

IN THE COURT OF THE MUNSIFF OF PAYYANNUR

Present: Smt.Greeshma.A.S, Munsiff, Payyanur

Tuesday, the 07th day of April, 2026

(17th day of Chaithra, 1948)

Original Petition (Indingent) No.03 OF 2024

Jolly Joyichan, W/o.Joyichan, aged 43 years,	]	
House Maker, Orappankal House, Karakkad,	]	
Peringome amsom and desom, Payyannur Taluk,	]	Petitioner
Kannur District-670 307.	]	

Vs.

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| 1. Joseph Orappankal, S/o.Late Varkey, aged 62 years, |] | |
| Property broker, Korangad, Peringome amsom and] | | |
| desom, Payyannur Taluk, Kannur District, |] | |
| P.O.Peringome-670307. |] | |
| 2. Jijo Joseph, S/o.Joseph, aged 35 years, |] | Respondents |
| Orappankal House, Korangad, Peringome amsom, |] | |
| desom, Payyannur Taluk, Kannur District, |] | |
| P.O.Peringome-670 307. |] | |
| 3. State of Kerala, represented by District Collector, |] | |
| Kannur, P.O.Kannur, Head Post Office, Kannur. |] | |

This Petition filed under Section XXVI, Order VII Rule 1 and Order XXXIII Rule 1 of CPC.

This petition is coming on this day for hearing before me in the presence of S/Sri.T.V.Ajayakumar, Arjun.C.H, Meghna.K and Vishnu Prasad.K, Advocates for the Petitioner; of S/Sri.Sajith Kumar.S and Arya.V, Advocate for the respondent Nos.1 and 2; of Sri.P.V.Madhu, Additional Government Pleader for the respondent No.3 and the Court passed the following:

ORDER

1. **The averments in the petition are as follows:-** The 1st respondent is the elder brother of the husband of petitioner and 2nd respondent is the son of 1st respondent. The husband of petitioner got siblings 8 in numbers. The youngest brother is the husband of petitioner he is a physically challenged man and he had looked after their parents till their death. The father in law of the petitioner died on 08.05.2015. After his death mother in law of petitioner had resided along with her and her family. Since the husband of petitioner is a physically challenged man he married her from a poor and down trodden family. The petitioner converted the gold ornaments of her elder son which was gifted to him those are bangles, chain, rings, anklets as a gold chain weighing 3 gold sovereign. Husband of the petitioner got a gold chain weighing 1½ gold sovereign by utilizing the pension amount of the physically challenged man half sovereigns of gold added and made it as a gold chain of 2 sovereigns. A chain of 1 gold sovereign was presented to the elder son of the petitioner by her father in law as usual presented to all his eldest grandsons. As such altogether the petitioner and her family members got 6 gold sovereign ornaments which has been used by the 1st respondent on several occasions to raise the amount for his business or other needs and taken back the same as agreed. Being a property broker the 1st respondent wanted money for his business for that the gold sovereign ornaments which was in possession of the petitioner and her family were also used by him for pledging and to raise money for his purpose.

2. On 01.05.2016 the respondent No. 1 and 2 approached petitioner and her husband with request to hand over the gold ornaments for raising amount for arranging visa to the 2nd respondent to go to gulf by pledging the

same to bank. As such on the same day the petitioner handed over above 6 gold sovereign ornaments to the 1st respondent. At the time of handing over the ornaments to the 1st respondent by the petitioner the eldest brother of the husband of petitioner George mother of husband of the petitioner, 2nd respondent and her two children were present and witnessed the same. Before handing over the gold ornaments to the 1st respondent both respondents under took to return the gold ornaments within 6 months. By using the money, pledging the gold ornaments of the petitioner, the 2nd respondent had gone to gulf and even now he is working there. Unfortunately the respondent No. 1 and 2 defaulted to return the gold ornaments to the petitioner as agreed when the petitioner needed money for taking admission to her son in nursing course. She demanded the 1st respondent to return the gold ornaments which was taken by him but he was not ready to return the gold ornaments even though he admitted its possession. When the respondent No. 1 and 2 failed to return the gold ornaments as agreed the petitioner and her husband constrained to file a complaint on 21.12.2020 to the Peringome police station against the respondent No. 1 and 2 where in the matter was settled by a condition to discuss among all the family member to return the gold ornaments to petitioner and also to partition the property which was seen in the name of father. Thereafter on 05.01.2021 family members of the husband of the petitioner sat together and discussed the matter where in the 1st respondent agreed to return the gold ornaments on or before 05-06-2021. But the respondent No. 1 and 2 defaulted to return the gold ornaments on 05.06.2021 but took 6 more months' time for returning the gold after that the petitioner waited several months but in vain. At last the petitioner and her husband filed a petition to the Deputy Superintendent of police Payyanur on 29.02.2024 when the respondent No. 1 and 2 defaulted to return the gold ornaments. But the Deputy Superintendent of police directed the petitioner to

