

IN THE COURT OF THE MUNSIFF, ETTUMANOOR

Present: Miss. Annu Mary Jose, Munsiff

Monday, the 14th day of July, 2025
23rd day of Ashada, 1947

EA.8/2025 in EP. No. 4/2023

Addl. JD3/Petitioner:

Leela @ Santhamma,W/o. Late Karunakaran Nair,
Poothettu Veetil, Punnathura Kara,
Ettumanoor Village, Kottayam Taluk.

By Adv. Jossy Bastin

Respondents/Decree Holders:

1. K.N.Mohanan, S/o. Sivaraman,
Kalappuravecha Mukalel Veetil,
Etrtumanoor Village, Kottayam Taluk.
2. Sajikumar, S/o. Karunakaran Nair,
Poothettu Veetil, Punnathura Kara,
Ettumanoor Village, Kottayam Taluk.

By Adv. K.Vinod Kumar

This Petition has come up for hearing on 14.07.2025 and
the court on the same day passed the following:-

ORDER

This application is filed by the additional third judgment debtor under section 151 of Code of the Civil Procedure to hear the maintainability of the execution petition.

2 The averments in the affidavit filed in support of the application in brief are as follows: - The petitioner is the additional third judgment debtor in the above case. O.S No.145/2018 filed by the plaintiff/decreed holder was decreed set exparte. The third and the fourth additional judgment debtors were impleaded in party array since the judgment debtor died on 20.01.2021. The property comprised in block no.29 resurvey no.659/8 which the petitioner obtained as per gift deed no.1548/1972 of Ettumanoor SRO is stated as item no.3 property in the execution petition. The averment that item no.3 property belongs to first judgment debtor is false and baseless. It belongs to the petitioner. The execution proceedings are being conducted stating that plaint schedule item no.5 way passes through item no.3 property. Item no.5 way is not in existence and it does not pass through item No.3

property. The suit was decreed ex-parte and she was not made a party to the suit. Hence the decree is not binding on her. Hence it is prayed to hear the maintainability of the execution petition.

3 The respondent/decreed holder filed objection contending as follows: - The above application is not maintainable. The petitioner had earlier preferred a claim petition challenging the maintainability of the execution petition and the same was dismissed also. The above application is filed raising the same contentions stated in the claim petition. Hence, it is prayed to dismiss the application.

4 Heard. Perused the records.

5 The learned counsel for the petitioner submitted that the suit was decreed ex-parte. The petitioner was not made a party to the suit. Hence the decree is not binding on her. The counsel further contended that survey commission was not taken and plan was not appended to the decree. The decree holder/respondent filed the suit suppressing material facts. Hence, it is prayed to allow the application. Per contra, the learned counsel for the respondent submitted that the

petitioner had earlier filed a claim petition raising the above contentions and the same was dismissed also. It was further submitted that the petitioner has no case that it was a collusive decree and the interest of respondent/first judgment debtor was against the petitioner's interest.

6 I have gone through the contentions of the learned counsel for the petitioner, learned counsel for the respondent and perused the records in the above case. It is contended by the petitioner that item no.3 property belongs to her and item no.5 way does not pass through the item no.3 property. It is also contended that the survey commission was not taken in this case. At this juncture it is necessary consider the decree passed by this court. It reads as follows:

That the suit is decreed with costs to the defendants on the following terms:

6.1 *The plaintiffs have perfected the right of easement by prescription over plaint item no.5 pathway.*

6.2 *A decree of mandatory injunction is passed directing the defendants to remove the*

*construction put up by the defendants in the
plaint item no.5 pathway and to restore the
plaint item no.4 pathway into its original
position within one month from today.*

6.3 *A decree of permanent prohibitory injunction
is passed restraining the defendants from
causing obstruction to the plaintiff from using
the plaint item no.4 pathway and its peaceful
enjoyment and also restrained from
committing any mischief or shortening the
width of the plaint item no.4 pathway.*

7 On a perusal of the decree, it would show that the decree is executable. It is the case of the petitioner that the execution petition is not maintainable. A perusal of records would show that the petitioner herein had earlier filed a claim petition as E.A No.5/24 raising above contentions and the same was dismissed also. It is to be noted that whether item no.5 way passes through item no.3 property or not is not a question to be determined by the execution court. It is true that, she was not made a party to the suit. It is stated by the petitioner in E.A

5/24 the appeal was already preferred against the ex-parte decree and the same is pending also. The petitioner can very well contest the case after getting the ex-parte decree set aside. It is a well settled position that the execution court cannot go beyond the decree. The contentions raised by the petitioner cannot be determined by this court. Hence, the application is liable to be dismissed.

8 In the result, the application stands dismissed. No order as to costs.

(Dictated to the Confidential Assistant, transcribed and typed by her, corrected by me and pronounced in open Court on this the 14th day of July, 2025.)

**Sd/-
Annu Mary Jose
Munsiff**

APPENDIX : NIL

**Sd/-
Annu Mary Jose
Munsiff**

Copied by :
Compared by :