

IN THE COURT OF THE SUBORDINATE JUDGE, ALAPPUZHA

Present:-Smt. Rekha Laurian, Sub Judge
Thursday the 19th of March 2026/28th Phalguna 1947
EA.01/2026 in EP 187/2021 in OS.No. 22/2020
Filed on 09.02.2026

Judgment Debtor/Petitioner:- Rajamani.N, aged 72 years,
S/o. Nallathambi, R.M. Textiles,
Boat Jetty Road, Mullackal P.O,
Mullackal Village, Alappuzha

(By Adv.R.N.Biju)

Decree Holder/Counter Petitioner:-

Thankamani Antharjanam, aged 60 years,
W/o. Sasikumar, Sabari, Avalukunnu P.O,
Aryadu South Muri, Aryadu South Village,
Ambalappuzha Taluk, Alappuzha.

(By Adv. K.V.Subhakumar)

This petition having being finally heard on 11.03.2026 and court on 19.03.2026 passed the following:-

ORDER

The petition is filed under Order XXI Rule 89, 90 of Code of Civil Procedure to set aside the auction proceedings and sale conducted on 10.12.2025.

2. Petition averments :- Petitioner is the judgment debtor. The application is filed for setting aside the sale and auction conducted on 10.12.2025. The sale was conducted on 10.12.2025 by committing fraud and suppressing the material facts before the court. The schedule item No.1 property is 48 sq.metres with 2 shop rooms No.AMCW.17/1552E and 17/1552F in resurvey No.821 Sub Division 32/B6 Mullackal Village, Alappuzha Municipality. The value shown for the said property is Rs.6,00,000/-. On 11.11.2010 the petitioner purchased the said property as per sale deed No.6837/10/1 for total sale consideration of Rs.30,00,000/-. It is having a higher

value as it is situated at Mullackal, were business of Alappuzha Town in concentrated. It is having value of more than Rs.1,00,00,000/- (Rupees one crore only). The schedule item No.2 property consist of 37 sq.metres with two shop rooms AMCW 17/1552C and 17/1552D in 1 Are 62 sq.metres in resurvey No.821 in Sub Division 32 B3 and 2 ares 03sq.metres in resurvey No.821/32/B6 and 32 sq.metres in resurvey No.821/32/B3 and 5 sq.metres of in resurvey No.821/32 B6 in Mullackal Village, Ambalappuzha Taluk. It was purchased by the judgment debtor on 11.11.2010 as per sale deed No.6838/10 of Alappuzha SRO for Rs.30,00,000/-. It is presently having value more than Rs.1,00,00,000/- (Rupees One crore only). But the valuation is shown that Rs.6,00,000/- . It is purchased during auction for Rs.17,84,189/- . It is having more than value of Rs.2 crores. So the sale conducted for Rs.17,84,189/- is by fraud and by suppressing material facts. The judgment debtor is suffering from severe ailment. He hails from Tamilnadu. He is having no information about the legal procedure herein. The case was settled in Adalath, while he was not well. As per the agreement Rs.5 lakhs was given while entering into compromise. The auction was not conducted as per the procedure. The judgment debtor could not properly convey the reasons to set aside sale and could not raise objection. Hence the application may be allowed.

3. Objection filed by the counter petitioner/decree holder reads as follows:-
The above petition is neither maintainable in law nor on facts. There is absolutely no bonafides for the above petition. The petitioner is not entitled to file a petition under Order 21 Rule 89 and 90 of the Code of Civil Procedure. Under Order 21 Rule 89 of the Code of Civil Procedure petitioner should deposit the amount specified in the proclamation of sale and the sum equal to 5% of the purchase money. The petitioner is not entitled to file an application under Order 21 Rule 89 of the Code of Civil Procedure without depositing the amount specified in the proclamation of the sale and 5% of the purchase money. Hence the application filed under Order 21 Rule 89 is

liable to be dismissed in limine. There is absolutely no material irregularity or illegality or fraud in publishing or conducting the sale in the above case and hence the petition under Order 21 Rule 90 of the Code of Civil Procedure is not maintainable. An application under Order 21 Rule 90 shall not be entertained upon any ground which the petitioner could have taken on or before the date on which the proclamation of sale was drawn up by this court. There is absolutely no valid ground stated in the affidavit in support of the petition to set aside the sale. The ground stated for setting aside the sale are not correct and are not sufficient to set aside the sale. All averments in the affidavit except those which are specifically admitted hereunder are not correct and hence denied. The allegation contained in para 1 to 4 of the affidavit are not correct and hence denied. The allegation that the sale conducted by this court on 10.12.2025 in the above case is as a result of fraud, misrepresentation and suppression of facts is not correct and hence denied. The proclamation of sale was drawn up by this court after giving sufficient opportunities to the petitioner to file objection. The counter petitioner has bid the property in auction after obtaining necessary permission from this court. The sale conducted by this court is perfectly valid and is in accordance with law. The property described in the proclamation schedule was purchased by the counter petitioner for Rs.17,00,000/-. The petitioner did not raise any objection regarding the market value of the property sold before the proclamation was drawn up by this court. The value of the property sold was fixed by this court on the basis of the valuation certificate submitted by the decree holder. The petitioner did not raise any objection regarding the valuation certificate produced by the decree holder. The upset price fixed by this court while the proclamation was drawn up is on the basis of the materials produced before this court. The allegation that the petitioner has purchased the property sold for Rs.30,00,000/- is not correct and hence denied. The value of the property is about Rs.5,00,000/- and the value of the building as per the valuation certificate is Rs.8,83,000/-. Hence the upset price fixed by this court is perfectly valid. There is no under valuation of the property sold in the above case. The

