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CMA No. 109 of 2



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 01-06-2026

CORAM

THE HON'BLE MRS.JUSTICE R. KALAIMATHI

CMA No. 109 of 2026

and

CMP.No.1124 of 2026

1. U. Ravichandran
S/o.late Uthirapathi,
No 44/1, T.H Road,
Govindaraj Street,
New Washermenpet,
Chennai 600 081.

2. R. Kavitha
W/o. Ravichandran,
No.44/1, T.H.Road,
Govindaraj Street,
Newwashermanpet,
Chennai - 600 081.

..Appellant(s)

Vs.

1. J. Princy,
W/o. Michael Raj,
No.111, T.H Road,
Govindaraj Street,
Newwashermanpet,
Chennai - 600 081.
2. A. Seenipushpaleela
W/o. Jayarajan (late),
Plot No.M1, Horizon Apartment,
Door NO.1030, T.H. Road,
Kaladipet,
Thiruvotriyur,
Chennai - 600019.
3. The Sub Registrar, Royapuram
No.535, Thiruvotriyur High Road,
Near Maharani Theatre,
Old Washermanpet,
Chennai - 600 021.

..Respondent(s)



Prayer: Civil Miscellaneous Appeal is filed under Section XLII Rule 1(q) of the Civil Procedure Code, 1908, to set aside the Order passed in IA.No.3 of 2024 in OS.No.6643 of 2024 dated 06.10.2025 under order XXXVIII rules 5 of CPC.

For Appellant(s) : Ms.P.Uma

For Respondent(s): M/s.K.Bijai Sundar for R1 and R2
Mr.P.Gurunathan for R3

JUDGMENT

This Civil Miscellaneous Appeal has been preferred by the defendants no.1 and 2 against the Order passed in I.ANo.3 of 2024 in O.S.No.6642 of 2024 dated 06.10.2025 on the file of the II- Additional Judge, City Civil Court, Chennai.

2. Parties are indicated herein as per their litigative status and ranking before the Trial Court.

3. According to the petitioners No.1 and 2 / plaintiffs No.1 and 2, the respondents no.1 and 2 / defendants no.1 and 2 claimed that they are the absolute owners of the land and building bearing No.44part, New No.135part, T.H.Road New Washermanpet, Chennai 600 081, comprised in Old R.S.No.4080/2part and as per old patta, R.S.4080/7 and as per New Patta, T.S.No.4080/19, Block No.79, Ward No.1, situated at Tondairpet Village, Tondairpet Town part 2, Tondairpet Taluk, Chennai measuring about 492 sp.ft. and situate within the Sub Registration District of Royapuram and



Registration District of North Chennai.

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3.1. Sale price for the suit property was fixed as Rs.56,58,000/- and the respondents / defendants informed them that the suit property was mortgaged with Bee Secure Home Finance Private Ltd., (INCRED HOUSING FINANCE PRIVATE LIMITED) and respondents / defendants were in need of Rs.7,00,000/- (Rupees Seven Lakhs) to redeem the mortgage from the above said Company. The respondents no.1 and 2/defendants further demanded a sum of Rs.3,00,000/- by way of cash to meet out other hand loans borrowed by them. The respondents no.1 and 2 / defendants requested 1st plaintiff to transfer the loan amount directly to Bee Secure Home Finance Private Ltd., (INCRED HOUSING FINANCE PRIVATE LIMITED).

3.2. First respondent's mother, 2nd respondent / Plaintiff no.2 Mrs.Seeni Pushpa Leela entered into an agreement for sale on 31.05.2024 with the respondents 1 and 2 / defendants. The 1st plaintiff directly transferred a sum of Rs.7,00,000/- (Rupees Seven Lakhs) from her bank account to IDFC bank account No.100366644034 which is the bank account of Bee Secure Home Finance Private Ltd., (INCRED HOUSING FINANCE PRIVATE LIMITED) and paid a sum of Rs.3,00,000/- (Rupees Three Lakhs) by way of cash to the respondents no.1 and 2 / defendants through her mother Mrs.Seeni Pushpa Leela. Time to complete the sale was stipulated as three months.

3.3. Mortgage amount towards full and final settlement was transferred



by the 1st plaintiff to Bee Secure Home Finance Private Ltd., (INCRED HOUSING FINANCE PRIVATE LIMITED) on behalf of the respondents no.1 and 2 /

defendants. The respondents No. 1 and 2 / defendants received the original sale deed and other related documents from Bee Secure Home Finance Private Ltd. and did not hand over the same to her as agreed in the sale agreement. Instead, respondents no.1 and 2 demanded a further sum of Rs.10,50,000/- in cash in order to hand over the original sale deed and other related documents.

3.4. She had no choice and paid sum of Rs.10,50,000/- (Rupees Ten Lakhs and Fifty Thousand) to the respondents no.1 and 2 /defendants by way of cash on 26.05.2024 and after receipt of cash from the respondents no.1 and 2 / defendants handed over the original sale deed (Document no.217 / 2001) of Sub Registrar Office, Royapuram, North Chennai and also handed over the original patta, downloaded patta, original mortgage deed and original receipt executed by Bee Secure Home Finance Private Ltd. The respondents no.1 and 2 / defendants received cash from her and executed a receipt on the reverse side of the first page of the sale agreement dated 31.05.2024. As they did not come forward to execute the sale deed or to return the advance amount, suit for specific performance was laid.

