IN THE COURT OF THE II ADDITIONAL DISTRICT JUDGE,

THOOTHUKUDI.

Present : Tmt. M.Breetha, M.L.,

II Additional District Judge,

Thoothukudi.

Tuesday, this the 18th day of August 2026

I.A. No. 1/2026

in

O.S. No. 36/2026

Mr. V. Raghunathan ... Petitioner/Plaintiff

/ versus /

1) M/s. Prabhat Saw Mill Partnership Firm
through its Partners

2) Mr. Hittesh S Patel
The Managing Director,
Prabhat Saw Mill

3) Mr. Dinesh S Patel,
The Director,
Prabhat Saw Mill ... Respondents /Defendants

This petition came before me for final hearing on 10.08.2026 in presence of Thiru.C.Balamurugan, Learned Advocate for petitioner/plaintiff and respondents 1 to 3 remain exparte and upon hearing both side arguments and on perusal of records and having stood over till this day for consideration of this court, this court delivers the following:

ORDER

The petitioner has filed this petition under Order 38 Rule 5 of Civil Procedure Code to pass an order to furnish security to the tune of Rs.1,03,00,000/- and in default to pass conditional order of attachment of the scheduled properties and to pass ad-interim order of attachment to that effect pending disposal of the petition and for costs.

2) Brief averments of the petition :-

(i) The petitioner is the plaintiff in the main suit. He has averred that he is well acquainted with the respondents, and that the 1st respondent's firm had requested a loan of Rs. 1,00,00,000/- from the petitioner for urgent business needs. Following persistent demands made by the 2nd defendant, who is the Managing Partner of the 1st defendant firm, the petitioner agreed to advance the aforementioned loan amount.

(ii) On 03.12.2016, the 2nd defendant received the sum of Rs. 1,00,00,000/- from the petitioner. On the same day, the 2nd defendant executed an unregistered *othi* deed in favour of the petitioner regarding the plaint-scheduled properties. He also handed over the original partition deed dated 27.04.2016 registered as Doc. No. 1528/2016 and the partnership deed of the defendants' firm, M/s. Prabhat Saw Mill, dated 25.03.2016. As per the terms of the othi deed, the agreed rate of interest was 24% per annum for a period of three years, or payable upon demand by the petitioner. Furthermore, the defendants handed over possession of the plaint-scheduled properties to the petitioner in lieu of interest until the realization of the othi amount. Subsequently, the 2nd defendant renewed the othi deed on 02.12.2019 and 01.12.2022 by making necessary endorsements on the reverse side of the first page of the deed.

(iii) To date, the defendants have neither settled the othi amount of Rupees One Crore (Rs. 1,00,00,000/-) nor renewed the aforementioned othi deed. The petitioner attempted to contact the 2nd defendant multiple times via mobile phone (9566117171), but the 2nd defendant failed to answer the calls. Consequently, the petitioner visited the 2nd defendant in person at Prabhat Saw Mill, Shencottah, on several occasions, but the 2nd defendant deliberately evaded him with an intention to defraud and cheat the petitioner. Thereafter, the petitioner issued a legal notice through his counsel on 06.01.2026, calling upon the 2nd and 3rd defendants to settle the othi amount of Rs. 1,00,00,000/-. Although the 2nd and 3rd defendants received the notice on 07.01.2026, they neither replied to it nor paid any amount to the petitioner. The 1st defendant is a partnership firm, while the 2nd and 3rd defendants are its Managing Partner and Partner, respectively. Therefore, all the defendants are jointly and severally liable to pay the othi amount of Rupees One Crore (Rs. 1,00,00,000/-) to the petitioner. Accordingly, the petitioner has filed the main suit for the recovery of money against the defendants, along with future interest at 24% per annum from the date of the plaint, as well as costs.

(iv) The petitioner has averred that the petition-scheduled properties absolute belong to the respondents. The respondents are actively attempting to alienate these properties. If the respondents succeed in alienating the petition-scheduled properties, the petitioner will be put to irreparable loss and injury. Therefore, the petitioner has been constrained to file this petition seeking an attachment of the petition-scheduled properties before judgment, and prays that this Hon'ble Court may be pleased to allow the same.

3) Respondents 1 to 3 are called absent and set exparte on 09.04.2026.

4) The point for consideration is whether this petition is to be allowed or not?

<u>5) Findings for the point for consideration :-</u>

Both sides are heard. Records are perused. The petitioner is the plaintiff in the main suit. The respondents are the defendants in the main suit.

6) The petitioner has averred that the respondent borrowed a sum of Rs. 1,00,00,000/- from the petitioner for urgent business needs. On the same day, the respondent executed an unregistered othi deed in favour of the petitioner with respect to the plaint-scheduled properties. Along with the execution of the deed, the respondent handed over the original partition deed dated 27.04.2016 registered as Doc. No. 1528/2016, the partnership deed of the defendants' firm named M/s. Prabhat Saw Mill dated 25.03.2016, and physical possession and enjoyment of the scheduled properties. As per the terms of the othi deed, the agreed rate of interest was 24% per annum for a period of three years, or payable upon demand made by the petitioner. Furthermore, the defendants handed over possession of the plaint-scheduled properties in lieu of interest until the realization of the othi amount. However, the defendants have failed to repay the loan amount. Consequently, the petitioner has approached this Hon'ble Court with the main suit seeking recovery of money from the defendants, along with future interest at the rate of 24% per annum from the date of the plaint, and for costs.

