

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

**PRESENT: Tr. B.C. GOPINATH, M.L.,  
Additional District Judge,  
Tiruvannamalai District.**

Wednesday the 5<sup>th</sup> day of March 2025

**I.A.No.3 /2023 in O.S. No. 288 / 2022**

K. Ravi

.... Petitioner / Plaintiff

**/Vs/**

1. S. Sangeetha,  
2. S. Saravanan,  
3. Murugan

..... Respondents /defendants

This petition coming before me for final hearing on 22.01.2025 in the presence of Tr. G. Pughazhenthii Advocate for the petitioners and Tr. T. Raguraman Advocate for the respondents, and after hearing the arguments of both, upon perusing the records and having stood over for consideration, till this day, this court passed the following

**ORDER**

Petition filed by the Petitioner / Plaintiff under Order 38 Rule 5 CPC, for an order of attachment before Judgment in respect of the petition-mentioned properties.

1) **PETITIONER'S CASE IN BRIEF:**

(i) The 1<sup>st</sup> respondent is the absolute owner of the suit property and 2<sup>nd</sup> defendant is her husband and the 3<sup>rd</sup> defendant is the purchaser of a portion of the suit property from 2<sup>nd</sup> defendant styling himself as the Power of Attorney Agent of 1<sup>st</sup>

defendant which was done in order to defeat the right of the plaintiff from getting the sale deed registered in his name with respect to the suit property from respondents / defendants 1 and 2 on the basis of an oral sale agreement entered between the petitioner and respondents 1 and 2/ defendants 1 and 2. The 1<sup>st</sup> defendant is the sister of one Mr. N . Raju a family friend of the petitioner and on that basis, the 1<sup>st</sup> defendant is known to petitioner for several years.

(ii) The respondents 1 and 2 are engaged the real estate business in the name and style of SAN REAL and they used to purchase lands and vacant sites and use to sell them to the purchasers and during the above business if they required financial help, they used to approach the petitioner for financial assistance and use to repay the same at regular intervals without interest. The petitioner learnt from respondents 1 and 2 that they are going to alienate a house property situated at Maha Sakthi Nagar, Tiruvannmalai in the first week of June 2020 and they offered to sell it to petitioner if the petitioner is interested to purchase the same. The petitioner accepted the proposal of defendants 1 and 2 and he accepted the offer made by them in the 2<sup>nd</sup> week of June 2020. After negotiations, it was agreed by defendants 1 and 2 to alienate the house property for a consideration of Rs.1,49,00,000/- and petitioner also agreed to purchase the house at the rate. Finally, it was agreed that the 2<sup>nd</sup> respondent has to execute the sale deed in favour of petitioner since she is the absolute owner of the same and petitioner asked her whether a written sale agreement can be entered. The respondents told that there is no need for if in view of their long friendship. They also suggested that a oral sale agreement can be entered and accordingly in the 2<sup>nd</sup>

week of June 2020 an oral sale agreement was entered. The petitioner informed them that he would periodically transfer portions of sale consideration to the Bank accounts of the 2<sup>nd</sup> defendant in Kotak Mahendra Bank Limited, Tiruvannamalai and on the basis of the same, the petitioner paid an advance amount of Rs.10,00,000/- in cash on 20.06.2020. From the same month, he also started to transfer the agreed sale consideration in instalments to the account of the 2<sup>nd</sup> defendant. Thus upto 12.02.2021, the petitioner had transferred a sum of Rs.1,39,00,000/- to the 2<sup>nd</sup> defendant's account. Thus the entire sale consideration was paid to 2<sup>nd</sup> defendant on the basis of the oral agreement of sale and petitioner asked them whether he can make arrangements to get the sale deed registered and the 2<sup>nd</sup> defendant informed that the same can be done after the closure of Assessment year 2021-2022 to avoid some Income tax problems. The petitioner also agreed for the same and due to some unavoidable circumstances, the sale deed with respect to the house property was not completed. However, the 2<sup>nd</sup> defendant executed a registered sale deed in respect of the house property at Maha sakthi Nagar , Tiruvannamalai in the year 2022 and petitioner is in absolute possession and enjoyment of the same.

