

IN THE COURT OF THE SUB JUDGE, ALAPPUZHA,

Present: Smt.MANJU.V, L.L.M. Sub Judge

Tuesday the 5th day of January, 2021 / 21st day of Pousha,1942**I.A.01/2020 in O.S.No.39/2020**

(Filed on 07.09.2020)

Petitioner:
PlaintiffJohnson V Edicula, aged 48 years,
S/o.Edicula Chandy,Valayil Berachah House,
Anapprampal South Muri, Thalavady Village,
Kuttanadu Taluk, Alappuzha.*By Adv.Sri.Oommen M Mathew***Counter Petitioner :**
DefendantV.C.Chandy, Kunthirikkal.P.O.,
Thalavady South Muri,
Thalavady Village,
Kuttanadu Taluk, Alappuzha.*By Adv.Sri.Satheesh Chandra*

This petition is having been finally heard on 05.01.2021 and the court on sameday passed the following:-

ORDER

This petition is filed by the petitioner/plaintiff under Order 38 Rule 5 C.P.C.

2. The averments in the petition are as follows:- The respondent was conducting the textile business in Edathua in a Commercial Building owned by St. George Feronia Church, Edathua under the name and style "Finethings Textiles". The respondent approached the petitioner during October 2011 and told him that he was not interested to conduct the business and he would like

to transfer the business including the tenancy right to the petitioner. It was agreed between the petitioner and the respondent that the stock was to be valued at Rs.2,75,000/-. Accordingly, the petitioner started conducting the business in the scheduled shop room from 01.11.2011 onwards under the name and style "Valayil Textiles". The said shop room is scheduled as Schedule A.

3. Thereafter, petitioner and the respondent had executed an agreement dated 28.05.2012 with respect to the transfer of the stock of textiles to the petitioner even though the petitioner started to conduct of business from 01.11.2011 onwards and on 22.07.2012, another agreement was executed between the petitioner and the respondent for the transfer of possession of the shop room and an amount of Rs.5,00,000/- was handed over to the respondent on the same day as consideration for transferring the shop room.

4. The stock in scheduled shop room was valued for Rs.2,75,000/- on 05.01.2012 and said amount of Rs.2,75,000/- given to the respondent as value of stock on 28.05.2012, even though the petitioner took possession of the shop room from 01.11.2011 onwards. The petitioner appointed a sales girl named as Sheeba.M on 01.11.2011 itself. The rent for the shop room was paid by the petitioner directly to the St. George Feronia Church, Edathua who is the landlord of the building from the account of the petitioner with Indian Overseas Bank, Edathua Branch and Syndicate Bank, Edathua Branch from the month of November 2011 onwards. The name of the employee was registered with Assistant Labour Office, Mancompu and the Wage Register duly kept was signed by the petitioner as the employer. The respondent promised that he

will change all the registers with respect to the shop room and the tenancy in favour of the petitioner and the petitioner believed the words of the respondent and handed over the amount as stated above to the respondent.

5. The petitioner requested the respondent to change the names in the registers and also the tenancy agreement in favour of him on several occasions. The respondent agreed to do so, but avoided the same by saying one or other reasons. In the month of May 2018, when the petitioner requested the respondent to change the name of shop in his name, the respondent demanded more amounts and threatened that he will not allow the petitioner to continue the business in the A schedule shop room.

6. Thereafter, on 25.06.2018, during night time, the respondent had broken the lock of the shop room and locked the room with a lock and the key was kept with him. Regarding the incident, Edathua Police registered Crime No.760 of 2018. The petitioner also filed OS No.508/18 before Additional Munsiff court, Alappuzha for restraining the respondent and men under him from trespassing into plaint A schedule shop room and causing any obstruction to the textile business carried out by the petitioner and also to restrain the respondent from evicting the petitioner except according to the due process of law till the disposal of the above numbered suit. The Commissioner appointed in the suit, on 14.07.2018, in the presence of petitioner and respondent, opened the shop room by using the key given by the respondent and found that the entire stock and valuable things and documents were stolen by the respondent from the plaint 'A' scheduled shop room.

