 184/4B2, Elanthakuttai Village, dated 09.08.2024.
8. Ex.P8 – FMB extract for Survey No. 184/1D2, Elanthakuttai Village, dated 09.08.2024.
9. Ex.P9 – Encumbrance Certificate dated 29.07.2024.
10. Ex.P10 – Certificate issued by the Village Administrative Officer (VAO).

(ii). The petitioner also examined the Village Administrative Officer of Elanthakuttai Village as PW2. In his chief examination, PW2 corroborated the case of the petitioners and deposed that he is the Village Administrative Officer of Elanthakuttai Village. He further stated that there exist two other survey fields situated between Survey Nos. 184/1C and 184/4C, and that both the said survey numbers are distinct and independent properties with separate and well-defined boundaries. He further deposed that the property in Survey No. 184/1C stands in the name of the petitioners and not in the name of the second respondent. Further, in his cross-examination, he deposed that the four boundaries mentioned in the execution petition are incorrect in respect of Survey No. 184/4C, and that the said boundaries in fact relate to the property in Survey No. 184/1C.

Witnesses and documents on produced on the side of the 1st respondent: -

There is no oral or documentary evidence adduced on the side of the Respondent.

(V). Points for Determination :

Whether this Petition is to be allowed or not?

(i). Heard the learned counsel for the petitioners and respondent and perused the records.

(ii). The learned counsel for the petitioner submitted that the first respondent is the decree holder and the second respondent is the judgment debtor. The petitioner purchased the property from the decree holder on 13.05.1998. Thereafter, on 11.12.2003, the judgment debtor borrowed a loan from the first respondent, i.e., five years after the execution of the sale deed. In the suit proceedings, the suit property was attached in the year 2006, and again, in the year 2017, attachment was made in the execution petition. Neither in the suit nor in the execution petition did the decree holder produce any document to establish his claim. It is further submitted that there are two intervening survey numbers between the petitioner's land in Survey No. 184/1C and the land in Survey No. 184/4C. However, the respondent has erroneously mentioned the boundaries of Survey No. 184/4C while describing Survey No. 184/1C. On the contrary, the learned counsel for the Respondent submitted that he has no objection for allowing this petition.

(iii). The present Execution Petition has been filed by the Petitioner/1st Respondent–Decree Holder against the 2nd Respondent–Judgment Debtor to execute and realize the decree amount as per the judgment and decree passed in O.S. No. 177 of 2004 on the file of the Hon'ble Sub Court, Namakkal, by way of attachment and sale of the property described in the schedule hereunder, and to appropriate the sale proceeds towards satisfaction of the decree amount.

(iv). The case of the Petitioners is that the property comprised in Survey No. 184/1C was purchased by the 1st and 2nd Petitioners jointly along with one Venkatachalam on 13.05.1998 for valuable consideration, and they have been in possession and enjoyment of the said property ever since the date of purchase. The said Venkatachalam subsequently died on 24.04.2008, leaving behind his mother (3rd Petitioner), his wife (4th Petitioner), and his two children (5th and 6th Petitioners) as his legal heirs. After the demise of Venkatachalam, the Petitioners have continued to be in possession and enjoyment of the said property as absolute owners.

(v). The 1st Respondent had filed O.S. No. 177 of 2004 (later renumbered as O.S. No. 195 of 2008 on the file of the Hon'ble Sub Court, Namakkal against the 2nd Respondent, alleging that the 2nd Respondent had borrowed a sum of Rs. 2,00,000/- on 11.12.2003 and executed a promissory note in favour of the 1st Respondent, but failed to repay the principal and interest. The said suit was decreed exparte on 30.10.2008.

(vi). The Petitioners further state that, though an order of attachment was passed in I.A. No. 382 of 2004 in the said suit on 26.06.2006, the attachment was intimated to the Sub-Registrar only on 26.02.2006 and again on 22.05.2017 in the above said execution application. The Petitioners submit that the four boundaries mentioned in the execution application for the first item of the property are incorrect, and that the property covered by Survey No. 184/1C belongs exclusively to the Petitioners and not to the Judgment Debtor/2nd Respondent. Hence, the Petitioners have filed the present application to raise the attachment made by this Hon'ble Court in respect of the property situated in Survey No. 184/1C and to declare that the Petitioners claim over the said property.

(vii). To substantiate the above said claim of the petitioners, they have produced the sale deed dated 13.05.1998 (Ex.P1), through which they have proved that the petition-mentioned property in Survey No. 184/1C was purchased by the first and second petitioners along with one Venkatachalam from the 2nd respondent / judgment debtor. The petitioners have also produced the death certificate of Venkatachalam dated 24.04.2008 (Ex.P2) and the legal heirship certificate (Ex.P3), which establish that the third petitioner is his mother, the fourth petitioner is his wife, and the fifth and sixth petitioners are his children and legal heirs.

