

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

Present: Thiru. S.MANOJKUMAR, M.A., M.L.,
Additional District Judge, Tenkasi

Monday the 23rd day of March 2026

I.A.No.2/2025

in

O.S.No.212/2025

(CNR No. TNTS-01 004464 2025)

Biju Francis K . . . Petitioner / Plaintiff

Vs.

1. J.Vijayan
2.Cheley . . . Respondents / Defendants

This Petition came up before this Court on 13.03.2026 for final hearing, in the presence of Thiru.P.G.Santhosh kumar, Advocate appeared for the Petitioner and Thiru.Thattathumala S. Anilkumar, Advocate appeared for the Respondents and upon hearing the arguments on both sides and having stood over for consideration till this day this Court delivers the following.....

ORDER

This Petition is filed by the Petitioner under Order 38 Rule 5 and Section 151 of CPC prays to furnish the security for a sum of Rs.30,08,870/- being the proportionate sale consideration for 20-1/2 cents of the suit property under the sale agreement dated 18.08.2002, failing which, to attach the schedule property before the Judgment.

2. **The averments stated in the Petition in brief are as follows :**

The Petitioner in this Petition is the Plaintiff in the Original Suit. The Original Suit was filed by this Petitioner / Plaintiff for the relief of Specific Performance of the sale agreement dated 18.08.2002 in respect of 20-1/2 cents of land in Survey Number 730/3A, Thippanampatti village besides consequential reliefs for damages, goodwill and permanent injunction. The Petitioner / Plaintiff entered into a sale agreement with 1st Respondent / Defendant for the purchase of property measuring 62 cents in S.No.730/3A situated at Thippanampatti village along with building No.14/33-6 and the running business "Aiden Aqua Foods and Beverages" located with the value of RO Plant, Filling plant and machineries is Rs.35,00,000/- , value of building is Rs.1,00,00,000/- , value for Patent and Trade mark is Rs.1,00,000/- , value of 62 cents of land is Rs.91,00,000/- and Rs.1,00,000/- for the Good Will of the company and the said agreements were formalized by two written arguments dated 16.07.2021 and 18.08,2022. The total sale consideration for the property and business was fixed at Rs.3,75,00,000/- and in accordance with the said agreement the Petitioner / Plaintiff paid Rs.2,11,56,700/- through bank transfers and Rs.1,25,000/- by cash totally a sum of Rs.3,36,56,700/- paid to the 1st Defendant. The cash component was sourced from the sale proceeds of the petitioner immovable property. At this juncture, the 1st Defendant gas sold the 20-1/2 cents to his daughter, the 2nd Defendant on 18.11.2022 with full knowledge of the existing sale agreement. Further, the Defendants have wrongfully alienated an extent of 42 cents to the seven different persons along with commercial building and machineries. The Petitioner / Plaintiff always ready and willing to perform his part of contract, but the 1st Defendant willfully and without just cause failed to execute the sale deed

within the stipulated four month period. The Petitioner has lodged multiple police complaints including on 22.10.2024 and 16.07.2025 against the Respondents for threats and fraud, but no effective police action has been taken so far, which increases the imminent danger of further alienation. If the Respondents succeed in alienating the remaining 20-1/2 cents and the business, the subject matter of the suit will be lost forever and the Petitioner's claim will be rendered infructuous. Therefore, it is necessary to pass an order of attachment of schedule property before the Judgment. Hence the Petitioner filed this Petition.

3. **The averments stated in the Counter in brief are as follows:-**

The Petition is not maintainable and the Petition averments are all false. The alleged agreement dated 18.08.2022 between the Plaintiff and Defendants in respect of schedule property is a false and fabricated. It is admitted that a sale agreement dated 21.12.2020 and a memorandum of understanding dated 25.02.2021 were entered into between the Plaintiff and the 1st Defendant for the purchase of 62 cents of property including the water plant and its machinery and the Plaintiff paid an advance amount of Rs.99,00,000 under the said agreement out of total sale consideration of Rs.3,75,00,000/- and the original sale agreement was in the possession of Plaintiff. When the 1st Defendant requested the return of the original agreement dated 21.12.2020, the Plaintiff deliberately failed and neglected to do so with the intention of fabricating subsequent documents dated 16.7.2021 and 18.08.2022. The signatures appearing in the alleged documents purported to be those of the 1st Defendant are forged and the said fabricated documents now form the false basis of the present suit. The alleged relationship between the 1st and Defendant and 2nd Defendant has been deliberately misrepresented and manipulated by the Plaintiff with the intention of misleading this Court. The transaction related with 20-1/2 cents of property between the 1st Defendant and the 2nd Defendant was a