7. It is submitted that the respondent has no right over materials which are scheduled as B and C and they are absolutely owned by the petitioner. The petitioner suffered loss as respondent had illegally taken away plaint 'B' and 'C' scheduled properties worth Rs.12,36,384/- and he is entitled to receive the said amount from the respondent. The petitioner was admitted as a tenant by the respondent after receiving an of Rs.5,00,000/- and the petitioner was in possession of the A Schedule shop room till 23.06.2018 and he was dispossessed thereafter. Thus the petitioner is entitled to realise the said amount of Rs.5,00,000/- from the respondent. Thus the petitioner is entitled to realize a total amount of Rs.17,36,384/-(Rupees Seventeen Lakhs Thirty Six Thousand Three Hundred and Eighty Four only) from the respondent and his assets.

8. The petitioner got reliable information from a leading estate broker in the locality, that the respondent is taking hasty preparations to alienate the his property scheduled with the petition to strangers with an intention to defeat the decree likely to be passed in favour of the petitioner. Hence the petition.

9. The respondent filed objection stating as follows:- The shop room belongs to St. George Feronia Church, Edathua. The respondent had taken on rent the said shop room on 10.04.2003 as per agreement No.1063/2003 of SRO, Ambalappuzha. The respondent was conducting textile business in the shop room under the name and style "Vaalayil Textiles". He denied that during October 2011 he approached the petitioner stating that he did not intend to proceed with the textile business and want to sublet shop room. He denied that Rs. 5 lakhs was fixed as the price of shop room and Rs.2,75,000/-

was fixed as the price for stock and that the petitioner conducted business in the shop room from 01.11.2011 onwards under the name and style "Vaalayil Textiles". He also denied that the agreements were executed on 28.05.2012 and on 22.07.2012 and the respondent handed over possession of the building to the petitioner on receipt of Rs.7,75,000/- in total. According to the respondent, the agreement dated 28.05.2012 and 22.07.2012 are forged documents. He also denied the averment that from 01.11.2011 onwards the shop room had been in the possession of the petitioner. According to him, the petitioner never obtained the possession of shop room. He also denied averments that on 01.11.2011, the petitioner employed a sales girl in the shop room. He also denied the averment that the petitioner paid rent of building to the church through his bank accounts. He also denied that the petitioner is keeping wage register in respect of the employee of the shop and according to him, the petitioner forged the said document also for the purpose of this case. He also denied the averment that the petitioner paid wages of the employee and he obtained wage slip and connected documents from the Labour Office. He also denied that St. George Feronia Church received contribution from petitioner recognising him as the tenant of the building.

10. The respondent also denied the averments that the petitioner asked him to change tenancy in his name by May 2018 and the respondent demanded more amounts and threatened the petitioner. He also denied averments that on 25.06.2018 during night the respondent broke open the lock of the the shop room. The respondent was regularly paying the monthly rent of the shop from the date on which he had taken the shop room for rent. It is contended that the shop room was in absolute possession and enjoyment of the respondent. As the business was in loss for the last several years, he

used to close the shop room during many times. While so, the petitioner approached him and requested to sublet building and he refused. According to the respondent, thereafter the petitioner filed this petition with the ulterior motive of obtaining possession of the shop room.

11. The respondent denied the averment that the petitioner got information that he is going to sell the property from one Mr. Satheesan, Meprassery, Neerettupuram. The respondent contended that he is residing house situated in the attachment schedule property and a saw mill also situated near to his residence. Hence the respondent prayed that the petition may be dismissed.

12. For the purpose of reference, Ext.A1 to A21 series were marked from the side of petitioner and Ext.B1 to B8 were marked from the side of respondents.

