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C.R.P.Nos.6447 and 5651 of 2025

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 21.01.2026

PRONOUNCED ON : 30.01.2026

CORAM

THE HONOURABLE MR.JUSTICE S.SOUNTHAR

C.R.P.Nos.6447 and 5651 of 2025
and C.M.P.Nos.31882 and 28277 of 2025

T.Senthilvel

... Petitioner (in both CRPs)

vs.

1.K.Saminathan

... Respondent (in both CRPs)

2.Palaniammal

3.S.Naveenkumar

4.S.Nithasree

... Respondents (in CRP.No.5651/2025)

PRAYER in CRP.No.6447/2025: Civil Revision Petition is filed under Article 227 of the Constitution of India, to set aside the fair and final order passed in I.A.No.02 of 2024 in O.S.No.874 of 2024 dated 26.08.2025 on the file of the Principal District Judge, Tiruppur made by allowing the Civil Revision Petition.

PRAYER in CRP.No.5651/2025: Civil Revision Petition is filed under Article 227 of the Constitution of India, to set aside the fair and final order passed in I.A.No.04 of 2025 in I.A.No.02 of 2024 in O.S.No.874 of 2024 dated 26.08.2025 on the file of the Principal District Judge, Tiruppur made by allowing the Civil Revision Petition.



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For Petitioner	: Mr.N.Umapathi (in both CRPs)
For R1	: Mr.R.Prabakar (in CRP.No.6447/2025)
For R1	Mr.P.Kalimuthu (in CRP.No.5651/2025)
For R2	: Mr.K.T.S.Sivakumar (in CRP.No.5651/2025)

COMMON ORDER

The Civil Revision Petition in C.R.P.No.5651 of 2025 has been filed challenging the order passed by the Principal District Judge, Tiruppur in I.A.No.4 of 2025 in I.A.No.02 of 2024 in O.S.No.874 of 2024, dated 26.08.2025 allowing the application filed by the respondent/defendant seeking to raise the attachment passed in I.A.No.2 of 2024.

2. The Civil Revision Petition in C.R.P.No.6447 of 2025 has been filed challenging the order passed by the Principal District Judge, Tiruppur in I.A.No.02 of 2024 in O.S.No.874 of 2024, dated 26.08.2025 dismissing the I.A.No.2 of 2024 filed by the petitioner seeking attachment before judgment.



3. The petitioner herein filed a suit for recovery of advance amount of Rs.98,00,000/- based on the alleged Sale Agreement dated 04.09.2024 entered between petitioner and the 1st respondent.

4. The 1st respondent herein contested the suit by denying execution of the Suit Sale Agreement. It is his case that Suit Sale Agreement is a forged document and hence, the prayer of the petitioner for recovery of the amount was not maintainable. However, in the written statement, the 1st respondent raised a plea that he received a loan of Rs.40,00,000/- from the plaintiff and as a security for the same, certain documents were deposited with the plaintiff and he also signed blank stamp papers and the same could have been used to prepare the Suit Sale Agreement. Pending suit, an application has been filed by the petitioner seeking attachment before judgment of the agreement mentioned property described as 'A' Schedule to the I.A.No.2 of 2024 and another property belonged to 1st respondent described as suit 'B' Schedule.

5. The suit was filed on 04.11.2024 and an order of attachment before judgment was passed on 28.03.2025 in I.A.No.2 of 2024 as the 1st



respondent/1st defendant failed to furnish any security inspite of sufficient opportunity. Thereafter, I.A.No.4 of 2025 has been filed by the 1st respondent seeking to raise attachment before judgment on the ground that his share in the subject property was sold to his mother-Palaniammal even prior to the attachment. Accepting the said plea, the Trial Court ordered raising of attachment in I.A.No.4 of 2025 and consequently, dismissed I.A.No.2 of 2024 which was filed for attachment before judgment. Aggrieved by the said two orders, these two revisions were filed by the petitioner/plaintiff.

6. The learned counsel appearing for the petitioner would contend that under Order 38 Rule 9 of the Code of Civil Procedure, attachment before judgment can be raised only on two contingencies and the said two contingencies are not satisfied in this case and therefore, the order impugned in these revisions are liable to be set aside. In support of the said contention, the learned counsel appearing for the petitioner relied on the judgment of this Court in *N.R.Thiruvengadam vs. Kaliannan alias Chinna Gounder* reported in *1996 LW 672* and *Subbaih Thevar vs. Arunachalam* reported in *2009-5- L.W.831*.



7. Per contra, the learned counsel appearing for the 1st respondent vehemently contended that even before passing of attachment order, the share of the 1st respondent in the suit property was transferred in favour of the 1st respondent's mother-Palaniammal under the Settlement Deed dated 21.11.2024 and hence, the Trial Court ought not have attached the property which did not stand in the name of the 1st respondent/defendant on the date of attachment. He further submitted that the petitioner claim that a sum of Rs.98,00,000/- was paid to 1st defendant by way of cash transaction and the same needs to be investigated as per the provisions of Income Tax Act, 1961. In such circumstances, the suit filed by the petitioner itself is liable to be dismissed.

8. Order 38 Rule 9 of the Code of Civil Procedure reads as follows:-

“9. Removal of attachment when security furnished or suit dismissed.- Where an order is made for attachment before judgment, the Court shall order the attachment to be withdrawn when the defendant furnishes the security required, together with security for the cost of the attachment, or when the suit is dismissed.”



