

C.M.A.(MD)No.503 of 2026

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
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Reserved on : 15.06.2026

Pronounced on : 31.07.2026

CORAM:

THE HON'BLE MR.JUSTICE K.MURALI SHANKAR

C.M.A.(MD)No.503 of 2026
and
C.M.P.(MD)No.5155 of 2026

A.Ramesh

... Appellant/Respondent/
Defendant

Vs.

R.Sivakami

... Respondent/Petitioner/
Plaintiff

Prayer : This Civil Miscellaneous Appeal filed under Section 104 and Order 43 Rule 1 of Code of Civil Procedure, to call for the records of the trial Court and set aside the fair and decreetal order in I.A.No.1 of 2025 in O.S.No.172 of 2025 dated 03.03.2026 on the file of the District and Sessions Judge, Karur by dismissing the petition.

For Appellant : Mr.S.Arul Murugan

For Respondent : No appearance



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JUDGMENT

The Civil Miscellaneous Appeal is directed against the order passed in I.A.No.01 of 2025 in O.S.No.172 of 2025 dated 03.03.2026 on the file of the District and Sessions Court, Karur, in attaching before judgment of the properties mentioned therein, under Order 38 Rule 5 of the Code of Civil Procedure.

2. The appellant is the respondent / defendant and the respondent / petitioner / plaintiff filed a suit in O.S.No.172 of 2025 for recovery of Rs.38,49,000/- with interest and costs due on the promissory note alleged to have been executed by the appellant / defendant in favour of the respondent / plaintiff.

3. For the sake of convenience and brevity, the parties hereinafter will be referred to as per their status / ranking in the trial Court.

4. The plaintiff filed an application invoking Order 38 Rule 5 C.P.C. seeking attachment before judgment of the properties mentioned therein



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by alleging that she lent a sum of Rs.30 lakhs to the defendant on 21.09.2023 and the defendant received the amount and agreed to repay the same with interest at 18% per annum and executed a promissory note therefor; that the plaintiff demanded the repayment of the loan with interest due on 24.11.2024 but the defendant failed to pay any amount nor offered any valid explanation and despite repeated demands, the defendant evaded payment and that the plaintiff recently came to know that the defendant is trying to sell the suit mentioned properties, wherein, item Nos.1 to 13 originally belonged to the defendant by way of ancestral properties having been obtained by him through an registered partition deed dated 12.11.2013.

5. The defence of the defendant is that himself and the plaintiff's husband were running a financial company in the name of Aiswaryam Finance; that a difference of opinion has arisen between them; that the defendant's 10 signed blank promissory notes, bank passbook, bank cheques and PAN card were found missing from his car and hence, a complaint came to be lodged on 29.11.2022 with Nallipalayam Police Station; that the defendant came to understand that the plaintiff's husband



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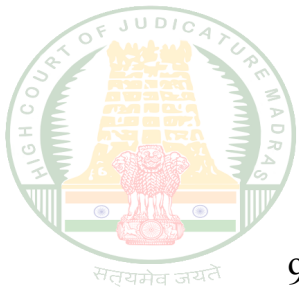
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with malicious intent of extorting money through the bank cheques and promissory notes that he had stolen from the defendant has initiated proceedings through his wife / plaintiff herein, son and by himself and that since there are no merits in the petition, the same is liable to be dismissed.

6. During enquiry, the plaintiff exhibited 3 documents as Ex.P1 to Ex.P3 and the defendant exhibited 13 documents as Ex.R1 to Ex.R13.

7. The learned District and Sessions Judge, Karur, after enquiry, passed the impugned order dated 03.03.2026 allowing the petition and ordered attachment of the entire 1 to 8 and 10 to 13 items of the petition mentioned properties and an extent of 1.01.27 acres in S.F.No.89 as per partition deed dated 12.11.2013 available in 9th item. Aggrieved by the impugned order, the defendant has preferred the present appeal.

8. Despite service of notice on the respondent / plaintiff as well as on the counsel appearing for the respondent / plaintiff before the trial Court, the respondent / plaintiff failed to enter into appearance.



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9. The learned counsel appearing for the appellant / defendant would contend that neither the plaintiff has stated nor the trial Court has observed that the defendant with an intent to obstruct or delay the execution of decree that may be passed against him has been attempting to dispose of the whole or any part of the properties; that the learned trial Judge, after enquiry, without directing the defendant to furnish security, has directly passed an order attaching the properties; that since the impugned order came to be passed in violation of Rule 5 of Order 38 C.P.C., the same is void and that therefore, the impugned order is liable to be set aside.

10. The learned counsel appearing for the appellant / defendant placed reliance on the judgment of the Hon'ble Division Bench of this Court in ***M.Padmini Vs. M.Anandhan*** reported in **2014 (3) CTC 792** and the relevant portion is extracted hereunder:

“13. It is a trite proposition of law that merely making a bald allegation that the Plaintiff is given to understand that the Defendant is going to sell the property through real estate agents may not be sufficient and there must a specific averment or allegation made. In the absence of any specific allegation it is well settled by the

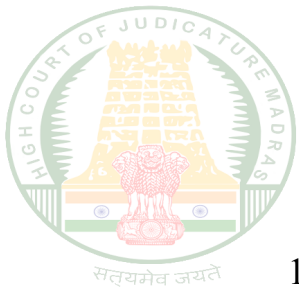


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Hon'ble Apex Court as well as by this Court that extraordinary remedy should not be granted. It is true that the Court is vested with powers to exercise power under Order 38, Rule 5, C.P.C. But, it remains to be stated that if it is a fit case, it should be exercised. It is an extraordinary power and such power should not be exercised mechanically. The Courts have held that it must be used strictly in accordance with the rules. The purpose of Order 38, Rule 5, is not to convert an unsecured debt into a secured debt."