13. Heard both sides.

14. The following points arose for consideration.

1. Whether the petitioner is entitled to get an order under O.38 R.5 as prayed for ?
2. Relief and cost?

15. **Point No.1:-** The petitioner contends that he and respondent are relatives. The respondent was conducting the textile business in Edathua in a Commercial Building owned by St. George Feronia Church, Edathua under the name and style "Finethings Textiles". It was learnt that from Assistant Labour

Office, Mancombu, Kuttanadu, that registration of the shop was issued in the name of Baby Chandy who is the wife of respondent and license from the Grama Panchayath, Edathua was issued in the name of Minu Chandy his daughter. But the shop was owned and conducted by the respondent himself. The respondent approached the petitioner during October 2011 and told him that he is not interested to conduct the business and he would like to transfer the business including the tenancy right to the petitioner. It was agreed between the petitioner and the respondent that the stock was to be valued at Rs.2,75,000/-. Accordingly, the petitioner started conducting the business in the scheduled shop room from 01.11.2011 onwards under the name and style "Valayil Textiles". The said shop room is scheduled as Schedule A.

16. Thereafter, petitioner and the respondent had executed an agreement dated 28.05.2012 with respect to the transfer of the stock of textiles to the petitioner even though the petitioner started to conduct of business from 01.11.2011 and on 22.07.2012, another agreement was executed between the petitioner and the respondent for the transfer of possession of the shop room and an amount of Rs.5,00,000/- was handed over to the respondent on the same day as consideration for transferring the shop room. It was stipulated in the said agreement that the respondent shall have the right to take back the shop only after paying the total amount of Rs.7,75,000/- and the value of stock of textiles kept in the shop room. It is contended that the originals of both the agreements are with the respondent and copies were issued to the petitioner which were kept in the shop room.

17. Actually, the stock in scheduled shop room was valued for Rs.2,75,000/- on 05.01.2012 and said amount of Rs.2,75,000/- given to the

respondent as value of stock on 28.05.2012, even though the petitioner took possession of the shop room from 01.11.2011 onwards. The petitioner appointed a sales girl named as Sheeba.M on 01.11.2011 itself. The petitioner spent an amount of Rs.35,000/- for interior works and for sealing roof of the shop in the month of July 2012. The rent for the shop room was paid by the petitioner directly to the St. George Feronia Church, Edathua who is the landlord of the building from the account of the petitioner with Indian Overseas Bank, Edathua Branch and Syndicate bank, Edathua Branch from the month of November 2011 onwards. The name of the employee was registered with Assistant Labour Office, Mancompu and the Wage Register duly kept was signed by the petitioner as the employer. The respondent promised that he will change all the registers with respect to the shop room and the tenancy in favour of the petitioner and the petitioner believed the words of the respondent and handed over the amount stated above to the respondent.

18. The petitioner had been paying the wages of the sales girl and Wage Slip is maintained in Form XIII as per rules. The St. George Feronia Church, Edathua considered the petitioner as a tenant and accepted monthly rent from him.

19. The petitioner requested the respondent to change the names in the registers and also the tenancy agreement in favour of him on several occasions. The respondent agreed to do so, but dragged the same by saying one or other reasons. In the month of May 2018, when the petitioner requested the respondent to change the name of shop in his name, the respondent demanded more amounts and threatened that he will not allow the petitioner to continue the business in the A schedule shop room. The

petitioner told the respondent that he had given the amounts agreed and he is not in a position to give more amounts.

20. The petitioner lodged complaint before the police Station as well as before the Superintendent of Police, Alappuzha against threats of the respondent on 23.05.2018. On 23.06.2018, at about 11.30 am, the respondent trespassed into the scheduled shop room and assaulted the petitioner as well as the employee and committed mischiefs in the scheduled shop room. Thereafter, on 25.06.2018, during night time, the respondent had broken the lock of the shop room and locked the room with a lock and the key was kept with him. Regarding the incident Edathua Police registered Crime No.760 of 2018 against the respondent for the offence punishable u/s.447,294(b), 324 of IPC. In the meantime, the respondent managed to register an FIR against the petitioner u/s 323 of IPC as Edathua Police Station Crime No.763 of 2018. On 07.07.18 the petitioner also filed OS No.508/18 before Additional Munsiff court, Alappuzha for restraining the respondent and men under him from trespassing into plaint A schedule shop room and causing any obstruction to the textile business carried out by the petitioner and also to restrain the respondent from evicting the petitioner except according to the due process of law till the disposal of the above numbered suit.