9. A perusal of the same would indicate that the defendant who suffered attachment before judgment is entitled to maintain an application for raising of attachment only on two contingencies. (i) Where he furnishes required security together with security for the costs of the attachment. (ii) Where the suit is dismissed.

10. Admittedly, in the case on hand, the 1st respondent/defendant neither furnished the security as required nor the suit got dismissed. Therefore, it is patently clear that both the contingencies mentioned under Rule 9 of Order 38 are not in existence and hence, the petition filed by the 1st respondent for raising of attachment appears to be not maintainable.

11. In ***N.R.Thiruvengadam*** case cited supra, while explaining the scope of Order 38 Rule 9 of the Code of Civil Procedure, this Court observed thus:-

“7. Thus, the provision made in O.38, R.9. C.P.C is a beneficial one intended to give an opportunity to defendants who despite an order of attachment passed against them are in a position to offer security for safeguarding the



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claims of a plaintiff made in the suit and pray for a withdrawal of the order attachment made already either over their other assets or moneys.”

12. In the case on hand, the 1st respondent/defendant neither offered security as required nor the main suit got dismissed. In such circumstances, the ingredients of Rule 9 of Order 38 of Code of Civil Procedure are not at all satisfied. Hence, C.R.P.No.5651 of 2025 stands allowed. I.A.No.4 of 2025 filed by the 1st respondent stands dismissed.

13. It is seen from the records that the properties sought to be attached were jointly allotted to the 1st respondent and his mother-Palaniammal under ‘D’ Schedule to the Partition Deed dated 23.06.1982. Therefore, it is clear that the 1st defendant is entitled to only 1/2 share in the properties attached by the Trial Court. When the 1st respondent is entitled to only 1/2 share in the properties sought to be attached, the Trial Court committed an error in attaching the entire property including the other 1/2 share belonged to his mother-Palaniammal.



14. Now, as per the stand of the 1st respondent in the petition to raise attachment, he settled his share in the subject properties in favour of his mother even prior to attachment on 21.11.2024. The 1st respondent has not filed the copy of the Settlement Deed executed by him in favour of his mother-Palaniammal. However, he only produced the Encumbrance Certificate concerning the subject property as Ex.P6.

15. A perusal of the same would indicate that he settled 21.13 cents of land in Survey No.202/3C1A1A1 and 3.13 cents of land in Survey No.202/3C1A1A1. The extent mentioned in the Encumbrance Certificate roughly represents 1/2 share of the 1st respondent. However, the boundaries mentioned in Encumbrance Certificate are not tallying with the boundaries mentioned in the Partition Deed. It is also not clear, whether the 1st defendant settled his undivided 1/2 share in favour of Palaniammal or settled an extent with specific boundaries in the absence of production of Settlement Deed dated 21.11.2024.

16. The learned counsel appearing for the 2nd respondent, mother of the 1st respondent, who got impleaded in C.R.P.No.5651 of 2025, submits



that the entire property belongs to her and therefore, the Trial Court ought not have attached the property.

17. The 2nd respondent has not filed any claim seeking raising of attachment before the Trial Court. If the 2nd respondent files any claim petition seeking raising of attachment, it can be independently considered by the Trial Court on its own merits. However, in the case on hand, the petition for raising attachment was filed only by the 1st respondent, who can maintain application only on two grounds mentioned above and both the grounds are not available in this case.

18. This Court is not in a position to come to a definite conclusion that the 1st respondent settled his undivided 1/2 share in favour of his mother-2nd respondent even prior to the attachment. In the absence of production of Settlement Deed executed by him, we cannot come to a definite conclusion based on the encumbrance certificate produced before this Court. In any event, the Trial Court committed an error in attaching the entire property including the undivided 1/2 share of the 2nd respondent. Therefore, this Court feels that the matter requires fresh consideration by the Trial Court.



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19. Both the petitioner and 1st respondent are at liberty to file additional pleadings and lead further evidence in support of their case.

20. In view of the discussion made above, C.R.P.No.6447 of 2025 stands allowed and order passed in I.A.No.2 of 2024 is set aside. The matter is remitted back to Trial Court with direction to consider I.A.No.2 of 2024 afresh. Both the parties are at liberty to lead further evidence. The I.A.No.2 of 2024 shall be considered afresh and disposed of within a period of four weeks from the date of receipt of copy of this order. The second respondent is also at liberty to file a claim petition. If any such petition is filed, the same shall be considered by the Trial Court on its own merits. No costs. Consequently, the connected civil miscellaneous petitions are closed.

21. **In Nutshell:-**

(i) C.R.P.No.5651 of 2025 stands allowed and the order passed by the Trial Court in I.A.No.4 of 2025 in I.A.No.2 of 2024 in O.S.No.874 of 2024, dated 26.08.2025 is set aside.



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(ii) C.R.P.No.6447 of 2025 stands allowed and the order passed by

the Trial Court in I.A.No.2 of 2024 in O.S.No.874 of 2024, dated 26.08.2025

is set aside and the matter is remitted back to the file of the Trial Court with

a direction to consider I.A.No.2 of 2024 afresh and dispose of the same,

within a period of four weeks from the date of receipt of copy of this order

as stated above.

30.01.2026

Index :Yes / No

Speaking order :Yes / No

Neutral Citation :Yes / No

dm

To

The Principal District Judge,
Tiruppur.



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S.SOUNTHAR, J.

dm

Pre-delivery common order made in
C.R.P.Nos.6447 and 5651 of 2025

30.01.2026