

IN THE COURT OF THE MUNSIFF, PERUMBAVOOR

Present:- Smt. Sumey Chandran, Civil Judge (Junior Division)
Wednesday the 8th day of April, 2026/ 18th Chaithra, 1948.

E.A. 01/2025

in

E.P No. 30/2025

Claim Petitioner:-

P P Sheela, Aged 70 years, W/o. Issac, Pothiyil House, Njarackal Village, Ernakulam, Vypin.

By Adv. Greeshma B Raj

Respondents/Judgment Debtors/Decree Holders:-

- 1 Sosamma, Aged 80 years, W/o. George, Mundackal House, Vembilly Kara, Kunnathunad Village, Ernakulam District.
- 2 Biju George, Aged 40 years, S/o. George, Mundackal House, Vembilly Kara, Kunnathunad Village, Ernakulam District.
- 3 Kurian(No More), S/o. Yohannan, Karakkunnathu House, Puttumanoor Kara, Puthencruz Village.
- 4 Basil Kurian, S/o. Kurian, Karakkunnathu House, Puttumanoor Kara, Puthencruz Village, Represented by Power of Attorney Holder Lissy.
- 5 Lissy, W/o. Kurian, Karakkunnathu House, Puttumanoor Kara, Puthencruz Village.
- 6 Bincy, D/o. Kurian, Karakkunnathu House, Puttumanoor Kara, Puthencruz Village, Represented by Power of Attorney Holder Lissy.

(R1,R2), (JD1,JD2) - By Adv. Sumesh S

DH1,R3 - Dead

DH2,R4 - No Vakalath

DH3 & DH4/R5 & R6 - P T Geevarghese

This Petition having been finally heard before me on 08/04/2026 and the court on the same day passed the following:-

ORDER

1. The petitioner is a third party and an absolute stranger to the decree and the execution proceedings.
2. According to the petitioner, she is the absolute owner in possession of 19.50 Ares of property comprised in Survey Nos. 325/5 and 325/3 of Kunnathunadu Village, Kunnathunadu Taluk. It is her case that she has been in continuous, peaceful and uninterrupted possession of the said property for the past 22 years and has been cultivating the same. It is further stated that the property contains various yielding trees and improvements. The petitioner contends that she acquired the said property as per a registered sale deed dated 06.07.1996 executed by one Biju George, and that since then she has been in absolute possession and enjoyment of the property. She has also been regularly remitting land tax in respect of the said property. It is her specific case that on 05.01.2026 at about 4.00 p.m., she came to know that steps are being taken in the execution proceedings for delivery of the decree schedule property, and that her property having an extent of 19.50 Ares in Survey Nos. 325/5 and 325/3 has been mistakenly included in the delivery schedule. According to the petitioner, her property is lying as a distinct plot with well-defined boundaries, fencing and demarcation. It is contended that if delivery is effected without properly identifying the correct boundaries of the decree schedule property, she will be unlawfully dispossessed from her property. The petitioner further submits that she has valid title deeds, tax receipts and other documents to establish her ownership and possession over the claim petition schedule property. She asserts that she has no connection whatsoever with the decree or the decree schedule property. It is contended that if delivery is effected before adjudication of this claim petition, she will suffer irreparable injury and loss. Hence, the petition is filed seeking adjudication of her claim and for appropriate reliefs to protect her possession over the claim petition schedule property.

3. The decree-holders have filed objection contending that the claim petition is not maintainable and is liable to be dismissed. According to the decree-holders, the claim petition has been filed suppressing material facts and with the sole intention of obstructing the execution of the decree. It is stated that the objection is filed not only on behalf of the contesting decree-holder but also on behalf of the other decree-holders. The second decree-holder is her son and the fourth decree-holder is her daughter, while the first decree-holder is her deceased husband. The decree-holders admit that the claim petitioner relies upon a property having an extent of 19.50 Ares in Survey Nos. 325/5 and 325/3 of Kunnathunadu Village, allegedly obtained as per document No. 4057/1996 of Puthencruz Sub Registry Office from Biju George. However, it is contended that the claim petitioner has not produced the said document. On the contrary, the decree-holders have produced the said document along with the objection and point out that the prior title traces back to document No. 197/1991. According to the decree-holders, the decree schedule property forms part of property comprised in Block No. 35 in Re-survey No. 325/4 of Kunnathunadu Village, having an extent of 37.03 Ares along with an additional extent of 3.44 Ares. These properties were acquired by the decree-holders as per document Nos. 293/2009 and 294/2009 of Puthencruz S.R.O., and the title of the judgment debtor traces back to a settlement deed of the year 2000 executed by his father George. It is further contended that earlier litigation had arisen in respect of the very same property, and the matter was adjudicated after measurement through a Commissioner and preparation of plan. The defendants in the said proceedings remained absent, and the suit was decreed ex parte in favour of the decree-holders. The decree-holders further submit that repeated attempts were made by the judgment debtors to set aside the ex parte decree by filing petitions, but the same were dismissed for default on account of non-appearance and failure to take steps. It is also stated that an appeal has been filed as C.M.A. No. 1/2026 before the Sub Court.

