IN THE COURT OF THE ADDITIONAL MUNSIFF, CHERTHALA
Present: Sri. Mahesh.M., Additional Munsiff
Friday, the 12th day of September, 2025/ 21st Bhadram, 1947.

IA No.03/2021 in O.S. No.130/2018
(Filed on 04.01.2021)

Petitioners:-

1. Roymon, aged 49, S/o Prastheena and Issac,
Puthenpurackal Veettil, Pathirappally.P.O,
Mararikkulam South Grama Panchayat,
Chettikkadu Muri, Pathirappally Village,
Ambalappuzha Taluk.
2. Shaniya, aged 40, W/o Roymon,
Puthenpurackal Veettil, Pathirappally.P.O,
Mararikkulam South Grama Panchayat,
Chettikkadu Muri, Pathirappally Village,
Ambalappuzha Taluk.

By Adv. N Balachandran

Respondents:-

1. The Merchants Association, Cherthala
Reg.No.45/71, CMC.XXVI/1329, T.D.Road,
Cherthala represented by its General Secretary-
Sibi Panjikkaran, aged 53, S/o Varghese,
Panjikkaran Veedu, CMC-XI, Cherthala.
2. Antony Felix, aged 56, S/o Felix Antony,
Azheekal Veedu, CMC-XIV, Cherthala.
3. V.N. Madhu , aged 42, S/o Vijayan,
Kannadan Veettil, CMC-XXVII, Cherthala.
4. Paul P Kallada, aged 48, S/o K P Pailo,
Kalladayil, Kooropada Village, Kottayam

By Adv. T Jayakrishnan

This petition having been finally heard on 12.09.2025 and the court on the same day passed the following :-

O R D E R

This is a petition filed by the petitioners under Order 38 Rule 8, Order 21 Rule 58 r/w Sec.95 and 151 of CPC for lifting the attachment ordered over the Petition Schedule Property and to communicate the same to the SRO and VO concerned.

2. **Petition averments in brief -**

The petitioners herein are strangers to the suit. The petition schedule property was transferred to the petitioners from the second respondent through a registered Sale deed bearing No. 1553 dated 25.09.2020 of SRO Cherthala. Upon payment of consideration, the petitioners acquired absolute ownership and possession of the property without any objection. Subsequently, the property was mutated in the name of the petitioners in Kokothamangalam Village under Thandaper No. 30543, and land tax has been duly paid to the government. The building situated on the petition schedule property was previously assessed in the name of the second respondent by the Cherthala Municipality, and municipal building tax was levied accordingly. After the mutation of the property in the petitioners' name, the ownership of the building was transferred to the petitioners, and an ownership certificate was issued by the Municipality in their favour. The second respondent had ownership rights over the petition schedule property and the building thereon, which were relinquished through the registered sale deed No. 1553 dated 25.09.2020. The second respondent accepted the consideration and executed the deed before the Sub Registrar, thereby transferring absolute ownership and possession to the petitioners. Post 25.09.2020, the second respondent holds no rights or possession over the said property. The total consideration mutually agreed upon was Rs.15,00,000, of which Rs.9,00,000 was allocated for the land and trees, and Rs.6,00,000 for the building and appurtenances. An advance of Rs.4,00,000 was paid on 23.09.2020 through the brother of the second petitioner to settle any liabilities. The remaining Rs.10,00,000 was transferred on 25.09.2020 from SBI Civil Station Branch, Malappuram (Account No. 67352054924) to Union Bank of India, Cherthala Branch (Account No. 360902010016119) in the name of the second respondent. An additional Rs.1,00,000 was paid in cash on the same day. The second respondent acknowledged receipt of the full consideration. The petition schedule property was lawfully possessed by the second respondent with absolute rights and was transferred to the petitioners free from encumbrances, attachments, or claims. The petitioners purchased the property in good faith and for valuable consideration, and are bonafide purchasers for value. From 25.09.2020 onwards, the second respondent has no rights, title, or interest in the petition schedule property, including the building and trees. Therefore, no person has any legal standing to seek attachment of the property on account of liabilities allegedly attributable to the second respondent. The attachment petition filed on 07.10.2020 by the first respondent is based on false and baseless allegations. The date mentioned in the petition as 01.10.2020 is deliberately mis-stated and is part of a fraudulent scheme by the first respondent. The petition was prepared, signed, and presented before the court only on 07.10.2020. The first respondent has alleged dues from the second respondent and others, and has filed a suit dated 28.02.2018. However, the first respondent failed to produce the bylaws of the institution involved, which is a vital document. The deliberate withholding of such documents constitutes fraud. The suit does not disclose the number of members of the institution, their residence details across Taluks and Villages, or any registration certificate under the XII Act of 1955. The institution's registration under No.

