

**IN THE COURT OF THE I ADDITIONAL DISTRICT AND SESSIONS
JUDGE, VELLORE, VELLORE DISTRICT.**

PRESENT: Tmt.J.Shanthi, B.Sc., B.L.,
I Additional District and Sessions Judge, Vellore.

Thursday, the 22nd day of December, 2022

I.A. 01 of 2022 in O.S. No.22/2022

P. Moorthi

...Petitioner/Plaintiff

Vs

1. C. Baslamoorthi
2. C. Lingamoorthi

...Respondents/Defendants

This petition is coming up for final hearing before this Court on 29.11.2022 in the presence of Thiru.R. Mathankumar, Advocate for the Petitioner and Thiru.V. Murugesan, Advocate for the Respondents, on hearing the arguments of both sides, upon perusing the entire case records and having stood over for consideration till this day, this Court delivered the following:-

ORDER

Petition filed by the petitioner under Order 38 Rule 5 C.P.C. to pass an Order for Attachment of Petition mentioned Properties before Judgment.

2. Brief averments of affidavit of the Petitioner/Plaintiff are as follows:-

The petitioner is the plaintiff in the above suit. While the petitioner was working as employee of State Bank of India, he had friendship with the respondents/defendants who were the customers of the bank and after the death of

respondents' brother C. Vinayagamoorthi, the case between the respondents and the wife of deceased C. Vinayagamoorthi in O.S. No.3/2009 was filed before the Subordinate Judge, Gudiyatham and pending and so as to make settlement for the due share of the properties to the legal heirs of deceased C. Vinayagamoorthi, the respondents/defendants had approached the petitioner/plaintiff who is then retired from service and got retirement benefits and requested to lend a sum of Rs.10,00,000/- as hand loan in cash for their urgent and family necessities. The petitioner/plaintiff agreed upon their request and that on 04.08.2014 the respondents/defendants borrowed a sum of Rs.10,00,000/- from the petitioner/plaintiff and executed five numbers of promissory notes each for Rs.2,00,000/- and agreed to repay the said sum together with interest at 24% per annum on demand. Thereafter, the respondents/defendants did not discharge the debt inspite of repeated requests and demands made by the petitioner and adopted delaying tactics. When the petitioner requested them again and again, they have paid Rs.4,000/- each for the amount due on five promissory notes and made endorsement on the back side of the promissory notes and put their signatures. Even after the time extended, they have not paid the amount with interest.

Further, on 01.10.2014 the respondents have once again approached the petitioner/plaintiff and obtained a loan of Rs.9,87,000/- to meet out their urgent family expenses and to settle the domestic problems and executed three promissory notes each for Rs.2,50,000/- and one promissory note for Rs.2,87,000/- and agreed to repay the said sum together with interest at 24% per annum on demand. Once again

they used delaying tactics and evaded to repay the amount with interest and on the repeated demands, they have paid Rs.5,000/- each for the amount due on the four promissory notes on 21.09.2020 and thereafter they did not take care about the discharge of debt. The petitioner has sent a legal notice, dated 23.09.2021 to the respondents calling upon them to repay the amount. Though the respondents received the said notice on 25.09.2021 they have neither paid the amount nor sent any reply. Further, the respondents have taken secret steps to dispose the properties belonged to them and to go abroad with the malafide intention to cheat the petitioner and to escape from their liability. If the respondents are succeeded in their attempts, the petitioner will be put to great loss and hardship. It is just and necessary to grant an order for attachment of petition mentioned properties before Judgment. Hence, the petition.