11. It is settled law that an order of attachment before judgment is an extraordinary and drastic remedy and that the power under Order XXXVIII Rule 5 C.P.C. cannot be exercised merely because a money suit has been instituted or on a mere apprehension that the plaintiff may find it difficult to realise the fruits of the decree that may ultimately be passed in his favour. Before invoking the power under Order XXXVIII Rule 5 C.P.C., the Court must record its satisfaction, on the basis of the pleadings and materials available on record, 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 the whole or any part of his property or is about to remove the same from the local limits of the jurisdiction of the Court.

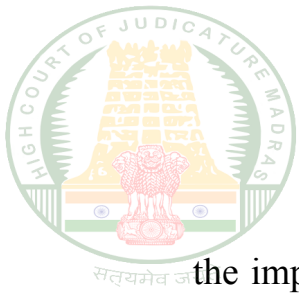


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12. In the impugned order, the learned trial Judge has observed that the plaintiff has made out a prima facie case in his favour and that, if the defendant succeeds in alienating the properties, the plaintiff may not be able to realise the fruits of the decree that may be passed in his favour and on that basis, has held that the plaintiff is entitled for attachment of petition mentioned properties as a security for the suit amount. As rightly pointed out by the learned counsel appearing for the appellant / defendant, it is pertinent to note that the impugned order does not contain even a whisper that the defendant was attempting to dispose of or remove his properties with an intention of obstructing or delaying the execution of the decree and in the absence of such a material finding, the very foundation for invoking Order 38 Rule 5 C.P.C. is shaking.

13. As already pointed out, the learned trial Judge has ordered attachment of items 1 to 8 and 10 to 13 and a specific extent in 9th item, practically entire properties shown in the petition for attachment before judgment. The learned trial Judge has also not undertaken any steps to ascertain the value of the properties or considering whether attachment of all the properties was at all necessary to secure the suit claim. Moreover,

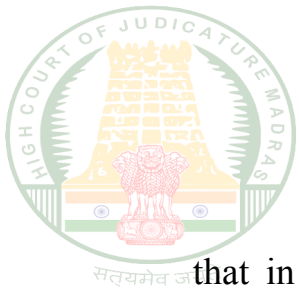


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the impugned order does not disclose that the Court had applied its mind to the proportionality between the value of the properties sought to be attached and the amount claimed in the suit and whether the attachment order was excessive. It is evident from the records that the learned trial Judge has not offered any opportunity to the defendant to furnish security or to show cause as contemplated under Order 38 Rule 5 C.P.C. and that the learned trial Judge, after enquiry, has straightaway directed the attachment of the entire properties. In the absence of the satisfaction mandated under Order 38 Rule 5 C.P.C. and compliance with the procedure contemplated thereunder, the order of attachment cannot legally be sustained.

14. It is evident from the records that in pursuance of the directions of this Court, the defendant filed an affidavit undertaking in the connected case in C.M.A.(MD)No.354 of 2026 that until the final judgment of the suit in O.S.No.137 of 2025 pending on the file of the District and Sessions Court, Karur, is pronounced or until this Court otherwise directs, he will not sell or encumber / mortgage or create any third party interest over the schedule of properties mentioned in I.A.No.2 of 2025. It is not in dispute



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that in pursuance of the interim order of this Court, the defendant has furnished security for the suit claim.

15. In view of the subsequent development, no useful purpose will be served by remanding the matter back to the trial Court for fresh consideration but at the same time, the impugned order, having been passed in violation of the mandatory requirements as contemplated under Order 38 Rule 5 C.P.C., cannot legally be sustained. Moreover, since the defendant has furnished security in terms of the interim order, the same itself is sufficiently protects the interest of the plaintiff. Consequently, continuation of the undertaking furnished by the defendant restraining alienation or encumbrance of the petition-mentioned properties is no longer necessary.

16. In the result, this Civil Miscellaneous Appeal is allowed and the impugned order of attachment before judgment dated 03.03.2026 passed in I.A.No.1 of 2025 in O.S.No.172 of 2025 is hereby set aside. In order to safeguard the interest of the respondent / plaintiff pending disposal of the appeal, it is directed that the security furnished by the appellant /



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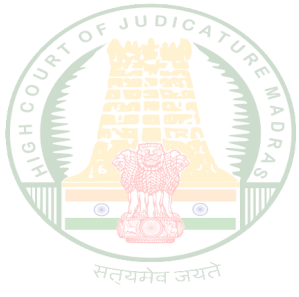
defendant pursuant to the interim order of this Court shall continue to remain in force till the disposal of the suit or until the further orders of the trial Court. Consequently, connected Miscellaneous Petition is closed. No costs.

31.07.2026

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Index :yes/No
Internet:yes/No
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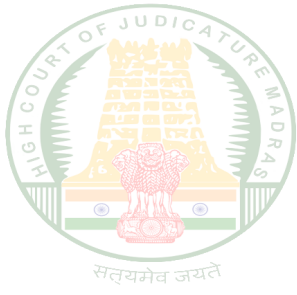
- 1.The District and Sessions Judge,
Karur.
- 2.The Record Keeper,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.



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K.MURALI SHANKAR,J.

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Pre-Delivery Judgment made in
C.M.A.(MD)No.503 of 2026
and
C.M.P.(MD)No.5155 of 2026

Dated : 31.07.2026