approach the court to satisfy her grievances. The petitioner is an ailing lady undergone a serious surgery by spending huge amount. She belonged in a poor family and her husband is also a physically challenged man. The elder son of the petitioner is a student of nursing now his 4th semester is over. To meet the expenses of treatment as well as the education of children the petitioner is in highly need of money. If the petitioner got her 6 gold sovereign ornaments she can utilise the same for that purposes. Since the respondent No. 1 and 2 are not ready to return the gold ornaments as demanded she has no alternative other than to approach this Hon'ble Court for a decree to return her 6 gold sovereign ornaments. When the petitioner demanded to return the gold sovereign ornaments and the petition to the police against the respondent No. 1 and 2 keeping the gold ornaments illegally in their custody. The 1st respondent is taking hectic steps to alienate his immovable property with the intention to making the fruits of the suit as in valid. Hence the petitioner is taking steps to restrain the respondent No.1 and 2 from alienating his immovable properties by an order of attachment order before judgment.

3. Since the petitioner is an indigent person not in a position to raise the huge amount for the payment of court fee. Hence the petitioner is filed as indigent person. The petitioner got properties shown in the schedule below that is extended from attachment also. The petitioner is undertaking to pay the court after disposal of the petition. There is no relief seeking from respondent No.3.

4. **Respondent No.1 filed counter and on behalf of the respondent No.2.** The petition is barred by limitation. The cause of action alleged is false as these respondents never borrowed gold from the petitioner. This petition is the last of several malicious litigations initiated by the petitioner and her husband. Various authorities rejected those petitions after

thorough investigation as those are false cases. The husband of the petitioner is the plaintiff in O.S.191/24 before this hon'ble court against the 1st respondent and others and this petition is an attempt to coerce the 1st respondent to give lion's share of the property to the husband of the 3. It is admitted that the husband of petitioner got siblings 8 in numbers, the youngest brother is the husband of petitioner he is a physically challenged man but denied that he had looked after their parents till their death. Actually the parents lived with him for supporting him. It is denied that the father in law of the petitioner died on 08.05.2015. He died on 08.01.2015. After his death mother in law of petitioner had resided along with her and her family but the petitioner badly treated her on her last days. It is denied that since the husband of petitioner is a physically challenged man he married her from a poor and down trodden family. Actually she is not claiming her ancestral property as she is rich now. It is denied that the petitioner converted the gold ornaments of her elder son which was gifted to him those are bangles, chain, rings, anklets as a gold chain weighing 3 gold sovereign. Husband of the petitioner got a gold chain weighing 1½ gold sovereign by utilizing the pension amount of the physically challenged man half sovereigns of gold added and made it as a gold chain of 2 sovereigns, a chain of 1 gold sovereign was presented to the elder son of the petitioner by her father in law as usual presented to all his eldest grandsons, as such altogether the petitioner and her family members got 6 gold sovereign ornaments which has been used by the 1st respondent on several occasions to raise the amount for his business or other needs and taken back the same as agreed, being a property broker the 1st respondent wanted money for his business for that the gold sovereign ornaments which was in possession of the petitioner and her family were also used by him for pledging and to raise money for his purpose etc as those are false statements. It is denied that on 01.05.2016 the respondent No. 1 and 2

approached petitioner and her husband with request to hand over the gold ornaments for raising amount for arranging visa to the 2nd respondent to go to gulf by pledging the same to bank as such on the same day the petitioner handed over above 6 gold sovereign ornaments to the respondent, at the time of handing over the ornaments to the 1st respondent by the petitioner the eldest brother of the husband of petitioner George mother of husband of the petitioner, 2nd respondent and her two children were present and witnessed the same, before handing over the gold ornaments to the 1 respondent both respondents under took to return the gold ornaments within 6 months, by using the money, pledging the gold ornaments of the petitioner, the 2nd respondent had gone to gulf and even now he is working there, unfortunately the respondent No. 1 and 2 defaulted to return the gold ornaments to the petitioner as agreed when the petitioner needed money for taking admission to her son in nursing course., she demanded the 1st respondent to return the gold ornaments which was taken by him but he was not ready to return the gold ornaments even though he admitted its possession, when the respondent No. 1 and 2 failed to return the gold ornaments as agreed the petitioner and her husband constrained to file a complaint on 21.12.2020 to the Peringome police station against the respondent No.1 and 2 where in the matter was settled by a condition to discuss among all the family member to return the gold ornaments to petitioner and also to partition the property which was seen in the name of father etc. as those are false statements. Actually the real reason for filing this petition is to get the Lion's Share of joint property to her husband..This petition is yet another attempt to coerce the defendants. It is denied that thereafter on 05.01.2021 family members of the husband of the petitioner sat together and discussed the matter where in the 1st respondent agreed to return the gold ornaments on or before 05.06.2021but the respondent No. 1 and 2 defaulted to return the gold ornaments on 05.06.2021