(iii) During the subsistence of the oral agreement of sale with respect to the house property, the 1<sup>st</sup> respondent along with 2<sup>nd</sup> respondent informed that she is going to promote a layout of the property which she got by means of a settlement deed in her family i.e., the suit property and that the suit property is lying on the National Highways. They offered the petitioner to purchase an extent of 16000 sq.feet with specific boundaries stating that they are in need of financial assistance to

promote the same. In view of their friendship, the petitioner agreed to accept the proposal of the 1<sup>st</sup> defendant along with 2<sup>nd</sup> respondent and the sale consideration was fixed at Rs.1,92,00,000/- for the suit property. Again, the respondents suggested that there is no need for any written agreement of sale.

(iv) Thus an oral agreement of sale was entered between the petitioner and 1<sup>st</sup> defendant in the 3<sup>rd</sup> week of March 2021 wherein the respondents agreed to receive the agreed sale consideration of Rs.1,92,00,000/- and they also agreed to execute the sale deed in favour of petitioner on or before 31.12.2022. It was also agreed that the petitioner can transfer the sale consideration at regular intervals to the accounts of respondents 1 and 2 in Kotak Mahindra Bank and ICICI Bank Tiruvannamalai in which they are having accounts either individually or jointly. Thus there was offer and acceptance. Petitioner was ready and willing to perform his part of contract. On 23.03.2021 petitioner paid an advance amount of Rs.10,00,000/- to the 1<sup>st</sup> respondent in cash and 2<sup>nd</sup> respondent was also present at that time. From 27.03.2021, the petitioner started to transfer the balance of sale consideration with respect to the suit property to the accounts of 1<sup>st</sup> defendant and on three occasions to the account of 2<sup>nd</sup> defendant and thus from 27.03.2021 upto 31.03.2022, the Petitioner had transferred a total sum of Rs.1,80,00,000/- and thus upto 31.03.2022, the petitioner had paid Rs.1,90,00,000/- out of total sale consideration of Rs.1,92,00,000/-. The petitioner was always ready and willing to pay the balance of sale consideration of Rs.2,00,000/- to the 1<sup>st</sup> respondents and respondents 1 and 2 informed that they had applied for DTCP approval to convert the portion of the suit property into house sites

and it would take few months for them to perform their part of contract as per the oral agreement of sale. The petitioner accepted it.

(v) In May 2022, the 2<sup>nd</sup> defendant along with 1<sup>st</sup> defendant requested the petitioner to obtain a sale deed with respect to the house property (for which a total consideration of Rs.1,39,00,000/- was already paid) and also further informed that the approval of DTCP is getting delayed and it would take some time to execute the sale deed qua the suit property. The petitioner also agreed for the same and the 1<sup>st</sup> respondent executed a registered sale deed with respect of the house property on 01.06.2022. The petitioner was under the firm impression that they would honour their part of contract ie., by receiving the balance of sale consideration and would execute the sale deed in respect to the suit property. In the 3<sup>rd</sup> week of October 2022, Petitioner came to know that the DTCP already rejected the proposal of 1<sup>st</sup> defendant. The petitioner requested the 1<sup>st</sup> respondent to receive the balance of sale consideration of Rs.2,00,000/- immediately and at the time to perform the contract ends on 31.12.2022.

(vi) But to the shock and surprise of petitioner, the 1<sup>st</sup> respondent demanded an extra amount of about Rs.50,00,000/- from the petitioner to execute the sale deed citing appreciation of value. After the intervention of a common friend, the 1<sup>st</sup> respondent agreed to execute the sale deed after Deepam festival which falls on 06.12.2022 and petitioner believed their words and agreed for the same.

(vii) While the petitioner was always ready and willing to perform his part of contract, in the first week of December 2022, the petitioner came to know that 1<sup>st</sup>

defendant had alienated a portion of the suit property to 3<sup>rd</sup> defendant on 28.11.2022. A search in the Sub Registrar office revealed that the 1<sup>st</sup> respondent had executed a Power of Attorney in favour of 2<sup>nd</sup> defendant on 23.03.2022 and on the basis of the same the 2<sup>nd</sup> defendant conveyed an extent of 22.70 cents.1.3., about 9800 sq.feet of the suit property to the 3<sup>rd</sup> defendant. The petitioner approached the 3<sup>rd</sup> defendant and informed him of his intention to purchase the suit property also about Rs.1,90,00,000/- paid by him to the respondents 1 and 2.

