

IN THE COURT OF THE PRINCIPAL DISTRICT MUNSHI, TIRUPPUR.

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

Principal District Munshi-Tiruppur

(J.O.CODE : TN01953)

Wednesday this the 12th day of November 2025

E.A.No. 9 of 2025

in

E.A.No.46 of 2020

1. Saraswathi

2. Bharathi Vasu

3. Abinaya

... Petitioner/Third Party Claimant

VS

1. M/s.Rajshri Finance Company,

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

... Respondent/Decree Holder

2. M.Ganesan

... Respondent/Judgment Debtor

This petition came on 23.10.2025 for final hearing before me in the presence of Thiru. N.Mayilsamy,BCA.,LLB., Advocate for the Petitioner/Third Party Claimant Respondent 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 set aside the order of attachment dated 23.10.2000 and raise the attachment of

the petition mentioned property and other orders that deems fit under the circumstances 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 petitioners are 3rd parties to the suit and execution proceedings, constitute a family wherein the first petitioner is the mother of the second and third petitioners. The petition-mentioned property, measuring 50 cents with buildings, forms part of the suit and execution properties and is jointly owned by the petitioner's family along with the first petitioner's brother-in-law, S. Viswanathan, with the revenue and other government records standing in their joint names. The first petitioner's husband and father of the second and third petitioners, late S. Rathinasamy, died on 07.01.2011, leaving the petitioners as his sole legal heirs, each entitled to a common half share in the property, which was duly mutated in the revenue records. The property originally belonged to Kaveriammal and others, who partitioned it on 20.09.1972, allotting 2.36 acres including the petition mentioned property to Kaveriammal, who sold it to the second respondent, Ganesan, on 04.07.1974 vide Document No. 2122/1974. Subsequently, Ganesan sold 50 cents to Arumugam on 14.10.1991 through Document No. 4300/1991, from whom S. Rathinasamy and S. Viswanathan jointly purchased the same for valid consideration on 23.05.2002 under

Document No. 1711/2002, taking possession and constructing buildings thereon with proper approval in 2003, thereafter continuously possessing and running partnership businesses under the names “Twinstar Clothing Company” and “Freedom Embroidery” without interruption or encumbrance.

3. The suit in O.S.No.521 of 1997 is a collusive and fraudulent proceeding, wherein the respondents have obtained a decree through mutual understanding to unlawfully claim the petitioners’ property and the said suit was merely a money transaction between the respondents, commenced and closed on 31.03.1997 and the petitioners came to know of the collusive decree only on 03.06.2024, when the Court Bailiff affixed a proclamation notice on their adjoining property. Therefore, the petitioners have promptly filed this application seeking to set aside the order of attachment dated 23.10.2000, and to raise the attachment over the petition mentioned property, as continuation of the attachment would cause them irreparable loss and hardship. Hence the petition

4. On Serving of summons the respondents set exparte.

5. Heard the petitioner. Ex.P1 to Ex.P19 marked.

POINT FOR DETERMINATION:

6. It is the case of the petitioner that the suit property measuring 50 cents with buildings is jointly owned by the petitioner’s family and each

of them were entitled to a common half share in the property and the property belonged to Kaveriammal and others, was partitioned on 20.09.1972 and allotted 2.36 acres including the petition mentioned property to Kaveriammal, who sold it to the second respondent, Ganesan, on 04.07.1974 vide Document No. 2122/1974 and the said Ganesan sold 50 cents of property to Arumugam on 14.10.1991 vide Document No. 4300/1991, from whom S. Rathinasamy and S. Viswanathan jointly purchased dated 23.05.2002 vide Document No. 1711/2002 and running a partnership business under the names “Twinstar Clothing Company” and “Freedom Embroidery” and constrained to file the application.

7. 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”.*

8. This 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.

9. Admittedly in this case, on looking into the Ex.P3 the 2nd respondent has executed a sale deed in favour of One Arumugam vide Document number 4300/1991 dated 14.10.1991. Further on looking into the Ex.P4 sale deed the said Arumugam sold property infavour of S. Rathinasamy and A.S.Viswanathan vide Doc. No.1711/2002. From the Ex.P3 it is apparent that the property was sold prior to the institution of suit and since the petitioner has purchased the property before filing of the suit, they are a bonafide purchaser 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 stone-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 : NIL

Documents on the side of the Petitioner :

Ex.P1.	20.09.1972	Partition deed executed by Kauveriyammal and 11 others (Doc.No. 2435/1972)	Xerox
Ex.P2.	04.07.1974	Sale deed executed by Kauveriyammal in favour of M.Ganesan (Doc.No. 2122/1974)	Certified Copy
Ex.P3.	14.10.1991	Sale deed executed by M.Ganesan infavour of M.Arumugam (Doc.No. 4300/1991)	Certified Copy
Ex.P4.	23.05.2002	Sale deed executed by M.Arumugam infavour of S.Rathinasamy, A.S.Viswanathan (Doc.No. 1711/2002)	Certified Copy
Ex.P5.	31.03.2003	Application filed by Rathinasamy and Viswanathan u/s 49 of TN Town and Country Planning Act, 1971 for the approval of land and construction of Industrial Building (Doc.No. 168/2003)	Xerox

Ex.P6.	22.09.2003	Certificate of Registration under TNGST Act, 1959 issued by Commercial tax officer, Tirupur.	Xerox
Ex.P7.	16.04.2003	Grant of approval for construction of new building u/s 201, of TN District and Municipalities Act, 1920 in (Doc No. 486/2003)	Xerox
Ex.P8.	14.10.2003	Certificate for installation of Electricity MV Generator issued by Electrical Inspector Coimbatore	Xerox
Ex.P9	07.02.2011	Death Certificate of A.S.Rathinasamy	Xerox
Ex.P10	-	Water Charges Receipts	Xerox
Ex.P11	17.03.2011	Legal Heir Certificate of A.S.Rathinasamy	Xerox
Ex.P12	06.05.2011	Electricity Receipts	Xerox
Ex.P13	21.05.2011	Encumbrance Certificate obtained from (01.01.1987 to 17.05.2011)	Xerox
Ex.P14	08.02.2013	Patta name transfer order passed by Depute Thasildhar, Tiruppur.	Xerox
Ex.P15	-	Property Tax Receipts	Xerox
Ex.P16	-	Patta Pass book issued by the Thasildar	Xerox
Ex.P17	-	Aadhar Card of Saraswathi	Xerox
Ex.P18	-	Aadhar Card of Bharathi Vasu	Xerox
Ex.P19		Aadhar Card of Abinaya	Xerox

Witness and documents on the side of the Respondent : NIL

**Principal District Munsif,
Tiruppur.**