

A.No.1582 of 2025

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 16.04.2025

Pronounced on : 21.04.2025

CORAM:

THE HON'BLE MR. JUSTICE ABDUL QUDDHOSE

A.No.1582 of 2025

in

E.P.No.68 of 2024

Ganesan Prabhu

.. Applicant / third party

vs.

1.M/s.Dhanabakkiam Enterprises,
Chennai.

.. 1st respondent/decreed holder

2.Eshan Productions,
Chennai.

3.R.G.Dusshyanth

4.Abirami Dusshyanth

5.Ram Kumar Ganesan

.. Respondents 2 to 5/judgment debtors

For Applicant

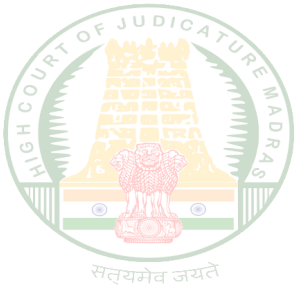
: Mr.P.R.Raman, Sr. Counsel
for Mr.S.Sandesh Saravanan

For R1

: Mr.A.Palaniappan

For R2 to R5

: Mr.G.V.Sridharan



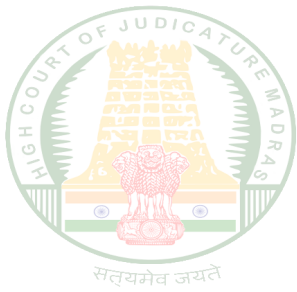
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ORDER

WEB COPY This application has been filed under Order 21 Rule 58 CPC seeking to raise the order of attachment granted by this Court on 10.02.2025.

2. The applicant/third party is the brother of the fifth respondent. The respondents 3 and 4 are the son and daughter of the fifth respondent respectively. The respondents 2 to 5 are the judgment debtors and the first respondent is the decree holder. For the sake of clarity and convenience, in the forthcoming paragraphs, the parties will be referred to as arrayed in this application.

3. The applicant contends that he is the owner of the property and according to him, his property has been wrongly attached through this Court's order dated 10.02.2025. In support of his contention, the applicant relies upon the following documents, through which, he has traced his title over the property, which has been ordered to be attached by this Court.



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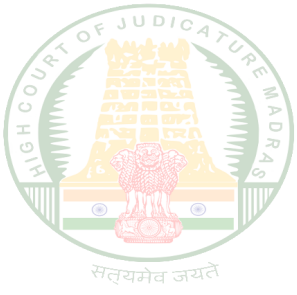
(a) The Joint Memorandum of Compromise dated 21.11.2023 entered into between the legal heirs of the deceased V.C.Ganesan, who was the original owner of the property.

(b) Cancellation of Power of Attorney bearing Document No.1555 of 2013 was executed by the judgment debtors. The said Power of Attorney was earlier granted in favour of the fifth respondent/judgment debtor through a registered document dated 21.06.2013.

(c) Execution Petition was filed by the decree holder against the judgment debtors on 24.07.2024.

(d) Cancellation of Power of Attorney bearing Document No.2423/2024 was executed on 19.08.2024.

(e) Release deed dated 15.07.2024 was registered in favour of the applicant, through which, the applicant claims that all the remaining legal heirs of the deceased V.C.Ganesan have released their share absolutely in favour of the applicant.



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4. Relying upon the aforesaid documents, the learned Senior counsel for the applicant would submit that the applicant alone is the owner of the property, which has been ordered to be attached by this Court, and the judgment debtors do not have any right or interest over the same.

5. To show the bonafides of the judgment debtors, this Court had also directed the judgment debtors to file an affidavit before this Court that they do not have any right/title over the property, which was ordered to be attached by this Court, and that they will not claim any right over the same in the future as well. As directed, the judgment debtors have filed an affidavit and the same was also taken on record.