value of the shop room is having more than 34 years old. After considering all these aspect the engineer issued the valuation of the shop room at Rs.8,83,000/- and it is fair and reasonable. The allegation that the property sold is in the heart of Alleppey town is not correct. The counter petitioner did not make any fraudulent or illegal act in purchasing the property in the auction. The allegation that the market value of the property sold is having more than 2 crores is without any basis. The counter petitioner bid the property in auction since there are no other bidders to participate in the auction. There is proper publication of sale as per rules. Nobody has prepared to purchase the property for the upset price fixed by this court. As per the compromise decree passed in the above case on 21.06.2020 the petitioner agreed to pay the decree amount on or before 29.06.2021. The petitioner did not pay any amount so far. The allegation contained in para 5 to 6 of the affidavit are not correct and hence denied. The allegation that the petitioner is suffering from various diseases and is undergoing treatment is absolutely false and hence denied. The counter petitioner is executing the decree in accordance with law and the petitioner is taking steps for delaying the execution proceedings. Sufficient opportunities were given by this court to file objection at every stage of the execution proceedings. The compromise decree was passed in the above case after consulting the advocate of the petitioner and he signed the compromise after understanding the terms incorporated in the compromise. The petitioner did not raise any objection to the compromise decree till now. The petitioner has paid Rs,5,00,000/- on the date of compromise and he has agreed to pay the balance amount within 1 year. The compromise decree passed in the above case is perfectly valid and there is absolutely no vitiating circumstance in passing the decree. There is due publication of sale proclamation. The allegation contrary contained in the affidavit are not correct and hence denied. The counter petitioner did not want the property of the petitioner if the decree amount due to the decree holder is paid with 5% auction amount as provided in the Code of Civil Procedure. There is no illegality or impropriety in publishing and conducting the sale. The property sold in the above

case is for a reasonable amount. The allegation contained in para 10 to 14 of the affidavit are not correct and hence denied. The petitioner got sufficient opportunity to deposit the decree amount and can avoid the auction if he is interested to pay the decree amount. The above petition is filed only for harassing the counter petitioner and delaying the execution proceedings. Under the above circumstance it is humbly prayed that the above petition may be dismissed cost of the counter petitioner.

4. Heard both sides.

5. The judgment debtor was examined as PW1 and Exts.A1 to A3 were marked. The learned counsel for the petitioner argued in tune with the petition averments. The learned counsel for the counter petitioner argued that the petition is not maintainable under Rule 89 and 90 of Order 21 as none of the ground as available for the judgment debtor.

6. I perused the application, objection and the entire case records. The suit was decreed on the basis of an award passed in an Adalath. During execution proceedings, the judgment debtor has received notice under Rule 66. But the judgment debtor remained absent through out the proceedings. After the sale, the judgment debtor filed the present application when the execution petition was posted for confirmation of sale. Even though Rule 89 is quoted no amount is deposited as prescribed in Rule 89. As per Rule 90 of Order 21 an application to set aside the sale, on the ground of irregularity or fraud should be pleaded. Here even though it is stated that fraud had been committed. The petitioner has not stated how it was committed. Rather than a mere statement nothing is stated in the affidavit. The petitioner has got sufficient opportunity from the receipt of Rule 66 to raise objections. But no objections were raised. In *Sreedharan v. Union Bank of India* 1992 KHC 415 our Hon'ble High Court held that "Order 21 Rule 90(3) Code of Civil Procedure the

judgment debtor right of set aside, the judgment debtor had notice and sufficient time to file objection regarding the value of the property. Rule debars an application to set aside the sale on the ground that value shown in the sale proclamation is inadequate”. Considering the above facts I am not inclined to allow this application.

7. In the result, the application is dismissed.

(Dictated to the Confidential Asst. transcribed and typed by her, corrected by me and pronounced in open court today this the 19th day of March, 2026.)

Sd/-
Rekha Laurian
Sub Judge

Appendix : Nil

Id/-
Sub Judge