

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

PRESENT: Selvi M.K. Jamuna, M.L.,
Principal District Judge,
Tiruvannamalai

Tuesday, the 21st day of June 2022

I.A.No. 323/2021

in

O.S.No. 183/2021

Gayathiri,

....Petitioner/Plaintiff

.vs.

Mageswari,

....Respondent/Defendant

This petition coming on this day 10.06.2022 for final hearing before me in the presence of Thiru. M.Jayavel, Advocate for the petitioner and Thiru. S.T.Raja, and C.Asaithambi Advocates for the respondent and having stood over for consideration till this date, this court delivered the order follows

ORDER

The Petitioner files this petition under order 38 Rule 5 of CPC to grant an order of attachment before Judgment of petition mentioned property.

2. The brief contents of the petition:-

The petitioner herein is the plaintiff in the above suit. He filed the above suit for recovery of money of Rs.54,72,998/-. The respondent

borrowed Rs.50,00,000/- on 06.01.2021 agreeing to repay with interest at 12% per annum on demand and executed promissory note to that effect. The respondent had not paid the amount till date. The respondent/defendant herein having the petition mentioned properties alone in her name, further she got the 1st item of the property under a registered Settlement deed and she is having share in the other two items of the property and in order to escape from the liability and to cheat the petitioner, she wanted to dispose off the properties to third parties. For the same she is negotiating with the third parties to sell the properties, if she sells the properties he could not be in a position to realize the decree amount. Further the general power of attorney deed appointing one Mr.R.Saravanan as her power agent to do all acts. Therefore, the respondent herein is attempting to sell the properties. Hence, this petition filed.

3. The brief content of the counter statement filed by the respondent (the respondent filed a memo to adopt his written statement as counter)

At the outset the defendant specifically denies all the allegations contained in the plaint except those are specifically admitted herein. The plaintiff is put to strict proof of such of those allegations which are not so admitted herein. This defendant denies para No.1 of the plaint as false and specifically denies the plaintiff is known person, she does not know about plaintiff personally. This defendant states that at relevant point of time i.e on

2.12.2020, her husband was admitted at Dr.V.Balai and Dr.V.Seshiah, Diabetes care and Research Institute , No.729,P.H.road, Aminjikarai, Chennai for leg surgery and he was continuous care till end of January 2021. This defendant being wife, she was taking care of her husband from December 2020 to end of January 2021. Thereafter her husband affected with Covid and passed away on 16.05.2021. Therefore, this defendant went for treatment of her husband to Chennai during December 2020 thereafter she has settled at Chennai due her daughter education. Hence, question of execution of promissory note on 06.1.2021 does not arise and suit pronote is rank forgery and this defendant specifically denies execution of pronote and receipt of so called Rs.50 lakhs as consideration. These facts do be proved by the plaintiff alone. That is why she rushed to file suit without pre suit notice and attempting to get ABJ based on fabricated promissory note. It is pertinent to mention here that when defendant's husband is alive at that point of time, what made plaintiff to obtain alleged signature from this defendant, this would prove the story set up by the plaintiff is nothing but utter falsehood and suit pronote is fabricated for the purpose of case. In addition to that relevant point of time being pandemic period and there is no business for any one, so there is no necessary to borrow such huge sum from police constable family. The plaintiff and her police husband have to prove their source in the manner known to law. This defendant denies para NO.2 of the plaint. Out of three item properties shown in schedule of property mentioned in

I.A.No.323 of 2021. The item No.1 has been mortgaged with bank of Boroda, Chennai on 03.09.2018 registered as document No.6952/2018 on the files of Joint II Sub Registrar, Tiruvannamalai. The 2nd item of property mortgaged with Tata capital housing finance Ltd on 04.04.2017 registered as document No.1463 of 2017 on the files of joint II Sub Registrar, Tiruvannamalai. So far as item No.3 property is concerned which agreed to be sold to Bharani Girison vide sale agreement dated 13.12.2019 for sale consideration of Rs.4 crores and taken advance of Rs.50 Lakhs. Later based on nominee clause, the said property sold Dr.Santhakumar vide Sale deed dated 4.12.2021 registered as document No.13347 of 2021 on the files Joint II Sub Registrar, Tiruvannamalai. Therefore all above items properties are already encumbered with concerned third parties well before so called pronote dated 06.01.2021. Therefore, question of selling the same by defendant does not arise. Plea of selling to third parties is made for purpose of case. This defendant denies para No.3 of the plaint as false and states that on the date of alleged pronote this defendant is not in Tiruvannamalai and her husband is taking treatment at Chennai for his Diabetic complications and subsequently for Covid and therefore question of taking loan from the plaintiff does not arise that too at the pandemic period. This defendant is also suffering from Hernia and she is also taking treatment for past two years. This defendant denies para No.4 of the plaint and states that no cause of action arose since she is not in Tiruvannamalai as on 06.01.2021 and she did not any

consideration and therefore question of demand for repayment does not arise. Hence the petition liable to be dismissed.

4. Point : whether the petition is to be allowed?

Heard both side. The petitioner filed the suit for recovery of money for Rs.50,00,000/- on the basis of promissory note. The plaintiff states that the defendant borrowed Rs.50,00,000/- and executed a promissory note agreeing to repay with interest at 12% p.a. Further the defendant is making an attempt to dispose the property to defraud the petitioner. On the other hand the defendant denies the execution of promissory note and states that it is fabricated and forged. Further this defendant's states that The item No.1 has been mortgaged with bank of Boroda, Chennai on 03.09.2018 registered as document No.6952/2018 on the files of Joint II Sub Registrar, Tiruvannamalai. The 2nd item of property mortgaged with Tata capital housing finance Ltd on 04.04.2017 registered as document No.1463 of 2017 on the files of joint II Sub Registrar, Tiruvannamalai. So far as item No.3 property is concerned which agreed to be sold to Bharani Girison vide sale agreement dated 13.12.2019 for sale consideration of Rs.4 crores and taken advance of Rs.50 Lakhs. Later based on nominee clause, the said property sold Dr.Santhakumar vide Sale deed dated 4.12.2021 registered as document No.13347 of 2021 on the files Joint II Sub Registrar, Tiruvannamalai. Therefore, all above items properties are already encumbered with concerned third parties. At outset the defendant denied the

execution of promissory note in favour of plaintiff. Further she states that the petition mentioned property was already under encumbrance. It was drawn attention to the decision reported in

2014-2- L.W.372

(R.Ramesh - vs- R.Raveender)

"Property mortgaged prior to the date of alleged transaction – Appellant could not alienate the property – Respondent has not given particulars regarding purported alienation – There cannot be mechanical attachment if security is not furnished".

The property was already under mortgaged. Therefore, the property cannot be attached. Furthermore, the burden is on the petitioner to prove the execution of the promissory note when the respondent specifically denied the signature. Hence, the court infers that the petitioner not established prima facie case to furnish security or interim attachment. Hence, the court inclines to dismiss the petition.

In fine, the petition is dismissed.

Dictated by me to my steno-typist, computerized by her directly to my dictation, corrected and pronounced by me in open court, this the 21st day of June 2022.

**Principal District Judge,
Tiruvannamalai**