

IN THE COURT OF THE MUNSIFF, PUNALUR
PRESENT :-Smt. Reshma R.S, Civil Judge, Junior Division
Monday the 25th day of August 2025, 3rd day of Sravana 1947
IA 1/2020 in OS 91/2016

Between

Petitioner : Kerala Gramin Bank, Anchal Branch, Punalur Taluk,
Kollam District represented by its Constitutional
Attorney and Manager, Pravitha.M, aged in 34 years,
D/o.K.R.Mani, Branch Manager Kerala Gramin Bank
Br. Anchal residing at Thusharam, Anachal,
Kalamachal P.O
(By Adv. Kaippallil.N.Gopalakrishnan Nair)

And

Respondents : 1. P.Rajendran, S/o.Purushothaman Vaidyan,
aged 65 years, residing at Anand House,
Adayamon Village, Punalur Taluk (Plaintiff)
2. Nazar.A, S/o. Abdul Khader, aged 38 years,
Koyikkal House, Vakkom Mukku, Thazhamel,
Anchal Village, Punalur Taluk (Defendant)
(By Adv. Surendran for D1 & Adv. Lenu Jamal for D2)

This petition is coming on for hearing before me on 25.08.2025 and on
the same day court passed the following.

ORDER

This is an application filed under Order XXXVIII Rule 8 of r/w Order
XXI Rule 58 of CPC.

2. **The petition averments in brief are as follows:** The petitioner is the
Kerala Gramin Bank. The 1st respondent filed this suit on 20/02/2016 for
realisation of Rs. 10,00,000/- with future interest @ 12 % per annum
compounded with monthly rests from the 2nd respondent. IA 497/16 was filed
to attach the petition schedule property, which was allowed on 20/06/2016.

The 2nd respondent availed a business loan of Rs. 8,00,000/- on 16/07/2013 after executing relevant documents to the North Malabar Gramin Bank Anchal branch. After amalgamation, the North Malabar Gramin Bank is now known as Kerala Gramin Bank. The security of the business loan was the equitable mortgage of the petition schedule property owned by the 2nd respondent. On 10/12/2010, the 2nd respondent deposited his title deed, i.e., sale deed No. 1161/2010 of Anchal SRO, to create an equitable mortgage under section 58 (f) of the Transfer of Property Act as collateral security for Rs. 5,00,000/- availed by him on 07/12/2010. The 2nd respondent requested the petitioner to continue the said equitable mortgage for the subsequent cash credit facility of Rs. 8,00,000/- on 16/07/2013. It was allowed to continue. From 28/02/2014, the repayment was highly irregular, and the 2nd respondent did not settle the accounts. The debt was classified as Non-Performing Asset on 29/05/2014. The 2nd respondent disposed of the hypothecated stock in trade. On 29/07/2014, the petitioner sent a legal notice to the 2nd respondent to clear the liability. But the 2nd respondent failed to discharge the liability. Hence, the authorised officer of the petitioner issued a demand notice to the 2nd respondent on 28/04/2015 u/S 13(2) of the SARFAESI Act. Since the 2nd respondent did not discharge the liability, a possession notice was published in two local newspapers, and the petitioner took possession of the scheduled property. The proceedings for the same are pending. Subsequently, upon verification of the encumbrance certificate, it was found that an attachment was made to the

mortgaged property on 21/03/2016. The scheduled property has been subject to a mortgage to the petitioner, and the petitioner has first charge over the scheduled property. The attachment was ordered long after the mortgage. The scheduled property is liable for the amount due to the petitioner. Hence, the attachment may be withdrawn. Otherwise, it would cause irreparable injury and hardships to the petitioner. Hence, this petition.

3. **The 2nd respondent filed objection contending the following:** - The claim petition is not maintainable either in law or on facts. The plaintiff is not entitled to realise any amount from the 2nd respondent. The 2nd respondent took a loan from Kerala Gramin Bank. But the 2nd respondent did not avail any loan of Rs. 8,00,000/- on 16/07/13. The 2nd respondent never executed a composite hypothecation agreement, a demand promissory note or a guarantee agreement as alleged. Those are forged documents, not binding on the 2nd respondent. The loan availed by the 2nd respondent on 10/12/2010 was duly repaid. But the petitioner did not return deed No.1161/2010. The petitioner demanded exorbitant interest. To realise it, they forged documents on blank papers signed by the 2nd respondent, and created false evidence that the 2nd respondent had availed a loan. The petitioner is not entitled to realise any amount from the 2nd respondent. There is no legally enforceable debt. The attachment made is also irregular. The petitioner does not have any charge over the scheduled property. There is no cause of action to file the present petition. The petition is filed

with ulterior motives, and hence, the petition is liable to be dismissed with compensatory costs.

