

IN THE COURT OF THE PRINCIPAL DISTRICT MUNSIF, TIRUPPUR.

Present: A.VANITHA. M.S.W., L.L.B.,

Principal District Munsif-Tiruppr

(J.O.CODE : TN01953)

Wednesday this the 12th day of November 2025

E.A.No. 28 of 2022

in

E.A.No.46 of 2020

M.Subramaniam

... Petitioner/Third Party Claimant

VS

M/s.Rajshri Finance Company,

Rep.by its partner Mr.A.S.Natarajan

... 1st Respondent/Plaintiff/Decree Holder

VS

M.Ganesan

... 2nd Respondent/Defendant/Judgment Debtor

This petition came on 14.10.2025 for final hearing before me in the presence of Thiru. N.Sathish Kumar, B.A.,B.L., Advocate for the Petitioner/Third Party Claimant and Thiru. M.Ramakrishanan.,B.Sc.,B.L., Advocate for the R1 and R2 called absent set exparte and after hearing both side arguments and upon perusing the connected material records and having stood over till this day for consideration, this court delivers the following:-

ORDER

1. This petition has been filed under Order 21 Rule 58 of CPC to raise the attachment and pleaded to adjudicate the claim of the petitioner with respect of this petition mentioned property and allow this claim application and dismiss the above E.P and pass further orders.

THE CASE OF THE PETITIONER AS STATED IN THE AFFIDAVIT FILED IN SUPPORT OF THIS PETITION IS AS FOLLOWS:-

2. The 2nd respondent/judgment debtor/defendant herein had entered into an written agreement of sale with the petitioner on 04.04.1996 by which he had agreed to sell this petition mentioned property. For proper and valid consideration and in pursuance of the said agreement, advance sale consideration had also been paid by this petitioner to this 2nd respondent herein and 2nd respondent had also acknowledged the same in the said agreement and due to refusal on the part of the 2nd respondent to perform as per the sale agreement, the petitioner has been filed a suit for specific performance on 24.02.1998 against the 2nd respondent before the court of the Hon'ble Principal Subordinate Judge , with respect of petition mentioned property and was taken on file by the court of the Hon'ble Pricipal Subordinate Judge, Tirupur in O.S.No. 181/1998 and on 07.11.2000 the suit is decreed in favour of the petitioner. The 2nd respondent herein had filed a Section 5 application to condone the delay in filling of application Under

Order 9 Rule 13 of C.P.C to set aside the exparte decree dated 07.11.2000 in O.S.No. 181/1998 and the same was taken on file in I.A.No. 1451/2003 by Hon'ble Court of the principal Subordinate Judge, Tirupur and the same was dismissed. On 19.12.2003 against that the 2nd respondent herein had preferred Civil Revision Petition in C.R.P.NPD.NO. 436/2004 and the same is dismissed on 09.03.2004 and against the same, the 2nd respondent herein had preferred a Review application Re.Appl.No.67/2004 and in the said application, the 2nd respondent herein had obtained a stay on 28.09.2004 wherein the operation of the above decreed dated 07.11.2000 passed by the Court of the Hon'ble Principal Subordinate Judge, Tiruppur in the above said suit and in E.P.No.54 of 2001 had been stayed by the Hon'ble High Court from 28.09.2004 to till 09.08.2011 and the Hon'ble High Court had also dismissed the application on 09.08.2011 and against which 2nd respondent has not preferred any appeal before the Hon'ble Supreme Court and thus the decree passed by the court of the Hon'ble Principal Subordinate Judge, Tirupur had attained finality.