45 of 1971 is no longer valid. The institution has ceased functioning and has failed to conduct annual general body meetings, elections, submit financial statements, returns, or member details to the authorities. Consequently, the registration was cancelled by the District Registrar of Alappuzha and published in the Government Gazette. The first respondent has concealed these facts and made false representations in the suit. On 28.02.2018, the suit filed before the Court was not pursued by the plaintiff in accordance with the prescribed legal procedures, and was deliberately delayed. Despite this, without any consultation or resolution from the governing body of the said institution, a petition titled as an “attachment petition” was filed before the Court. At the time of filing the said petition, the second respondent, who is the first defendant in the case, had no right or interest over the petition schedule property. The petition filed does not, in any manner, pertain to or connect with the said institution. The attachment order was obtained based on false allegations and misrepresentations made in the petition submitted before the Court on 07.10.2020. The affidavit accompanying the attachment petition did not specify the ownership of the properties listed therein as of that date. It was merely stated that Babu Mathew of Mullappally Chira was attempting to sell the property of the first defendant. It was also mentioned that the first defendant had other properties in different parts of the taluk. The petitioners had purchased the petition schedule property in good faith by paying consideration on 25.09.2020, and possession was handed over to them on the same day. From that date onward, the petition schedule property exclusively belongs to the petitioners. Therefore, the said property cannot be subjected to attachment for any debts owed by others. The first respondent, without verifying the liability certificate of the entire property including the petition schedule property, and without confirming whether the second respondent had

any rights or possession over the said property, acted without good faith. The first and second respondents colluded and fraudulently obtained the attachment order. The action of attaching the petition schedule property on 07.10.2020 for the debts of the second respondent, and the subsequent communication of the said order to the Sub Registrar Office, Cherthala and the Village Office, Kokothamangalam, is illegal and invalid. The petitioners had no prior knowledge of the said fraudulent proceedings. The petitioners had been negotiating the sale of the petition schedule property with the second respondent for several years. In August 2020, the sale was finalized and a contract was executed. Pursuant to the agreement, the petitioners paid the consideration in two installments during September 2020 and obtained a registered sale deed. The first respondent misrepresented facts before the Court and thereby misled the Court to obtain the attachment order. It is therefore prayed that the Hon'ble Court may be pleased to lift the said attachment and direct that the information be communicated to the Sub Registrar Office, Cherthala and the Village Office, Kokothamangalam for which this petition is filed.

