

**IN THE COURT OF ADDITIONAL DISTRICT AND SESSIONS,
PERIYAKULAM, THENI DISTRICT.**

**Present: Thiru. C.SANKAR, B.A. M.L. PGDCFS.,
Additional District And Sessions Judge,
Periyakulam, Theni District.**

Monday, the 15th day of September, 2025.

CNR.No.TNTH09 000070 2025

IA.No.01/2025

- in -

OS.No.92/2025

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R.Moorthy.

**... Petitioner/
Plaintiff**

// Vs. //

G.Pandiyarajan.

**... Respondent/
Defendant**

This petition came up for final hearing before this Court on 18.08.2025, in the presence of Mr.A.Gopalakrishnan, Learned Counsel for the petitioner and Mr.T.Ambaashankar, Learned Counsel for the respondent and upon perusing the Petition, Counter and Documents and upon hearing both side arguments and having stood over for consideration till this day, this Court delivered the following...

ORDER

This petition is filed by the petitioner/plaintiff under Order 38, Rule 5 of CPC.

Averments made in the Petition in brief is as follows:

2. The respondent/defendant, on 04.02.2024, borrowed a loan of Rs.13,00,000/- from the petitioner/plaintiff and agreed to pay interest on the said loan at the rate of Rupee.1/- per month from that date, and wrote a Promissory Note at the petitioner's House at Periyakulam. In this circumstances, the respondent/defendant has not repaid any amount towards interest or principal from the date of the loan. The petitioner/plaintiff have personally and through persons informed the above respondent/defendant, that the above loan amount not paid any amount either towards interest or principal till the date. The above respondent/defendant owes the petitioner/plaintiff a total amount of Rs.14,87,629/- including interest on the principal loan amount of Rs.13,00,000/- as on the date. The above respondent/defendant has deliberately sold the Petition Schedule Property allotted to him and has planned to move to another state with the intention of defrauding the petitioner/plaintiff by keeping the money in his hand. By attachment of the Petition Schedule Property allotted to him before the judgment. If the above respondent/defendant sells the Petition Schedule Property and moves to another state with the money, the petitioner/plaintiff will have no other means to collect the loan amount. Therefore, the Petition Schedule Property has to be attached before the judgment. Otherwise, the petitioner will suffer great hardship and loss. Hence, this petition may be allowed with costs.

Averments made in the Counter filed by the respondent/defendant in brief is as follows:

3. The respondent/defendant did not have acquaintancy with petitioner/plaintiff and he never seen him. Under those circumstances, the theory of borrow and repayment with interest is nothing but it is cock and bull story. The respondent/defendant is having permanent residence in his own house in Thenkarai and he is having Shop, Petty shop with retail Fruit Shop in heart of city in Periyakulam. He

has been running the shop from time immemorial. He has been running those three shops in his own building. The vague allegation levelled in Para No.4 of the Petition is highly defamatory and badly required for apology. The Petition Mentioned Property is own property of respondent/defendant and now it has been lease out to the thrid party for running hotel. The respondent/defendant never has idea to sell the Petition Mentioned Property. The respondent/defendant has given under taken not to alienate the Plaint Schedule Property till the disposal of the suit but also till life time of respondent/defendant. The petitioner/plaintiff with intent to malign of dignity of the respondent/defenedant stated such concocted facts in Para No.4 of the Affidavit. There is no merit in the petition and entitled to be dismissed as devoid of merit.

4. No documents or oral evidence let by the both sides.

5. **Point for determination:**

1. **Whether this petition is allowed or not ?**

Point No.1.

6. Heard and perused records. The Learned Counsel for the petitioner/plaintiff argued that, the respondent/defendant, on 04.02.2024, borrowed a loan of Rs.13,00,000/- from the petitioner/plaintiff and agreed to pay interest on the said loan at the rate of Rupee.1/- per month from that date, and wrote a Promissory Note at the petitioner's House at Periyakulam. In this circumstances, the respondent/defendant has not repaid any amount towards interest or principal from the date of the loan. The petitioner/plaintiff have personally and through persons informed the above respondent/defendant, that the above loan amount not paid any amount either towards

interest or principal till the date. The above respondent/defendant owes the petitioner/plaintiff a total amount of Rs.14,87,629/- including interest on the principal loan amount of Rs.13,00,000/- as on the date. The above respondent/defendant has deliberately sold the Petition Schedule Property allotted to him and has planned to move to another state with the intention of defrauding the petitioner/plaintiff by keeping the money in his hand. By attachment of the Petition Schedule Property allotted to him before the judgment. If the above respondent/defendant sells the Petition Schedule Property and moves to another state with the money, the petitioner/plaintiff will have no other means to collect the loan amount. Therefore, the Petition Schedule Property has to be attached before the judgment. Otherwise, the petitioner will suffer great hardship and loss. Hence, this petition may be allowed with costs.

7. The Learned Counsel for the respondent/defendant argued that, the respondent/defendant did not have acquaintancy with petitioner/plaintiff and he never seen him. Under those circumstances, the theory of borrow and repayment with interest is nothing but it is cock and bull story. The respondent/defendant is having permanent residence in his own house in Thenkarai and he is having Shop, Petty shop with retail Fruit Shop in heart of city in Periyakulam. He has been running the shop from time immemorial. He has been running those three shops in his own building. The vague allegation levelled in Para No.4 of the Petition is highly defamatory and badly required for apology. The Petition Mentioned Property is own property of respondent/defendant and now it has been lease out to the thrid party for running hotel. The respondent/defendant never has idea to sell the Petition Mentioned Property. The respondent/defendant has given under taken not to alienate the Plaint Schedule Property till the disposal of the suit but also till life time of respondent/defendant. The petitioner/plaintiff with intent to malign of dignity of the respondent/defenedant stated

such concocted facts in Para No.4 of the Affidavit. There is no merit in the petition and entitled to be dismissed as devoid of merit.

8. The petitioner/plaintiff side Third Party Affidavit also filed and stating in the affidavit that, the 3rd Party is a broker to the real estate in surrounding of Periyakulam Taluk and he well know that, the respondent/defendant is attempting to sold the House in Sungasavadi Street, Periyakulam belonged to him. **Order 38, Rule 5 (3) CPC** deals that, **the Court may also in the order direct the conditional attachment of the whole or any portion of the property so specified.** Further, the respondent/defendant has not furnished security for the amount mentioned in the petition till date. The respondent/defendant has not filed any affidavit on under taking that, he has not encumbrance the Petition Schedule Property to Third Party till the disposal of the suit with Counter. If the Petition Schedule Property has not be attached till the disposal of the suit, the petitioner/plaintiff will be put into ir-repairable loss. Hence, considering the facts and circumstances of the petition, this Court is of view that the petition is allowed.

9. **In the result this petition is allowed. Attach by 15.10.2025. Batta in three days.**

Dictated by me, directly typed by Stenographer into computer, corrected and pronounced by me in the open Court, this the 15th day of September, 2025.

**Additional District and Sessions Judge,
Periyakulam.**

Petitioner/plaintiff side Witnesses and Documents: Nil.

Respondent/defendant side Witnesses and Documents: Nil.

**Additional District and Sessions Judge,
Periyakulam.**

Fair: Order

IA.No.01/2025

- in -

OS.No.92/2025

**Additional District &
Sessions Court,
Periyakulam, Theni District.**

Dated 25.08.2025.