7) The petitioner submits that a prima facie case rests in his favour. The petition-scheduled properties belong exclusively to the respondents, who are now actively attempting to alienate them. Therefore, the petitioner prays that this Hon'ble Court may be pleased to order the attachment of the petition-scheduled properties before judgment.

8) The petitioner has sought for the relief of attachment before judgment under Order 38 Rule 5 of the Code of Civil Procedure and it 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 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 require, 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 said provision, the twin conditions to be satisfied are :

(1) Primafacie case in favour of the petitioner

(2) Reasonable apprehension that there is likelihood of the defendant to dispose of the whole or any of the property to defeat the fruits of the decree if passed in favour of the petitioner.

10) If the above said twin conditions are satisfied, then in such contingencies, the court can direct the defendant to first furnish security to the tune of the suit claim.

11) To prove that the primafacie case is in his favour, the petitioner has produced Ex.P1 to P5 documents. Ex.P1 is the copy of the partnership deed of the defendants' firm named M/s. Prabhat Saw Mill dated 25.03.2016. Ex.P2 is the original partition deed dated 27.04.2016 registered as Doc. No. 1528/2016. Ex.P3 is the original othi deed dated 03.12.2016. Ex.P4 is the legal notice issued by the petitioner to the respondnets. Ex.P5 is the acknowledgment card.

12) The fact that the original title deeds of the scheduled properties are in the physical custody of the petitioner lends immense credibility to the petitioner’s averment that a substantial loan was advanced, and that these documents were handed over by the respondents as security. The endorsements dated 02.12.2019 and 01.12.2022 on the reverse of Exhibit P3 prima facie establish the acknowledgment of liability and keep the debt alive within the statutory period of limitation.

13) Despite receiving a formal legal notice on 07.01.2026, the respondents chose neither to reply nor to clear the outstanding dues. Crucially, the respondents have chosen not to enter an appearance before this Court and have been set ex-parte. In the absence of any counter-affidavit, or rebuttal evidence from the respondents, the claims of the petitioner stand unchallenged. Consequently, this Court is fully satisfied that the petitioner has established a primafacie case in his favour.

14) The second prong of the statutory test requires an inquiry into the conduct and intent of the respondents. It is a well-settled principle that a mere vague allegation that the defendant is selling his property is insufficient; there must be distinct material indicating a clear intent to defraud the creditor. The undisputed facts show that the respondents completely severed communication, refused telephone calls, and evaded personal visits at their business venue Prabhat Saw Mill, Shencottah. The non-delivery of a reply to the legal notice dated 06.01.2026, despite acknowledged receipt on 07.01.2026, points toward a deliberate attempt to ignore their financial liabilities. By remaining ex-parte, the respondents have deliberately withheld any defense or explanation regarding their assets.

15) The petitioner's specific assertion that the respondents are actively negotiating with third parties to alienate the petition-scheduled properties, when viewed alongside their evasive and non-cooperative conduct, creates a highly reasonable and well-founded apprehension. If the respondents succeed in alienating the properties, the petitioner, who has advanced a massive sum of Rupees One Crore will be left completely remediless, and any decree passed in the main suit would be rendered a mere "paper decree.

16) In the light of the above findings, this court is of the view that the twin conditions enumerated under Order 38 Rule 5 of Code of Civil Procedure have been complied by the petitioner herein and hence, the petitioner is entitled to the relief sought for in this petition.

In the result, this petition stands allowed. The respondent is directed to furnish security for a sum of Rs.1,03,00,000/- on or before 18.09.2026; failing which the petition scheduled properties stands attached automatically. For furnishing security, Call on 18.09.2026.

Directly dictated to the Steno-Typist and typed by her in the computer, corrected and pronounced by me, on this the 18th day of August 2026.

BREETHA M
Digitally signed by BREETHA M
Date: 2026.08.18 17:29:38 +0530

II Additional District Judge,
Thoothukudi.

List of witnesses : NIL

List of Exhibits:

Ex.P1	Copy of the partnership deed of the defendants' firm named M/s. Prabhat Saw Mill dated 25.03.2016
Ex.P2	Original partition deed dated 27.04.2016 registered as Doc. No. 1528/2016
Ex.P3	Original othi deed dated 03.12.2016
Ex.P4	Legal notice issued by the petitioner to the respondents
Ex.P5	Acknowledgment cards

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II Additional District Judge,
Thoothukudi.

II Additional District Court,
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I.A. No.1/2026
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O.S. No 36/2026
Draft/ Fair order
Date : 18.08.2026