(viii) The act of respondents 1 and 2 is highly illegal and the same was done to defeat the petitioners valuable rights to purchase the suit property. They deceived the plaintiff by executing a sale deed in favour of 3<sup>rd</sup> defendant with respect to a portion of the suit property. Upto 31.3.2022 a huge sum of Rs.190,00,000/- is lying in the hands of defendants 1 and 2. In view of the above acts of the defendants, the petitioner is left with no other option but to file a suit to enforce the oral agreement of sale entered by him with respondents 1 and 2 and to direct them along with 3<sup>rd</sup> defendant to execute the sale deed after receiving the balance of sale consideration of Rs.2,00,000/- in his favour. With alternative relief of refund of advance already paid with interest at the rate of 12% per annum from the date of plaint till date of realization.

(ix) The 2<sup>nd</sup> respondent is having immovable properties adjacent to the suit property and he is now trying to alienate those to 3<sup>rd</sup> parties to deprive the petitioner's valuable rights of refund of advance amount already paid of the respondents further alienate the properties, the petitioner will be put to great loss and serious hardship and

petitioner may not be able to recover the advance amount of Rs.1,90,00,000/- paid by him. Hence, it is necessary to attach the petition mentioned properties as security for the present suit filed by me as against the respondents either for the due repayment of the advance amount paid by me or to execute the sale deed by the defendants 1 to 3 in my favour as per the oral agreement of sale. Hence the petition.

2) AVERMENTS IN THE COUNTER :-

The petition is not maintainable in law or on facts. The petitioner has a burden to prove the oral agreement and establish his right over the suit property. He has unnecessarily invoked under Order 38 Rule 1 CPC. The petition is hit by section 16 of CPC and hence the petitioner cannot claim attachment before Judgment. The petitioner has filed the application with a belief that he cannot establish his right over the suit property as agreement holder through the oral agreement for a sale and therefore he has filed the application to harass the defendant. The petitioner has filed the suit for specific performance and sought for attachment of all the properties of the respondents/ defendants and hence the petition is clearly an abuse of the process of the court. The petitioner has filed the suit only on imaginary grounds to make unlawful gains from the defendants. The petitioner has filed this petition with knowledge that the properties have been conveyed to third parties. Apart from item no. 4, the defendant has already alienated all of the other properties even before filing of this petition. The petitioner has filed this petition to delay finality to proceedings and hence the petition is liable to be dismissed.

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

**4. The point for consideration is that.**

Whether the petition filed by the petitioner under order 38 Rule 5 CPC seeking for an order of attachment before Judgment in respect of the petition mentioned properties is to be allowed or not ?

5) Heard both sides. No oral or documentary evidence on both sides.

6) A perusal of the records shows that the petitioner / plaintiff K. Ravi has filed the above suit against the respondents Sangeetha and two others seeking the relief of specific performance of agreement for sale dated 23.03.2021 after receiving the balance of sale consideration of Rs.2,00,000/-. The petitioner has also prayed for delivery of vacant possession of the suit properties or the alternative relief of refund of advance of Rs.1,90,00,000/- with interest and costs.

7) At the risk of repetition, the plaint averment is to the effect that the 1<sup>st</sup> respondent / 1<sup>st</sup> defendant Sangeetha is the absolute owner of the suit property which is described as a vacant site to the extent of 16,000 sq.ft in Survey No.62/3C, 62/12, 623/1A2 in Kilnathur village of Tiruvannamalai Taluk. The 2<sup>nd</sup> defendant / respondent Saravanan is the husband of the 3<sup>rd</sup> defendant is a purchaser of the portion of the suit property. There was a oral sale agreement between the plaintiff and the defendants 1 and 2 in respect of the suit property(Presumably on 23.03.2021).