21. The petitioner filed commission application and the Court allowed the same. The Commissioner on 14.07.2018, in the presence of petitioner and respondent, opened the shop room by using the key given by the respondent and found that the entire stock and valuable things and documents were stolen by the respondent from the plaint 'A' scheduled shop room. According to the petitioner, it can be safely presumed that the respondent had stolen

entire stock and valuable things and documents from the A scheduled shop room and with that intention, he locked the shop room with his own key. The entire stock in trade and other valuables kept in the 'A' schedule shop were scheduled in the plaint as B and C properties were stolen by the respondent from the shop room and now the said things were in the custody of the respondent. It is further contended that apart from the items mentioned above, the respondent had also taken away some more items from the shop room. Regarding the incident, Cr.No.1222/18 is pending before Judicial First Class Magistrate Court, Alappuzha alleging offence punishable u/s 380 IPC against the respondent. It is submitted that the respondent has no right over materials which are scheduled as B and C and they are owned absolutely by the petitioner. The petitioner suffered loss as respondent had illegally taken away plaint 'B' and 'C' scheduled properties of worth Rs.12,36,384/- and he is entitled to receive the said amount from the respondent. The petitioner was admitted as a tenant by the respondent after receiving an amount of Rs.5,00,000/- and the petitioner was in possession of the A Schedule shop room till 23.06.2018 and he was dispossessed thereafter. Thus the petitioner is entitled to realise, the said amount of Rs.5,00,000/- from the respondent. Thus the petitioner is entitled to realize a total amount of Rs.17,36,384/- (Rupees Seventeen Lakhs Thirty Six Thousand Three Hundred and Eighty Four only) from the respondent and his assets.

22. The petitioner got reliable information from one Satheeshan, Mepprasseril House, Neerettupuram P.O, Thalavady Village, a leading real estate broker in the locality, that the respondent is taking hasty preparations to alienate the his property scheduled with the above petition to strangers with an intention to defeat the decree likely to be passed in favour of the

petitioner. Hence it is prayed that the above petition filed O.38 R.5 CPC may be allowed, unless the petitioner will be put to irreparable loss and injury.

23. The respondent's case is as follows:- The shop room belongs to St. George Feronia Church, Edathua. The respondent had taken on rent the said shop room on 10.04.2003 as per agreement No.1063/2003 of SRO, Ambalappuzha. The respondent was conducting textile business in the shop under the name and style "Vaalayil Textiles". He denied that during October 2011 he approached the petitioner stating him that he did not intend to proceed the textile business and want to sublet shop room. He denied that Rs. 5 lakhs was fixed as the price of shop room and Rs.2,75,000/- was fixed for stock and that the petitioner conducted business in the shop room from 01.11.2011 onwards under the name and style "Vaalayil Textiles". He also denied that the agreements were executed on 28.05.2012 and on 22.07.2012 and the respondent handed over possession of the building to the petitioner on receipt of Rs.7,75,000/- in total. According to the respondent, the agreement dated 28.05.2012 and 22.07.2012 are forged documents and he has no knowledge about the same. He denied that the signatures appearing in the said agreements were put by him. He also denied the averment that the original of the agreements were kept by him and photo copies of the same were kept by the petitioner in the shop room. He also denied averment that from 01.11.2011 onwards shop room has been in the possession of the petitioner. According to him the petitioner never obtained the possession of shop room. He also denied averments that on 01.11.2011, the petitioner employed a sales girl in the shop room and that during July 2012 the petitioners spent Rs.35,000/- for decorating the shop room. He also denied the averment that the petitioner paid rent of building to the church through

his account with Indian Overseas bank, Edathua branch and Syndicate bank, Edathua branch. He also denied that the petitioner is keeping wage register in respect of the employee of the shop and according to him, the petitioner forged said document for the purpose of this case. He also denied the averment that the petitioner paid wages of the employee and he obtained wage slip and connected documents from the Labour Office. He also denied that St. George Feronia Church received contribution from petitioner recognizing him as the tenant of the building.