3. As per the decree passed by the Hon'ble Principal Subordinate Judge, Tirupur in O.S.No.181/1998, the petitioner has got right over the petition mentioned property which is also the subject matter of the execution petition and in pursuance of the decree the petitioner had filed an execution petition in E.P.No.66/2014. The petitioner derives his right, interest, title to

the petition mentioned property as per the decree passed by the court of the Hon'ble Principal Subordinate Judge, Tirupur in O.S.No. 181/1998 in his favour, in terms of Sale agreement dated: 04.04.1996. Thus the right, interest, title of the 2nd respondent/Judgment debtor in petition mentioned property had ceased to exist as on 04.04.1996 itself by virtue of the above said Sale Agreement and by virtue of a decree passed by the Hon'ble Court of the Principal Subordinate Judge, Tirupur court in O.S.No.181/1998 in favour of petitioner in terms of decree for specific performance of Sale agreement dated 04.04.1996 and the alleged order of attachment is only subsequent to the sale agreement dated: 04.04.1996 with respect of the petition mentioned property. So, the sale agreement entered into prior to the alleged order of attachment will prevail over attachment.

4. The claim petition mentioned property was originally belonged to the Judgment Debtor Mr.M.Ganesan by way of his self acquisition through Sale Deed dated 08.03.1995.The description of the property mentioned in the Sale deed, Sale Agreement, Complaint and Decree clearly denotes that the claim petition mentioned property and the property which is the subject matter of the decree are one and the same. From the description of the property mentioned in the Petition, it is made clear that the decree- holder had wrongly described the Item no.3 Property and allegedly obtained the alleged attachment which is not maintainable. On this ground alone this

E.P. is liable to be dismissed with regard to item No.3 property. The previous claim application filed by the petitioner in E.P.No.-10/2007 in the court of the Hon'ble Principal Subordinate Judge, Tirupur was returned for the reasons that the above said E.P.No.40/2007 was sent to this Hon'ble Court for want of pecuniary Jurisdiction and the petitioner is filing this present application before this Hon'ble Court. Hence attachment to be raised attachment and claim may be adjudicated. Hence the petition.

THE CRUX OF THE COUNTER STATEMENT IS AS FOLLOWS :

5. The petition is false, frivolous and vexatious. The petitioner's claim of right, title, or interest over the petition-mentioned property based on the decree in O.S.No.181 of 1998 is legally unsustainable, as the said decree is subject to the prior order of attachment made by this Hon'ble Court on 23.10.2000, which was before the ex-parte decree dated 07.11.2000 in O.S.No.181 of 1998. The alleged pendency of execution proceedings in O.S.No.181 of 1998 does not affect the decree holder's rights accrued under the said attachment order. Hence, the suit is liable to be dismissed.

6. Heard Both sides.

7. On the side of the petitioner Ex.P1 to Ex.P4 has been marked. No documets has been marked on the side of respondent. No oral evidence were adduced.

POINT FOR DETERMINATION:

8. According to the petitioner, the 2nd respondent/judgment debtor had entered into a written agreement of sale with the petitioner on 04.04.1996 and for a proper and valid consideration and in pursuance of the said agreement, advance sale consideration had also been paid by this petitioner to this 2nd respondent herein and 2nd respondent had also acknowledged the same in the said agreement and due to refusal on the part of the 2nd respondent to perform as per the sale agreement, the petitioner has been filed a suit for specific performance on 24.02.1998 against the 2nd respondent before the court of the Hon'ble Principal Subordinate Judge , with respect of petition mentioned property and was taken on file by the court of the Hon'ble Principal Subordinate Judge, Tirupur in O.S.No. 181/1998 and on 07.11.2000 the suit was decreed the said suit in favour of the petitioner, and the petitioner is bonafide to institute the petition.

9. Further plea of the petitioner is that from the the description of the property mentioned in the Petition, it is made clear that the decree-holder had wrongly described the Item no.3 Property and allegedly obtained the alleged attachment which is not at maintainable and constrained to file the application.

10. On the other hand the respondent comes with a counter

statement that the application is not maintainable and sought for the dismissal of the application.