8) The plaintiff has further alleged that the defendants 1 and 2 were engaged in Real Estate business and as they were family friends, the defendants 1 and 2 offered to alienate the house property at Maha Sakthi Nagar at Tiruvannamali in the 1<sup>st</sup> week of June 2020 and after negotiation the consideration was fixed at Rs. 1,40,00,000/- . The defendants 1 and 2 were not for reducing the sale agreement to writing and suggested that a oral sale agreement is enough. Accordingly in the 2<sup>nd</sup> week of June 2020 the oral agreement for sale was entered in respect of house property between the plaintiff and defendants 1 and 2 and the plaintiff transferred the sale consideration amount in installments to the defendants's bank accounts periodically. Thus the plaintiff paid Rs.1,39,00,000/- to the 2<sup>nd</sup> defendant. A sale deed for the house was ultimately registered. But the suit property is different.

9) When the 1<sup>st</sup> agreement was in subsistence, the respondents 1 and 2 also offered to sell the suit property stating that it lies adjacent to the National Highway and can be converted to a layout. The plaintiff accepted the offer for a consideration of Rs.1,92,00,000/- and entered into an oral agreement for sale in March 2021 through which the defendants 1 and 2 agreed to receive the said amount and complete the sale on or before 31.12.2022. The petitioner, in furtherance of the oral agreement, transferred a total sum of Rs.1,80,00,000/- through cash and also bank transactions in May 2022. The defendants 1 and 2 requested the plaintiff to get a sale deed for the house property at Maha Sakthi Nagar and sought time to execute the sale deed in respect of the suit property for want of DTCP approval. However the plaintiff learned that the DTCP approval was rejected. The plaintiff requested

defendants 1 and 2 to receive the balance sale consideration of Rs.2,00,000/- and execute the sale deed by 31.12.2022. But the defendants demanded Rs.50,00,000/- as extra amount citing escalation of property value. The plaintiff was always ready and willing to perform his part of the contract. But in the 1<sup>st</sup> week of December 2022, the plaintiff was shocked to learn that the 1<sup>st</sup> defendant has alienated a portion of the suit property to 3<sup>rd</sup> defendant through the power deed in favour of the 2<sup>nd</sup> defendant. The plaintiff learned that the 3<sup>rd</sup> defendant has paid Rs.1,90,00,000/- to the defendants 1 and 2 . Thus the respondents 1 and 2 have deceived the plaintiff by not executing the sale deed in terms of the oral agreement for sale in respect of the suit .

10) From a bare perusal of the plaint it is seen that the suit is for the relief of specific performance on the basis of oral agreement for sale (Even the specific date is not mentioned) or the alternate relief of refund of advance. The petitioner / plaintiff alleges that the defendants / respondents have failed to perform their part of the contract agreement by executing a sale in favour of the plaintiff although the plaintiff has paid up Rs.1,90,00,000/- out of the sale consideration of Rs.1,92,00,000/-. The petitioner alleges that the respondent/ defendants are attempting to alienate the suit property to defeat the right and interest of the petitioner / plaintiff. Therefore he has pressed into service Order 38 Rule 5 CPC. of attachment before Judgment.

11) Glaringly, in the schedule of properties mentioned in the petition for Attachment before Judgment, the petitioner has shown 5 properties located at various areas, apart from the suit property. The petitioner seeks security by way of

attachment for the advance of Rs.1,90,00,000/- that he has allegedly parted to purchase the suit property. Now let have a look at Order 38 Rule 5 CPC which runs as follows.

*5. Where defendant may be called upon to furnish security for production of property.—(1) Where, at any stage of a suit, the Court is satisfied, by affidavit or otherwise, that the defendant, with intent to obstruct or delay the execution of any decree that may be passed against him,—*

*(a) is about to dispose of the whole or any part of his property, or*

*(b) is about to remove the whole or any part of his property from the local limits of the jurisdiction of the Court, the Court may direct the defendant, within a time to be fixed by it, either to furnish security, in such sum as may be specified in the order, to produce and place at the disposal of the Court, when required, the said property or the value of the same, or such portion thereof as may be sufficient to satisfy the decree, or to appear and show cause why he should not furnish security.*

*(2) The plaintiff shall, unless the Court otherwise directs, specify the property required to be attached and the estimated value thereof.*

*(3) The Court may also in the order direct the conditional attachment of the whole or any portion of the property so specified.*

