

IN THE COURT OF THE PRINCIPAL DISTRICT JUDGE, THANJAVUR.

PRESENT : **Tmt. Jacintha Martin, B.L.,**
Principal District Judge, Thanjavur.

Thursday, the 15th day of June, 2023.

(Thiruvalluvarandu 2054 Sri Sobakirudhu Varudam Vaikasi Thingal 32nd day)

I.A.No.67/2023 in O.S.No.40/2023

G.Vadivalagan	...	Petitioner / Plaintiff
	versus	
R.Kumar @ Veerakumar	...	Respondent / Defendant

This Interlocutory Application has come up for final hearing before me on 07.06.2023 in the presence of Mr.A.Saravanan, Learned Advocate appearing for the petitioner and of Mr.K.Prasanna, Learned Advocate appearing for the respondent and upon hearing the argument on both sides and upon perusing the available records and having stood over for consideration till this day, this court passed the following...

ORDER

1) The petitioner filed this petition under Order 38 Rule 5 of CPC to direct the respondent / defendant to furnish security for a sum of Rs.13,50,000/-, failing which to attach the petition mentioned property before judgment belong to the respondent.

2) **The case of the petitioner is that** the petitioner has filed a suit for recovery of money under promissory note against the respondent claiming Rs.12,00,000/- towards principal with interest at the rate of 12% per annum from 10.04.2022 till 08.02.2023 and the total amount claimed by the petitioner is Rs.13,19,952/-. The respondent with an intent to delay the execution of the decree that may be passed as against him in this case is about to dispose of the whole or any part of the petition mentioned property. In fact, he has mortgaged the petition mentioned property in favour of Sri Ram City Union Private Limited by means of a registered simple mortgage deed on 28.02.2020 and subsequently, the same has been discharged on 22.09.2021. Now, the respondent has been making arrangements to dispose of the property in order to prevent the petitioner from recovering the amount. The respondent has taken a defence that he has never executed a promissory note and the signature in the promissory note is not signed by him. In this circumstance, the petitioner has come forward with this petition to attach the petition mentioned property of the respondent before Judgment only for a security purpose.

3) **On the other hand,** the defence taken by the respondent is that before filing the suit, the respondent has executed a power deed in favour of one P.Natarajan on 01.02.2023 and the said Natarajan entered into a sale agreement with Senthila on 02.02.2023 for a sum of Rs.16,36,000/- and the respondent received an advance amount of Rs.1,00,000/- from Senthila. So, the respondent's counsel argued that a sale agreement was entered by the respondent through his power agent before the suit. So, the claim of the petitioner to attach the petition mentioned property will not

arise and thus, pleaded to dismiss the petition.

4) Point that arises for consideration in this Petition is that

Whether this petition is to be allowed as prayed for?

Point :

5) Heard both sides and perused the records.

6) On careful perusal of the facts of this case, the respondent has already initiated sale process by entering into Ex.R2 sale agreement on 02.02.2023 with one Senthila through Ex.R1 power of attorney deed executed on 01.02.2023 in favour of one P.Natarajan. The defence of the respondent is that he has not executed a promissory note and the signature in the promissory note is not of the respondent. If the petitioner's case is decreed, the petitioner has to recover the money from the respondent either by payment of cash or bringing the petition mentioned property to sale for recovery of money through execution proceedings.

7) The defence taken by the respondent has to be proved only after full trial, but before that if the property of respondent was sold, then the petitioner will be left without option for execution. So only after conducting full trial, this court has come to a conclusion about the fact stated by the petitioner that a sum of Rupees borrowed by the respondent and executed the disputed promissory note. The signature in the promissory note was disputed by the respondent. Then respondent has to prove it. In this circumstance, for the security purpose the suit property which belongs to the the respondent shall be secured in the interest of justice. The right of

the petitioner has to be secured and no loss will be caused to the respondent if the property is attached. Hence, this court proceeds to allow this petition only attaching the petition mentioned property for security purpose and thus, the point is answered accordingly.

In the result, this petition is allowed. Attach by 22.06.2023. No cost.

This Order is dictated by me to the *Stenographer Grade-II* of this Court, transcribed by her in Computer, corrected and pronounced by me in open court, this the 15th day of June, 2023.

Principal District Judge,
Thanjavur.

Documents marked on the side of the Respondent :

Ex.R1 01.02.2023 : Certified copy of power deed executed by the respondent in favour of P.Natarajan.

Ex.R2 02.02.2023 : Certified copy of sale agreement entered between P.Natarajan on behalf of power agent of respondent and one Senthila.

Documents marked on the side of the Petitioner : Nil.

PDJ

Draft /Fair Order in
IA.67/2023 in OS 40/2023
PDJ Court, Thanjavur.
D.O.O: 15.06.2023.