

IN THE COURT OF THE ADDITIONAL MUNSIFF, CHERTHALA

Present: Sri. Mahesh. M., Additional Munsiff

Tuesday, the 7th day of April, 2026/ 17th Chaithram, 1948.

EA No. 01/26 in EP No. 201/2014 in O.S. No. 858/2003

(Filed on 19.01.2026)

Petitioners/ Additional Judgment Debtors 5 and 6:-

1. Shibu
Aged 52 years, S/o. Sankunni, Anchuthuruthu Veetil,
Panavally Muri, Panavally Village, Cherthala.
2. Reshmi
Aged 42 years, W/o. Shibu, Anchuthuruthu Veetil, Panavally
Muri, Panavally Village, Cherthala.

By Adv.N.Ratheesh

Cr. Petitioners:-

1. Syed Muhammed (Died)
S/o. Ali Kunju, Kannezhathu House, Panavally Muri,
Panavally Village, Cherthala Taluk. (DH)
2. Sheeba (Died)
D/o.Syed Muhammed, Kannezhathu House, Panavally Muri,
Panavally Village, Cherthala Taluk. (Addl. DH)
3. Zeenath (Died)
D/o.Syed Muhammed, Kannezhathu House, Panavally Muri,
Panavally Village, Cherthala Taluk. (Addl. DH)
4. Sebiya
D/o.Syed Muhammed, Kannezhathu House, Panavally Muri,
Panavally Village, Cherthala Taluk. (Addl. DH)

5. Rehmath
D/o.Syed Muhammed, Kannezhathu House, Panavally Muri,
Panavally Village, Cherthala Taluk. (Addl. DH)
6. Umma Rabiya
D/o.Syed Muhammed, Kannezhathu House, Panavally Muri,
Panavally Village, Cherthala Taluk. (Addl. DH)
7. Raziya
D/o.Syed Muhammed, Kannezhathu House, Panavally Muri,
Panavally Village, Cherthala Taluk. (Addl. DH)
8. Rugminiyamma
W/o Parameswara Paniker, Puthanveli Veettil, Panavally
Muri, Panavally Village, Cherthala Taluk. (JD1)
9. Vinu @ Omanakkuttan
S/o Parameswara Paniker, Puthanveli Veettil, Panavally Muri,
Panavally Village, Cherthala Taluk. (JD2)
10. Divya
D/o Rugminiyamma, Puthanveli Veettil, Panavally Muri,
Panavally Village, Cherthala Taluk. (Addl. JD3)
11. Pappankunju @ Padmanabha Paniker
S/o Kesava Paniker, Puthanveli Veettil, Panavally Muri,
Panavally Village, Cherthala Taluk. (JD4)

By Adv.K.Premkumar

This Execution application having been finally heard on 07.04.2026 and the Court on the same day passed the following.

ORDER

This is a petition filed by the additional judgment debtors no.5 and 6 under Sec.47 and 151 CPC contending that the decree passed in the above original suit is not executable.

2. Petition averments in brief are as follows -

The petitioner is the fifth judgment debtor in the above execution petition. The sixth judgment debtor is the petitioner's wife. The decree-holder has instituted the above-numbered suit for declaration of title and permanent prohibitory injunction. In that suit, the petitioner and the sixth judgment debtor were not parties. By virtue of Assignment Deed No. 340 dated 27/01/2005, the petitioner purchased and has been in possession of 1.62 ares of property comprised in Survey No. 137/2 of Panavally Village from defendants 1 to 3 in the said suit. The decree-holder was aware of the petitioner's purchase at the time of the said assignment itself. However, the petitioner was not impleaded as a party in the above suit. Subsequently, by virtue of Settlement Deed No. 285 dated 23/01/2008, the petitioner transferred 0.40½ ares from the aforesaid property to the petitioner's wife, the sixth judgment debtor. Thus, the property described above has been in the possession of the petitioner and the sixth judgment debtor. During the pendency of the suit, the aforesaid property was in the possession of defendants 1 to 3. The decree-holder had no possession or right over the property. The decree-holder instituted the suit on false allegations. None of the defendants contested the suit, and consequently, the case was decreed ex parte on 30/06/2004. As per the decree schedule, item No. 2 is 4 cents of property in Survey No. 132/22 of Panavally Village. It is this 4 cents of property that the petitioner purchased from the original defendants and has been in possession of. The property in the possession of the petitioner and the

property in the possession of the decree-holder are separated by an old boundary wall. According to the decree, schedule item No. 2 is stated to be situated in Survey No. 132/2/2. For the purpose of declaration of title, no comprehensive plan was prepared in the above suit by measuring and identifying schedule item No. 2 as per survey records. On the contrary, in the plan filed in the suit, the survey number of schedule item No. 2 was wrongly shown as 137/2/2, which in fact is the petitioner's property. The decree-holder has no right or possession over the said property. For the reasons stated above, schedule item No. 2 of the decree is not identifiable. Further, there is no decree directing delivery of possession of the petitioner's property. The decree in the above-numbered case is not executable in accordance with law. Hence, the petitioner and the sixth judgment debtor have filed this petition seeking an order declaring that the decree is not executable.

