

In the Court of the Principal District Judge, Villupuram

**Present : Thiru.A. Manimozhi, B.A., LL.B.,
Principal District Judge.**

Thursday, the 11th day of September 2025

I.A. No.03/2025

in

O.S. No.104/2025

.....

Vijayalakshmi

... Petitioner/Plaintiff

/Vs/

1. Kavita Sri

2. Minor Hariharan

3. Minor Karthiyayani

(Minors 2 & 3 represented by
Mother Kavitha Sri)

4. Rani

... Respondents/Defendants

This Petition is coming on 11.08.2025 before me for final hearing in the presence of Tr.T.S.Subramanian, Advocate for the Petitioner and of Tr.R.Kannappan, Advocate for the Respondents and upon hearing the arguments of both side and on perusing the records and having stood over for consideration till this day, this court passed the following...

ORDER

This application has been filed by the petitioner/plaintiff under Order 38 Rule 5 r/w Section 151 of C.P.C., seeking attachment before judgment of the schedule mentioned property belonging to the deceased husband of the 1st respondent/1st defendant.

2. The case of the petitioner in brief is as follows :-

(a) Santhoshkumar had borrowed Rs.25,00,000/- from Pachaiappan, the husband of the petitioner and executed a promissory note dated 09.08.2023 in favour of the petitioner. In support of the said transaction Santhoshkumar handed over original title deeds dated 17.04.2023 and 01.10.2020. Santhoshkumar had not paid any interest. When demanded during December 2024, he had given three cheques drawn on Indus Ind Bank, Pondicherry dated 20.12.2024, 03.01.2025 & 02.02.2025 respectively for a sum of Rs.5,00,000/-, Rs.5,00,000/- and Rs.7,00,000/- respectively. He promised to pay the amount and receive back the cheques before March 2025. So the petitioner did not deposit those cheques. Santhoshkumar committed suicide on 27.02.2025 because of the pressing debts, leaving behind the respondents 1 to 4 as his legal representatives to succeed his estate/properties. After his death, without any legal knowledge, petitioner had presented the three cheques for

collection on 14.03.2025 and they were returned for the reason, "Funds Insufficient". The petitioner caused a notice dated 18.03.2025. The respondents 1 & 2 received the notice, but neither issued reply nor made any payment. Hence, the suit has been filed for recovery of money from the estate of the deceased Santhoshkumar in the hands of respondents.

(b) Now, the petitioner from reliable sources, particularly from one Gopalakrishnan, during the 3rd week of April 2025 came to know that the respondents are attempting to alienate the properties described in the petition, with an intention to defraud the claim of the petitioner. If they were allowed to do so the petitioner may not be able to realise the fruits of the decree. Hence, the petition.

3. The counter filed by the 1st respondent and adopted by the respondents 2 to 4 in brief are as follows :-

The 1st respondent's husband Santhoshkumar had not borrowed any amount as alleged by the petitioner. He had not spent any of the alleged amount for his legal necessity to the family. The alleged promissory note and the cheques must have been forged and fabricated and it must be a piece of rank forgery. The presentation of three cheques after the demise of Santhoshkumar would clearly establish the fact that the petitioner had concocted the story, which is fraudulent and illegal, and the same must

have been made to cover up her misdeeds and wrongful acts, for illegal gains. The only vague allegation made is that the respondent is trying to dispose of the property. No sufficient information has been made in support of the plea. There is no prima facie case for the petitioner. The 2nd item of the property alone is worth more than Rs.40,00,000/-. So, it is not correct to say that the petitioner even if succeeds will be deprived of the fruits of the decree. The value of the property mentioned in the petition does not reflect real value. The petitioner has no right to prevent the respondent to dispose any of the properties, simply because she has filed the suit on the alleged promissory notes and cheques. The respondent had not been in possession of any of the property documents. The petition for attachment does not arise at all and liable to be dismissed.

4. In the enquiry no witness was examined and no document was marked on either side.

5. Heard both side and perused the records.

6. The point for consideration is :-

Whether this petitioner is entitled for an order to attach the petition mentioned property as prayed for?