*1[(4) If an order of attachment is made without complying with the*

*provisions of sub-rule (1) of this rule, such attachment shall be void)*

**12)** The learned counsel for the respondents/ defendants has, by relying upon the case of **M. Padmini Vs. M. Anandhan 2014(3) CTC 792** drawn the notice of this court to the observation of the Division Bench of the Hon'ble Madras High Court to underline that mere bald allegations are not enough to secure order of attachment and in the absence of specific allegations the power to attach should not be exercised he has highlighted the relevant portions which runs thus,

*(4) That a mere allegation that the defendant is selling off his properties is not sufficient. Particulars must be stated.*

*(5) An order of Attachment before Judgment is a drastic remedy and the power has to be exercised with utmost care and caution, as it may be likely to ruin the reputation of the party against whom the power is exercised. As the court must act with the utmost circumspection before issuing an Order of Attachment, the Affidavit filed by the Applicant should clearly establish that the defendant with intent to obstruct or delay the execution of the Decree that may be passed against him is about to dispose of the whole or any part of his property.*

*(6) A mere mechanical repetition of the provisions in the code of the language therein without any basic strata of truth underlying the allegation or vague and general allegations that the defendant is about to dispose of the property or to remove it beyond the jurisdiction of the court, totally in*

*supported by particulars, would not be sufficient compliance with order 38, Rule 5 of CPC.*

*(7) An attachment before Judgment is not a process to be adopted as a matter of course. The suit is yet to be tried and the defense of the Defendant is yet to be tested. At the nebulous juncture, the relief which is extraordinary could be granted only if the conditions for its grant as per the provisions of the code, stand satisfied. This process is never meant as a lever for the plaintiff to coerce the Defendant to come to terms. Hence utmost caution and circumspection should guide the court.*

13) It is no doubt true that the suit filed by the petitioner / plaintiff is not for recovery of money, but specific performance. The petition prays for Attachment before Judgment to secure repayment of his earnest money if the alternate relief of refund of advance is ordered by this court. Here we may profitably refer to the case of **Sardar Govindrao Mahadik v. Devi Sahai (1982) 1 SCC 237** in which the Hon'ble Supreme court has observed that the sole object behind the order levying Attachment before Judgment is to give an assurance to the plaintiff that his decree if made would be satisfied. It is a sought of guarantee against decree becoming infructuous for want of property available from which the plaintiff can satisfied the decree)

14) Therefore it is now trite in law that Attachment Before Judgment is a sort of assurance to the plaintiff that if a decree is eventually passed in his favour, it would be satisfied.

15) The Instant case is disputedly a suit for specific performance on the basis of an oral sale agreement. It is not on the basis of any kind of mortgage or any other secure / insecure debt. In this connection we may be recollect that the Hon'ble Supreme court in the case of **Suraj Lamp and another private limited Vs. state of Haryana and another (2011 (11) SCR 848** by relying upon the section 54 observed that by virtue of of section 54 of Transfer of Property Act agreement for sale does not of itself create any interest or charge on such properties. *In this regard, the Hon'ble Supreme Court in Vareed Jacob Vs. Sosamma Geevarghese 23. unquestionably declared " the scheme of Order 38 is different from Order 39 or Order 40"*. Thus the Hon'ble Supreme Court has clearly explained the scope and object of injunction restraining alienation Vis-a-Vis attachment before Judgment.

16) It is to needless to mention that the plaintiff has instituted the suit and any encumbrance moves along with the property and transactions pendent elite is hit by section 52 of Transfer of Property Act. In such circumstances attaching the property would only amount to helping the petitioner to increase his bargaining power by prohibiting the defendant from dealing with the property. Needless to state, if the petition is bound to succeed, he will get a sale deed in his favour, irrespective of subsequent alienations.

17) The petitioner has only made his case worse by including various other properties other than the suit properties. The petitioner / plaintiff has therefore not made out a clear case for effecting attachment of property before Judgment under order 38 Rule 5 CPC. For the above reasons, the petition is bound to fail and the petitioner has not made out a case for attachment before Judgment. The point is answered accordingly.

In the result, the petition is dismissed with 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 5<sup>th</sup> day of March 2025.

(Sd/- B.C.GOPINATH),  
**Additional District Judge,**  
**Tiruvannamalai.**

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

List of Witnesses and Exhibits on the side of Respondent : Nil

(Sd/- B.C.GOPINATH),  
**Additional District Judge,**  
**Tiruvannamalai.**

