

IN THE COURT OF THE SUBORDINATE JUDGE, ALAPPUZHA

Present:-Smt. Rekha Laurian, Sub Judge
Thursday the 19th of March 2026/28th Phalguna 1947
EA.02/2026 in EP 187/2021 in OS.No. 22/2020
Filed on 25.02.2026

Petitioner/Judgment Debtor/Defendant:-

Rajamony, aged 72 years,
S/o. Nallathambi, R.M. Textiles,
Boat Jetty Road, Mullackal P.O,
Mullackal Village, Alappuzha

(By Adv.R.N.Biju)

Counter Petitioner/Decree Holder/Plaintiff:-

Thankamany Antharjanam, aged 62 years,
W/o. V.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 XXVI Rule 9 of Code of Civil Procedure.

2. Petition averments :- The petitioner is the judgment debtor/defendant in this petition and in the Execution Petition. The counter petitioner is the decree holder/plaintiff. The proclamation schedule property belongs to him and this property is a land and building situated in Mullakkal Village, Alappuzha Municipality and it situated on the side of Alappuzha Boat Jetty Road and also in the heart of Alappuzha Town. The market value of the property is more than Rs.2,00,00,000/- (Rupees Two Crores only), but the upset price is fixed Rs.12,00,000/- (Rupees Twelve Lakhs only). The said valuation is only a less value of the land and building and does not take into account the value of the building/structure situated in the property. There

exists a building in the proclamation schedule property which forms part of the land that is not considered. A proper and full valuation of the property cannot be made without assessing the value of the said building. It is therefore essential to ascertain the true and fair market value of the building situated in the property and also ascertain the potentiality of the land and its market value. Hence, for the just and effective execution of the decree, it is necessary that an advocate commissioner be appointed to inspect the property and report the market of the land and building and its potentiality and importance, with the assistance of an expert engineer. Hence the application.

3. Objection filed by the counter petitioner/decreed holder reads as follows:-
The petition is neither maintainable in law nor on facts. The petitioner has no right to file an application under Order 26 Rule 9 of Code of Civil Procedure in the application to set aside the sale conducted by this court. The matters sought to be ascertained in the application are absolutely unnecessary for disposing the application to set aside the sale. The market value of the property sold is not a relevant fact in deciding the question whether there is any material irregularity or fraud in publishing and conducting the sale. All averments in the affidavit expect 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 market value of the property sold is Rs.2 crores and upset price fixed by this court is Rs.12 lakhs is not correct. The property sold by this court is having only 37 sq.meter and two shop rooms having 450 sq.feet. The fair value of the property sold is Rs.24,81,575/- per Are. Hence the market value of the 37 sq.meter property is Rs.9,18,182/-. The two shop rooms sold in the auction is having 245 sq.feet each and the shop room is having 34 years old. As per the valuation certificate filed by the decreed holder, the value of the shop room is Rs.4,95,140/-. Sufficient the materials are available before the court for fixing the upset price of the property. The upset price is fixed in accordance with law and property is sold for a reasonable value. The

petitioner did not raise any objection regarding the market value of the property at the time of settlement of proclamation. Under the above circumstances the petitioner is estopped from contending that the upset price fixed by this Hon'ble Court is not correct. There is a statutory bar under Order 21 Rule 90(3) of Code of Civil Procedure to contend that the upset price fixed by this court is not correct. Hence there is absolutely no need to appoint a commissioner for ascertaining the market value of the property sold and the above petition is liable to be dismissed with costs of the counter petitioner.

4. Heard both sides. The Execution Petition is posted for confirmation of sale. At this stage, the judgment debtor has filed an application under Rule 82 and 90 of Order 21 of Code of Civil Procedure. That application stands dismissed as there are no grounds for setting aside the sale. An application to ascertain the market value of the land, at this stage is not maintainable. It is only a means for protracting the matter. Hence the application is dismissed with costs.

In the result, the application is dismissed with costs.

(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