

**IN THE COURT OF THE PRINCIPAL DISTRICT JUDGE,
TIRUVANNAMALAI**

PRESENT: Tr. P.Mathusuthanan, B.A.B.L.,
Principal District Judge,
Tiruvannamalai

Friday, the 28th day of March- 2025

I.A.No.2/2024 in O.S.No.284/2024

Chitra		.. Petitioner/Plaintiff
	Vs	
1. Ravi 2. Malathi		...Respondents/defendants

This petition has come up before me for hearing today (28.03.2025) in the presence of **Tr.P.M.Ranganathan** learned Advocate appearing for the petitioner and **Tr. P.Kuganesan** learned Advocate appearing for Respondents and upon hearing either saide arguments and perusing entire case records and having stood over for consideration till this date, this court delivered the following...

ORDER

The petitioner filed this Petition under Order 38 Rule 5 CPC, to attach the schedule mentioned property belongs to the respondents/defendants before judgment.

2. Petition averments in brief:-

The petitioner herein is the plaintiff in the above suit. She filed the above suit for recovery of money against the repsondents alongwith

the petition seeking attach the petition mentioned proeprty before Judgment. The 1st respondent is the own brother of 2nd respondent and sister-in -law of the petitioner. The respondents herein on 01.01.2020 borrowed a sum of Rs.15,00,000/- from the petitioner and agreeing to repay the same at the rate of interest of 1% per annum and subsequently on 01.01.2021 the respondents herein once again borrowed a sum of Rs.15,00,000/- from the petitioner for the purpose of buying land in their name and agreeing to repay the same with interest at the rate of 1% per annum. However the respondents herein did not pay the interest as agreed by them for the above loan. In such a circumstance, as per the petitioner urged the respondents herein to repay the same, the respondents herein executed loan document on 05.04.2021. In such a circumstance, the respondents herein once again demanded a sum of Rs.30,00,000/- from the petitioner and assured to repay the same along with earlier loan through the chit fund amount paid by them at one Chit fund Company running at Mumbai and also mortgaging the property belongs to them in bank. Though the petitioner initially electant to give loan, since the 1st respondent convened through the petitioner's husband, considering the akin relationship of the 1st respondent, she gave another Rs.30,00,000/- to the respondents on 16.06.2022, for which they executed the loan document dated 16.06.2022 infavour of the petitioner in Rs.100/- stamp paper. In such a circumstance,

since the respondents herein did not come forward either to settled the principal or interest, without any reason, she sent a notice dated 23.09.2024 to the respondents herein which was returned as left without instruction. Since the respondents herein are going to sell the property herein to third party, in order to recover the loan amount from the respondents, she has come forward with this petition to attach the petition mentioned property before judgment. If the respondents would alienate the schedule mentioned property, the petitioner will not able to recover the suit amount and she will put to great loss and hardship. Hence it is just and necessary to attach the petition mentioned property before judgment enabling the petitioner to recover the suit claim. Hence this petition.

3) Brief averments of the counter filed by the 1st respondent and adopted the same by 2nd respondent:-

The facts mentioned in this petition filed by the petitioner and the facts mentioned in the case are contradictory. There is no need for the respondents to sell the petition mentioned properties. The 3rd item of the property mentioned by the petitioner in his petition is not the property of the respondents. The petitioner has filed this petition mentioning the wrong property details. If in fact the respondents had tried to encumber the petition properties, the petitioner would have filed the petition mentioning the names of those, who propose to purchase. Further a petition for attachment of properties can be filed only in

cases of promissory notes. Accordingly to the petitioner's plea , the respondents have executed loan document on stamp paper. Hence, the respondents requested to dismiss the petition with cost.

4) Point arises for consideration in this petition is that

"Whether this petition is to be allowed or not?"