3. The counter contentions of the 1st Respondent which are adopted by the 2nd Respondent are as follows:-

The petition and the suit is not maintainable either in law or on facts. The averments found in the affidavit are all false and denied. The respondents never executed any promissory note in favour of the petitioner at any point of time. The respondents have no necessity to borrow the loan from the petitioner. It is false to state that the respondents have obtained loan from the petitioner for their urgent family expenses and requirements. The petitioner has filed this vexatious suit against the respondents only with an intention to harass them. The respondents never executed the promissory notes and never made the alleged endorsements on the back

side of the alleged promissory notes. The petitioner/plaintiff has filed this suit against the respondents with ulterior motives out of jealous. The suit is not maintainable either in law or on facts. The suit is filed by the petitioner only to grab money from the respondents under false allegations. The respondents have sent proper reply notice on 01.10.2022 to the legal notice sent by the plaintiff. It is false and baseless to state that the respondents have taken efforts to sell their property secretly. There is no proof at all. The petition is filed only to extract money from the respondents under threaten. Hence, the petition is liable to be dismissed.

4. Point for consideration is whether the petition is to be allowed or not ?

5. On the side of the Petitioner, P.W.1 was examined and Ex.P1 to P7 marked. On the side of the respondents no witness was examined. But, Ex.R1 to R6 were marked during the cross examination of P.W.1.

6. Heard. Records perused.

POINT:

7. The petition was filed by the petitioner under Order 38 Rule 5 C.P.C. to pass an Order for Attachment of Petition mentioned Properties before Judgment. The petitioner is the plaintiff in the above suit. The petitioner stated that while the petitioner was working as employee of State Bank of India, he had friendship with the respondents/defendants who were the customers of the bank and after the death of respondents' brother C. Vinayagamoorthi, the case between the respondents and the wife of deceased C. Vinayagamoorthi in O.S. No.3/2009 was filed before the Subordinate Judge, Gudiyatham and pending and so as to make settlement for the due

share of the properties to the legal heirs of deceased C. Vinayagamoorthi, the respondents/defendants had approached the petitioner/plaintiff who is then retired from service and got retirement benefits and requested to lend a sum of Rs.10,00,000/- as hand loan in cash for their urgent and family necessities.

8. The petitioner/plaintiff further stated that he agreed upon their request and that on 04.08.2014 the respondents/defendants borrowed a sum of Rs.10,00,000/- from the plaintiff and executed five numbers of promissory notes each for Rs.2,00,000/- and agreed to repay the said sum together with interest at 24% per annum on demand, but the respondents/defendants did not discharge the debt inspite of repeated requests and they have paid Rs.4,000/- each for the amount due on five promissory notes and made endorsement on the back side of the promissory notes and put their signatures. Even after the time extended, they have not paid the amount with interest.

9. According to the petitioner, on 01.10.2014 the respondents have once again approached the petitioner/plaintiff and obtained a loan of Rs.9,87,000/- to meet out their urgent family expenses and to settle the domestic problems and executed three promissory notes each for Rs.2,50,000/- and one promissory note for Rs.2,87,000/- and agreed to repay the said sum together with interest at 24% per annum on demand and on the repeated demands, they have paid Rs.5,000/- each for the amount due on the four promissory notes on 21.09.2020 and thereafter they did not take care about the discharge of debt.

10. The petitioner/PW.1 further stated that he has sent a legal notice, dated 23.09.2021 to the respondents and called upon them to repay the amount and the respondents received the said notice on 25.09.2021, but they have neither paid the amount nor sent any reply. Now he came to know that the respondents have taken secret steps to dispose the properties belonged to them and to go abroad with the malafide intention to cheat the petitioner and to escape from their liability, Hence, the petition.

11. According to the respondents they never executed any promissory note in favour of the petitioner at any point of time and there is no necessity to borrow the loan from the petitioner and they have never executed the promissory notes and never made the alleged endorsements on the back side of the alleged promissory notes and the respondents stated that they have sent proper reply notice to the plaintiff and denied about the selling of property.

12. The petitioner is the plaintiff in the above suit. He has filed the above suit as against the defendants for the recovery of the amounts based on the pronotes. According to the petitioner, since the petitioner has been pressing the defendants for the payment of the amounts due to him, the defendants are making hasty arrangements to dispose off the petition mentioned immovable properties to secret the sale proceeds and if the defendants alienate the petition mentioned properties the petitioner will not be able to recover the amounts due to him and so this petition was filed to pass an order for the attachment of the petition mentioned properties before Judgment.