(viii). Further, through Ex.P4 (Computerised Patta No.10553), it is proved that the property in Survey No.184/1C stands in the name of the petitioners. The entries in

the Field Measurement Book (Ex.P5 to Ex.P8) corroborate the same and clearly show that the property in Survey No.184/1C lies at the top-central portion of the survey block, with Survey No.184/1D2 situated to its south, Survey No.184/1D1 to the west of 184/1D2, Survey No.184/4B2 lying further south of 184/1D1 and 184/1D2, and finally Survey No.184/4C situated further south of 184/4B2. This positional sequence and distinct boundary demarcation have also been corroborated by PW2, the Village Administrative Officer of Elanthakuttai Village.

(ix). The Petitioners have produced the sale deed dated 13.05.1998 (Ex.P1), through which they have established that the property described in the petition, situated in Survey No. 184/1C, was purchased by the 1st and 2nd Petitioners jointly along with one Venkatachalam from the 2nd Respondent/Judgment Debtor. From the aforesaid document, it is evident that the Petitioners had purchased the property in Survey No. 184/1C from the 2nd Respondent/Judgment Debtor much prior to the alleged borrowing made by the said Judgment Debtor from the 1st Respondent/Decree Holder on 11.12.2003, and also long prior to the order of attachment made in I.A. No. 384 of 2004 in O.S. No. 177 of 2004 (renumbered as O.S. No. 195 of 2008). Therefore, it is clear that on the date of the alleged borrowing as well as on the date of attachment, the Judgment Debtor had no subsisting right, title, or interest over the property in Survey No. 184/1C, the same having already been conveyed in favour of the Petitioners under the sale deed dated 13.05.1998.

(x). The Encumbrance Certificate (Ex.P9) further reveals that the property was attached on 26.06.2016 pursuant to an order passed in I.A.No.382 of 2004 in O.S.No.177 of 2004, and further perusal of notes paper of E.P.No.36/2013 attachment was ordered on 04.04.2017 and the same was intimated to sub registrar office and recorded on 27.05.2017 though the said property actually belongs to the petitioners and not to the second respondent. Hence, on the date of the alleged attachments, the property in Survey No. 184/1C did not stand in the name of the Judgment Debtor, and

consequently, the said property could not have been attached in suit and also in execution of the decree obtained against him. Hence, the order of attachment obtained in respect of the said property, which had already been sold to the Petitioners long before the date of borrowing, is not binding upon the Petitioners.

(xi). In view of the oral and documentary evidence, particularly Ex.P1 to Ex.P10 and the testimony of PW1 and PW2, this Court finds that the attachment was wrongly made over the petitioners' property situated in Survey No.184/1C, instead of the property belonging to the second respondent. The petitioners have thus proved their claim. Furthermore, the respondent's counsel has filed a memo stating that they have no objection to raising the attachment.

(xii). It is further declared that the property in Survey No. 184/1C exclusively belongs to the Petitioners, and therefore, the attachment made over the said property is set aside as being not binding on the petitioners. The order of attachment made over the petition mentioned property in Survey No. 184/1C, Elanthakuttai Village, in I.A. No. 382 of 2004 in O.S. No. 177 of 2004 and order in E.P.No.36/2013, dated 04.04.2017 are hereby raised.

Accordingly, this petition is allowed. No cost.

Result:-

In the result this petition is allowed. No cost.

Dictated by me to the Steno-Typist and has been typed in the computer directly, corrected and pronounced by me in the open Court on 11th day of November 2025.

Additional Subordinate Judge,
Tiruchengode.

1). Petitioner side oral evidence : Nil

2). Petitioner side documentary evidence :-

S.No.	Exhibits	Date	Description	Remarks
1.	Ex.P:1	13.05.1998	Sale deed in favour of claimants 1, 2 and one Venkatachalam	Office Copy
2.	Ex.P:2	13.05.2008	Death certificate of Venkatachalam	Xerox Copy
3.	Ex.P:3	17.06.2008	Legal heirship certificate of Venkatachalam	Xerox Copy
4.	Ex.P:4	29.07.2024	Patta in respect of Survey No. 184/1C, Elanthakuttai Village	Online Copy
5.	Ex.P:5	05.08.2024	Field Measurement Book (FMB) extract for Survey No. 184, Elanthakuttai Village	Online Copy
6.	Ex.P:6	05.08.2024	FMB extract for Survey No. 184/1C, Elanthakuttai Village	Online Copy
7.	Ex.P:7	09.08.2024	FMB extract for Survey No. 184/4B2, Elanthakuttai Village	Online Copy
8.	Ex.P:8	09.08.2024	FMB extract for Survey No. 184/1D2, Elanthakuttai Village	Online Copy
9.	Ex.P:9	29.07.2024	Encumbrance Certificate	Online Copy
10.	Ex.P:10	---	Certificate issued by the Village Administrative Officer (VAO)	Original

3). Respondent side oral and documentary evidence: Nil

Additional Subordinate Judge,
Tiruchengode.

Fair/draft order
R.E.A.No.02/2024
in
R.E.P.No. 36/2013
Date :11.11.2025