6. The learned Senior counsel for the applicant drew the attention of this Court to a decision of the Hon'ble Supreme Court in ***Vannarakkal Kallalathil Sreedharan Vs. Chandramaath Balakrsihnan and another*** [1990 (3) SCC 291] and would submit that as seen from the said decision, under a contract of sale entered into before the attachment, the



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conveyance after attachment in pursuance of the contract passes on good title inspite of the attachment. He would submit that in the instant case, a Memorandum of Understanding was entered into between the legal heirs of the deceased V.C.Ganesan even prior to the date of order of attachment, and the release deed was also executed by the remaining legal heirs of the deceased V.C.Ganesan in favour of the applicant even prior to the date of attachment order. Though the said release deed was registered subsequently, but, it dates back to the date when the said release deed was presented for registration. Therefore, since presentation of the release deed was prior to the date of order of attachment passed by this Court, the applicant is having exclusive bonafide title over the property and therefore, the order of attachment is bad in law. He would further submit that even the Execution Petition was filed by the decree holder only after the release deed was presented by the applicant for registration. Therefore, he would submit that the order of attachment has to be set aside by this Court.

7. On the other hand, the learned counsel for the first respondent drew the attention of this Court to the list of dates and events filed by the



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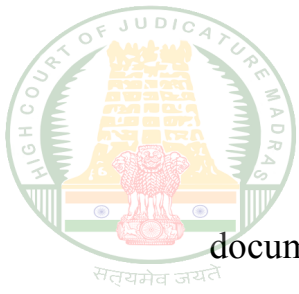
decree holder/first respondent herein. According to him, in the instant case, the transfer has taken place through gratis, i.e., through release deed, which has been executed on the ground of love and affection. Order 21 Rule 58 CPC makes it clear that in case of gratis transaction, it cannot be decided through a summary proceeding and can be decided only after trial. In support of his contention, he drew the attention of this Court to various documents, which were also relied upon by the learned Senior counsel for the applicant, and would submit that since the property in question having an extent of 22 grounds will fetch several crores of rupees, it is unbelievable that the judgment debtors by gratis would give up their right over the said property and therefore, whether the applicant is having bonafide title over the said property or not can be decided only after trial. He would also submit that the question of placing reliance on the Will dated 23.06.1999 executed by Mr.V.C.Ganesan, in which, the applicant is the exclusive beneficiary of the subject property, does not arise, since the applicant has not obtained Letters of Administration. However, the learned Senior counsel for the applicant would submit that T.O.S.No.2 of 2023 filed by the applicant seeking for grant of Letters of Administration has been withdrawn and



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only thereafter, release deed was executed in favour of the applicant on 20.08.2024.

8. The learned counsel for the first respondent drew the attention of this Court to the General Power of Attorney dated 21.06.2013 executed by the applicant and other legal heirs of the deceased V.C.Ganesan in favour of the fifth respondent/judgment debtor and would submit that as seen from the same, it can be inferred that the fifth respondent is having a share in the attached property. He would also submit that the Power of Attorney was cancelled only on 15.07.2024 after the passing of the arbitral award in favour of the first respondent. According to him, the transfer in favour of the applicant has taken place through gratis, i.e., through release deed dated 15.07.2024 executed on the ground of love and affection, and therefore, whether the applicant is the absolute owner of the property or not can be decided only after trial. According to him, only after the first respondent is permitted to cross-examine the applicant with regard to his claimed ownership of the property, truth can be ascertained, whether the applicant is the bonafide owner or not, and whether the transfer through release deed is a valid



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document or not.

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9. In support of his contentions, the learned counsel for the first respondent drew the attention of this Court to the following authorities:-

(a) Messrs. Southern Steelmet and Alloys Ltd.
Vs. B.M.Steel, Madras [1991 LW 243];

(b) An unreported decision of the Madras High Court dated 07.03.2022 passed in C.R.P.(NPD) No.262 of 2017 [J.Kalamani and another Vs. S.Rajeswari and another];

(c) An unreported decision of the Madras High Court dated 05.07.2022 passed in C.M.S.A.No.2 of 2005 [Kalyani Vs. Sekar and others];

(d) A decision of the Madras High Court in the case of Ramasamy Gounder Vs. Lakshmi and others [1988 1 LW 273]; and

(e) A decision of Punjab and Haryana High Court in the case of Harjit Singh Vs. Manjit Kaur and others [AIR 2004 P&H 379].

