

IN THE COURT OF THE MUNSIFF OF TALIPARAMBA

Present: Smt. Athulya A, Munsiff

Friday, the 10th day of April, 2026

(20th day of Chaitra, 1948)

I.A.02 OF 2025 in O.S.No.474 OF 2025

John Joseph, S/o Joseph, aged 59 years,)
'Manthottathil House, Payyavoor amsom) Petitioner/
desom, Taliparamba Taluk, Kannur) Plaintiff
District – 670633.)

Vs

Uthirakkulam Suja Babychan, W/o Babychan)
Thomas, aged 61 years, Kandakassery,) Respondent/
Payyavoor amsom, desom, Taliparamba Taluk,) defendant.
Kannur District – 670633.)

Petition filed Under order XXXVIII Rule 5 of the Civil Procedure Code.

This petition coming on this day for hearing before me in the presence Sri.Suresh M.V., Advocate for the petitioner; and of Sri.E.V.Gangadharan, Advocate for the respondent; and the court passed the following:

ORDER

This is a petition filed by the petitioner under Order XXXVIII Rule 5 of the Code of Civil Procedure, 1908 (hereinafter referred to as 'CPC').

2. The case of the petitioner in brief are as follows: The respondent/defendant is the absolute owner in possession of the petition schedule property having a total extent of 26.11 Ares. Out of the said property, the respondent agreed to sell an extent of 8.01 Ares to the petitioner as per an agreement for sale dated 16.04.2025 for a total sale consideration of ₹46,00,000/-. At the time of execution of the agreement, the petitioner paid an amount of ₹5,00,000/- to the respondent as advance. The respondent had

represented that the property agreed to be sold has direct access to the PWD road and is suitable for construction purposes. Believing the said representations, the petitioner entered into the agreement and paid the advance amount. Subsequently, on verification, the petitioner realised that the property does not have direct access to the road and that a PWD drainage channel lies between the property and the road, thereby preventing access. The respondent had falsely stated that necessary permission had been obtained to cover the drainage, which later turned out to be incorrect. Relying on the assurances of the respondent, he had incurred additional expenses for construction of a slab over the drainage. However, it was later found that such construction was unauthorised and could not be regularised. The respondent has thus committed misrepresentation and breach of contract, and is liable to refund the advance amount along with the amounts spent and interest. The petitioner was always ready and willing to perform his part of the contract and had taken steps for execution of the sale deed within the stipulated time. However, the respondent evaded execution and later issued a notice with false allegations against the petitioner. The petitioner has a strong apprehension that the respondent is attempting to alienate the petition schedule property to third parties with the intention of defeating the decree that may be passed in the suit. The respondent is negotiating with third parties and is likely to dispose of the property at any time. The respondent has no other sufficient means to satisfy the decree. In the above circumstances, the petitioner seeks an order of attachment before judgment over the petition schedule property to secure the suit claim.

3. The respondent/defendant filed counter strongly opposing the petition. The respondent contends that the application is not maintainable either in law or

on facts and is liable to be dismissed. The respondent admits that she is the owner in possession of the property having an extent of 26.11 Ares and that she had entered into an agreement for sale dated 16.04.2025 with the petitioner in respect of 8.01 Ares for a total consideration of ₹46,00,000/-. The receipt of ₹5,00,000/- as advance is also admitted. However, all other allegations are denied. It is contended that there was no misrepresentation on the part of the respondent as alleged. According to the respondent, the property has road frontage and the petitioner had full knowledge regarding the nature, lie and condition of the property at the time of entering into the agreement. It is further contended that no assurance was given regarding covering of any drainage or providing access in the manner alleged by the petitioner. The respondent would further contend that the petitioner, on his own volition and without any consent or authority, attempted to construct a slab over the drainage and incurred expenses, for which the respondent cannot be held liable. The allegation that the respondent induced the petitioner to incur such expenses is specifically denied. It is further contended that the respondent was always ready and willing to perform her part of the contract and had in fact appeared before the Sub Registrar Office on the agreed dates for execution of the sale deed. However, the petitioner failed to perform his part of the contract by not arranging the balance sale consideration and did not turn up for execution. According to the respondent, it is the petitioner who committed breach of the contract. The allegation that the respondent is attempting to alienate the property with an intention to defeat the decree is specifically denied. It is contended that no such attempt has been made and that the allegations are false, baseless and made only to obtain an order of attachment. The respondent further submits that the petition schedule property

forms part of a larger extent and that attachment of the entire property is unwarranted and excessive. The respondent has also produced documents to show that she is facing serious financial and personal difficulties, including medical issues in the family and liabilities, which necessitated attempts to deal with the property. It is contended that these circumstances do not indicate any intention to defeat a decree, but only reflect genuine hardship. Hence, prayed to dismiss the petition.

4. Then the point to be considered is;

Whether the petition is allowable?

5. Heard the learned counsel for both sides. The petitioner has produced the agreement and the partition deed along with the plaint. The respondent has produced, documents relating to the petition schedule property and medical documents relating to cancer treatment, along with his counter. The documents produced from both sides are considered for the proper adjudication of this IA.

6. **The point**:- In this case on hand, the petitioner contends that the execution of the agreement for sale and receipt of ₹5,00,000/- as advance by the respondent with respect to the petition schedule property. The petitioner has produced agreement and certified copy of partition deed along with the plaint. On the other hand, the respondent has disputed the allegations of misrepresentation and breach and has contended that the petitioner himself committed default. Such contention can be adjudicated only during the trial as it is a matter of evidence. But the respondent had admitted the execution of the agreement and the receipt of advance payment as alleged by the petitioner. In this regard, Let us discuss Order 38 rule 5 of C.P.C.