5) **Point:** The learned counsel appearing for the petitioner would submit that the 1st respondent is the own brother of petitioner, the 2nd respondent is a sister-in-law of the petitioner. He would further submit that the respondents herein on 01.01.2020 borrowed a sum of Rs.15,00,000/- and agreeing to repay the same at the rate of interest of 1% per annum and subsequently on 01.01.2021 the respondents herein once again borrowed a sum of Rs.15,00,000/- for the purpose of buying land in their name and agreeing to repay the same with interest at the rate of 1% per annum. However the respondents herein did not pay the interest as agreed by them for the above loan. In such a circumstance, since petitioner urged the respondents herein to repay the same, the respondents herein executed loan document dated 05.04.2021. In such a circumstance, the respondents once again demanded a sum of Rs.30,00,000/- from the petitioner and assured to repay the same along with earlier loan through the chit fund amount paid by them at one Chit fund Company, at Mumbai and also mortgaging the property belongs to them in bank. Though the petitioner initially reluctant to give loan, since the 1st

respondent convinced through the petitioner's husband, considering the akin relationship of the 1st respondent, she gave another Rs.30,00,000/- to the respondents on 16.06.2022, for which they executed the loan document dated 16.06.2022 infavour of the petitioner in a (Rs.100/-) stamp paper. In such a circumstance, since the respondents herein did not come forward either to settle the principal or interest, without any reason, she sent a notice dated 23.09.2024 to the respondents herein which was returned as left without instruction. And he would further submit that since the respondents herein are going to sell the property herein to third party and also filing this petition in order to recover the loan amount from the respondents, she has come forward with this petition to attach the petition mentioned property before judgment.

6) **Per contra**, the learned counsel appearing for the respondent would contend that 3rd item of the petition mentioned property is not that of them hence the present petition seeking attachment of the petition mentioned property is not maintainable. He would further submit that the loan document relied upon by the petitioner are forged one and as a matter of fact the petitioner threatened the respondents as to she was going to file partition suit if the 1st respondents did not execute the property belongs to him infavour of the petitioner since the 1st respondent did not yield to her illegal demand, has come forward with this suit on the strength of forgery document dated

15.04.2021 and 16.06.2022 with the help of his associates and her husband, hence he argued for dismissal of the petition.

7) Heard. Perused the records.

8) Point:- At the time of hearing the enquiry, the respondent filed a memo alongwith encumbrance certificate stating that the 1st item of the property belongs to the 2nd respondent herein had been sold of on 31.03.2025, hence no order of attachment can be passed on the 1st item of the property.

9) From the submission of the learned counsel appearing for petitioner as well as Ex.P1 to Ex.P.11, it reveals that the encumbrance certificate Ex.P.9 which disclose the 3rd item of the petition mentioned property is still stands in the name of 2nd respondent herein and the encumbrance certificate Ex.P.10 which disclose the 4th item of the petition mentioned property is still stands in the name of 1st respondent herein.

10) From the above exhibits, and from the submission of the learned counsel appearing for the petitioner it reveals that after executing the loan document infavour of the petitioner, the respondents are now making serious attempt to sell their properties to third party. It is further noted from the submission of the learned counsel appearing for the petitioner that in the event of property in question is sold of, it would cause great prejudice to the main suit filed by the petitioner and it may cause infructuous of the main suit itself. Though the learned counsel appearing for the respondents by filing a memo

assured to that extent that they will not encumber the 2nd item of the petition mentioned property to anybody else, by their serious attempt to execute the sale deed in respect of the 1st item of the petition mentioned property it would go to show that the interest and right of the petitioner are at risk. Hence, despite this court is issued show-cause notice as to why they shall not furnish security, the mere assurance in the form of memo filed by the respondents could not be accepted.

11) Apart from this, though this court directed the respondents through the show-cause notice as to why they shall not furnish security, the respondents herein instead of answering to the said show-cause notice has filed memo stating that they will not sale the 2nd item of the property, which is not acceptable one and since the respondents herein did not come forward to say any objection to the show-cause notice, on contra, has assured in the form of memo that they will not encumber the 2nd item of the petition mentioned property, but in the memo filed by the petitioner today reveals that 2nd respondent has executed a settlement deed over the 2nd item of the property infavour of the 1st respondent and to that effect produced encumbrance certificate. The said act of the 2nd respondent would further strengthen the contention of the petitioner that there is imminent danger to prevent the legitimater claim of the petitioner over the property and ill-intention of the 2nd respondent, to defeat the right of the petitioner, by making all endeavours.