3. Respondent filed objection contending as follows -

The petition is not maintainable. It is admitted that the petitioners were not parties to the ex-parte decree. But the petitioners have not taken any steps to set aside the ex-parte decree passed in the original suit. The execution petition is filed by arraying the petitioners as parties as well. The survey number of the decree scheduled property is 132/2/2. It is the same property which was measured and identified as per the commission report and plan. So the contention of the petitioners that the decree is not executable is untenable. So the petition is liable to be dismissed.

4. Heard both sides.

5. The following points are raised for consideration;

- (1) Whether this petition is allowable or not?
- (2) What is the order?

6. Point No.1 -

The sole question that arises for consideration in this petition is whether the decree passed in the original suit is capable of execution. The petitioners herein are arrayed as additional judgment debtors Nos. 5 and 6 in the present execution proceedings. Their contention is that decree schedule item No.2, over which a decree of declaration has been granted in favour of the plaintiff, is not identifiable. It is further urged by them that the property presently identified as decree schedule item No.2 in Ext.C1 and Ext.C1(a) commission report and plan, in fact, belongs to them and not to the decree-holder. Before examining the merits of the contentions raised, it is necessary to reproduce the operative portion of the decree passed in the original suit. The decree reads as follows: *“The plaintiff’s right and possession over the plaint schedule item No.2, which is described by the commissioner as BCEFGIB plot in Ext.C1(a), is hereby declared. The defendants are restrained by a decree of permanent prohibitory injunction from trespassing into the plaint schedule property or causing any obstruction to the peaceful possession and enjoyment of the same by the plaintiff. The plaintiff is also allowed to realise the costs of the suit.”* From the above decree, it is manifest that the plaintiff’s title and possession over item No.2 property has been declared, and the defendants have been enjoined from interfering with the plaintiff’s peaceful possession thereof. It is precisely this item No.2 property which the decree-holder seeks to enforce and reinstate through the present execution petition. The dispute raised by the petitioners centres around the identity of decree schedule item No.2. They contend that the property identified in Ext.C1 and Ext.C1(a) as BCEFGIB plot is not the property covered by the decree, but rather their own property. Therefore, the pivotal issue to be adjudicated is whether decree schedule item No.2, as described in the decree and identified in the commission report and plan, is sufficiently clear and

capable of being executed. The executability of the decree hinges upon the identifiability of the subject property. While analysing the description of item No.2 property in the decree, it is seen that the same reads as follows: “ഒന്നാം നമ്പർ വസ്തുവിൽ കിഴക്കടുത്തു വാദിയുടെ വീട്ടുവേലിക്കു കിഴക്കുവശം തെരുവിലെത്തെ ഉദ്ദേശം 4 സെന്റ് പുറയിടവും അതിൽ നിൽപ്പ് തൈ തെങ്ങുകളും മണൽകുന്നയും മറ്റുമാകുന്നു.” From the above, it is evident that item No.2 property is described as having an extent of approximately 4 cents, comprised in Survey No.132/2/2 of Panavally Village. The decree further makes it clear that the said property lies on the eastern side of the fence of item No.1 property, lying in a north-south direction. Keeping this description in mind, the identification of item No.2 property in Ext.C1 and Ext.C1(a) commission report and plan must be examined. It is an admitted fact that during the trial stage, the plaintiff schedule item Nos.1 and 2 were not identified by way of a comprehensive plan. For that reason, Ext.C1 and Ext.C1(a) report and plan were subsequently brought forth to properly identify the properties. On a careful perusal of Ext.C1 and Ext.C1(a), it is revealed that the property identified therein as item No.2 has an extent of 6.88 cents. This is in clear variance with the decree, which specifies the extent as 4 cents. Furthermore, another significant discrepancy emerges with respect to the survey number. As per Ext.C1 and Ext.C1(a), item No.2 property is identified in Survey No.137/2/2, whereas the decree categorically states that item No.2 property is comprised in Survey No.132/2/2 of Panavally Village. The Advocate Commissioner has not furnished any explanation in the report as to why such a change in survey number has occurred. The decree-holder himself admits that the property over which he obtained a declaration of title and possession is comprised in Survey No.132/2/2. Yet, in execution, he seeks to reinstate possession over property in Survey No.137/2/2. Such an attempt cannot be permitted. Even during the hearing of this petition, the decree-holder failed to

offer any satisfactory explanation as to how or why the survey number has changed. Similarly, the lie and location of item No.2 property, as described in the decree, do not correspond with the lie and location of the property identified in Ext.C1 and Ext.C1(a). In view of these material discrepancies, this Court is of the considered opinion that the decree cannot be executed on the basis of Ext.C1 and Ext.C1(a) commission report and plan. The decree schedule item No.2 property, which is sought to be reinstated, is not properly identifiable. Executability of a decree depends upon the certainty and identifiability of the subject matter. Where such identification is lacking, execution cannot proceed. Hence this point is found in favour of the petitioners.

7. Point No.2 –

In view of the findings in Point no.1, the I.A. is allowed as follows :-

The decree passed in O.S.858/2003 is found to be not executable as the decree schedule item no.2 property is not identifiable.

(Dictated to the Confidential Asst. transcribed and typed by her, corrected by me and pronounced in open court on this the 7th day of April, 2026.)

Sd/-
MAHESH M
ADDITIONAL MUNSIFF

APPENDIX :- NIL

Sd/-
ADDITIONAL MUNSIFF