24. The respondent also denied the averments that the petitioner asked him to change tenancy in his name by May 2018 and the respondent demanded more amounts and threatened the petitioner and regarding the same, the petitioner lodged a complaint before the police station on 23.05.2018 and 21.06.2018. He also denied the averments that he trespassed into shop room on 23.06.2018 at 11.30 am and inflicted hurt on the petitioner and his employee. He also denied averments that on 25.06.2018, during night, he broke open the lock of the the shop room. According to him, as the shop room belongs to him and it was in his possession and hence he had no necessity to broke open the lock of the shop room.

25. The agreement between the respondent and the Feronia Church regarding the shop room was in existence till 30.06.2019 and on that date the respondent terminated the agreement with the church and obtained receipt. The respondent was regularly paying the monthly rent of the shop from the date on which he had taken out the shop for rent. The textiles business was conducted by the respondent as per license No.A1 1260/2014 issued from Edathua Grama Panchayath in the name of the respondent's daughter named

Meenu Sara Chandi. The shop was registered in the name of respondent's wife Baby Chandi. It was contended that the textiles was registered in the Labour office in the name of the wife of respondent and on 19.02.2008 notice was issued to respondent's wife from Assistant Labour Officer asking her to renew the registration.

26. The respondent contended that the kaikkaran of the Feronia church issued a letter dated 07.07.2018 to respondent showing that he had paid rent of shop room till 06.07.2018. The respondent also produced rent receipts issued from the church in his name. It is contended that there is no rent agreement between the petitioner and the Feronia Church. The shop room was in absolute possession and enjoyment of the respondent. As the business was in loss for the last several years, he used to close the shop room during many times. While so the petitioner approached him and requested to sublet building to him. It is contended that the petitioner was working as sales man in his shop earlier and as he was involved in several criminal cases, his employment in the shop was terminated. It is further contended by the respondent that the petitioner was convicted in crime No.63/12 of Thiruvalla police station and after releasing from the jail, he requested the respondent to sublet the shop room to him and the respondent refused. According to the respondent, the petitioner filed this petition with an ulterior motive of obtaining the possession of the shop room.

27. It is contended by the respondent that Crime No.760/18 Edathua police station was registered under the influence of the petitioner. It is averred that crime No.763/18 of Edathua police station was also registered against the petitioner as he inflicted hurt on the respondent. The petitioner also filed OS

508/18 before the Munsiff court, Alappuzha, raising false allegations which was subsequently withdrawn by him. He also denied that allegation that on 14.07.2018 when the commissioner came to the shop room it was found that the respondent had stolen away 'B' and 'C' schedule properties. According to him no property owned by the petitioner was kept in the shop.

28. The respondent denied the averment that the petitioner got information from one Mr. Satheesan, Meprassery, Neerettupuram that he is going to sell the property. The respondent contended that he is residing in the house situated in the attachment scheduled property and a sawmill is also situated near to his residence. The respondent completed the construction of the residential building only on 31.08.2020. He also contended that the description of the property and its boundaries and market value stated in the petition are not correct. So, according to him, the petition is not maintainable and hence may be dismissed.

