

IN THE COURT OF THE SUBORDINATE JUDGE OF VATAKARA

Present: Sri. Joji Thomas, Sub Judge
Tuesday, the 1st day of July, 2025

EA 97/2025 in EP 37/2021 in OS 20/2019

Between:

Mukrivalappil Ummerkutty,
S/o Abdulla, aged 53 years,
Residing at Mukrivalappil, Vadakara P.O.,
Vadakara amsam, desam , Vadakara Taluk,
Kozhikode District.

} Petitioner/
3rd party

And:

1. K.V Muammed Alias-
Pallintavida Muhammed,
S/o K.V Abdurahiman, 59 Years,
Residing at "Sal Sabeel",
Chorode Amsom, Desom,
Vatakara Taluk, Kozhikode.
2. Kalleri Kunhammed,
S/o Abdulla, 61 Years,
Residing at "Vallil", Vatakara Beach Post,
Vatakara Amsom Desom,
Vatakara Taluk, Kozhikode.

} Respondents

This petition coming on this day for hearing before me in the presence of Sri. C. Bhaskaran, Advocate for petitioner and of Sri. C. Subramanian and Sri. P. Anoop, Advocate for R1 and Sri. B. Krishnan, Advocate for R2, the court passed the following.

ORDER

This application is filed under Order XXXIX Rule 1 of the Code of Civil Procedure, 1908 (hereinafter referred to as 'CPC'). The petitioner is the plaintiff in OS 69 of 2024, a case filed against the judgment debtor, in the present Execution Petition. He has obtained an order of attachment before judgment against the defendant in that suit. The property attached in that suit is now sought to be attached and sold in execution of the present decree. The auction proceedings are currently posted for steps. If the auction sale is allowed without granting the petitioner an opportunity to be heard, it will prejudice his legal rights. The petitioner's presence is necessary for the effective and complete adjudication of rights of all stakeholders in the matter of execution. Hence, this application.

3. Respondent filed objection with the following contentions:- The application for impleadment in a pending Execution Petition, filed under Order 39 Rule 1 of the CPC, is not maintainable. The facts disclosed in Paragraphs 2 to 5 of the affidavit supporting the Petition do not allow the Petitioner to be impleaded in a pending Execution Petition. As stated in Paragraphs 2 and 3 of the affidavit, the Petitioner obtained an attachment before judgment in 2024, almost three years after a decree was obtained in O.S. No. 20 of 2019. The Petitioner has

not yet secured a decree before the assets are held by the court, and therefore, will not be entitled to any benefit under Section 73 of the CPC. This attempt is solely to prevent this Respondent from enjoying the fruits of the decree they obtained. This Respondent submits that the present Petitioner has colluded with the 2nd Respondent in this Petition, who is the Judgment Debtor in O.S. No. 20 of 2019, solely to stall execution. Hence, seeks to dismiss the application.

4. Heard both sides. Perused the records.

5. The following points arose for consideration and decision:-

- 1) Is the prayer in this application to add petitioner in this Execution Petition allowable?
- 2) Reliefs and costs?

6. **Point No.1:-** The learned counsel for the petitioner would submit that his client obtained an attachment before judgment on the property slated for sale in execution of the decree, thus making him a necessary party in this Execution Petition. Conversely, the learned counsel for the respondent would argue that the attachment before judgment was secured three years after the decree in this Execution Petition was passed, and that the current application is merely a result of collusion between the petitioner and the judgment debtor.

7. The decree put in for execution was passed in OS 20 of 2019 on February 27, 2021. The petitioner, however, filed OS 69 of 2024 against the judgment debtor three years after this decree. It is well-settled law that an order of attachment before judgment only restricts private sales, not court-ordered sales. In this case, the property on which the petitioner obtained an attachment before judgment is now being sought for sale to execute the decree from OS 20 of 2019. Admittedly, the petitioner has not even secured a decree in OS 69 of 2024. An order of attachment before judgment grants the petitioner no right other than to restrain a private sale. As per Rule 10, Order 38 of the CPC, an attachment before judgment does not prevent a decree-holder from applying for the sale of the attached property in execution of their decree. The petitioner's right is limited to Section 73 of the CPC for rateable distribution of assets held by the Court, provided he has obtained a decree against the same judgment debtor. However, in this case, the petitioner has not yet obtained any decree. Therefore, the petitioner is neither a necessary nor a proper party to be impleaded in the current Execution Petition, and his application for addition cannot be allowed. Accordingly, this point is found against the petitioner.

8. **Point No.2:-** In the light of point No.1, this application is to be dismissed. There is nothing on record to deviate from normal rule of imposing costs. Hence, costs shall follow the event.

In the result, this application is dismissed with costs.

(Dictated to C.A, typed by her, corrected and pronounced by me in open Court, on this the 1st day of July, 2025)

Sd/-
SUB-JUDGE,
VATAKARA

Witnesses and Exhibits marked on either side : NIL

Sd/-
SUB-JUDGE,
VATAKARA

pp/-

Fair/Copy of Order in EA. 97/25 in
EP 37/21 in OS 20/19
dated 01/07/2025