Order 38 rule 5 of C.P.C. reads as follows;

5. Where defendant may be called upon to furnish security for production of property. -(1) Where, at any stage of a suit, the Court is satisfied,

by affidavit or otherwise, that the defendant, with intent to obstruct or delay the execution of any decree that may be passed against him,-

(a) is about to dispose of the whole or any part of his property, or

(b) is about to remove the whole or any part of his property from the local limits of the jurisdiction of the Court, the Court may direct the defendant, within a time to be fixed by it, either to furnish security, in such sum as may be specified in the order, to produce and place at the disposal of the Court, when required, the said property or the value of the same, or such portion thereof as may be sufficient to satisfy the decree, or to appear and show cause why he should not furnish security.

(2) The plaintiff shall, unless the court otherwise directs, specify the property required to be attached and the estimated value thereof.

(3) The Court may also in the order direct the conditional attachment of the whole or any portion of the property so specified.

(4) If an order of attachment is made without complying with the provisions of sub-rule (1) of this rule such attachment shall be void.

7. In this case on hand, the learned counsel for the respondent contended that the petition schedule property cannot be attached as there is an excess property mentioned in the schedule to be attached. The learned counsel for the respondent relied on the medical document produced to explain that she is facing financial stringencies. In this regard, the learned counsel produced a reliance of Hon'ble Supreme Court in *Smitha v. Varhese 2016(3) KLT SN 50 (Case No.35)*, wherein para 8, it was held that, "*the plaintiff, who is seeking*

attachment before judgment has to state convincingly that he has obtained reliable information about the intention of the defendant to dispose of the whole or any part of the property belonging to him, with a view to obstruct or delay the execution of any decree that may be passed against him. Further, it is the duty of the plaintiff to specify the property required to be attached and to show the estimated value thereof. It is from such materials which are to be furnished mandatorily, that the court can arrive at a satisfaction that, the defendant with a view to obstruct or delay the execution of any decree that may be passed, is intending to dispose of the whole or any part of his property.” In this case on hand, on perusal of the petition, it is seen that the petitioner had contended that “from reliable source the petitioner got information that the respondent had entered in to an agreement with a person named Shaji of Payyavoor as to the sale of the petition schedule property.” It is to be noted that an additional affidavit was received as per IA 1/2026 stating that the approximate value of the petition schedule property is ₹48 lakhs. Here the documents produced from the side of the petitioner are admitted.

8. In *Smitha v. P.C. Varghese and Another (2016 (2)KHC 793)*, wherein it was held that ‘*In such a case, Court has to consider such documents after duly applying its mind and come to a conclusion regarding sufficiency of security. Based on such application of mind and materials on record, Court can determine whether lesser extent of land is required to satisfy the plaint claim.*’ In this case on hand, as stated earlier, the petitioner has raised an apprehension that the respondent is attempting to alienate the property. It is to be noted that admittedly, a caveat was lodged by the respondent herein. The learned counsel for the petitioner argued that filing of caveat petition itself shows the malafide

intention of the respondent to evade from performing his part or to return the advance amount.

9. The respondent has specifically denied the petitioner's apprehension and such intention and also has produced documents relating to the petition schedule property, and also medical documents indicating financial hardship. The counsel for the respondent argued that the medical documents are pertaining to the treatment of cancer for the daughter of the respondent. The respondent also produced a document showing that she had pledged some gold ornaments in Federal Bank. But these materials only show that the respondent is under financial strain. However, such hardship alone cannot be a ground to deny claim of the petitioner when there is an admitted receipt of advance payment. The apprehension of the petitioner thus cannot be wholly brushed aside as per the facts and circumstances of the case, especially in view of the admitted transaction. The admitted transaction and the nature of the claim thus prima facie emphasis the apprehension expressed by the petitioner especially when the petitioner contends that the respondent had entered into a sale agreement with 3rd party named Shaji of Payyavoor. At the same time, it is to be noted that the petition schedule property comprises a larger extent of 26.11 Ares, whereas the agreement relates only to 8.01 Ares. Hence, attachment of the entire property would be excessive. In *Smitha v. P.C. Varghese and Another (2016 (2) KHC 793)*, it was further held that '*When court arrives at a satisfaction that the defendant with a view to obstruct or delay the execution of any decree that may be passed, is intending to dispose of the whole or any part of his property, the Court can issue show cause notice directing to furnish security, that the Court can pass any order of conditional attachment.*' Considering the rival contentions

and taking the admitted facts and materials on record, this Court is prima facie satisfied that the defendant, with a view to obstruct or delay the execution of any decree that may be passed is about to dispose of the whole or any part of his property. Hence, this court is of the view that the attachment of the property, admittedly, agreed to be sold alone is justifiable. Since the petition schedule property shown is of larger extent comprising of 26.11 ares, in order to affect the attachment, the petitioner is directed to produce the schedule with appropriate boundaries pertaining to the property comprising of 8.01 ares and upon furnishing fresh schedule, the said property will be attached to the tune of ₹6,84,520/-.

In the result, the petition is allowed attaching the property measuring an extent of 8.01 Ares out of 26.11 Ares. The attachment will come to effect upon producing the schedule with specified boundaries pertaining to the property. The petitioner is directed to comply the order within two weeks from the date of this order.

(Dictated to the Confidential Assistant transcribed by her, corrected and pronounced by me in open court on this the 10th day of April, 2026.)

Sd/-

MUNSIF

