

IN THE COURT OF THE MUNSIFF, KOCHI

Present :- Sri.Mithun Roy K., B.A., LL.B., Additional Munsiff

Thursday the 12th day of April, 2018/ 22nd Chaithra, 1940**I.A. No.590/2018 in O.S. No.60/2018****Petitioner:-**

Alibava M.K., aged 60 years, S/o. Late Bava Kasim, Residing at 2/962,
Mini Market, Koncherry, Fort Kochi, Pin 682 001

By Adv. Sheheera P.Y.

Respondents:-

- 1 Balkees, W/o. Late T. Babu Ibrahim C.C. 3/539, Mattancherry PO, Pin 682 002 and now residing at Thannathil House, H.No. 1/751, Fort Kochi, Pin 682 001
- 2 Saleem T., S/o. Late Ibrahim, residing at Thannathil House, H.No. 1/751, Fort Kochi, Pin 682 001

By Advs. Priya P.A. & Dhanya Babu

This petition filed under Order XXXVIII Rule 1 & 2 of C.P.C. to issue an order of conditional attachment of the plaint schedule properties.

This petition come up for hearing before me on 12.04.2018 and the court on the same day passed the following:-

ORDER

This is an order in a petition filed for attachment of the plaint schedule property before judgment.

2. **Facts of the case:-** The petitioner is the plaintiff and the respondents are the defendants in OS.60/2018. The suit is filed to realise a sum of Rs.5 Lakhs given by the petitioner to his maternal uncle's son named Mr.T.Babu Ibrahim. According to

the petitioner, Mr.Babu Ibrahim had borrowed an amount of Rs.3 Lakhs from the petitioner as per an agreement dated 04.03.2017. The said amount was borrowed for giving the said amount to the brothers and sister of deceased Usaiba. Mr.Babu Ibrahim was having serious health problems. To meet his medical expense, another Rs.2 Lakhs was given to him by the petitioner. At that time, Mr.Babu Ibrahim had promised to repay the said amount by pledging his residential building. The 1st respondent is the wife of Mr.Babu Ibrahim and 2nd respondent is the brother of Mr.Babu Ibrahim. After the death of Mr.Babu Ibrahim on 01.12.2017, the petitioner had approached the respondents and demanded for the repayment of the amount borrowed by the deceased Babu Ibrahim. Though the respondents had sought for one month's time to repay the debt due to the petitioner, no amount was paid. The respondents, being the legal heirs of deceased Babu Ibrahim are having pious obligations to pay off the liabilities of the deceased. It is contended in the petition that the 1st respondent is liable to pay 1/4th of the debt and the balance 3/4th of the debt will have to be paid the 2nd respondent. The respondents had inherited the property of Babu Ibrahim shown as the plaint schedule property. The 2nd respondent is now taking hasty steps to sell that property. Hence this petition is filed to attach the plaint schedule property before judgment.

3. Emergent notice was ordered in this petition to the respondents. Thereafter the respondents/defendants appeared through counsel and filed counter affidavit contending inter

alia as follows:- No amount is to be paid by the deceased Babu Ibrahim to the petitioner. In fact, it is the petitioner who is liable to pay Rs.5 Lakhs taken from Mr.Babu Ibrahim during his life time. The suit is filed only to avoid legal proceedings against him for the realization of the amount due to Babu Ibrahim. The agreement dated 04.03.2017 is a forged one. Mr.Babu Ibrahim who was in abroad had good financial condition. Many persons including the petitioner had cheated the deceased Babu Ibrahim after obtaining huge amounts from him. There was no occasion where Mr.Babu Ibrahim had promised the petitioner to settle his debt by pledging the plaint schedule property. Apart from the 2nd respondent, Mr.Babu Ibrahim was having one more brother named Hussain. Mr.Husain is no more. But his three children namely Shimla, Shakeela and Faisal are not made parties to the proceedings. The 1st respondent is the third wife of Mr.Babu Ibrahim. The allegation that the respondents are taking steps to alienate the plaint schedule property is false. No legally enforceable debt existed in between the petitioner and the deceased Babu Ibrahim. Hence the respondents had prayed for the dismissal of the petition.

4. Heard the learned counsel for both sides.

5. Points raised for determination are as follows:-

(i) Can the prayer for attaching the plaint schedule property before judgment be allowed?

6. **Points No.(i)** The learned counsel for the petitioner had contended that the suit is filed to realize an amount of Rs.5 Lakhs given by the petitioner on two occasions to his maternal uncle's son named Mr.T.Babu Ibrahim. The fact that

Mr.Babu Ibrahim is no more is not disputed. Admittedly, the respondents are the legal heirs of deceased Babu Ibrahim who inherited the plaint schedule property belonged to Mr.Babu Ibrahim. The learned counsel for the petitioner submitted that respondents are the legal heirs of deceased Babu Ibrahim are having pious obligations to pay the liability.

7.The learned counsel for the petitioner had relied on the ruling reported in P.N.Veetil Narayani V. Pathumma Beevi and Others [(1990) 4 SCC 672] to canvas the position that, ***the estate of a muslim dying intestate devolves under the Islamic law upon his heirs at the moment of his death and each heir is under the personal law liable to satisfy the debts of the deceased only to the extent of the share of the debt proportionate to his share in the estate.***

8.The learned counsel for the respondents had contended that Mr.Babu Ibrahim was having one more brother named Hussain, who is no more. But his three children namely Shimla, Shakeela and Faisal are not made parties to the proceedings. Even if the children of late Hussain are not included in the suit, the respondents cannot contend that their liability, if any, to satisfy the debts of the deceased Babu Ibrahim is washed away.

9.The learned counsel for the respondents had contended that no amount was in due to the petitioner from the deceased Babu Ibrahim and the agreement dated 04.03.2017 is a fabricated document. The liability, if any, of Babu Ibrahim towards the petitioner can be decided only after a full fledged trial. The allegations and counter allegations made by the parties to the

lis are to be looked into at the trial stage. At this juncture, the preservation of the asset of the deceased Babu Ibrahim is essential till the final disposal of the suit. No prejudice will be caused to the respondents if their respective shares in the plaint schedule property are attached till the culmination of the proceedings, particularly when the respondents are having no case that they want to alienate the plaint schedule property.

10. From the above discussions, I am inclined to attach the respective shares of the respondents over the plaint schedule property till the final disposal of the suit. The respondents can be given an option to furnish security for a sum of Rs.5 Lakhs, being the principal amount claimed in the suit, if they want to vacate the attachment order.

In the result, the petition is allowed as follows:-

a) The respondents respective shares over the plaint schedule property is hereby attached till the final disposal of the suit.

b) The respondents are at liberty, at any stage before the final disposal of the suit to furnish security for a sum of Rs.5 Lakhs, being the principal amount claimed in the suit, if they want to vacate the attachment order.

(Typed, corrected and pronounced by me in open court on this 12th day of April 2018.)

Mithun Roy K.
Additional Munsiff

APPENDIX : Nil

Additional Munsiff

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I.A. No. 590/2018 in

O.S. No.60/2018

ORDER

Dated : 12.04.2018