

IN THE COURT OF THE MUNSIF, CHANGANACHERRY

Present :-Smt. Sarica A.R , Munsiff

Thursday the 21st day of August, 2025

30th Sravanam, 1947

I.A.No.1/2024 IN O.S. No.99/2024

Petitioner/Plaintiff:-

Abin Kuruvila,aged 28,S/O KK Kuruvilla,
Kochuparambil House, Cheeramchira P.O,
Chethipuzha Village ,Changanacherry Taluk Rep By
brother,Bibin Kuruvilla aged 26, S/O KK Kuruvilla,
Kochuparambil House, Cheeramchira P.O,
Chethipuzha Village, Changanacherry Taluk.

By Adv.K Madhavan Pillai

Respondents/Defendant:-

1. Sony Mathew, 26 years, S/o Cherian Mathew,
Kunammamoottil House, Nalunnakkal P.O,
Vakathanam Village,Changanacherry Taluk.
2. Ciciliyamma Mathew, 48 years, W/oCherian
Mathew,Kunammamoottil House, Nalunnakkal P.O,
Vakathanam Village,Changanacherry Taluk.

D1 No Vakalath

D2 By Adv. Kurien Joseph

This petition is coming up for consideration before this Court on 21.08.2025 and the court on the same day passed the following :-

ORDER

The suit is for realization of money. I.A.No.1/2024 was filed by plaintiff/petitioner under Order XXXVIII Rule 5 and Sec.151 of Civil Procedure Code for attachment of plaint schedule property.

2) The gist of the I.A.No.1/2024 is as follows: The defendants/respondents who owe the plaintiff/ petitioner ₹3,20,000/- are in an attempt to sell the plaint schedule properties so as to prevent the execution of a decree in the petitioner's favour. The said information was given to the petitioner by one Mr. Tom Thomas Kottapuram on 18.3.2024. The petitioner states that an amount of ₹3,96,800/- is due and that in case of due security not given for the amount, the lifting of attachment will cause irreparable injury and loss to the petitioner. Hence this petition for attachment of the property.

3) The defendants/respondents in I.A 1/2024 objected to the petition stating that the respondent had no financial dealings with the petitioner and that for the same reason there is no

documents produced with respect to these financial dealings. The addition of the second respondent, who is the mother of the first respondent with a view to attach the property in the name of the second respondent's husband is not tenable. The first respondent is also falsely implicated in the suit. The first respondent has been working in Canada for quite some time, and the second respondent is a housewife. The third respondent is not known to the second respondent. The plaint schedule property is in the name of the husband of the second respondent. The respondents have no intention to sell this property and thus, pray for dismissal of the petition to attach the property.

4) On the basis of averments, following points are raised for the purpose of adjudication.

- 1) Whether the prayer in I.A. No.1/2024 for attachment is allowable?
- 2) What is the order as to costs?

5) Heard.

6) **Point Nos.1 and 2:** The petitioner alleges that the respondents have not repaid the amount of ₹3,20,000/- which the petitioner had transferred to them via Google pay for the purpose of obtaining a job in UK. This amount was transferred

to the Google pay number of the third respondent. The 2nd respondent stiffly opposed the above petition and contended that the above petition is without any bonafides. According to Order XXXVIII R.5 of CPC the essential requirements to be proved to the satisfaction of the Court, for an attachment before judgment *are*,

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

(2) the defendant is about to remove the whole or any part of his property from the local limits of jurisdiction of the Court,

(3) the defendant is intending to do so to cause obstruction or delay in the execution of any decree that may be passed against him,

7) The object of invoking Order. 38 Rule 5 is to safeguard the interest of the plaintiff, if the court is satisfied that ultimately when a decree is going to be obtained by the plaintiff he may not be able to realise the fruits of the decree. Thus, the object of Order 38 Rule 5 CPC in particular, is to prevent any defendant from defeating the realization of the decree that may

ultimately be passed in favour of the plaintiff, either by attempting to dispose of, or remove from the jurisdiction of the court, his property.

8) A reading of the above provision would show that it is incumbent upon the plaintiff to state the grounds on which he entertains an apprehension that the defendant would dispose or remove the property. The above apprehension of the plaintiff must be clearly revealed from the affidavit filed in support of the application or from other materials produced before the Court. Vague and general allegations in the affidavit are not sufficient. It is stated by the plaintiff that on receipt of information of this suit and the chances of a decree in favour of the plaintiff, the defendant is attempting to alienate the property. The plaintiff should show, *prima facie*, that his claim is bonafide and valid and also satisfy the court that the defendant is about to remove or dispose of the whole or part of his property, with the intention of obstructing or delaying the execution of any decree that may be passed against him, before power is exercised under Order 38 Rule 5 CPC.

9) Keeping in view the principles relating to grant of attachment before Judgment, this court holds that attachment before the Judgment is considered a very harsh remedy because it substantially interferes with the defendants'

property rights before the final resolution of the overall dispute and that the plaintiff has not successfully established his claim for attachment.

10) The recitals in the affidavit of the petitioner and the schedule filed by the respondent would show that the property sought to be attached does not belong to the 2nd defendant/respondent. On analyzing the pleadings, it is seen that the suit is based on the transaction in Google pay between the plaintiff and 3rd defendant, allegedly under the advise of the 1st and 2nd defendants. The averments in the affidavit of the petitioner with regard to the financial transactions and the role of the 2nd defendant are vague and would not show that the respondent is about to dispose of or remove whole or any part of property to defeat the execution of the decree. This being the situation, the need for attachment of this property of the respondent is not vital, especially when there is no clarity as to whether the property belongs to her. The plaintiff has failed to establish a prima facie case that the 2nd defendant is intending to dispose of the whole or any part of her property or remove the whole or any part of her property from the local limits of jurisdiction of the Court, or is intending to do so to cause obstruction or delay in the execution of any decree that may be passed against her. On perusing the affidavit of the

plaintiff/petitioner, this court is satisfied that plaintiff has failed to established a prima facie case.

In the result:

- 1) The prayer in I.A. No.1/2024 for attachment is dismissed and the ad interim attachment order dated 27.03.2024 in I.A.No.1/2024 in O.S.No. 99/2024 with respect to the claim schedule property is lifted.
- 2) Considering the facts and circumstances of the case, no order is made as to costs.
- 3) Communicate the order to SRO and VO concerned.

(Directly typewritten into my personal laptop, corrected by me and pronounced by me in open court on this the 21st day of August, 2025.).

Sd/-
SARICA A.R
MUNSIFF

APPENDIX:- NIL

Id/-
MUNSIFF

//True Copy//

Copied by:
Compared by:

Sd/-
SARICAA.R
MUNSIFF

