

IN THE COURT OF ADDITIONAL DISTRICT COURT,

TIRUVANNAMALAI

PRESENT: Tr. B.C.GOPINATH, M.L.,

Additional District Judge, Tiruvannamalai

Thursday, the 5th day of June, 2025

I.A.No. 1/2022 in O.S. No. 253 / 2022

Ambikapathy

.... Petitioner / Plaintiff

/Vs/

1. R. Mageswari

2. SaiKiruba

3. M.C. Ravikumar

..... Respondents /defendants

The petition is coming before me on 02.04.2025 for final hearing in presence of Tr. V.G.Murali, Advocate for the Petitioner and Tr.C. Asaithami Advocate for the Respondents 1 and 2 and third respondent having remained exparte and on perusal of entire case records and upon hearing both sides and having stood over for consideration till this day, this court delivered the following.

Order

Petition filed by the Petitioner/Plaintiff Under order XXXVIII Rule 5 CPC, for an order of attachment before Judgment of the petition mentioned properties.

2. Petitioner's averments in brief :-

The petitioner is the plaintiff in the suit. The suit has been filed for recovery of money due under a debt deed . The 1st item of petition mentioned property belongs

to the 1st respondent through a settlement deed dated 22.09.2017. She is in possession and enjoyment of the same as its owner. The suit debt deed has been jointly executed by the 1st respondent and her husband Ramesh. Items 2 to 8 of the petition mentioned property was allotted to the 1st respondent's husband Ramesh in the partition deed dated 10.03.2017. The respondent's who are well aware of the liability under the debt deed , to defeat the rights of the petitioner/plaintiff have executed a power deed dated 28.09.2021 in favour of the 3rd respondent. Thereby the respondents are attempting to alienate the petition mentioned properties and leave Tiruvannamalai/. If they do so, the petitioner's legitimate claim will be defeated. Hence the petition mentioned property should be attached before judgment.

3) **Averments in the counter of Respondents 1 and 2 :-**

The petition averments are false. The debt deed was not executed by respondents 1 and 2. The purpose of borrowal is mentioned differently in the debt deed and the plaint. Nobody will borrow Rs.45,00,000/- for family expenses. The 1st respondent was a minor at the time of the said debt deed and her signature has been forged. As the 1st respondent is a widow, she appointed the 3rd respondent as her Power Agent. The properties sought to be attached have been mortgaged with various banks and thereby they are already encumbered . One Kumar and Gayathri filed a suit with petitions for attachment before Judgment and those petitions were dismissed by this court and the Principal District Court, Tiruvannamalai as the properties are already under mortgage with a bank. This petition is not maintainable. Hence the petition is liable to be dismissed.

4) During enquiry, no evidence, oral or documentary was let in. This Court has perused the materials on record and has considered rival submissions.

5) **Now the point for consideration is whether the petition mentioned properties can be attached under Order XXXVIII Rule 5 CPC or not ?**

6) **Point :-**

The plaintiff / Petitioner Ambigapathy has filed the above suit for recovery of Rs.55,96,500/- with subsequent interest and costs on the basis of a debt deed dated : 20.10.2020. The petitioner Ambigapathy alleges that the 1st respondent/ defendant Maheswari is attempting to alienate or encumber the petition mentioned properties that devolved upon her to defeat the legitimate rights of the plaintiff to recover the decree amount, if any, passed in favour of the plaintiff. The petitioner further alleges that in furtherance of the intention to deceive the petitioner's right to recover the amount, she executed a power deed in favour of the 3rd respondent.

7) On the other hand, the respondents 1 and 2 / defendants 1 and 2 have, by way of Written Arguments, contended that the averments of petitioner that the property is likely to be alienated is false in toto on the ground that the properties are already under mortgage with certain banks and in support of the same, the Memorandum of Deposit deeds have been filed by the respondents. Though not marked, these documents and also the documents filed by the petitioner have been perused.

8) It is trite proposition of law, that for ordering attachment before judgment, the petitioner has to establish therein an imminent threat of alienation by the

respondent/defendant in a case. In the instant case, the properties sought to be attached have already been mortgaged with banks and the banks have become secured creditors. Hence it cannot be said that the respondents are likely to remove or dispose the whole or part of the petition mentioned properties with the intention of delaying the execution of any decree that may be passed against the petitioners.

9) It is also imperative to note that in the petition the petitioner has failed to mention the approximate value of the 4 properties mentioned therein. Thereby this court cannot attached the property without knowing the value of the properties.

10) For the above reasons the petitioner has failed to make out a case for attachment before Judgment and the petition mentioned properties cannot be attachment under Order XXXVIII Rule 5 CPC. The point is answered accordingly.

In the result, the petition is dismissed . No costs.

Dictated by me to the steno typist, computerized by her directly to my dictation, corrected and pronounced by me in open court this the 5th day of June 2025

Additional District Judge,
Tiruvannamalai.

List of Witnesses and Exhibits on the Petitioner's side :-

List of Witnesses Exhibits on the Respondents side :-

Additional District Judge,
Tiruvannamalai.