3. Respondent No.1 filed objection contending as follows -

The petition is not maintainable. A pendente lite purchaser cannot make an application like this. He is legally bound by all orders passed in the case. His remedy if any lies elsewhere. The above suit was instituted in the year of 2018 for realization of money from the original defendants availed by them from the plaintiff association. At the time of availing the loan, the first defendant was well aware that he along with his all assets is liable against the same. The claim petitioner purchased the property only on 25.09.2020. This is during the pendency of the suit and hence it is having no validity since the transaction was carried out pendente lite. It was only an attempt from the side of the second respondent to evade from his liability in collusion with the claim petitioner. When the plaintiff got reliable information that the 2nd respondent was making hasty preparation to transfer his property, it moved an attachment petition before this Court and the same was allowed by this Court. The alleged transaction in the claim petition is a proof of the said apprehension which can only be considered as a fraudulent attempt from the side of the second respondent in collusion with the claim petitioners. As per the petition, the second respondent has transferred the property maliciously and hence the claim petitioners cannot be considered as the bonafides purchasers for value of the property. As far as the plaintiff association is considered, the only equitable remedy available for them to safeguard their interest is by attaching the property known to be of the defendants. And the plaintiff was having every right to move before the Court for the same. Considering all these facts the Court allowed the attachment petition filed by the first petitioner. In a petition for raising claim over a property, the allegations like plaintiff has failed to produce vital documents before the Honourable Court, the person who has verified the plaint has no authority to do the same, and there is no cause of action against the original defendants etc. are quite irrelevant. While stating all these things the petitioner is stepping into the shoes of the original defendants or rather become a spokesperson for them. The suit was instituted by the proper authority under the plaintiff association according to the applicable Act. The plaintiff association is having authority to lend monetary assistance to its members. And in the same way respondents 2 to 4 have availed the monetary assistance from the first respondent. The petitioner is having no authority or right to question the internal affairs of the 1" respondent of any manner being a complete stranger to it. The only intention of the claim petitioner by purchasing the property is to help the 2nd respondent to escape from his liability. First respondent has never colluded with any of the other respondents. The statement by the petitioner that he got information regarding the attachment through his relative is quite unbelievable. The petitioner having no cause of action against the first respondent. Hence the petition is liable to be dismissed. Other respondents remained ex-parte.

4. After filing of objection the petition was posted for evidence. The 2nd petitioner was examined as PW1. The documents produced from the side of the petitioners were marked as Exts.A1 to A8. No oral evidence was adduced from the side of respondent No.1. The document produced by respondent No.1 was marked as Ext.B1.

5. Heard both sides.

6. The following points are raised for consideration;

(1) Whether this petition is allowable or not?

(2) What is the order?

7. Point No.1 –

The petitioners herein are strangers to the above suit. Their contention is that they are bonafide purchasers for value of the petition schedule property. According to the petitioners, they purchased the petition schedule property from the 2nd respondent (1st defendant in the suit) by virtue of Sale Deed No. 1553/2020. The petitioners contend that they were unaware of the pending suit between the plaintiff and the defendants. It was only later revealed that the property purchased by the petitioners had been attached by this Court in the above suit. Therefore, the petitioners assert that they are bonafide purchasers and request that the attachment effected over the petition schedule property be lifted and the same be communicated to the SRO and V.O concerned. On the contrary, the 1st respondent in this petition, who is the plaintiff in the suit, contends that the sale deed was executed as a result of collusion between the claim petitioners and the defendants in the suit. It is further contended that the 1st defendant was well aware, at the time of availing the loan, that all his assets would be liable in the event of default. The transfer of the property is alleged to be malicious, and hence, the petitioners are not entitled to have the attachment lifted. Upon consideration of the rival contentions advanced by both parties and on a careful perusal of the case records, it is evident that the suit was instituted by the plaintiff/1st respondent in the year 2018 for the realisation of money from the defendants/respondents Nos. 2 to 4. As per the averments in the plaint, the suit is based on a joint promissory note executed by the defendants. At the time of institution of the suit, the plaintiff had not filed any petition seeking attachment of the immovable property belonging to the 1st defendant. It was only subsequently, on 05.10.2020, that an attachment petition was filed, seeking to attach the immovable property of the 1st defendant. The timing of the attachment petition is of particular relevance in the present context. The certified copy of the Sale Deed marked as Ext.A1 clearly indicates that the transfer of ownership of the petition schedule property in favour of the petitioners took place on 25.09.2020 prior to the filing of the attachment petition. This fact is not disputed and is discernible from the records. The recitals in Ext.A1 further reveal that the transfer of property was effected upon receipt of valid consideration from the petitioners to the 1st defendant. It is pertinent to note that the plaintiff/1st respondent has not raised any contention regarding the defectiveness of the 1st defendant's title over the petition schedule property. In light of the above, it is apparent that the transfer of the petition schedule property was made for valid consideration and prior to the filing of the attachment petition. Therefore, prima facie, the said transfer cannot be deemed fraudulent or collusive merely on the basis of its proximity to the date of the attachment petition.