4. The 1st respondent did not file any objection to this petition, and hence the petition was proceeded ex-parte against the 1st respondent.

5. To prove the petitioner's case, the manager and principal officer of Kerala Gramin Bank, Anchal branch, was examined as PW1 and Exts. A1 to A8 were marked. The 2nd respondent did not adduce any evidence.

6. Heard both sides and perused the records.

7. The following points arise for consideration:-

1) Is the attachment over the petition schedule property liable to be lifted?

2) Relief and costs?

8. **Point Nos. 1 and 2:** These points are considered together for brevity, convenience, and to avoid repetition of facts. The learned counsel for the applicant argued that the application is to be allowed in the interest of justice. According to the claim petitioner, the petition schedule property is a secured asset and the petitioner bank has a first charge over the petition schedule property. To prove the contentions, the manager and principal officer of the claimant bank, Anchal branch, was examined as PW1. PW1 filed affidavit in lieu of examination-in-chief, in tune with the averments in the claim petition. Ext. A1 to A8 were marked. PW1 deposed before the court that the petition schedule property is a secured asset and that the 2nd respondent deposited the

title deed of the petition schedule property to create an equitable mortgage in 2010 itself. PW1 produced a certified copy of the application filed before the Debt Recovery Tribunal, and it was marked as Exhibit A1. Exhibit A2 is the certified copy of the composite hypothecation agreement dated 16.07.2013. Exhibit A3 is the certified copy of the guarantee agreement dated 16.07.2013. Exhibit A4 is the certified copy of the demand promissory note dated 16.07.2013. Exhibit A5 is the certified copy of the mortgage by deposit of title deed vide Sale Deed No. 1161/2010 dated 10.12.2020. Exhibit A5 (a) is the certified copy of the letter for creation of subsequent equitable mortgage dated 16.07.2013. Exhibit A7 is the certified extract of statement of accounts. Exhibit A8 is the copy of the encumbrance certificate dated 1.7.2020.

9. During his cross-examination, PW1 deposed before the court that he has not produced the authorization letter before the court. He further added that Exts. A1 to A8 documents were not created or signed in his presence. He further added that the bank came to know about the attachment in the property in 2016.

10. Perusal of Exhibits A1 to A10 and an analysis of the evidence of PW1 makes it clear that the petition schedule property was already mortgaged with the bank, and the 2nd respondent created an equitable mortgage by deposit of the title deed. It is evident that the proceedings are pending under the Debt Recovery Tribunal, and the learned counsel for the petitioner argued that the proceedings till the sale was completed. It is evident that the claimant has first

charge over the property. It can be seen that the attachment was made on 21/03/2016, and at that time the property was mortgaged with the petitioner bank. Order XXXVIII R. 10 makes it clear that the attachment before judgment shall not affect the rights existing prior to the attachment, or persons not parties to the suit.

11. The purpose of Order XXXVIII R.5 is to prevent the defendant from disposing of his property with the intent to obstruct or delay the execution of any decree that may be passed against him. If he had already mortgaged the property, such a contingency would not arise. From the materials on record, it can be seen that in 2010 itself, the 2nd respondent mortgaged the property with the petitioner bank, and the same is a secured asset. Hence, this court is of the view that the attachment over the claim petition schedule property is to be lifted.

In the result: This application is allowed, the attachment over the claim petition schedule property is hereby vacated. Issue intimation to the SRO concerned.

Pronounced in open court on this the 25th day of August, 2025.

Sd/-

Civil Judge (Junior Division)

Appendix:

Exhibits for the petitioners

A1	04.11.2022	Certified copy of Application filed before Debt Recovery Tribunal.
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A2	16.07.2013	Certified copy of Composite hypothecation agreement.
A3	16.07.2013	Certified copy of Guarantee agreement
A4	16.07.2013	Certified copy of Demand Promissory Note.
A5	28.04.2010	Certified copy of Mortgage by deposit of the deed vide Sale deed No.1161/2010.
A5(a)	10.12.2010	Certified copy of Mortgage by deposit of title deeds.
A6	17.09.2020	Certified copy of extract of statement of Bank.
A7	21.01.2015	Certified copy of Demand Notice under section 13(2)
A8	01.07.2020	Certified copy of Encumbrance certificate

Witness for the Plaintiff

PW1 : Manu.R

Id/-
Civil Judge (Junior Division)

//True Copy//

Typed by : Saranya V S

Compared by :

CIVIL JUDGE (Junior Division)