

**III ADDITIONAL DISTRICT AND SESSIONS COURT,
TIRUVALLUR AT POONAMALLEE**

Present : **Thiru.C.VIJAYAKUMAR, B.A., B.L.,**
III Additional District and Sessions Judge

Thursday, the 12th day of March 2026

I.A.No.02/2024 in O.S.No.414/2024

- 1) Minor P. Monish, S/o. Premkumar,
Rep. by his Mother P. Sangeetha,
- 2) Minor P. Kavya, D/o. Premkumar,
Rep. by her Mother P.Sangeetha,
- 3) P. Divya, D/o. Premkumar,
- 4) P. Sangeetha, W/o. Premkumar,
1st to 4th plaintiffs residing at No. 39,
Oragadam Cross Street, Venkatapuram,
Ambattur, Chennai – 600 053.

..Petitioners / Plaintiff

//Vs//

M. Devi, W/o. Marimuthu,
No. 1/55, Pillaiyar Kovil Street,
G.C. Kuppam Post, Govindachery Village,
Vellore – 632 505.

..Respondent / Defendant

This petition came up before this Court for final hearing on 16.02.2026 in the presence of M/s. S. Ramajayam, G. Sathish, N. Yuvaraj, G. Venkatamohan, P. Ganesh learned counsels for the petitioner / plaintiff, Respondent / Defendant set *ex parte* on 07.08.2025, and upon hearing petitioner side arguments and

having stood over for consideration till this day, this court passed the following:

ORDER

The plaintiff in the suit has filed this petition under Order XXXVIII Rule 5 of CPC and prayed to direct the defendant to furnish the petition scheduled property as security to the suit claim and if he fails to furnish security, an order of attachment before judgement of the scheduled property.

2) The averments made in the affidavit filed by the plaintiff in support of the petition are briefly as follows:-

The Petitioner herein is the plaintiff in the above suit filed for recovery of money from the defendant and stated that the defendant was served with a legal notice on July 1, 2024, and immediately on the following day, she offered her property for sale through a real estate broker. This property was situated in the Thiruvallur District, Thiruvallur Taluk, under the Thiruvallur Sub-Register Office in Vepampattu Village, specifically identified by Survey Nos. 46/13, 47/4, 47/6, 47/7, 47/9, at J.P. Nagar, Plot No. 5, with a total extent of 1357 sq. ft. of land. It was further submitted that the defendant was attempting to dispose of the said property and relocate with the intention of defeating any decree that might be passed in favor of the plaintiff. The petitioner/plaintiff

believed that the defendant held no other assets within the local limits of the jurisdiction of the District Munsif Court at Thiruvallur. The petitioner/plaintiff apprehended that if the defendant had succeeded in her plan, any order or decree passed by the honorable court would have been rendered infructuous, causing the plaintiff to suffer irreparable loss and damage. Therefore prayed an order directing the respondent to furnish the petition schedule property as security for the suit amount of Rs.12,40,000/-, or to order the attachment of the property before judgment should she fail to provide security. Hence, the Petition.

3) Since the respondent herein was set exparte in the main suit, she was also set exparte in this petition on 07.08.2025.

4) On the side of the Petitioner/ Plaintiff and Respondents/ Defendants, no witnesses were examined and no documents were marked.

5) The point arising for consideration is whether the petition has to be allowed or not ?

6) Point:

Heard both sides. Perused the documents.

7) The petitioner/Plaintiff filed the main suit for the recovery of money, a sum of Rs.12,40,000/- with interest from the defendant. The above suit is pending

before this court for exparte evidence. At this stage, the petitioner / Plaintiff filed the petition for the direction to the defendant to furnish security to the suit claim and if he fails to furnish security, an order of attachment before judgement of the schedule property to be passed. Eventhough the notice issued to the respondent / defendant, she was failed to appear before this court. The respondent/defendant has neither contested nor shown any cause the above suit as well as this petition and set exparte. Though the respondent was set ex parte, the petitioner was not entitled to an automatic order. The petitioner has to establish his claim on the basis of the settled position of law.

8) To substantiate the claim of the petitioner, the petitioner must establish his case under Order 38 Rule 5, which reads 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.

(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.

9) As per the above mandate, the petitioner has to initially prove the following facts:

1) That he has a legitimate chance to obtain a decree;

2) That the respondent, with the intent to obstruct or delay the execution of any decree that may be passed against him, is likely to dispose of or remove the property; and

3) That the property mentioned in the petition is owned by the respondent.

10) The petitioner herein filed the main suit for the relief of payment of loan with interest due from the respondent. The defendant is the sister of Tr R.Premkumar, she borrowed Rs.10,00,000 via cheque (No. 593376, City Union Bank, Ambattur) on July 18, 2022, and executed a promissory note with 1% monthly interest. Despite receiving a legal notice on June 26, 2024,

following Premkumar's death, the defendant failed to repay the loan. Including 12% annual interest (Rs.2,40,000) for the period of July 18, 2022, to July 15, 2024, the defendant is now liable to pay a total of Rs.12,40,000 is the claim of the petitioner. After death of Tr R.Premkumar his legal heirs filed the main suit for the prayer of recovery of sum.

11) In the affidavit filed by the petitioner in support of this petition, stated that, the defendant is trying to dispose of the said property and living from here with intention to defeat the decree, if it may be passed in favour of this petitioner. The petitioner believed that, the defendant holds no other property except the scheduled property herein and the defendant try to alienate the property. The defendant did not show any objection with these contentions, since she was set exparte.

12) Since the respondent has not come forward to defend the petition, this Court concludes that prima facie material shows the petitioner has a reasonable likelihood of establishing the relevant facts in issue in favour of him. That is the petitioner have an ultimate chance to obtain a decree infavour of them as enumerated under order 38 rule 5 of CPC.

13) In this circumstances the Hon'ble Supreme court in the following case published in **Indian Kanoon - <http://indiankanoon.org/doc/9447> Reported**

in 2007 SC 80 Raman Tech. & Process Engg. Co. & ... vs Solanki

Traders case held that,

“It is well-settled that merely having a just or valid claim or a prima facie case, will not entitle the plaintiff to an order of attachment before judgment, unless he also establishes that the defendant is attempting to remove or dispose of his assets with the intention of defeating the decree that may be passed. Equally well settled is the position that even where the defendant is removing or disposing his assets, an attachment before judgment will not be issued, if the plaintiff is not able to satisfy that he has a prima facie case.”

In these circumstances, when this Court applied the above position to the present case, this Court concludes that the petitioner has sufficiently proved their petition and has satisfied all the requirements under Order 38 Rule 5 of the CPC.

14) In result, the petition is allowed. The petition mentioned schedule property was attached for the payment of a sum of Rs. 12,40,000/-. The Encumbrance Certificate (EC) filed by the petitioner shows that the defendant has only a 1/3 interest in the petition mentioned property. Hence, this court orders the attachment of the defendant's 1/3 share in the petition mentioned property for the sum of Rs. 12,40,000/-. Attachment Batta with in a week time.

Dictated to the typist directly, typed by him in the computer, corrected and pronounced by me in the open court, this the 12th day of March 2026.

**III Additional District and Sessions Judge,
Tiruvallur at Poonamallee.**

Both side Witnesses and Exhibits : NIL

**III Additional District and Sessions Judge,
Tiruvallur at Poonamallee.**