13. The respondents/defendants filed an undertaking affidavit on 18.07.2022 that they will not alienate item no.2 and the copy of document is filed as Ex.P1 and the respondents also filed memo to deposit the principal amount and the memo is marked as Ex.P2, the encumbrance certificate of the properties is Ex.P3, the sale deed executed by the respondents/defendants dated 13.05.2022 is Ex.P4, the legal notice to 4th respondent is Ex.P5 and another legal Notice to 1 to 4 respondents is Ex.P6 and the returned cover is Ex.P7.

14. According to the petitioner to defeat the petitioner, the respondents try to sell the properties to 3rd parties and so he filed this petition to attach the property before judgment. But the respondents stated that they are ready to deposit the principal amount and gave undertaking memo that they will not sell the item no.2. But the principal amount stated by the respondents is not accepted by the petitioner.

15. According to respondents, the petitioner is a person used to get unfilled pro-notes and like wise the present pro-notes were obtained and marked some unfilled pro-notes as Ex.R1 and R2 during the time of cross examination of PW.1 and also marked the reply notice and acknowledgment as Ex.R3&R4. The summons from the police to the respondents are also filed as documents.

16. The suit was filed for the recovery of amount of Rs.54,35,721/- together with interest. Admittedly, after the suit the respondents sold item no.1 to 3rd parties. Now the available property is only the 2nd item. The main object of Order 38 Rule 5 CPC in particular, is to prevent any defendant from defeating the realization of the decree that may ultimately be passed in favour of the plaintiff, either by attempting to

dispose of, or to remove from the jurisdiction of the court, his movables.

17. As far as this case is concerned, the encumbrance certificate of the petition mentioned properties shows that 1 item was sold by the respondents after the suit. The said sale deed also filed as document. In such circumstances, the intention of the respondents/defendants to defeat the plaintiff to recover the money cannot be entertained. Hence, as narrated above, the petitioner/plaintiff has proved his contentions through documents and evidence and so the petition is allowed and the item No 2 of the petition schedule property is order to be attached before judgment and the point is answered accordingly.

In the result, this petition is allowed and the item No. 2 of the petition schedule property is ordered to be attached before judgment. No costs.

Dictated by me to the Steno-typist, typed by her in computer, corrected and pronounced by me in the Open Court, this, the 22nd day of December, 2022.

**I Additional District and Sessions Judge,
Vellore.**

Witness examined on the side of the Petitioner:

P.W.1: Thiru P. Moorthi

Exhibits marked on the side of the Petitioner:

Ex.P1	18.07.2022	Undertaking Affidavit executed by the Respondents.
Ex.P2	05.09.2022	Memo filed on behalf of the Respondents.
Ex.P3	18.07.2022	Encumbrance Certificate.
Ex.P4	13.05.2022	Xerox copy of registerd sale deed executed by the Respondents in favour of J.N. Gowrishankar

Ex.P5	05.05.2022	Copy of Legal Notice sent by the Petitioner to the Sub Registrar, Gudiyatham.
Ex.P6	12.05.2022	Copy of Legal Notice sent by the Petitioner to the Respondents and two others.
Ex.P7	----	Unserved Postal Covers.

Witness examined on the side of the Respondents:

Nil.

Exhibits marked on the side of the Respondents

Ex.R1	04.08.2014	Xerox copies of unfilled pronotes (5 Nos.)
Ex.R2	01.10.2014	Xerox copies of unfilled pronotes (4 Nos.)
Ex.R3	01.10.2021	Reply Notice sent by the Respondents to the Petitioner.
Ex.R4	04.10.2021	Postal Acknowledgement Card.
Ex.R5	29.12.2021	Summon sent by the Inspector of Police, District Crime Branch, Vellore to the 1st Respondent.
Ex.R6	29.12.2021	Summon sent by the Inspector of Police, District Crime Branch, Vellore to the 2nd Respondent.

I ADJ., Vellore.