12) Apart from this, from the above facts and circumstance and serious attempt of the respondents to sell the property after having got the knowledge of this suit and the above Interlocutory application would go to show that there is imminent danger to the claim of the petitioner on the subject property of the petition and if such attempt is not thwarted forthwith by the order of this court there will be definite detrimental to the legitimate right of the petitioner in conducting the main suit and substantiate his claim.

13) Though, the respondents herein in his counter claimed that 3rd item of the property not belongs to them. The patta No.3491 marked on the side of the petitioner reveals that the 3rd item of the property still stands in the name of 2nd respondent, which shows prima facie case on the contention of the petitioner herein.

14) Apart from this, the conduct of the respondents, who sold of the 1st item of the property infavour of third party would prima facie shows their ultimate intention to defeat the realisation of decree that may be passed infavour of the petitioner after full-fledged trial. Though the learned counsel appearing for the respondents filed a memo assuring that they will not encumber the 2nd item of the property, so far as other items of the properties are concerned, he did not make either not encumber the same or come forward to furnish security in response to the show-cause notice ordered to him. Against this backdrop, the

said conduct of the respondents herein seems as against the petitioner's right to substantiate his legitimate claim on the decree may be passed infavour of him.

15) Hence, for the reason and discussion, this court satisfied with the above documents marked on the side of the petitioner and the submissions advanced on either side that this is the fit case for ordering attachment before Judgment.

16) Admittedly, the 1st item of the property was sold of the same 3rd party. So no attachment can be passed on the 1st item of property.

17) Hence considering the possibility of lot of chance to obstruct the legitimate right of the petitioner in conducting the main suit and his claim to prevent the end of justice to be defeated, this court deem appropriate to attach the petition mentioned item 2 to 4 properties till the judgment on the main suit. Thus, there shall be attachment before judgment on the both petition mentioned properties (item 2 to 4 properties) till the judgment in the main suit and thus the point is answered according.

In the result, the petition is allowed. Item No.2 to 4 of the properties at attach by 28.04.2025.

This order is dictated by me to the Stenographer Grade -I of this court, transcribed by her in the computer, corrected and pronounced by me in open court, on this, the 28th day of March 2025.

**Principal District Judge,
Tiruvannamalai.**

List of witnesses on the side of petitioner: None

List of documents on the side of Petitioner:

Ex. P1	10.04.2017	Xerox copy of registered sale deed stands in the name of 2nd respondent
Ex.P2	26.10.2024	Encumbrance certificate of 1st item of the property from 01.01.1994 to 25.10.2024
Ex.P3	...	Computerized patta for 2nd item of the property (patta No.3421) standing in the name of 2nd respondent
Ex.P4		Computerized patta for 3rd item of the property (patta No.3491) standing in the name of 2nd respondent
Ex.P5	..	Computerized patta for 4th item of the property (patta No.3782) standing in the name of 1st respondent
Ex.P6	20.03.2025	Encumbrance certificate of 1st item of the property from 01.10.2024 to 19.03.2025
Ex.P7	28.09.2019	Copy of Proceedings of Spsial Tahsildar for patta transfer in the name of 2nd respondent
Ex.P8	..	Computerized patta for 2nd item of the property (patta No.3421) standing in the name of 2nd respondent alongwith Encumbrance certificate from 01.10.2024 to 19.03.2025
Ex.P9	..	Computerized patta for 3rd item of the property (patta No.3491) standing in the name of 2nd respondent alongwith Encumbrance certificate from 01.10.2024 to 19.03.2025
Ex.P10	..	Computerized patta for 4th item of the property (patta No.3782) standing in the name of 1st respondent alongwith Encumbrance certificate from 01.10.2024 to 19.03.2025
Ex.P11		Photo Copy of Whatsapp message sent by the 2nd respondent.

Witness examined on the side of the respondents: None

Documents marked on the side of the Respondents: Nil

PDJ.