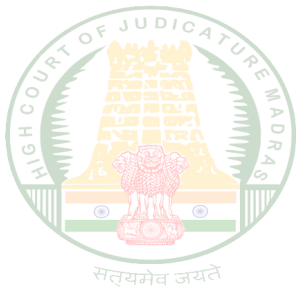
10. By way of reply, the learned Senior counsel for the applicant would submit that the judgments relied upon by the learned counsel for the first respondent has no bearing for the facts of the instant case. He would at the outset submit that in those decisions, the attached property



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was the subject matter of the suit, whereas, in the present case, the attached property was not the subject matter of the arbitration. He would also submit that even prior to the date of the arbitral award (04.05.2024), the applicant and other legal heirs of the deceased V.C.Ganesan had entered into a Memorandum of Compromise dated 21.11.2023 before the Mediator. Therefore, according to him, the execution of the cancellation deed as well as the release deed subsequently can never be treated as fraudulent documents, as they do not create any iota of suspicion.

11. The learned Senior counsel for the applicant would further submit that the decision of the Division Bench of this Court relied upon by the learned counsel for the first respondent reported in 1991 LW 243 (cited supra) has no bearing for the facts of the instant case. He would submit that in the said decision, the attachment order pertains to a movable property, whereas, in the present case, it is an immovable property. He would submit that the documents produced on record by the applicant do not create any doubt about the ownership of the applicant and therefore, the question of directing the parties to go for trial does not arise.

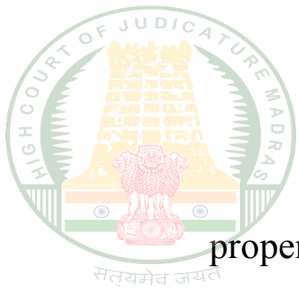


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WEB COPY DISCUSSION:

12. Order 21, Rule 58 of the Code of Civil Procedure (CPC) deals with the adjudication of claims or objections raised to the attachment of property in execution of a decree. It outlines the process for the Executing Court to determine whether the attached property is liable to attachment. Essentially, it provides a mechanism for third parties to challenge the attachment of property that they claim ownership or interest in. Therefore, any person, who claims an interest in the attached property or objects to its attachment on the ground that the property is owned by him/her, can file an application under Order 21, Rule 58 CPC, and the Executing Court must investigate the claim or objection in a summary manner. The wording of Order 21, Rule 58 CPC also does not stipulate that necessarily only after trial, the application can be adjudicated by the Executing Court.

13. In the case on hand, the applicant claims that he is the absolute owner of the property, which has been ordered to be attached through this Court's order dated 10.02.2025. Being the absolute owner of the



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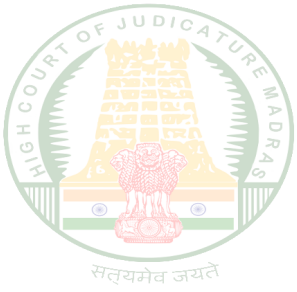
property, the applicant claims that the attachment order passed by this Court is a wrongful attachment obtained by the first respondent. To substantiate his title over the attached property, the applicant has filed the following documents:-

(a) The Joint Memorandum of Compromise (MoC) dated 21.11.2023 entered into between the legal heirs of the deceased V.C.Ganesan, who was the original owner of the property.

(b) Cancellation of Power of Attorney bearing Document No.1555 of 2013, which was executed by the judgment debtors. The said Power of Attorney was earlier granted in favour of the fifth respondent (judgment debtor) by the remaining legal heirs of the deceased V.C.Ganesan, through a registered document dated 21.06.2013.

(d) Cancellation of Power of Attorney bearing Document No.2423/2024 was executed on 19.08.2024.

(e) Release deed dated 15.07.2024 was registered in favour of the applicant and executed by



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the remaining legal heirs of the deceased V.C.Ganesan, which includes the fifth respondent as well as two sisters of the applicant and the fifth respondent, releasing their respective shares absolutely in favour of the applicant.

14. Before this court, the judgment debtors have categorically asserted through their counsel that they are not the owners of the attached property. To test the bonafides of the judgment debtors, this Court had also directed them to file an affidavit before this Court that they do not have right/title over the attached property, and that they will also not claim any right over the same in the future as well. As directed, the fifth respondent/judgment debtor has also filed an affidavit dated 07.04.2025 stating that the respondents 2 to 5 do not have any right / title over the attached property, and that they will not claim any right over the same in the future as well.