3.5. The Respondents No. 1 and 2 have intended to cheat her and sell away the suit property and she will not be able to realise the decree amount if they fly away from Chennai. Hence, it is just and proper to direct the



respondents No. 1 and 2 to furnish security to the extent of the suit claim and if they fail to furnish security, to attach the immovable property of the

respondents no. 1 and 2 as mentioned supra.

4. Per contra, the respondents 1 and 2 / defendants would inter-alia contend by filing counter that the 2nd plaintiff is the mother of the 1st plaintiff has to be proved by the 1st plaintiff. First plaintiff has no right to file the suit. On 31.05.2024, the 2nd petitioner/ plaintiff entered into sale agreement with the respondents/ defendants for an amount of Rs.56,58,000/- and the 2nd petitioner / plaintiff paid an amount of Rs.3,00,000/- (Rupees Three Lakhs) in cash and the balance amount of Rs.46,58,000/- has to be paid within 60 days from the date of agreement. Instead of Rs.53,58,000/-, it has been mistakenly mentioned as Rs.46,58,000/-. The respondents no.1 and 2 / defendants were living along with their family members in Chennai. The plaintiffs have no right to claim any relief before the Trial Court directing Respondents 1 and 2 to furnish security to the extent of the suit claim.

5. On perusal of the docket entries of the impugned interim application, the application was taken on file on 22.11.2024. Notice has been ordered to the respondents and to furnish security on 19.12.2024. The respondents no.1 and 2 / defendants entered appearance through their Counsel by filing vakalat and the matter was posted for counter on 22.01.2025. On the next hearing date, counter of the respondents no.1 and 2 was filed and the matter was posted for enquiry on 10.02.2025. After so many adjournments, on



18.09.1995, the matter was posted for furnishing of security and the matter was adjourned to 06.10.2025. On 06.10.2025, it has been ordered by the Trial Court that since the security was not furnished by the respondents, order of attachment was passed (attached by 13.10.2025).

6. The aforestated Order dated 06.10.025 is sought to be challenged in this Civil Miscellaneous Appeal.

7. On a careful perusal of the record, it appears that the 2nd plaintiff Mrs. Seeni Pushpa Leela entered into an agreement for sale on 31.05.2024 with the 1st respondent - R. Kavitha and the 2nd respondent - G. Ravichandran. Admittedly, the 1st petitioner / 1st plaintiff is not a party to the agreement. On the other hand, she would aver that in the affidavit enclosed with the interim application that she paid some amount by way of cash to the respondents. The respondents would stoutly contend that the suit is not maintainable as against the 1st petitioner/1st plaintiff. Those details have to be gone into during the course of trial.

8. For better understanding, Order XXXVIII, Rule 5 CPC is extracted hereunder:-

“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

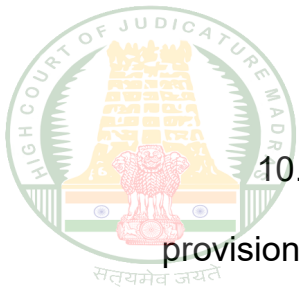
(b) is about to remove the whole or any part of his property from the local limits of the jurisdiction of the Court, the Court may direct the defendant, within a time to be fixed by it, either to furnish security, in such sum as may be specified in the order, to produce and place at the disposal of the 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.

1[(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. The object of attachment before judgment is to prevent a decree from becoming infructuous. The essential requirement to invoke this Section are i) owner of the property is about to dispose of the whole or any part of his property, ii) owner of the property is about to remove the whole or any part of his property from the local limits of the jurisdiction of this Court.



10. Whether the impugned order is passed in due compliance with the provision of Order XXXVIII Rule 5 is the core question.

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11. The petitioner would aver that they have entered into sale agreement with the respondents no.1 and 2 / defendants and they have paid part of the consideration and the respondents no.1 and 2 are likely to dispose of the property and they may fly away from Chennai. The trial Court after taking the interim application on its file has ordered to furnish security to the extent to the suit claim. Though the respondents no.1 and 2 on the very next hearing dated 22.01.2025 chose to file their counter, they did not furnish security as called for by the trial Court. After some nine months, again the trial Court has ordered for furnishing security and posted the matter on 06.10.2025. As the security is not furnished by the respondent no.1 and 2 / defendants, order of attachment was passed. As the impugned order has been passed by the Trial Court in due compliance to the Order XXXVIII Rule 5 CPC, this Court does not find any perversity or infirmity in the Order of the Trial Court passed in I.A.No.3 of 2024 in O.S.No.6643 of 2024 dated 06.10.2025. This Court also does not find any good reason to upset the finding of the Trial Court.

12. Based on the aforestated narrative, this Civil Miscellaneous Appeal stands dismissed. There is no order as to costs. Consequently, connected Civil Miscellaneous Petition stands closed. The Trial Court shall take all



effective steps to dispose of the suit preferably within a period of eight months from the date of receipt of a copy of this Judgment.

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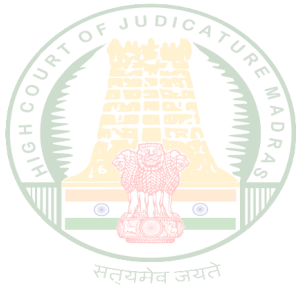
01-06-2026

Index: Yes/No
Speaking/Non-speaking order
Neutral Citation: Yes/No

MAC

To

1. The II- Additional Judge, City Civil Court,
Chennai.
2. The Sub Registrar, Royapuram
No.535, Thiruvotriyur High Road,
Near Maharani Theatre,
Old Washermanpet,
Chennai - 600 021.



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R.KALAIMATHI, J.

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