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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON: 28.10.2026

PRONOUNCED ON: 04.11.2026

CORAM

THE HON'BLE MR. **JUSTICE K.KUMARESH BABU**

WP(MD) No. 19335 of 2026

CNR:{HCMD010917072026}

Case QR

T.Kuthalingam

..Petitioner(s)

Vs

1. The District Registrar,
   Office of the District Registrar Office,
   Tenkasi Registration District,
   Tenkasi District-627 811.

2. The Sub Registrar,
   Office of the Surandai Sub Registrar Office,
   Surandai, Tenkasi District 627 854.

3. Indian Bank,
   Rep by its Authorized Officer,
   No.68A, 184, Kannimaramman Kovil St,
   Tenkasi Branch, Tenkasi District 627 811.

4. C.Arulraj

5. M.Jayaraj

..Respondent(s)

PRAYER: Writ Petition, filed under Article 226 of the Constitution of India, praying this court to issue a Writ of Certiorarified Mandamus calling for the records to the impugned refusal check slip issued by the 2nd respondent in RFL/Surandai/109/2026 dated 02.06.2026 to quash the same as illegal, arbitrary and unconstitutional and direct the 2nd respondent to register the petitioner's settlement deed dated 02.06.2026

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relating to the property measuring to an total extent of 24 cents in Survey No.407B/2, Re-Surevy No.407B/2A1 Surandai-1 Village, Veerakelamputhur Taluk, Tenkasi District and consequential direction to the 2nd respondent to efface/delete the adverse attachment entry of the 5th respondent relating to the above said property in the Encumbrance Certificate within the limited time in the light of the order passed by the Hon'ble Division Bench of this High Court in W.P.(MD)No.674 of 2023 dated 31.08.2023.

For Petitioner	:Mr.I.Abrar Mohamed Abdullah
For R1 and R2	:Mr.S.Venkatesh Additional Government Pleader
For R3	:Mr.C.Karthik
For R4	:No appearance
For R5	:Mr.A.Balakrishnan

ORDER

The present Writ Petition has been filed in the nature of a Writ of Certiorarified Mandamus challenging the impugned refusal check slip issued by the second respondent, dated 02.06.2026 and for a consequential direction to direct the second respondent to delete the adverse attachment entry of the fifth respondent relating to the subject property in the encumbrance certificate.

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2. Heard the learned Counsel on either side.

3. The learned Counsel for the petitioner would submit that the fourth respondent had owned immovable properties, which were mortgaged with the third respondent through execution of memorandum of deposit of title deed. The said loan was declared as non-performing asset and proceedings were issued under the SARFAESI Act, in which the properties were brought under auction and the petitioner had purchased the same by offering a valid sale consideration. He would further submit that pursuant to which, a sale certificate was also issued and he is in peaceful possession and enjoyment of the property.

4. While that be so, a settlement deed was sought to be executed by the petitioner in favour of his son and when the same was presented for registration, the impugned refusal check slip had been issued by indicating that the property was the subject matter of an attachment in a civil suit. He would further submit that the properties, which were the subject matter of mortgage by way of memorandum of deposit of title deeds, had been sold in a public auction and that there would be a priority of claim over the said property, which had been reiterated by Hon'ble Division Benches of this Court and had relied upon the following

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judgments of the Hon'ble Division Bench of this Court in support of his contentions:

1)***W.P.(MD)No.674 of 2023***, dated 31.08.2023 in the case of ***Cholamandalam Investment and Finance Company Limited -vs.- District Registrar, Registration Department and others;***

2)***W.P.(MD)No.28500 of 2022***, dated 02.08.2023 in the case of ***M/s.Siva Automative Trading Private Limited -vs.- the Sub Registrar, Othakadai Sub Registrar Office and others***; and

3) ***2023 SCC OnLine Mad 8940*** in the case of ***Cholamandalam Investment and Finance Company Limited -vs.- District Registrar, Registration Department and others***.