15. The following are the undisputed facts:-

(a) The property, which was ordered to be attached by this Court, which is the subject matter of this application, in which, the applicant



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seeks for raising the order of attachment under Order 21, Rule 58 CPC, is

not the subject matter of the claim in the arbitration, which culminated in the passing of the arbitral award in favour of the first respondent, against the respondents 2 to 5. The arbitral claim had nothing to do with the property attached, but, it was a mere money claim arising out of the non-payment of outstanding dues to the first respondent/decreed holder by the respondents 2 to 5/judgment debtors under a contractual relationship between them which did not involve the applicant.

(b) The Joint Memorandum of Compromise dated 21.11.2023 was entered into between the legal heirs of the deceased V.C.Ganesan, who was the original owner of the attached property, prior to the filing of the execution petition, which was filed on 24.07.2024. The said MoC dated 21.11.2023 was also entered into only in the presence of the Mediator, a former Judge of this Court, who was appointed as a Mediator by orders of this Court.

(c) During the pendency of the arbitral proceedings, the first respondent did not seek for interim attachment of the property, which was ordered to be attached by this Court only in this execution petition. Only after passing of the arbitral award, i.e., on 04.05.2024, and after the



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Joint Memorandum of Compromise dated 21.11.2023 was entered into between the legal heirs of the deceased V.C.Ganesan, the first respondent/decree holder has sought for attachment of the property through the execution petition filed before this Court on 24.07.2024.

16. The release deed dated 15.07.2024 was presented for registration by the fifth respondent and his sisters in favour of the applicant prior to the filing date of the execution petition by the first respondent, i.e., prior to 24.07.2024. Though the release deed was presented for registration on 15.07.2024, it was registered by the office of the Sub-Registrar, T Nagar, only on 20.08.2024. Section 47 of the Registration Act, 1980, specifies that once a document is presented for registration and subsequently registered, the date of execution of the document will relate back to the date of presentation of the document for registration. Hence, it is undoubtedly clear that the release deed was executed in favour of the applicant by all the remaining legal heirs of the deceased V.C.Ganesan releasing their respective shares absolutely on 15.07.2024 itself. It is also to be noted that the said release deed dated 15.07.2024 has neither been cancelled nor been challenged by the first

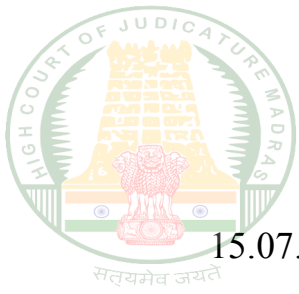


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respondent/decreed holder or any other party, though the first respondent would contend that the release deed dated 15.07.2024 is a sham and nominal document, executed only to deprive the first respondent/decreed holder and other creditors of the first respondent to have a security to recover their respective dues from the fifth respondent/judgment debtor. But, before this Court, no shred of evidence has been placed on record by the first respondent to substantiate this contention.

17. The first respondent/decreed holder also contends that the fifth respondent/judgment debtor is having 1/4th undivided share in the attached property, since he is also one of the legal heirs of the deceased V.C.Ganesan, who was the original owner of the attached property. Excepting for making a bald statement that the fifth respondent is having 1/4th undivided share in the attached property, the first respondent has not produced any documentary evidence to support the said contention.

18. According to the first respondent, since the release deed dated 15.07.2024 through which the applicant claims title over the attached property is through gratis, i.e., through the release deed dated



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15.07.2024, which has been executed on the ground of love and affection, Order 21, Rule 58 CPC is not applicable and therefore, the applicant cannot seek for raising the order of attachment. The first respondent has not produced independently any documentary evidence before this Court to prove his contention that the applicant is not the absolute owner of the attached property. But, on the other hand, the first respondent is relying only upon the documents produced by the applicant through which the applicant has derived title over the attached property.

19. As stated above, pursuant to the directions given by this Court, the fifth respondent/judgment debtor has filed an affidavit dated 07.04.2025 stating that he does not have any share / interest in the attached property and in the future as well, he will not claim any interest/share from the applicant.