29. Heard both sides and perused the documents.

30. The petitioner contends that he was conducting business in the plaint A schedule room from 1.11.2011 to 23.06.2018 and thereafter he was dispossessed from the room Ext.A1, which is the photo copy of agreement dated 28.05.12 executed between the petitioner and respondent, shows that the respondent included the petitioner as a partner of Fine Things -Vaalayil Textiles on 01.11.2012 and he received Rs.2,75,000/- on 05.01.2012 from the petitioner as the price of the stock and that the parties agreed to share the profit of business. Ext.A2, which is the photo copy of agreement dated 22.07.12 executed between petitioner and respondent shows that the

respondent received Rs.5 lakhs for changing the ownership of Fine Things Textiles owned by the respondent in the name of petitioner and that the respondent earlier received Rs.2,75,000/- as the price of the stock kept in the shop. It was also agreed between parties that the petitioner shall give another amount of Rs.4 lakhs when the respondent transfers the ownership of the shop in the name of the petitioner. Ext.A3 certificate dated 05.07.2018 issued by Indian Overseas bank shows that the petitioner who was the proprietor of M/s Vaalayil Textiles, Edathua has been maintaining current A/c with the bank bearing account No. 26602000001241 in the name of M/s Vaalayil Textiles from 18.06.2014 onwards and that the account was last operated on 26.06.2018. Ext.A4 account statement (Account No. 126601000003902) dated 05.07.2018 of petitioner with Indian Overseas bank, Edathua shows that on 04.06.2018 St. George Feronia Church withdrew Rs.7,530/- from the account of the respondent through Cheque No.710893. Ext.A5 series to Ext.A16 shows that the petitioner, in the capacity of the proprietor of the shop Vaalayil Textiles, purchased clothings from various dealers for the period from the year 2012 to 2018. Ext.A17 is the report filed by the Commissioner before Munsiff court, Alappuzha in OS No.508/18. Ext.A18 is the book containing carbon copies of monthly wage slips showing that the petitioner paid wages to sales girl named Sheeba. M for the period from 01.01.2015 to 31.05.2018. Ext.A19 is the register of wages showing that the petitioner had paid wages to Smt.Sheeba.M from 01.12.11 to 31.05.2018.

31. Ext.A20 which is the certificate No.A5.4723/19 issued by Secretary Edathua Grama panchayath dated 06.09.2019 shows that the petitioner had paid license fee and professional tax for the year 2014/15 in respect of Vaalayil Textiles conducted by him. Ext.A21 series receipts (2 in numbers)

dated 28.02.2014 issued by Edathua Grama panchayath shows that D&O Trade License fee and Professional tax were paid by the petitioner in respect of Vaalayil Textiles. However, by virtue of Ext.B9 proceedings No.J.C.3-417/2020 dated 05.11.2020, Edathua panchayath cancelled Ext.A20 certificate.

32. Ext.B1 is the photo copy of rent agreement dated 10.04.2003 executed between kaikkaran of St. George Feronia church, Kozhimukku and the respondent in respect of the plaint A schedule shop. Ext.B2 is the agreement dated 20.01.2004 executed between the same parties. Ext.B3 is the photo copy of license No.A1-1260/14 issued in the name of Minu Sara Chandi by Edathua grama panchayath permitting her to conduct textiles business till 31.03.15. Ext.B4 is the letter dated 07.07.18 issued by Kaikkaran of the St. George Feronia church, Edathua showing that plaint A schedule shop room was rented out on 23.05.2003 and no rent was in arrear till 06.07.2018. Ext.B5 series are the rent receipts issued to respondent by St. George Feronia Church for the period from January to July 2012, 01.01.2014 to 31.01.14, July to October 2015, November to June 2016, April 2018, May 2018 and from June 18 to July 18 of the year 2018. Ext.B6 is the notice dated 19.02.2018 issued by Assistant Labour office, Mankompu to Miss. Baby Chandy asking her to renew the registration of shop named 'Fine Things' as the registration was not renewed after 2015. Ext.B7 is the letter dated 05.11.2020 issued by South Indian bank, Edathua to the Office in charge, Department of Factory and Boilers showing that originals of property document of property situated in survey No.371/13, 371/14, 371/17 and 371/18 of Edathua village, Kuttanadu taluk in the name of respondent is kept in the bank as the property was secured to the Bank. Ext. B8 is the copy of

complaint filed by the respondent before District police superintendent alleging that the petitioner forged agreements dated 28.05.2012 and 22.07.2012 and with the aid of said forged documents he filed OS No.508/18 before Munsiffs court, Alappuzha and the above case before this court.

