

IN THE COURT OF THE MUNSIF, KOCHI

Present:

Sri. Nishad Ibrahim., Principal Munsiff

Tuesday 27th day of January, 2026/ 07th Magha, 1947

E.P. No. 126/2024 in O.S. No. 540/1994

Decree Holder:-

P.K. Joshy, aged 77 years, S/o. Krishnan, Pulickal House, Azheekkal P.O., Vypeen, Kochi – 682 508.

By Advs. P.P. Raphaelkutty & P.R. Thomachan

Judgment Debtors:-

1. Suresh M.N., aged 60 years, S/o. Narayanan, Malothe Parambil House, Azhikkal P.O., Vypeen, Kochi – 682508.
2. Raji, aged 60 years, D/o. Late Gopalan & D/o. Devaki, Maloth House, Azhikkal P.O., Vypeen, Kochi – 682508.
3. Rohini, aged 65 years, D/o. Late Bai and W/o. Ravi, Rohini Nivas, Near to Kochumullakkal Temple, Thiruvampadi, Alappuzha.

JD1 by Advs. C.P. Saji, Anish Abraham & Gregory E.M.

JD2 by Adv. K.V. Bhasi

JD3 No Vakalath

This petition filed under Order 21 Rule 10 & 11 of CPC and having been finally heard on 27.01.2026 and the court on the same day, passed the following:-

ORDER

This is an execution petition filed to execute the decree dated 14.02.1995 in the above suit.

2. Judgment Debtors 1 and 2 filed objections.

3. A1 to A13 were marked as the side of the Decree Holder.

4. Heard both sides.

5. The 1st Judgment Debtor filed detailed objection stating that the decree was obtained by the Decree Holder behind the back of the 1st Judgment Debtor and his co-shareholders of his property through which the Decree Holder is now claiming way in the pretext of a collusive exparte decree obtained by him against the defendants in the original suit. The learned counsel for Judgment Debtor No. 1 vehemently argued that the 1st Judgment Debtor cannot be termed as a Judgment Debtor in the EP as there is no enforceable decree passed against him. According to the learned counsel, the 1st Judgment Debtor or his co-shareholders were not a party to the suit.

6. On the other hand, the learned counsel for the Decree Holder submitted that the contentions of the 1st Judgment Debtor were already considered by this court in the claim petition filed by him under Order 21 Rule 99 and 100 of Code of Civil Procedure in EP 26/2014 and were discarded by this court. Hence, according to him, the decree is perfectly executable against the 1st JD as well.

7. Ext.A7 is the certified copy of the EA 71/18 in EP 26/14 in the above suit which was filed by the 1st Judgment Debtor herein under Order 21 Rules 99 and 100 of Code of Civil Procedure seeking the following reliefs:-

(A) Declare that the judgment and decree passed in OS 540/ 1994 on the files of this Hon'ble Court is not binding on the petition schedule property or on its true owners in possession.

(B) Declare that the Judgment and decree passed in OS 540/1994 on the files of this Hon'ble Court is the result of collusion practiced between the plaintiff and defendants in the said suit.

(C) Declare that the respondent is having no manner of right whatsoever over the petition schedule property to use any portion of it as a pathway.

(D) Declare that the petitioner is entitled to get a sum of Rs.1,00,000/- as compensation and damages caused to the petition schedule property by the Decree Holder and direct him to pay the amount and in the event of his default to pay, permit the petitioner to realise the said amount creating by a charge over his property.

(E) Direct the respondent to pay the entire cost of this proceeding.

8. Ext. A5 is the certified copy of the order in EA 71/2018 in EP No. 26/14 in OS 540/1994. As per Ext. A5, the said EA was dismissed.

9. In view of Ext. A5, the contentions raised by the 1st Judgment Debtor against the execution of the decree at this stage, cannot be upheld. The 2nd Judgment Debtor has filed objection stating that Judgment Debtor No.2 has not obstructed the B schedule pathway and that she is ready to remove any obstructions found in the measurement.

10. From the above discussion, this court is of the view that the execution petition is maintainable against the Judgment Debtors. Hence it is held that EP is maintainable against the Judgment Debtor. For taking steps for execution - 07.02.26.

Pronounced by me in open Court on this the 27th day of January, 2026.

Sd/-
Nishad Ibrahim
Principal Munsiff

APPENDIX:

| <u>Petitioner's Exhibits:-</u> | | |
|---------------------------------------|------------|---|
| A1 | 14.02.1995 | Certified copy of the judgment in O.S 540/1994 in the Munsiff's Court, Kochi. |
| A2 | 14.02.1995 | Certified copy of the decree in O.S. 540/1994 in the Munsiff's Court, Kochi. |

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| A3 | 17.03.2014 | Certified copy of the Execution Petition numbered as E.P 26/2014 in O.S 540/1994 in the Munsiff's Court, Kochi. |
| A4 | 06.03.2018 | Certified copy of the deposition of P.K. Joshy in E.A 71/2018 in E.P 26/2014 in O.S 540/1994 in the Munsiff's Court, Kochi. |
| A5 | 22.01.2020 | Certified copy of the Order passed in E.A 71/2018 in E.P 26/2014 in O.S 540/1994 in the Munsiff's Court, Kochi. |
| A6 | 15.07.2017 | Certified copy of the Commission Report and Survey Sketch submitted in E.A 111/2016 in E.P. 26/2014 in O.S 540/1994 in the Munsiff's Court, Kochi. |
| A7 | 15.03.2018 | Certified copy of the affidavit and petition filed by Suresh M.N. as E.A 71/2018 in E.P 26/2014 in O.S 540/1994 in the Munsiff's Court, Kochi. |
| A8 | 31.10.2012 | Certified copy of the judgment passed by the Hon'ble High Court in W.P (C) No. 23170/2012. |
| A9 | 16.09.2023 | Letter received by P.K. Joshy from Banu K.U. Public Information Officer, Village Office, Puthuvype. |
| A10 | 12.07.2023 | The settlement entered in the Mulavukad Police Station, Kochi City in the petition filed by P.K. Joshy obtained by Public Information Act. |

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|---------------------------------------|------------|--|
| A11 | 09.05.2024 | Land tax receipt issued from the Village Office, Puthuvype. |
| A12 | 08.02.2024 | Letter issued by the Secretary, Elamkunnappuzha Grama Panchayath to Joshy P.K. |
| A13 | 23.02.2018 | Certified copy of photocopy of Amin Report and Delivery Report. |
| <u>Respondent's Exhibits:-</u> | | Nil |
| <u>Court's Exhibits:-</u> | | Nil |
| <u>Witness Exhibits:-</u> | | Nil |
| <u>Petitioner's Witness:-</u> | | Nil |
| <u>Respondent's Witness:-</u> | | Nil |
| <u>Court's Witness:-</u> | | Nil |

**Id/-
Principal Munsiff**

///True Copy///

Principal Munsiff

bk/-
Compd.by:AK

Order in
E.P. No. 126/2024 in
O.S.No. 540/1994
Dated : 27.01.2026