

IN THE COURT OF THE SUB JUDGE, CHERTHALA

Present: Ms. Lakshmy.S, Sub Judge

Tuesday, the 13th January 2026/ 23rd Pousha 1947

IA.1/2025 in OS.38/2025

(Filed on 01.08.2025)

Petitioner/Plaintiff: Noushad, aged 58 years, S/o. E.K. Pareethu Haji,
residing at Niamath, Vaduthala Jetty. P.O,
Mattathilbhagam Muri, Arookkutti Village,
Cherthala Taluk, Pin : 688 535

By Adv. N. Ratheesh, Adv. T.K. Haribalan,
Adv. Jyothi. R. Krishnan, Adv. Rajkamal,
Adv. Anjana Anilkumar & Adv. S. Muralikrishnan

Respondent/Defendant: Vijayakrishnan, aged about 50 years,
S/o. Krishnankutty Nair, Vijaya Nivas, Panavalli. P.O,
Panavalli Muri, Panavalli Village, Cherthala Taluk,
Pin : 688 526

By Adv. John Varghese

This petition coming on for final hearing on 03.01.2026 and the Court on
13.01.2026 passed the following:

ORDER

This petition is filed by the plaintiff under S.94 and 151 CPC and Order
XXXVIII R.5 CPC for attachment before judgment of the petition schedule
property.

2. The contentions of the petitioner, in brief, are as follows:

The suit is for return of advance sale consideration based on an agreement for sale. However, the petitioner got reliable information from Shaji, S/o Mohammed, Kotakeri Nikarthil on 18.07.2025 that the respondent was actively taking steps to transfer the petition schedule property in order to defeat the judgment which would be passed in favour of the petitioner. If that happens, the petitioner would be unable to recover the unjust amount from the respondent and would therefore be in great loss and hardships. Hence the petition for attachment.

3. The respondent filed objection as follows:

The petition is not maintainable either under law or facts. The suit is premature and it ought to have been for specific enforcement of the agreement. The suit ought to have been valued for the total sale consideration of Rs.79,94,896/- and an enquiry under Section 12 of the Court Fees Act is required. Plaintiff property absolutely belongs to the respondent by virtue of a Settlement Deed. The petitioner who was engaged in real estate business along with a broker by name Shaji, S/o Muhammed offered to purchase the petition schedule property after being convinced that the defendant has marketable title over the property, for an amount of 1,60,000/- per cent. After negotiation between parties on 22/08/2024, an agreement for sale was executed between the parties. An amount of Rs.20,00,000/- was paid as advance sale consideration and a period of 8 months was fixed for due

performance of the agreement, ending by 21st April 2025. As per the terms in the default clause embodied in the agreement, the petitioner was entitled to receive only Rs.10 lakhs and the defendant was entitled to forfeit an amount of Rs.10 lakhs as charges and damages for the default. The petitioner is the defaulter to the agreement and as such was not entitled to claim the advance amount as claimed.

4. In the notice issued on 04/04/2025, the respondent has expressed his intention to sell the property within the stipulated time and the petitioner was called upon to measure out the property in his presence on 15/04/2024. The said notice was received by the petitioner on 7/4/2025 and he was not prepared to execute the sale deed. The suit is vexatious and the respondent was always prepared to act as per the terms of the agreement. Hence, the petition is liable to be dismissed with costs.

5. Heard both sides and perused records. Exts.A1 and B1 to B3 marked for the purpose of this application.

6. The suit is for realization of money based on an agreement for sale between the petitioner and respondent. The petition schedule property belongs to the respondent and Ext.A1 is the agreement for sale with respect to the said property whereby the petitioner has agreed to purchase the property for a sale consideration of Rs.1,60,000/- per cent. As per Ext.A1 dated 22.08.2024, the petitioner has paid Rs.20,00,000/- to the respondent as part of sale consideration. The petitioner has alleged that he intended to purchase the property to start a

concrete block manufacturing unit. But the nearby property owners objected the same, alleging pollution and hence the property could not be used. The same is the reason stated for not concluding the agreement of sale.

7. The respondent on the other hand contended that the petitioner proceeded with the agreement only after getting convinced about the nature and lie of the land and that the reason stated is not correct. It is further contended that the respondent was ready and willing to perform his part always and hence he cannot be fastened with any liability. The forfeiture clause in Ext.A1 was also highlighted by the respondent to support his contention that the petitioner is not entitled to get the sum as claimed.

8. Ext.A1 is not disputed and it is also admitted that the respondent has received part of sale consideration at the time of Ext.A1 agreeing to sell the property to the petitioner. However, the circumstances were not favourable to both parties to conclude the contract of sale as per Ext.A1. Ext.B1 to B3 would show that the respondent was ready to execute the deed.

9. At the same time, the petitioner has explained a convincing reason for not proceeding with the sale and the money received by the respondent is still with him. The legality of the forfeiture clause in Ext.A1 in the event of default and the failure to perform the terms of contract are all matters for consideration after trial. The respondent who has received the money from the petitioner cannot be permitted to make unjust enrichment. The law is settled by the Hon'ble High Court

in **Hamaza Haji v. Thykkandiyil Ibrahim; 2025 Supreme(Ker) 446** that a purchaser who committed breach of a contract is also entitled to recover advance amount unless it is proved that the other party has suffered damages due to the breach.

10. The law on penalty and damages due to breach of contract is settled by the Hon'ble High Court in **Soji Peter v.K.B.Vijayan and others; 2017(4) KHC 456** wherein it was held that compensation can only be reasonable which the court finds after adjudication. Here, the respondent who still holds the amount received from the petitioner alienates the property before the adjudication of the suit, the same would cause irreparable hardships to the petitioner. Hence, it is only just and proper to attach the petition schedule property before judgment.

In the result, IA is allowed, with costs and the petition schedule property is attached herewith for an amount of Rs.20 lakhs (Rupees Twenty Lakhs only).

Dictated to the Confidential Assistant, typed by her directly to the Computer, corrected and pronounced by me in open court on this the 13th day of January, 2026.

Sd/-
LAKSHMY.S,
SUB JUDGE

Appendix

Exhibit for Petitioner

A1 : 22.08.2024 : Sale Agreement

Exhibits for Respondent

B1 : 04.04.2025 : Letter

B2 : Acknowledgement card

B3 : 22.08.2024 : Receipt

Id/-
SUB JUDGE

// True Copy//

Id-
SUB JUDGE