

**IN THE COURT OF THE SUB JUDGE, KATTAPPANA
PRESENT:- SHRI. ARAVIND B. EDAYODI, SUB JUDGE**

Wednesday, the 19th day of November, 2025 / 28th day of Karthika, 1947

E.A. 89/2019 IN E.P. 28/2014

**Petitioner/
Claimant**

: M. T. Thomas, aged 66 years, S/o Cheriyan Thomas, Madukkakavumkal House, Mlamala Kara, Thengakkal P .O, Manjumallay Village.

(By Adv. A. M. Michael)

**Cr. petitioners/
Decree holder and
Judgment Debtor**

1. The Federal Bank Ltd. by the Branch Manager, Kaloor Barnch, Ernakulam
2. Jacob T. Ommen, aged 58 years, S/o M. C. Ommen, Thundiyamkulth house, Thengakkal P.O, Manjumallay Village.

(By Adv. Tom Thomas and

Adv. Sunny Cheriyan for R1 and

Adv. Jomon K Chacko for R2)

This Petition is filed Under Order 21 Rule 58 and 59 of Civil Procedure Code 1908 and coming before me for hearing on 12.11.2025 and having been stood once consideration till 19.11.25 in the presence of the above counsel and the court on the same day passed the following:-

ORDER

This is an application filed by 3rd party under Order XX1 Rule 58 and 59 and Under section 151 of the Code of Civil Procedure for an order that the property proclaimed for sale is not liable to be sold and sought to adjourn the sale till the disposal of this application. The decree holder and judgment debtor are the respondents

2. According to the petitioner, the decree holder is seeking sale of 26.50 Cents of property purchased by the petitioner in the court auction dated 25/09/2010 and the sale was confirmed on 27/11/2010 and delivery of the property was ordered in favour of the petitioner as per Order in EA 25/2011 though it was stayed as per Order of Hon'ble High Court in OP(C) 382/2012. The judgment debtor has no interest in the property proclaimed for sale, as his right, title and interest over the property was sold in favour of the petitioner. Hence the petitioner sought for an order that the property proclaimed for sale is not liable to be sold for the realisation of the decree debt.

3. The respondent/the decree holder objected the petition.

4. From the side of the petitioner, Ext. A1 to A4 documents were marked and from the side of the respondent/ decree holder in E P Ext. B1 and B2 documents were marked.

5. Heard both sides.

6. Now the point that arose for consideration is:-

Is the petitioner to entitled to an order that the property proclaimed for sale for the realisation of the decree debt in EP 28/2014 is not liable to be sold, as that sought for?

7. From perusal of Ext.A1 Encumbrance Certificate, Ext.A2 Sale certificate and Ext. A4 Order of Attachment it could be seen that the property, forming part of 68 Cents of property purchased by the petitioner in this EA, which was earlier attached by the petitioner on 12/12/2002, as per Order in IA 1111/2002 in OS 185/2002, in the suit preferred by the petitioner and the petitioner who was the decree holder in that suit purchased the above property, as per Ext. A2 Sale Certificate in EP 51/2005 in OS 185/2002 on 27/11/2010 and the sale in favour of the petitioner was confirmed and in Ext. A1 Encumbrance certificate, there is no whisper that the decree holder in this EP has any right over the property purchased. From Ext. B1 and B2 documents it could be seen that the judgment debtor in this EP deposited his title deed with respect to the property seeking sale on 20/08/2007, before the 1st respondent Bank/the decree holder in this EP, but the above property was under attachment from 12/12/2002, as per order in IA 1111/2002 in OS 185/2002, on the basis of the application filed by the petitioner and thereafter the above property was sold in favour of the petitioner. As per Sec. 64 of CPC, where an attachment has been made, any private transfer or delivery of the property attached or of any interest therein and any payment to the judgment debtor of any debt, dividend or other money contradictory to such attachment shall be void as against all claims enforceable under the attachment. From Ext. A2 Sale certificate it could be seen that the petitioner, who was a decree holder in OS 185/2002 purchased the property attached for the discharge of decree debt and the decree debt due was

set off towards sale as consideration. Hence the claim of the decree holder in this EP, over the attached property in IA 1111/2002 in OS 185/2002, for the realisation of suit claim in this EP, which was already sold to the petitioner, based on a subsequent mortgage on 20/08/2008 is void, as provided under Sec. 64 of the Code of Civil Procedure. I find the point in favour of the petitioner.

In the result:-

1. The petition is allowed and the petitioner is entitled to an order that the property proclaimed for sale in EP 28/2014 based on a mortgage with respect to property in sale deed No. 3603/1994 of SRO Peermed with an area of 26.50 Cents in Sy No. 449/1 of Manjumala Village in Peermed Taluk referred in Ext. B1 and B2 documents, is not liable to be sold for the realisation of the decree debt in EP 28/2014 as it was already attached in favour of the petitioner and it was subsequently sold in favour of the petitioner, for the realisation of his decree debt, as item No. 2 in Ext. A2 Sale Certificate; as the above property was mortgaged, subsequent to the attachment in favour of the petitioner for the realisation of the suit claim against the 2nd respondent, who is the judgment debtor in this EP.

Dictated to the Confidential Assistant, typed by her, corrected and pronounced by me in open court on this the 19th day of November 2025.

**ARAVIND B EDAYODI
SUB JUDGE, KATTAPPANA**

*Order in E.A.89/19 in
E.P. 28/ 2014
Dated: 19.11.2025*