5. Hence, he would submit that the impugned refusal check slip issued for a property which was the subject matter of the sale certificate that had been registered with the Registration Department by relying upon an earlier mortgage was wholly ill-founded and therefore, seeks indulgence of this Court.

6. The learned Counsel for the 5th respondent would submit that the fourth respondent had borrowed money from the fifth respondent under a

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promissory note and that the fifth respondent had instituted a suit against the fourth respondent, in which a decree came to be passed and further, *inter alia* pending the suit, an interim attachment had also been made. He would submit that the subject property was also the subject matter of execution petition and in the said execution petition, two cents of lands have also been sold to a third party for a full satisfaction of the decreetal amount and in that regard, he would submit that a third party interest had been created and the said third party also ought to have been made as a necessary party in this Writ Petition. He would submit that therefore, the petitioner cannot claim any exclusive right in execution of a settlement deed in favour of his son and hence, he prays to dismiss this Writ Petition.

7. The learned Government Advocate submit that since there is a pre-existing mortgage, the petitioner cannot be permitted to execute a document, which would create multiplicity of proceeding and hence, prays this Court to uphold the order impugned in this Writ Petition.

8. I have carefully considered the submissions made on either side and perused the materials available on record.

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9. There is no dispute as regards to the mortgage created by the fourth respondent in favour of the third respondent. The said mortgage was supported by a deposit of title deed on various dates starting from 2009 to 2017. This had created a pre-existing right with the third respondent. Even though the contention of learned Counsel for the petitioner that there would be priority of right of a mortgaged property in view of Section 26E of the SARFAESI Act, as interpreted by the Hon'ble Division Benches of this Court in the judgments relied upon by the petitioner, referred supra, it is further to be noted that an interim attachment in a pending civil suit will also not extinguish a pre-existing right created by a registered document. This is explicit from the provision of Section 64(2) of CPC r/w Order 38 Rule 10 CPC.

10. Hence, this Court is of the view that the third respondent Bank, which had a pre-existing right by way of memorandum of deposit of title deeds in support of its mortgage, read with Section 26E of the SARFAESI Act, has priority. It is therefore discernible that the order of attachment relied upon by the second respondent for issuing the impugned refusal check slip is wholly erroneous.

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11. That apart, admittedly, when the suit had been decreed *ex parte* and an execution petition had also been terminated, the sale of a portion of the property cannot whittle out the pre-existing right with the third respondent in view of the discussion supra. Further, it is to be noted that the suit was based upon a promissory note executed on 01.07.2018. From the decree of the Court below, it could also been seen that the plaint was presented on 13.08.2018, wherein, the fourth respondent remained *ex parte*. Further, it is also to be noted that the suit had been filed within a period of 43 days from the date of execution of the promissory note and the conduct of the fourth respondent remaining *ex parte* would only drive this Court to the conclusion that the suit was filed in a collusive manner only to defeat the rights of the third respondent. It is for the third party to work out his remedy against the fourth and fifth respondents, as this Court is of the view that the sale in the execution proceeding had also been only pursuant to a collusive suit filed by the fifth respondent as against the fourth respondent. In that regard, this Court has no hesitation in setting aside the order impugned in this Writ Petition.

12. Accordingly, this Writ Petition stands allowed and the impugned refusal check slip issued by the second respondent, dated 02.06.2026 is set aside and the petitioner is directed to re-present the

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document and on such re-presentation, the second respondent is directed to proceed with the registration of the document, if it is otherwise in order. There shall be no order as to costs.

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

cmr

To

1. The District Registrar,
   Office of the District Registrar Office,
   Tenkasi Registration District,
   Tenkasi District-627 811.

2. The Sub Registrar,
   Office of the Surandai Sub Registrar Office,
   Surandai, Tenkasi District 627 854.

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K.KUMARESH BABU, J.
cmr

order made in
W.P.(MD)No.19335 of 2026

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