

The petitioner herein is the plaintiff in the suit and suit has been filed by the petitioner seeking the relief of recovery of money based on the pronote. The respondent is known to the petitioner for several years through his wife and he is running a fancy store opposite to the Sona College, Salem. The respondent has borrowed Rs.35,00,000/- on 15.01.2022 for his urgent family expenses and

agreed to repay the same with 12% interest per annum on demand and executed the suit pronote. After the execution of pronote, the respondent has not come forward to pay the principal or interest. Therefore, the petitioner demanded the respondent to pay the principal and interest amount. However, he has not turned up. Hence, on 01.03.2024 the petitioner has convened panchayat. But, the respondent refused to settle the suit claim. Thence, petitioner has filed a suit for recovery of money. The petition mentioned property belonged to the respondent and now he is making attempts to alienate the petition mentioned property to 3rd parties to defraud the petitioner. Hence, the above petition for attachment before the judgment.

2. The counter filed by the respondent is as follows:

The respondent has denied the averments stated in the petition except that those are specifically admitted by him. It is false to state that the respondent borrowed Rs.35,00,000/- on 15.01.2022 as the loan and executed the suit pronote by agreeing to repay the loan with 12% interest per annum. The demand pleaded by the petitioner in respect to the loan is false. In fact, the respondent has borrowed Rs.50,000/- from one Rajesh Jageer, Ammapalaym and for that the respondent has executed the pronote. Subsequently, the respondent repaid the said loan amount in the year 2019 itself and he demanded the pronote from the said Rajesh in several occasions. However, the said Rajesh has not handed over the pronote. Afterward, the said Rajesh and the petitioner who are the friends colluded together and created the suit pronote and filed the present suit. The suit property is the ancestral property of the respondent and the legal heirs of the respondent also entitled to get share in the suit property. Hence, it is prayed for dismissal.

3. Point for consideration is:

Whether this petition is liable to be allowed or not?

4. Answer to the Point:

This petition has been filed under Order 38 Rule 5 of CPC seeking to attach the petition mentioned properties to satisfy the decree that may be passed in the suit. The petitioner would contend he has filed suit for recovery of money from the respondent based on the pronote dated 15.01.2022. While so, the respondent with intent to obstruct the execution of decree that may be passed in suit against him is trying to dispose petition mentioned property. Therefore, the petitioner has come forward with the present petition.

5. On the other hand, the respondent filed counter and he denied the execution of suit pronote and also denied the legally enforceable debt between himself and the petitioner. Moreover, the respondent would contend that the petition mentioned property is the ancestral property and the same cannot be attached.

6. Heard the submission of the petitioner and perused the materials available on record. A perusal of the above would unwrap that the petitioner herein has filed a suit based on pronote for Rs.39,80,700/-and the present petition has been filed under section 38 rule 5 of CPC. Therefore, it is appropriate to mention the judgment reported in **2013 (1) MWN (Civil) 201**, wherein, it has been held that

“ In an application for attachment before judgment, the court, if satisfied that the requirements of order 38,Rule 5(1) C.P.C have been made out, may issue a notice to the defendant in appropriate form conforming to the requirements of order 38, Rule 5(1) C.P.C for all or any of the purpose mentioned therein and at that same time direct a conditional attachment of the whole or any part of the property under Order 38, Rule 5 (3),CPC if, in response to such a notice, the defendant appears and shows cause, or otherwise satisfies the court, then the court may proceed to withdraw the attachment effected earlier, under Order 38, Rule6(2) CPC if, on the other hand, the defendant does not show cause why he or she should not furnish security or fails to furnish security, then it will be open to the court to

proceed under Order 38, Rule 5(1) CPC and the court may order attachment of the property specified in the application of such portion thereof, as appears sufficient to satisfy the decree that may be passed, in the suit, in the appropriate form, namely, Form 7-A in Appendix –F”

7. This court has taken note of the above said proposition of law, the petitioner has produced 3rd party of affidavit, which clearly shows that the respondent is making attempts to sell the property to the 3rd parties. It is noticed from the Encumbrance certificate and sale deed produced by the petitioner dated 09.11.2018 that the petition mentioned property is belonged to the respondent. It is satisfied that there exists circumstances that the respondent is trying to alienate the property with intention to obstruct the execution of decree that may be passed against the respondent in the suit. While such being the facts remaining so, it is appropriate to direct the respondent to furnish security for the suit amount within a time fixed by this court, failing which order attachment will be passed as prayed for. For the foregoing reasons this court this petition is deserved to be allowed.

In the result this petition is allowed. The respondent is directed to furnish security for the suit amount on or before 03.03.2025, failing which attachment will be ordered. No cost.

Dictated to the Steno-typist, transcribed and computerized by her corrected and pronounced by me in the open court on 17th day of February 2025.

(Sd/-L.Kalaivani)

III Additional District Judge,
Salem.

Fair/Draft Order in

I.A.No.1/2024 in

O.S.No.368/2024

Dt. 17.02.2025, III ADJ.,Salem.