20. Earlier, the applicant had sought for Letters of Administration of the Will dated 23.06.1999 executed by his father V.C.Ganesan. The said petition filed before this Court seeking for Letters of Administration was converted into Testamentary Original Suit (TOS), in view of



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objections raised by the applicant's sisters. However, through a Mediator, a former Judge of this Court, appointed by this Court in TOS, all the legal heirs of the deceased V.C.Ganesan, arrived at an amicable settlement, and in the presence of the Mediator, the Joint Memorandum of Compromise dated 21.11.2023 was entered into between the legal heirs of the deceased V.C.Ganesan, by which, it was agreed that the subject property is absolutely owned by the applicant. The fifth respondent under the said MoC dated 21.11.2023 was permitted to stay in the subject property in terms of the wishes of Late V.C.Ganesan. The said MoC dated 21.11.2023 also stipulates that one sibling out of love and affection to the other sibling can release his/her share absolutely in favour of other sibling. The release deed dated 15.07.2024 registered in favour of the applicant does not create any iota of suspicion in the mind of this court, with regard to the genuineness of the said document considering the fact that the release deed dated 15.07.2024 was executed only to implement the MoC dated 21.11.2023. Only pursuant to the MoC dated 21.11.2023, which was arrived at in the presence of the Mediator, the release deed dated 15.07.2024 was executed in favour of the applicant, through which, the applicant became the absolute owner of



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the attached property. The sisters of the applicant have received monetary consideration for releasing their respective shares in the property. Similarly, the fifth respondent/judgment debtor was permitted to stay in the attached property till his life time. The execution of the document, namely, release deed dated 15.07.2024 in favour of the applicant does not create any suspicion in the mind of this Court. In fact, the release deed was presented for registration on 15.07.2024, though the said document was registered subsequently. But, as per Section 47 of the Registration Act, release deed dates back to the date when it was presented for registration. Therefore, it is clear that even prior to the filing of the execution petition, i.e., on 24.07.2024, release deed was executed in favour of the applicant.

21. It is also to be noted that T.O.S.No.2 of 2023 filed by the applicant seeking for grant of Letters of Administration has been dismissed as withdrawn and only thereafter, the release deed was executed in favour of the applicant on 15.07.2024. The learned Senior counsel for the applicant has categorically submitted that the applicant is not relying upon T.O.S.No.2 of 2023 as the same has been dismissed as



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withdrawn. The applicant relies upon only MoC dated 21.11.2023 and release deed dated 15.07.2024 to prove that the applicant is the absolute owner of the attached property. The documents relied upon by the applicant do not create any doubt in the mind of this Court with regard to the ownership of the attached property by the applicant.

22. The mode of adjudication in an application under Order 21, Rule 58 CPC is akin to mode of adjudication that is being adopted in an under chapter suit (summary suit) under Order 37 CPC, or rejection of plaint application filed under Order 7, Rule 11 CPC. Only in cases where triable issues are involved, the Court directs the parties to go for trial. In the case on hand, when the documentary evidence placed on record before this Court clearly reveals that the applicant is the owner of the property which has been wrongfully ordered to be attached by this Court, there is no necessity for this Court to direct the parties to go for trial. If the intention of the legislature is to record oral evidence for adjudicating every application filed under Order 21, Rule 58 CPC, the same would have been stipulated in Order 21, Rule 58 CPC itself. Therefore, just because the order passed by the Executing Court under



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Order 21, Rule 58 CPC, also amounts to a decree and it is appealable, it

is not mandatory for the Executing Court to adjudicate the application only after trial. In a leave to defend application in a summary suit, rejection of plaint application under Order 7, Rule 11 CPC as well as the present application under Order 21, Rule 58 CPC, if the Court finds without any doubt that the applicant is entitled for a decree as prayed for by him/her based on the documentary evidence placed on record, there is no necessity for the Court to direct the parties to go for trial, as proceedings are summary in nature.

23. The decisions relied upon by the learned counsel for the first respondent have no bearing for the facts of the instant case for the following reasons:-

(a) The decision in ***B.M.Steel (cited supra)*** is a case involving ownership of movables, whereas the case on hand involves an immovable property. The said decision only makes it clear that the investigation under Order 21 Rule 58 CPC should be full, realistic and after giving adequate opportunities to the parties concerned to prove their respective claims, right, title and interest in the property attached.



