

IN THE COURT OF THE SUBORDINATE JUDGE, KARUNAGAPPALLY

Present:- Sri.Santhosh Das, Civil Judge (Senior Division), Karunagappally.

Friday the 31st day of October, 2025/ 9th day of Karthika, 1947.

I.A.No.01/2025 in OS.65/2025

Between

*Petitioner/
Plaintiff:-*

Remya Benni, D/o.Leena,
TC. 10/2579/3 Keraladithyapuram,
Thottapattukudi Muri, Poudikonam.P.O.,
Poudikonam Village,
Thiruvananthapuram Taluk,
Thiruvnanathapuram District.

(By Adv.Shri.A.Satheeshkumar).

And

*Respondent/
Defendant:-*

Devijith, aged 31 years,
D/o.Deepa, Deepika House,
Valiyakulangara Muri,
Oachira Village, Karunagappally Taluk,
Kollam District.

(By Adv.Shri.Vinayakumar.K).

This petition is coming on for hearing before me on 31.10.2025 and on the same day the Court passed the following:-

ORDER

1. Plaintiff in the above suit had filed this application under O. 38 Rule 5 CPC, and the suit is one filed for recovery of an amount of ₹ 12,00,000/- (Rupees Twelve Lakhs Only) with

interest from the defendant and her assets. Vide order dated 26/08/2025, defendant / respondent was directed either to furnish security for the plaint claim before the Court or to appear and show cause why she should not furnish security for the plaint amount, and in the mean time the petition schedule property was conditionally attached.

2. In response to the notice, defendant / respondent entered appearance and without furnishing security she filed objection and sought for the lifting of the conditional attachment.
3. According to the plaintiff, defendant requested financial assistance of ₹ 12,00,000/- for procuring her job at United Kingdom and promised to repay the same within a period of one year. Believing the defendant, plaintiff on 07/12/2022 transferred an amount of ₹ 12,00,000/- from his bank account to the bank account of the defendant. With the financial assistance so availed, defendant obtained job at U.K and upon his return, plaintiff called at the house of the defendant and demanded the repayment of the loan, whereupon defendant issued a cheque dated 20/05/2025 for the amount of ₹ 12,00,000/- and assured the plaintiff that funds will be available at the bank for encashing the cheque. Plaintiff presented the cheque for collection, but the same got returned for want of funds in the account of the defendant. Plaintiff demanded the cheque amount, but defendant had not discharged the liability, and plaintiff was planning to

move the Court for recovery. As the matter stood thus, it is understood by the plaintiff / petitioner from one Mr. Suresh that the defendant is taking hasty steps for alienating his assets namely the property described in the schedule attached to this application. According to the petitioner / plaintiff, if defendant succeeds in that attempt, plaintiff / petitioner will be put to great hardships and the scope of recovery would be bleak. In the circumstances, this petition was filed along with the recovery suit.

4. Turning to the objection of the defendant / respondent, the contentions raised therein are summarized as follows:-

1. Defendant had taken a case of total denial of the alleged transaction, but it is said that the plaintiff was introduced to her by her husband as his closest friend. According to her, there is no financial transaction what so ever with the plaintiff and no amount is due from her to the plaintiff.
2. According to her, she was being harassed by her husband and family and they have procured her assets and records. It is claimed that her husband had took her to South Indian Bank, Oachira branch and opened a SB account in her name and forced her to obtain cheque book having 50 leaves and thereafter the husband took possession of the cheque book and pass book. It is said that she was given a car by her parents at the time of her marriage and that the

loan of that car was later cleared by her parents. At this juncture, her husband informed her that he is in need of money and he forced her to obtain a loan of ₹ 6,00,000/- by pledging the car, which she obliged. Towards security for that loan her signed blank cheques were obtained by her husband, it is said.

3. According to her, on account of the domestic violence at her matrimonial house, she had now shifted her residence to her parental house and OP(Others) 451/2025 is filed by her against her husband before Family Court Pathanamthitta. It is thus claimed that her husband had colluded with the plaintiff / petitioner and one among the cheques obtained by her husband is used for making false document and this suit is filed.
4. Turning to the property under attachment, it is claimed that the same is not her property, but that the same was in the name of her father and that upon his demise, she along with her mother and brother have inherited the same as legal heirs in equal shares.
5. Therefore, it is said that the attachment petition is bad in law for false declaration regarding the ownership of the property.
5. Records produced from either side for the purpose of this

inquiry is got marked as Ext. A1 to A6 and B1 & B2 respectively.

