

IN THE COURT OF THE CIVIL JUDGE (SENIOR DIVISION),PUNALUR

Present:- Sri. Biju.T.V, Civil Judge (Senior Division)

Thursday, 5th day of March, 2026 (14th day of Phalguna, 1947)

EA.113/2024 in EP. 10/2024 in OS. No.48/2016

(filed on 13-08-2024)

Between

Applicant/

Decree Hholder:-

Nazarudeen, Aged 67, S/o Sulaiman Kunju,
Shibin Cottage, Thazhamel Muri,
Anchal Village, Punalur Taluk.

(By Adv. S.S. Prasantha Kumar)

And

Respondents/

Defendants:-

1. Laila (Died)
2. Shine Raj, Aged 41, S/o Laila, Raj Bhavan,
Kodikkal Veedu, Uppodu Muri,
Kizhakke Kallada Village, Kizhakke Kallada P.O.,
Kollam Taluk, Kollam District.
3. Shibi, Aged 27, D/o Laila, Raj Bhavan,
Thazhamel Muri, Anchal Village,
Punalur Taluk.

(Adv. L. Usha Kumari for R3)

This Application is filed under Section 50 and Section 151 of CPC 1908 .

This Application came up for hearing before me on 05-03-2026 and on the same day the court passed the following.

ORDER

The original JD in the above EP died following which her children have been impleaded as additional JD 2 and 3. Decree holder wants to proceed against three items of property of which the first item owned by the original JD was attached on the trial side and after her death, it devolved jointly upon additional JD 2 and 3. The decretal amount comes to an amount of about Rs.38 lakhs and the said property is not sufficient to satisfy the decree. Item No.2 and 3 property were originally owned by the husband of the original JD and after his death, they got jointly devolved upon the wife and children of the deceased. The original JD had 1/3rd right each over item No.2 and 3 property and they are also to be attached and to be sold in auction for the purpose of realizing the decree debt. It is for the said purpose, EA 113/2024 is filed.

2. Additional JD 3 filed objection raising the following contentions. EA 113/2024 is not maintainable either in law or on facts. Item No.2 and 3 properties were owned by the husband of the original JD and with his death on 31.03.2016, they got jointly vested upon his wife and children. The original JD was having only 1/3rd right over item No.2 and 3 properties and that alone cannot be attached. The decree passed in the suit is not binding on the original owner Sivarajan and the properties left behind

by him are not liable to be proceeded against for the debt incurred by the original JD. The market value shown is far below the prevailing rates and the objection is concluded with a plea to dismiss the EA with costs.

3. Heard both sides.

4. The decree put to execution was passed on 10.07.2017 and the JD died on 17.11.2017. After her death, her children were impleaded as additional JD 2 and 3. As on the date of the EP, the decree debt was Rs.35,87,938/-. Item No.1 property was attached on the trial side and it has been inherited by the additional JD's after the death of the original JD mother. The husband of original JD pre-deceased her and item No.2 and 3 property got jointly vested upon the original JD and her two children after the death of the former. It is in disputable that at the time of the death of the original JD, she was having absolute right over item No.1 property and 1/3rd right each over item No.2 and 3 property.

5. The objection raised by the additional JD 3 is that the 1/3rd right devolved upon the mother is not liable to be attached as it is only a fractional right. Such a contention is perse unsustainable. Even fractional right is liable to be attached and sold in auction in execution of a decree for realisation of money. The party who bids the fractional right can seek delivery of possession of his right as contemplated under O.21 R.95 and later he can seek partition. Once the right is devolved, the fractional share

becomes her absolute property and it can be proceeded against for executing the decree passed against her. After the death of the original JD, her 1/3rd right over item No.2 and 3 property got jointly vested upon her children, the additional JD's and the said portion is liable to be proceeded against as contemplated u/s 50(2) of the CPC. Another objection is about the market price shown by the decree holder and it can very well be raised at the later stage during settlement of proclamation. All the objections raised by the JD are found devoid of any merits.

6. In the result, EA 113/2024 is allowed and the 1/3rd share each over item No.2 and 3 properties which devolved jointly upon additional JD 2 and 3 are found liable to attached and to be proceeded against for realising the decree debt.

(Dictated to the confdl. asst. transcribed and typed by her, corrected by me and pronounced in open court on this the 5th day of March, 2026).

Sd/-
Civil Judge (Senior Division).

Appendix : - Nil.

Id/-
Civil Judge (Senior Division)

//True Copy//

Typed by : Bindu.R
Compd by : Manjusha.P.S.

Civil Judge (Senior Division)