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Nowhere the Division Bench in the said decision held that trial is mandatory for adjudicating an application filed under Order 21, Rule 58 CPC. In the case on hand, when the applicant has produced clinching documentary evidence to prove that he is the only owner of the attached property, there is no necessity for this Court to direct the parties to go for trial. The words used in Order 21, Rule 58 CPC are clear that an adjudication should take place and it also shows that the discretion is vested with the Court to decide in what manner such adjudication should take place. In case, the Court is satisfied with the available documents that the applicant has made out a case for raising the order of attachment, directing the parties to go for trial is redundant. Moreover, the first respondent is a money lender and the arbitral award did not also involve the property in question and therefore, the first respondent cannot be permitted to question the genuineness of the compromise among the family members nor be permitted to reopen the settlement itself.

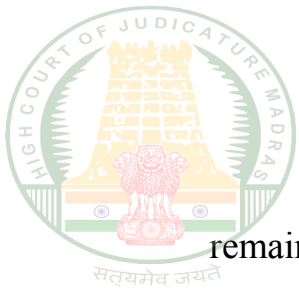
(b) The other decisions relied upon by the learned counsel for the first respondent, namely, ***Kalyani and J.Kalamani (cited supra)*** where the cases in which the attached property in the execution petition was the subject matter of the suit, and in those cases, there was no clinching



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evidence produced by the applicant to prove that they are the absolute owners of the property. However, in the case on hand, as observed earlier, the applicant has produced clinching evidence to prove that he is the only owner of the attached property. On the other hand, the first respondent has only relied upon the applicant's documents for the purpose of attempting to create doubt in the mind of the Court as to the genuineness of the release deed dated 15.07.2024 executed in favour of the applicant, through which, the applicant asserts absolute ownership of the attached property. Despite the said attempt, this Court is not convinced with the contentions of the first respondent as it is without any basis.

(c) The decision of the Hon'ble Supreme Court in the case of ***Ravinder Nath Agarwal Vs. Yogender Nath Agarwal and others [2021 (15) SCC 282]*** relied upon by the learned counsel for the first respondent also does not have any bearing for the facts of the instant case, in view of the fact that the applicant is not relying upon the Will of his Late father V.C.Ganesan, but, has only relied upon the MoC dated 21.11.2023 entered by the legal heirs of the deceased V.C.Ganesan, as well as the release deed dated 15.07.2024 executed in favour of the applicant by the



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remaining legal heirs of the deceased V.C.Ganesan. The first respondent has also not produced any evidence to prove that the release deed dated 15.07.2024 executed in favour of the applicant is hit by doctrine of fraudulent transfer. Therefore, the other decisions relied upon by the learned counsel for the first respondent have also got no bearing for the facts of the instant case

24. Infact, in the decision relied upon by the learned Senior counsel for the applicant, namely, ***Vannarakkal (cited supra)***, it has been made clear that in cases where a contract of sale was entered into before attachment, the conveyance after attachment in pursuance of the contract passes on good title in spite of attachment. Though in the instant case the document in question is a release deed and not a sale agreement, the same principle is also applicable to the facts of the instant case, as Order 21, Rule 58 CPC does not differentiate between conveyance for consideration and gratis transfer.

25. For the foregoing reasons, it is clear the applicant is undoubtedly the absolute owner of the attached property and the

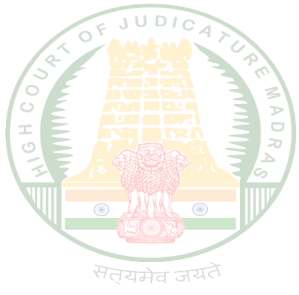


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respondents 2 to 5/judgment debtors do not have any right, title or interest in it and therefore, necessarily, this application will have to be allowed as prayed for. Accordingly, this application is allowed as prayed for by raising the order of attachment passed by this Court in E.P.No.68 of 2024, dated 10.02.2025. The applicant is permitted to communicate this order to all the statutory authorities which includes the registration department, and the said authorities are directed to act accordingly and remove the encumbrance (order of attachment) from their respective records.

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Index:yes
Neutral citation: yes



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