8. The next aspect that requires consideration is whether the petitioners can be regarded as bonafide purchasers for value of the petition schedule property. As already observed, the sale in favour of the petitioners was effected prior to the filing and allowing of the attachment petition. The 2nd petitioner was examined as PW1, and in her deposition, she categorically stated that at the time of purchasing the property, they were unaware of the existence of any pending litigation involving the 1st defendant. She further deposed that the defendants are not related to them in any manner. Upon a close scrutiny of the cross-examination of PW1, it emerges that there is no material elicited to suggest that the sale transaction was collusive or intended to defeat any decree that may be passed against the 1st defendant. Despite extensive cross-examination by the learned counsel for the 1st respondent/plaintiff, no substantive evidence was brought forth to establish collusion between the petitioners and the 1st defendant. It is also pertinent to note that the 1st respondent has not adduced any independent evidence in support of his allegation of collusion. The burden of proof in respect of such an allegation squarely lies upon the party who asserts it. In the absence of any cogent evidence, the allegation of collusion remains unsubstantiated and cannot be accepted. Furthermore, the contention raised by the 1st respondent/plaintiff that all assets of the 1st defendant are liable from the time of availing the loan is legally untenable. The 1st defendant did not avail the loan by creating any charge or encumbrance over his immovable properties. In law, the liability of a debtor's property arises only upon the passing of a decree enabling the creditor to proceed against such assets. In the present case, no such decree has been passed thus far. Therefore, the said contention of the 1st respondent is devoid of merit and cannot be sustained. Another significant factor that warrants consideration at this stage is the status of service of summons upon defendant No.1. Upon a careful perusal of the case records, it is evident that the summons issued to defendants Nos. 1 and 3 were returned unserved. Consequently, the plaintiff filed a petition seeking substituted service of summons upon the said defendants by way of paper publication. Although this Court had allowed the petition for substituted service, it is noted that the plaintiff has not taken any further steps to effect service through paper publication. As a result, till date, summons has not been duly served upon defendants Nos. 1 and 3. This lapse has a direct bearing on the present matter. In the absence of service of summons, it can reasonably be inferred that defendants Nos.1 and 3 remain unaware of the pendency of the suit. Therefore, at the time of execution of the sale deed transferring the petition schedule property, defendant No.1/respondent No.2 was likely unaware of the existence of the present litigation. As already discussed, there is no evidence on record to suggest that the petitioners had any knowledge of the pending suit at the time of purchase. When considered in conjunction with the fact that defendant No.1 himself was unaware of the suit, the transfer of property effected by him cannot be presumed to be collusive or fraudulent. In view of the foregoing, this Court finds no material to support the allegation of collusion between the petitioners and defendant No.1. The sale appears to have been executed for valid consideration, in good faith, and without notice of any pending litigation. Accordingly, this Court is of the considered view that the petitioners are bona fide purchasers for value of the petition schedule property. Hence this point is found in favour of the petitioners.

9. <u>Point No.2 –</u>

In the result the I.A. is allowed as follows;

The attachment ordered over the petition schedule property is hereby lifted. Communicate the same to SRO, Cherthala and

Village Office, Kokkothamangalam. The petitioners are entitled to get the costs of the petition from respondent No.1.

(Dictated to the Confidential Asst. transcribed and typed by her, corrected by me and pronounced in open court on this the 12th day of September, 2025.*)*

Sd/-
MAHESH M.
ADDITIONAL MUNSIFF

APPENDIX :-

Witness for the Petitioners:-

PW1	23.09.2023	Shaniya.

Exhibits for the Petitioners:-

A1	25.09.2020	Sale deed No.1553/2020
A2	07.02.2008	Sale deed No.413/2008.
A3	17.01.1990	Sale deed No.234/1990.
A4	07.07.1978	Sale deed No.3563/1978
A5	09.10.2020	Tax receipt bearing No.1233189 from Kokkothamangalam Village.
A6	22.10.2020	Possession Certificate No.51346237.
A7	18.11.2020	Order No. B/R4/10075/2020 by Cherthala Municipal Secretary.
A8	18.11.2020	Tax receipt bearing No.01/120470109684 from Cherthala Municipality.

Witness for the Respondents:-NIL

Exhibits for the Respondents:-

B1	02.03.2015	Promissory note executed by defendants in the name of plaintiff.

Sd/-
ADDITIONAL MUNSIFF