7. Answer to the Point :-**Submissions :**

(a) The learned counsel for the petitioner, by pointing out the averments in Para 13 of the counter, contended that it shows the intention of the respondents to dispose off the property. He would further contend that title deeds to the property had been handed over to the petitioner in support of the loan transaction, that the cheques issued by Santhoshkumar had been dishonored, and that the petitioner had received reliable information from Gopalakrishnan about the attempt being made by the respondents to sell the property. As such, the learned counsel for the petitioner prayed to pass an order for attachment.

(b) Per contra, the learned counsel for the respondents would contend that Santhoshkumar did not borrow any amount, that the promissory note is a rank forgery, that there was no direct relation between the petitioner, Santhoshkumar and the respondents, that Santhoshkumar had left lot of properties, that there is no necessity for the respondents to sell the property, that the prima facie case is not in favour of the petitioner, that the petitioner is trying to convert the alleged unsecured debt as a secured debt and that therefore the petition is liable to be dismissed.

Discussion :

8.(a) The law relating to attachment before judgment is well settled. Under Order 38 Rule 5 C.P.C., the court may order attachment, if it is satisfied that the respondent with intend to obstruct or delay the execution of any decree that may be passed, is about to dispose off or remove his property from the jurisdiction of the court. The power is drastic and extraordinary in nature and must be exercised sparingly. Mere existence of a claim or denial of liability is not sufficient. The petitioner must establish a prima facie case and further show that there is a real danger of the respondent defeating the decree by alienation or removal of the property.

(b) In *Premraj Mundra Vs. Md. Maneck Gazi, dated 29.01.1951 (AIR 1951 Calcutta 156)*, it has been held that the attachment before judgment is not to be granted merely for the asking; the plaintiff must prove that the defendant is attempting to dispose his property with intend to defeat or delay the decree. Similarly, in *Raman Tech & Process Engineering Company & Another Vs. Solankri Traders, dated 20.11.2007, (2008 (2) SCC 302)*, the Hon'ble Supreme Court cautioned that the court must balance the interests of both parties and guard against misuse of the provision as a tool of coercion.

(c) In the instant case, though the petitioner has made allegations regarding the liability of the deceased borrower and filed the suit for recovery of money, no material has been placed before this court to establish that the respondents are attempting to dispose off or remove the properties in question. The bald averments that the respondents may alienate the property is not sufficient compliance with the requirement of Order 38 Rule 5 C.P.C.

(d) In the absence of any concrete evidence of an attempt to defeat or delay execution of decree, this court is not inclined to exercise its extraordinary power of attachment before judgment. It is pertinent to mention that the original title deeds relating to the properties are with the petitioner and she has produced the same along with the plaint. The respondents have totally denied the borrowal and claim that the suit promissory note is a rank forgery. Hence, the passing of consideration has to be proved by the petitioner during the trial. Though the petitioner claims that Santhoshkumar had given three cheques in the month of December 2024, she had not deposited the same for collection immediately during the life time of Santhoshkumar. The petitioner has only averred that she came to know from one Gopalakrishnan about the arrangements being made to alienate the property. No other specific averments have been made in the

petition. Under these circumstances, this court finds that the petitioner has not prima facie proved that her claim for attachment is genuine.

(e) Therefore, this court decides that the petitioner is not entitled to an order for attachment of the property. However, the petitioner's rights in respect of the claim made in the suit are not prejudiced, and she will be entitled to seek execution against the estate of the deceased borrower in the event of decree being passed in her favour. The point is answered accordingly.

RESULT :

In the result, the petition for attachment before judgment is dismissed.

There is no order as to cost.

Order dictated by me to the Stenographer, transcribed by him in the Computer, corrected and pronounced by me, in the open court, this the 11th day of September 2025.

Principal District Judge,
Villupuram.

List of witness examined and document marked on the side of the Petitioner / Plaintiff :- - Nil -

List of witness examined and document marked on the side of the Respondents / Defendants :- - Nil -

Sd/-AM
P.D.J,
VPM.

Draft / Fair Order :
I.A.No.3/2025 in
O.S.No.104/2025
Dated: 11.09.2025