11. On the side of the petitioner Ex.P1 to Ex.P14 were marked.

12. It is pointed out that on look into the provision of Order 21 Rule 58 of CPC is extracted herein:

“58.Adjudication of claims to, or objections to attachment of, property.-

. (1) *Where any claim is preferred to, or any objection is made to the attachment of, any property attached in execution of a decree on the ground that such property is not liable to such attachment, the Court shall proceed to adjudicate upon the claim or objection in accordance with the provisions herein contained:*

. *Provided that no such claim or objection shall be entertained-*

- *a)where, before the claim is preferred or objection is made, the property attached has already been sold; or*
- *b)where the Court considers that the claim or objection was designedly or unnecessarily delayed.*
- *(2)All questions (including questions relating to right, title or interest in the property attached) arising between the parties to a proceeding or their representatives under this rule and relevant to the adjudication of the claim or objection, shall be determined by the Court dealing with the claim or objection and not by a separate suit.*

- *(3) Upon the determination of the questions referred to in sub-rule (2), the Court shall, in accordance with such determination,-*
- *a) allow the claim or objection and release the property from attachment either wholly or to such extent as it thinks fit; or*
- *b) disallow the claim or objection; or*
- *c) continue the attachment subject to any mortgage, charge or other interest in favour of any person; or*
- *d) pass such order as in the circumstances of the case it deems fit.*
- *(4) Where any claim or objection has been adjudicated upon under this rule, the order made thereon shall have the same force and be subject to the same conditions as to appeal or otherwise as if it were a decree.*
- *(5) Where a claim or an objection is preferred and the Court, under the proviso to sub-rule (1), refuses to entertain it, the party against whom such order is made may institute a suit to establish the right which he claims to the property in dispute; but, subject to the result of such suit, if any, an order so refusing to entertain the claim or objection shall be conclusive.”*
- *16. Sub Rule (1) of Order 21 Rule 58 CPC prescribes the mode of adjudication on objections made to “attachment of properties” or “attachment of a property in execution of a decree”.*

13. It is pointed out that the purchase done by the 3rd party can be valid

only if the purchase was done prior to the institution of the suit and when a transfer is made after the institution of the suit and moreover, after an attachment with regard to the petition mentioned property has already been made.

14. Admittedly in this case, on looking into the Ex.P1 the decree in O.S.No 181/98 the decree has been passed in favor of the petitioner and against the 2nd respondent for relief of specific performance and on perusal of Ex.A3, the 2nd respondent has executed a sale agreement in favour of the petitioner dated 04.04.1996 which is prior to the institution of the suit and on perusal of the Ex.P10 to Ex.P14 the decree of Hon'ble Principal subordinate Judge become attained finality.

15. It is pointed out that the order of attachment is only subsequent to the sale agreement dated: 04.04.1996. Hence this court is of view that the claim of the petitioner is bonafide and this court is inclined to allow the petition.

ORDER

1.	As a result, this petition is allowed. Attachment raised.
2.	There is no order for costs.

Dictated to the steno-typist directly, typed by her in computer, corrected and pronounced by me in open court, this the 12th day of November 2025.

Principal District Munsif,
Tiruppur.

Witness on the side of the Petitioner : Subramaniam

Documents on the side of the Petitioner :

Ex.P1	07.11.2000	Decree in O.S.No. 181/1998	Certified copy
Ex.P2	-	Plaint in O.S.No. 181/1998	Certified copy
Ex.P3	04.04.1996	Sale Deed Vide Document infavour of Subramanian	Certified copy
Ex.P4	07.11.2000	Judgment in O.S.No. 181/1998	Certified copy
Ex.P5	22.10.2003	Petition in I.A.No. 1451/2003	Certified copy
Ex.P6	22.10.2003	Affidavit in I.A.No. 1451/2003	Certified copy
Ex.P7	16.12.2003	Counter Statement in I.A.No. 1451/2003	Certified copy
Ex.P8	19.12.2004	Order in I.A.No. 1451/2003	Certified copy
Ex.P9	19.12.2004	Final Order in I.A.No. 1451/2003	Certified copy
Ex.P10	-	Execution Petition	Certified copy

Ex.P11	-	Petition	Certified copy
Ex.P12	-	Claim Application	Certified copy
Ex.P13	03.10.2023	Order and Final Order in E.A.No.102/2014 in E.P.No.55/2007	Certified copy
Ex.P14	03.10.2023	Order and Final Order in E.A.No.13//2013 in E.P.No.66/2014	Certified copy

Witness and documents on the side of the Respondent : NIL

**Principal District Munsif,
Tiruppur.**