bonafide transaction effected for valid and proper consideration of Rs.20,00,000/- The 1st Defendant never sold, transferred or agreed to transfer the trademark or goodwill of the company to any person. It is true that the 40-1/2 cents included a commercial building, machinery and a water filling plant. The genuine sale agreement and Memorandum of understanding between the Plaintiff and the 1st Defendant is dated 21.12.2020 and 25.02.2021 respectively. Under that agreement, the Plaintiff was required to pay the balance amount and complete the sale on or before 31.03.2021, but the Plaintiff violated the terms and failed to perform within the stipulated period. After lapse of one year, on 18.11.2022, the 1st Defendant sold 20-1/2 cents of vacant land without any buildings or construction in favour of 2nd Defendant. Only subsequent to the execution of sale deed in respect of the said 20-1/2 cents of vacant land, the 2nd Defendant obtained a building permit for a construction and managed to construct a building by exerting loan from bank. The property which was originally agreed to be sold for a consideration of Rs.3.75 crores and which would have fetched not less than Rs.4 crores + as on date was compelled to be sold for less than half of its market value. The 1st Defendant was always ready to execute the sale deed at any time on receipt of the balance consideration. After the expiry of original agreement dated 21.12.2020 and Memorandum of undertaking dated 25.02.2021 the Plaintiff did not pay any amount to the 1st Defendant as consideration under the alleged agreements. After several months from the expiry of the original agreement, the 1st Defendant sold 40-1/2 cents of the property which was standing in the Plaintiff's benami name and the remaining 20-1/2 cents of waste land was subsequently sold to the 2nd Defendant. Hence the Petition is to be dismissed.

4. There is no oral evidence and documents marked on both sides.

5. **The point for consideration is:**

"Whether this Petition is to be allowed ?"

6. **Point:-**

The learned counsel for the Petitioner has argued that the Petitioner in this Petition is the Plaintiff in the Original Suit. The Original Suit was filed by this Petitioner / Plaintiff for the relief of Specific Performance of the sale agreement dated 18.08.2002 in respect of 20-1/2 cents of land in Survey Number 730/3A, Thippanampatti village besides consequential reliefs for damages, goodwill and permanent injunction based upon sale agreement dated 16.07.2021 and 18.08.2022. It is the contention of the Petitioner / Plaintiff that the Defendants have wrongfully alienated the suit property to the seven different persons along with commercial building and machineries and the Petitioner / Plaintiff always ready and willing to perform his part of contract, but the 1st Defendant willfully and without just cause failed to execute the sale deed within the stipulated four month period and the Petitioner has lodged multiple police complaints including on 22.10.2024 and 16.07.2025 against the Respondents for threats and fraud, but no effective police action has been taken so far, which increases the imminent danger of further alienation and if the Respondents succeed in alienating the remaining 20-1/2 cents and the business, the subject matter of the suit will be lost forever and the Petitioner's claim will be rendered infructuous. Therefore, it is necessary to pass an order of attachment of schedule property before the Judgment and hence the Petition may be allowed.