According to the decree-holders, the present claim petition is yet another attempt to delay and obstruct execution proceedings and to prevent them from enjoying the fruits of the decree. Hence, the decree-holders pray that the claim petition be dismissed with costs.

4. The only point that arise for consideration is:- Whether the petition is allowable?
5. Heard both sides. Perused records. No evidence was adduced by petitioner and respondent. The document produced by petitioner marked as Ext. A1 and the document produced by respondent marked as Ext. B1 to B7.
6. **The point:-** The present execution petition is filed to execute the decree passed in the above suit. As per the decree, the decree-holder is declared to be in possession of the plaint schedule property, and the eastern boundary of the property has been specifically fixed. There is also a decree of injunction restraining interference with such possession.
7. From the decree and the plan appended thereto, it is seen that the decree schedule property is situated in Block No. 35 of Kunnathunadu Village in Survey No. 325/4. The plan forming part of the decree further indicates that the property lies in sub-divisions 325/4-1 and 325/4-2. The decree-holder traces title to the said property under documents No. 294/2009, 293/2009 and 4194/2000 of SRO, Puthencruz. The claim petitioner, who is a third party to the decree, contends that she is in possession of 19.50 Ares of property comprised in Survey Nos. 325/5 and 325/3 and that her property has been wrongly included in the delivery schedule.
8. A comparison of the decree schedule property with that of the claim petitioner would show that the decree relates specifically to property in Survey No. 325/4 and its sub-divisions, whereas the claim petitioner asserts possession over property in Survey Nos. 325/5 and 325/3. Thus, these appears to be distinct survey numbers. However, that by itself is not conclusive.
9. The claim petitioner asserts title under a sale deed of the year 1996 and long possession. However, no satisfactory documentary evidence has been

produced or proved in support of such claim. The matter was posted for enquiry on 09.01.2026 and thereafter on 13.01.2026 and 17.02.2026. Despite sufficient opportunity, the claim petitioner has not chosen to adduce any evidence.

10. In a claim petition under Order XXI Rule 97 CPC, the burden lies squarely on the claimant to establish independent right, title or possession over the property sought to be delivered. Mere assertion of possession, without supporting evidence, cannot be accepted, especially when the decree sought to be executed is supported by a plan and identifiable survey particulars.
11. On the other hand, the decree-holder relies on the decree and the plan appended thereto, which clearly identify the property as lying in Survey No. 325/4 and its sub-divisions. There is nothing on record to show that the property claimed by the petitioner forms part of the decree schedule property or that there is any overlap requiring interference at this stage. In such circumstances, this Court finds no reason to accept the claim put forward by the petitioner. The claim petition appears to have been filed only at the stage of delivery, without substantiating the alleged right, and cannot be permitted to obstruct the execution of the decree. Accordingly, it is found that the claim petitioner has failed to establish any independent right, title or possession over the decree schedule property.

In the result, the claim petition is dismissed. No order as to costs.

Pronounced by me in open court on this the 08th day of April, 2026.

Sd/-

Sumey Chandran,
Civil Judge (Junior Division)

Appendix

Petitioner's Exhibits :-

A1 - 04.03.2022 - Encumbrance Certificate

Respondent's Exhibits :-

- B1 - 06.07.1996 - Certified Copy of sale deed No. 4057/3/1996 of SRO, Puthencruz.
- B2 - 24.01.2009 - Copy of sale deed No. 294/2009 of SRO, Puthencruz.
- B3 - 24.01.2009 - Copy of sale deed No. 293/2009 of SRO, Puthencruz.
- B4 - 08.10.2013 - Copy of Judgement OS 12/2011 of Munsiff Court, Perumbavoor.
- B5 - 22.03.2011 - Copy of written statement in OS 12/2011 of Munsiff Court, Perumbavoor.
- B6 - 07.01.2011 - Copy of plaint in OS 12/2011 of Munsiff Court, Perumbavoor.
- B7 - 22.03.2011 - Copy of draft issue in OS.12/2011 of Munsiff Court, Perumbavoor.

Court Exhibits :-Nil

Witnesses Exhibits: Nil

Petitioner's Witnesses :-Nil

Respondent's Witnesses :- Nil

Court Witnesses :-Nil

Id/-
Civil Judge (Junior Division)
(By Order)

// True Copy //

Junior Superintendent

Typed by : kmb
Compd.by : RM

Copy of Order in
E.A. No. 1/2025
in
E.P No. 30/2025

Dated: 08.04.2026