

IN THE COURT OF THE SUBORDINATE JUDGE, KARUNAGAPPALLY

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

Wednesday the 20th day of August, 2025/ 29th day of Sravana, 1947.

IA.03/2024 in OS.40/2023

Between

Claim Petitioner:-

Shamna, aged 50 years,
D/o.Muhammedkannu,
Sumayya Manzil, Manakkadu,
Pallimukku Kollam, now residing at
Shamna Gardens, Kilikollor Cherry,
Mangadu Village, Kollam.

(By Adv.Shri.Farook Nizar).

And

Respondents:-

1. Abdul Salam, aged 64 years,
S/o.Kochu Kunju,
Kodiyil Veedu, Kunnathoor Taluk,
Sasthamcotta, Kollam.

(By Adv.Shri.Arun Sreeraj)

2. M.A.Anzar, S/o.Abdul Azeez,
Shamna Gardens, Kilikollor Cherry,
Mangadu Village, Kollam.

(By Adv.Shri.Plakkadu B.J.Shibu)

This petition is coming on for hearing before me on 20.08.2025 and on the same day the court passed the following.

ORDER

1. This is a claim petition filed under Order 38 Rule 8 of CPC.

2. According to the petitioner, the property attached by this Court in IA No. 01 of 2023 in OS 40/2023 is owned and possessed by her by way of sale deed No. 3552/1992 and settlement deed No. 3393/1996 of Eravipuram SRO, and she is paying basic tax for that property, and is in absolute possession and enjoyment of the same. On 30/10/2024, she approached SRO for obtaining an encumbrance certificate of the property, whereupon she got knowledge about the attachment. Immediately she made inquiries, and it was understood that respondent No. 1 had filed suit for recovery against respondent No. 2, who is her husband, and got the property attached before judgment, as if the said property was standing in the name of her husband. According to the petitioner, she has no connection whatsoever with the alleged transaction between respondents, and the attachment over the property is liable to be vacated.

3. 1st respondent is the plaintiff in OS 40/2023, and though written objection is not filed on this claim petition, learned

Counsel for the plaintiff raised arguments objecting the claim petition and tried to convince the Court that being the wife of the defendant, her property can be enforced for recovering the debt of the defendant. To buttress that argument, learned Counsel would submit that improvements were made in the property by using the funds availed from the plaintiff.

4. Claim petitioner produced documents in support, which were got marked as Ext. A1, A2 & A3 series.
5. Respective Advocates were heard, and the records were perused.
6. It is now fairly conceded by plaintiff's side that the property attached is standing in the name of the claim petitioner, but it is claimed that the property is liable for the debt of the 2nd respondent (defendant) for the reason that improvements are made in the property by the defendant using the funds availed from the plaintiff. It is also pointed out that the claim petitioner is the wife of the defendant.
7. Per contra, the Counsel for the claim petitioner refuted the contentions advanced by the Counsel for the plaintiff regarding the claimed improvements. In that regard, it is stoutly submitted by the learned Counsel that apart from the blunt and wild claim regarding improvements using the funds availed from the plaintiff, there is no iota of evidence from the side of the plaintiff in the matter. Heavy onus was on the

plaintiff to prove the allegations with cogent evidence which he failed, it is submitted. Inviting attentions to Ext. A1, A2 & A3 series, learned Counsel highlighted that the claim petitioner is the title holder of the property right from 1992, but the alleged transaction between the respondents is of the 2022. According to the counsel for the claim petitioner, prior to the filing of the interim application for attachment before judgment, plaintiff / respondent No. 1 was supposed to verify the records for conforming the ownership of the property which he proposed to get attached. If he had exercised the expected care and caution, this unwarranted attachment could have been avoided. Failure on the part of the plaintiff had put the claim petitioner to great hardships and trouble, and she was forced to move the Court and she suffered much in terms of money, as well. Therefore, according to the learned Counsel, justice will not be served by mere lifting of the attachment, but the petitioner is also entitled for costs and compensatory costs.

8. Ext.A2 is the certified copy of sale deed No.3552/1992, whereas Ext. A1 is the certified copy of settlement deed No. 3393/1996. Ext. A3 series are the tax receipts of the property. A reading of Ext. A1, A2 & A3 series would show that the property under attachment is owned and possessed by the claim petitioner. As regards the impugned attachment, the same is of the date 27/09/2023, and the attachment was issued on the basis of the affidavit of the plaintiff, wherein it was specifically affirmed that the defendant (respondent No.

2) is the owner of the properties described in schedule A & B and that upon hearing the information of the filing of the suit, defendant is trying to dispose of those properties. It is believing the affidavit that Court finally issued an order of conditional attachment over B schedule property in IA 01/2023 in OS 40/2023.

9. Admittedly, plaintiff is not claiming any security interest over the property that is attached, but he ventured to get the property attached before judgment by making false claim in the affidavit filed in support of IA 01/2023. As on date of the said affidavit, the B schedule property was not in the name of defendant / respondent No. 2, and it was for the plaintiff to confirm the title from relevant records prior to his moving the Court with the petition for attachment before judgment. As B schedule property was not standing in the name of the defendant / respondent No. 2, the said property cannot be attached in the suit for recovering the debt from the defendant, and the attachment is liable to be lifted.

10. As rightly pointed out from the side of the claim petitioner, mere lifting of the attachment will not meet the ends of justice in the case in hand. In view of the unwarranted attachment, the claim petitioner suffered much in terms of money and time, and she was forced to move the Court and she waited for her turn patiently. Had the plaintiff exercised required prudence, the unwarranted attachment could have been avoided and the petitioner could have enjoyed the

ownership of her property, as per her needs, well in time. Therefore, this is a fit case where compensatory costs can also be imposed.

11. All said and done, this claim petition is allowed and the impugned attachment is hereby vacated.
12. Claim petitioner is entitled for her costs from respondent No. 1, and invoking the powers of the Court u/s. 35A CPC, respondent No. 1 is also directed to pay compensatory costs to the claim petitioner to the tune of ₹ 3000/- (Rupees Three Thousand only).
13. Further, the plaint averments would show that high value cash transaction of ₹ 5,00,000/- is done, which appears to be in violation of S. 269ST of the Income Tax Act. Therefore, in compliance of the direction of Hon'ble Supreme Court in '**RBANMS Educational Institutions v. B. Gunashekar & Another**' (Judgment dated 16/04/2025 in Crl. Appeal No. 5200 of 2025), the matter will have to be intimated to the jurisdictional income tax department to verify the transaction regarding the violation if any, of S. 269ST. Accordingly, office of this Court will give intimation in the matter to the Office of the Deputy Commissioner of Income Tax, Kollam, as per procedure.

14. The lifting of the attachment shall be communicated to the S.R.O. and V.O. concerned, as per procedure.

(Dictated to the Confidential Assistant, typed by her corrected and pronounced by me in Open Court on this the 20th day of August 2025.)

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

Appendix:- Nil.

Id/-
Civil Judge (Senior Division).

//True Copy//

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

Civil Judge (Senior Division).