

IN THE COURT OF THE II ADDITIONAL DISTRICT JUDGE AT SALEM
PRESENT: THIRU. A. M. RAVI, B.A., B.L.,
II Additional District Judge, Salem.

Friday, the 31st day of January 2025.

I.A. 1/2023

in

O.S..601/2023

P. Sundaram

... Petitioner/Plaintiff.

Vs.

1. Sengodan

2. Alamelu

3. Tamilselvi

4. Krishnaveni.

. . . Respondent / Defendants.

This petition is taken on file on 15.09.2024 and coming for final hearing on 22.01.2025 before me in the presence of Thiru.K.R.Masilamani, Advocate for the Petitioner and of Thiru.K.R.Masilamani, Advocate for the Respondents and on hearing both side arguments, and upon perusing the entire records and matter having stood over for considering till this day, this Court delivered the following:

ORDER

The Petitioner / Plaintiff filed a petition under order 38 Rule 5 of CPC to attach the petition mentioned property before Judgment.

2. The Summary of the averments in the petition Affidavit filed by the Petitioner / Plaintiff read as follows:-

The Petitioner is the Plaintiff in this case, he filed a suit for Recovery of money. On 23.01.2022 the 1st Defendant borrowed a sum of Rs.15 Lakhs from the Petitioner and he failed to repay the said debt. The 1st defendant has conveyed a document among his family members Defendants 2 to 4 without any consideration with an intention to defraud the Petitioner. The said documents are only sham and nominal and never acted upon and the Petitioner learned from some well wishers that the Respondents / defendants are making arrangement to alienate the said property. Hence, this petition.

3. The Respondents side memo filed and recorded, reported written statement treated as counter”

4. The Summary of the averments in the Counter / written statement filed by the 1st Respondent / 1st Defendant reads as follows:-

The 1st Defendant never borrowed any loan amount and not executed any suit promissory note in favour of the Plaintiff. The suit promissory note is forged one. Actually for their coconut business transaction their routine process is that for the security purpose the Plaintiff obtained signature of the defendants in the blank promissory note. Due to the loss of the coconut business, the 1st Respondent / 1st defendant unable to give the lease amount

for three years for a sum of Rs.8,00,000/- with 18% interest. Thereby the 1st Respondent / 1st defendant told to the Plaintiff regarding the said money problem and requested time to give the said amount. But the Plaintiff misused as a suit promissory note. Hence, he prayed to dismiss the petition.

5. The Summary of the averments in the Counter / written statement filed by the 2nd Respondent / 2nd Defendant reads as follows:-

The 2nd Respondent / 2nd defendant never borrowed any amount from the Petitioner / Plaintiff. Thereby the Petitioner / Plaintiff not able to arise his objection regarding the maintainability of the documents of his family members and prayed to dismiss the petition.

6. The Summary of the averments in the Counter / written statement filed by the 3rd Respondent / 3rd Defendant reads as follows:-

As per the settlement deed dated 02.01.2023 the Respondents 3 & 4 / Defendants 3 & 4 possessed the “B” schedule in the petition mentioned property. Further more the Respondents 3 & 4 / Defendants 3 & 4 constructed a house worth about Rs.50,00,000/- and the 1st Respondent / 1st defendant did not give any paise for consideration. Further more the “C” schedule property was purchased by this 3rd Respondent / 3rd Defendant from the Defendants 1 & 2. Thereby this petition is not maintainable and prayed to dismiss the petition.

7. The Summary of the averments in the Counter / written statement filed by the 4th Respondent / 4th Defendant reads as follows:-

As per the settlement deed dated 02.01.2023 the Respondents 4 & 3 / Defendants 4 & 3 possessed the “B” schedule in the petition mentioned property. Further more the Respondents 4 & 3 / Defendants 4 & 3 constructed a house worth about Rs.50,00,000/- and the 1st Respondent /1st defendant did not give any paise for consideration. Thereby this petition is not maintainable and prayed to dismiss the petition.

8. Both side no oral evidence adduced and no documents marked as an Exhibit.

9. Both side arguments heard.

10. The Point for consideration in this petition is that Whether this petition is deserved to be allowed or not?

POINT:

11. The Petitioner / Plaintiff filed a suit for recovery of money on the basis of the suit promissory note with interest and cost, he filed a petition for Attachment before the Judgment petition along with the plaint. The reason submitted by the Petitioner / plaintiff is that with an intention to defraud the Petitioner the 1st defendant has conveyed a document among his family members Defendants 2 to 4 without any consideration. The said documents are only sham and nominal and never acted upon and the

Petitioner learned from some well wishers that the Respondents / defendants are making arrangement to alienate the said property. Hence this petition..

12. The Respondents / Defendants filed a written statement and treated as a counter in this petition. The averment in their written statement /counter is that they never borrowed any loan amount and not executed any suit promissory note in favour of the Plaintiff. The suit promissory note is forged one. Actually for their coconut business transaction their routine practice is that for the security purpose the Plaintiff obtained signature of the defendants in the blank promissory note which was forged and misused as a suit promissory note and made a bogus claim.

13. Considering the contentions submitted by the both sides, the petition mentioned properties are belongs to the Defendant. The defendants not come forward to furnish any security. Hence in the interest of the Justice except no other option to attach the property before Judgment, and this petition is allowed.

IN THE RESULT:-

This petition is allowed. Batta in three days. Attach by 14.03.2025.

Dictated to Steno-typist, directly typed by her, corrected and pronounced by me in the open Court, the 31st day of January 2025.

**II Additional District Judge,
Salem.**

APPENDIX :

List of Petitioner side witnesses : NIL

List of Petitioner side Documents : NIL

List of Respondent side witnesses : NIL

List of Respondent side Documents : NIL

**II Additional District Judge,
Salem.**