33. In this case, the petitioner produced Ext.A1 and A2 agreements to show that he was put in possession of the plaint A schedule shop room from 1.11.2011 onwards. Ext.A3 certificate shows that the petitioner, in the capacity of the proprietor of M/s Vaalayil Textiles, Edathua has been maintaining current A/c with the Indian Overseas bank in the name of M/s Vaalayil Textiles from 18.06.2014 onwards and that the account was last operated on 26.06.2018. Ext.A5 series to Ext.A16 shows that the petitioner, in the capacity of the proprietor of the shop Vaalayil Textiles, purchased clothings from various dealers for the period from the year 2012 to 2018. Ext.A18 and A19 documents shows that the petitioner paid wages to the sales girl employed in the shop from 1.12.11 to 31.5.18. I find that Ext.A1 to A3, A5 to A16, A18 and A19 documents are relevant for the purpose of showing that the petitioner was conducting textile business in the plaint A schedule shop room and that the petition has a prima facie case.

34. The respondent's case is that the petitioner was a salesman in his shop and Ext.A1 and A2 agreements are forged documents. He also contended that he had been paying rent of the shop room till 6.07.18 as evidenced by Ext.B4 letter and Ext.B5 rent receipts. At this juncture, the learned counsel appearing for the petitioner argued that the petitioner had paid the rent of the shop room from 1.11.2011 onwards through his bank accounts and as the room was sublet to him by the respondent, the rent receipts were issued by

the church in the name of respondent. I find that the above stated rival contentions of both parties can be decided only after taking detailed evidence in the matter.

35. However, after hearing the learned counsel for the petitioner and on perusal of Ext.A1 to A19 documents, I am satisfied that the petitioner has succeeded in making out a prima facie case that he was in possession of the plaint A schedule shop room from 1.11.2011 onwards and he was conducting business therein in the capacity of the proprietor of Vaalayil Textiles till he had been dispossessed therefrom and that plaint B and C schedule properties kept in the shop room were taken away by the respondent.

36. The petitioner contends that he got reliable information from one Satheeshan, Mepprasseril House, Neerettupuram P.O, Thalavady village, a leading real estate broker in the locality, that the respondent is taking hasty preparations to alienate his property scheduled with the petition to strangers with an intention to defeat the decree likely to be passed in favour of the petitioner. Though the respondent denied the averment that the petitioner got information from Satheesh, Mepprasseril that he is disposing of the petition schedule property, the respondent has not specifically stated in the objection filed by him that he has no intention to sell the petition schedule property. So I find that the apprehension of the petitioner is well founded. Hence I find that the petitioner had made out a prima facie case and there is every likelihood of the respondent disposing of his property with the intention to obstruct and delay the execution of a decree that may be passed against him. Thus this petition is ought to be allowed. Accordingly Point No.1 is found in favour of the petitioner.

37. **Point No.2 :-** In view of my findings in the earlier points, I find that the petitioner is entitled to get an order of attachment before judgment of scheduled property as prayed for in the petition.

1. In this I.A., only ordinary notice was served to the respondent and no notice under O.38 R.5 is seen issued to him.
2. In the result, this petition is allowed and the counter petitioner is hereby called upon to furnish security for Rs 17,40,000/- within 3 weeks from the date of this order or to show cause why he shall not be ordered to furnish security for that amount. In the meantime a conditional attachment of the scheduled property is ordered. Communicated the order to SRO and Village office concerned.
3. No order as to cost.

(Dictated to the Confidential Asst. transcribed and typed by her, corrected by me and pronounced in open court today this the 05th day of January, 2021)

MANJU.V
SUB JUDGE

Appendix:- Nil

SUB JUDGE