6. Both sides were heard and the records were perused.
7. Having regard to the rival contentions, the point to be considered is whether the conditional attachment is to be lifted, and if not, to what extent it can be continued.
8. The case advanced by the plaintiff is denied in toto by the defendant, and it is her case that her husband against whom she filed OP(Others) No. 451/2025 before Family Court Pathanamthitta had colluded with the plaintiff and that the cheque used by the plaintiff for filing the suit, namely Ext. A1 is obtained by the plaintiff through her husband without her junction and that the said document is a false document, without any consideration. Ext. A6 is the copy of the legal notice issued by the plaintiff to the defendant regarding the return of Ext. A1. The said notice was received by the defendant as is evident from Ext. A5 postal acknowledgment card, corroborated by Ext. A4 postal receipt. Defendant has no case that she had issued any reply notice to Ext. A6, which was the first opportunity for her to refute the allegations with reasons. Without doing so, present objection is filed by her raising various allegations which all requires more proof. In the premises, at this juncture it can only be concluded that plaintiff had made out a prima-facie case from the records. It

is on such prima-facie satisfaction that the conditional order of attachment was passed, and there seems to be no change in that circumstances.

9. At any rate, correctness or otherwise of the plaint claim and the contentions advanced by the defendant needs to be tested in evidence, led in the trial that is to follow. Till that time, it can only be said that there is a prima-facie case in favour of the plaintiff.
10. Turning to the property under attachment, of-course the claim raised by the plaintiff that the same belongs to the defendant is not perfectly correct, but it is understood from the objection that the defendant / respondent is having fractional right over the same as explained therein. To be precise, the property was standing in the name of her father, and upon his demise, the same devolved upon the legal heirs, namely defendant, her mother and brother. Therefore, though it is correct to say that the defendant is not having absolute title, it is not correct to say that she is not having any title at all. Admittedly, she is having 1/3rd right over the property under attachment, and that right can be definitely attached.
11. Regarding the apprehension of alienation, having regard to the facts and circumstances, it is possible that the defendant may release her right over the property so as to avoid the same from being proceeded upon in execution of

the possible decree.

12. Now, what is the real purpose of an attachment before Judgment. At paragraph No.11 of the Judgment of Hon'ble High Court of Kerala in **Skoda Auto India Pvt. Ltd. v. St.Antony's Trading Company & Ors.** reported in 2018 (1) KLJ 782, the Hon'ble Court observed that the object of Order 38 Rule 5 is to prevent any attempt on the part of the defendant to defeat the fruits of the decree that may be passed against him, and that the object behind the order levying attachment before Judgment is to give an assurance to the plaintiff that the decree, if passed would be satisfied, and that it is a sought of guarantee against the decree becoming infructuous for want of property.
13. No doubt, as discussed supra, petitioner had made out a strong prima facie case in his favour. Being so, in the absence of production of security, the conditional attachment cannot be vacated as such, but it can be clarified that the attachment is limited to the right of the defendant over the property.
14. It follows, the conditional attachment dated 26/08/2025 is made absolute, but with clarification that the attachment is limited to the 1/3rd right of the respondent / defendant over the property, subject to the final outcome of the suit.

15. Accordingly, this petition stands allowed.

16. Office will intimate the SRO / VO in the matter.

Dictated to the Confidential Assistant, typed by her, corrected by me and pronounced in open Court on this the 31st day of October, 2025.

Sd/-
Santhosh Das,
Civil Judge (Senior Division)

Appendix:-

Exhibits marked from the side of Petitioner:-

- A1. Original cheque dated 14.10.25.
- A2. Cheque Return Memo dated 14.10.25.
- A3. Concern letter dated 21.08.25.
- A4. Postal Receipt dated 14.10.25.
- A5. Acknowledgment Card dated 14.10.25.
- A6. Legal Notice dated 14.10.25.

Exhibits marked from the side of Respondent:-

- B1. Sale deed No.1962/1974 dated 20.05.74.
- B2. Sale deed No.2878/15 dated 09.11.2015.

Id/-
Civil Judge (Senior Division)

//True copy//

Typed by : Sunil Kumar.S,
Compared by: Sini.G.

Civil Judge (Senior Division)