7. The learned counsel for the Respondents has argued that the alleged agreement dated 18.08.2022 between the Plaintiff and Defendants in respect of schedule property is a false and fabricated. It is averred that a sale agreement dated 21.12.2020 and a memorandum of understanding dated 25.02.2021 were entered into between the Plaintiff and the 1st Defendant for the purchase of 62 cents of property including the water plant and its machinery and the Plaintiff paid an advance amount of Rs.99,00,000 under the said agreement out of total sale consideration of Rs.3,75,00,000/- and the original sale agreement was in the possession of Plaintiff. When the 1st Defendant requested the return of the original agreement dated 21.12.2020, the Plaintiff deliberately failed and neglected to do so with the intention of fabricating subsequent documents dated 16.7.2021 and 18.08.2022. The signatures appearing in the alleged documents purported to be those of the 1st Defendant are forged and the said fabricated documents now form the false basis of the present suit. It is the further contention of Respondents / Defendants that the 1st Defendant was always ready to execute the sale deed at any time on receipt of the balance consideration and after the expiry of original agreement dated 21.12.2020 and Memorandum of undertaking dated 25.02.2021 the Plaintiff did not pay any amount to the 1st Defendant as consideration under the alleged agreements and after several months from the expiry of the original agreement, the 1st Defendant sold 40-1/2 cents of the property which was standing in the Plaintiff's benami name and the remaining 20-1/2 cents of waste land was subsequently sold to the 2nd Defendant a therefore the Petition is to be dismissed.

8. Heard both sides. Records perused. The main contention of the Petitioner is that the Petitioner has entered into a sale agreement with the 1st Respondent / 1st Defendant for purchase of the suit property along with business and had paid substantial consideration. It is alleged that the

1st Respondent, with full knowledge of the agreement, has alienated portions of the property to third parties including the 2nd Defendant and it appears that the Respondents are attempting to evade the execution of sale deed regarding the schedule property and therefore, it is necessary to attach the property before the judgment. On the other hand the Respondents / Defendants contended that the alleged agreement dated 18.08.2022 is false and fabricated. According to them, the only valid agreement is dated 21.12.2020 along with Memorandum of Understanding dated 25.02.2021, under which the Plaintiff paid only Rs.99,00,000/- as advance and failed to perform his part within the stipulated time. It is further contended that subsequent conveyances were bonafide and for valid consideration and that there is no intention to defeat any decree.

9. The relief sought under Order 38 Rule 5 of CPC is an extraordinary one and can be granted only when the Court is satisfied that the Defendant, with an intention to obstruct or delay the execution of any decree that may be passed against him, is about to dispose of or remove his property. Further in the case of **Raman Tech. & Process Engg. Co., and another ..vs.. Solanki Traders**, our Hon'ble Supreme Court has held as follows:

The power under Order 38 Rule 5 CPC is drastic and extraordinary power. Such power should not be exercised mechanically or merely for the asking. It Should be used sparingly and strictly in accordance with the Rule. The purpose of Order 38 Rule 5 is not to convert an unsecured debt into a secured debt. Any attempt by a plaintiff to utilize the provisions of Order 38 Rule 5 as a leverage for coercing the defendant to settle the suit claim should be discouraged. Instances are not wanting where bloated and doubtful claims are realised by unscrupulous plaintiffs by obtaining orders of attachment before judgment and forcing the defendants for out of court settlement, under threat of attachment.

In the present case, the disputes between the parties regarding the genuineness of the agreements, payment of consideration, and performance of contractual obligations are all matters to be adjudicated in the main suit after full trial and appreciation of evidence let in by both parties. Mere allegation of alienation, without clear proof of intention to defeat the decree, is not sufficient to invoke the provisions of Order 38 Rule 5 CPC. The Petitioner has also not demonstrated any fraudulent attempt on the part of the Respondents warranting attachment before judgment. On the other hand, the Respondents have taken a specific plea of forgery and fabricated document prepared by the Plaintiff. In such circumstances, this Court is of the considered view that the Petitioner has not made out a prima facie case and so this Petition is to be dismissed.

In the result, this Petition is dismissed.

Dictated to the Steno typist, typed directly by her in Computer corrected and pronounced by this Court, on this the 23rd day of March 2026.

Additional District Judge,
Tenkasi

Witnesses examined and documents marked on both sides

Nil

Additional District Judge,
Tenkasi

Additional District Court,
Tenkasi
I.A.No.2/2025 in
O.S.No.212/2025
Dated:23.03.2026
Order (Fair).