but took 6 more months' time for returning the gold after that the petitioner waited several months but in vain, at last the petitioner and her husband filed a petition to the Deputy Superintendent of police Payyanur on 29.02.2024 when the respondent No. 1 and 2 defaulted to return the gold ornaments, but the Deputy Superintendent of police directed the petitioner to approach the court to satisfy her grievances. Actually Police dismissed those petitions as those are false. It is denied that the petitioner is an ailing lady undergone a serious surgery by spending huge amount, she belonged in a poor family .the elder son of the petitioner is a student of nursing now his 4th semester is over, to meet the expenses of treatment as well as the education of children the petitioner is in highly need of money, if the petitioner got her 6 gold sovereign ornaments she can utilize the same for that purposes, since the respondent No. 1 and 2 are not ready to return the gold ornaments as demanded she has no alternative other than to approach this Hon'ble Court for a decree to return her 6 gold sovereign ornaments etc as those are false statements. It is denied that when the petitioner demanded to return the gold sovereign ornaments and the petition to the police against the respondent No. 1 and 2 keeping the gold ornaments illegally in their custody, the 1st respondent is taking hectic steps to alienate his immovable property with the intention to making the fruits of the suit as in valid, etc as those are false statements. The respondent No.1 and 2 never intends to alienate any immovable properties. 7. The petitioner is a business woman. She runs a shop near her house along with her husband. She is rich and can afford to pay court fee. She is having bank accounts in nationalized banks and co operative banks with enough bank balance. She is hiding her financial status from this hon'ble court. Hence it is prayed to dismiss the petition in the interest of justice.

5. The points that arise for consideration are:-

- 1) Whether the petitioner is possessed sufficient means to enable him to pay the court fee prescribed by law?
- 2) Whether the petitioner is entitled to an order permitting him to sue the suit as an indigent person?
- 3) What is the order as to costs?

6. From the side of the petitioner, PW1 was examined. No documentary evidence was adduced. The respondent has not adduced any evidence.

7. Heard both sides.

8. **Point Nos.1 and 2:-** The petitioner was examined as PW1. She deposed that she studied up to SSLC. PW1 deposed that she has two children and husband. PW1 deposed that his husband is conducting shop. PW1 deposed that the elder son has completed his studies just now. PW1 deposed that his second son is studying. PW1 deposed that she is having gas connection and it is in her name. PW1 deposed that in the ration card she is the head of the household. PW1 deposed that the colour of ration card is blue. The learned counsel for the respondent put a suggestion to PW1 that, the chappel, anklet, bangle, bracelet and earrings are of very expensive and of high value, to which PW1 deposed that only earrings are of gold all other are not made of gold. PW1 deposed that the earrings are brought by her mother from Padichal and she does not remember the name of the jewellery. PW1 deposed that she does not have account in Payyannur Canara Bank. PW1 deposed that she does not have any account in any other bank. Learned counsel for the respondent put a suggestion that she and her husband is conducting a shop to which PW1 deposed that it is only a small shop. PW1 denied to suggestion put forth by learned counsel for the respondent that she is having income, that is why the colour of ration card is blue and it is an APL card, which was denied by PW1.

9. During re-examination PW1 deposed that the shop is being conducted by her husband. PW1 also deposed that her earrings consists only of one gram. During re-examination PW1 deposed as follows:- ചെറിയ പലചരക്കു കടയാണ്. വീടിന്റെ അടുത്താണ് . ഭർത്താവിന്റെ വരുമാനം എന്ന് പറയുന്നത് അൽപ്പം രബർ ഉണ്ട്, പിന്നെ കടയുടെ വരുമാനവും ഉണ്ട്.

10. Further, there is no evidence to the effect that the petitioner has sufficient amount in the bank deposit. Further, all the suggestions put to PW1 were denied by him while in the witness box. No objection was filed to the report of the village officer. It is to be noted that the respondents have not disputed the means of the petitioner in their counter statement. From the materials on record, there is nothing to conclude the fact that the petitioner has sufficient means to pay the requisite court fees. Hence, it can only be concluded that the petitioner does not have sufficient means to remit the requisite court fees. Thus, point no. 1 is answered accordingly, in favour of the petitioner.

11. **Point No. 2:-** Order XXXIII Rule 1 of the Code of Civil Procedure, 1908 stipulates that if a person does not possess sufficient means to remit court fees required to be paid for the institution of a suit, he may be permitted to institute the suit as an indigent person. From the finding in Point No.1, this court has already come to the conclusion that the petitioner had satisfied the said condition. Hence, he is entitled to get leave to institute the suit as an indigent person. Thus, point No. 2 is also answered in favour of the petitioner.

12. **Point No. 3:-** Considering the nature of the petition, there is no order as to costs. Point No. 3 is accordingly answered.

In the result, this Original Petition is allowed as follows:-

- 1. Permission is granted to the petitioner under O.XXXIII R.1 of the Code of Civil Procedure, 1908, to institute the suit as an indigent person. The plaint presented by the Petitioner shall be taken on file to institute original suit.*
- 2. There is no order as to costs.*

(Dictated to the Confidential Assistant, transcribed and typed by her, corrected and pronounced by me in open court, this the 7th day of April 2026).

Sd/-
MUNSIFF.

Petitioners' Exhibits:- Nil

Petitioners' Witness:-

PW1 : Joly Joyichan

Respondent's Exhibit and Witness :- Nil

Court Exhibits

C1 : Report submitted by District Collector, Kannur

Sd/-
MUNSIFF.