

IN THE COURT OF THE SUBORDINATE JUDGE, IRINJALAKUDA

Present:- Lekshmi K Thampi, Additional Sub Judge

Wednesday, the 11th day of March 2026,/20th Phalgunam1947 SE

AS 98/2024

**(IA 4/2022 in IA 2064/2016 in OS 4016/2013 of Munsiff Court,
Irinjalakuda)**

Appellants:-

1. Jackson Chummar, Aged 49, S/o. Akkara Chummar, Ollur village, desom, Thrissur Taluk.
2. Soly Jackson, Aged 41, W/o. Akkara Jackson Chummar, Ollur village, desom, Thrissur Taluk, D/o. Thanikkal Chalissery Moni Lonappan.

By. Advs. K. Gopinadhan & Manju K R

Respondents:-

1. Sini, Aged 45, D/o. Manjali Bose, Nandipulam village, desom, Mukundapuram Taluk.
2. LIS(Regd) , Partnership firm, Rep by Managing Partner Kuriachan Chacko, Palakkal Court, Near Shanayees, M G Road, Ernakulam, cochin- 35.
3. Kuriachan Chacko, Managing Trustee, LIS Educational Charitable Trust, Palakkal Court, Near Shanayees, M G Road, Ernakulam, Cochin- 35.

R1 : By Advs. K A Jayachandran, Anand Asok T & Shajil P M

R2 & R3 : Exparte

This appeal having come up before me for final hearing on 29.02.2026 in the presence of counsel for both sides and stood over for consideration till this date and the court delivered the following:-

JUDGMENT

Appellants are the claim petitioners in the IA.4/2022 in OS 4016/2013. Aggrieved by the order in IA.4/2022 in OS 4016/2013 of Munsiff Court, Irinjalakuda the appellants have filed this appeal to set aside the order.

2. The averments of the claim petitioner are as follows: The petition schedule property was acquired by the petitioner from respondent Nos. 2 and 3 by way of Sale Deed No. 2598/2014, registered with the Sub-Registrar's Office, Thrissur, executed on 06.06.2014. Prior to the purchase, the petitioner had ascertained that the property was free from any encumbrances. Since the date of purchase, the petitioner has been the absolute owner and in possession of the petition schedule property. The said property was subsequently attached in the above suit on 13.01.2017. The petitioner came to know of the attachment when obtaining an encumbrance certificate for the purpose of securing a loan. At the time of the attachment, the respondents had no rights, title, or interest over the petition schedule property. The petitioner submits that he is a bona fide purchaser for value without notice of any prior claims. Consequently, the petitioner contends that the attachment effected over the petition schedule property is erroneous and illegal and prays that it be lifted.

3. Notice was duly served to all respondents. The 1st respondent has filed objection to the petition, contending that the petition is not maintainable in law or on facts. The 1st respondent denies all

allegations contained in the petition. It is contended that the petitioner is a friend of the defendants in the suit and was fully aware of the existence of the earlier suit filed by the respondent. Further, respondent Nos. 2 and 3 were allegedly burdened with multiple debts and liabilities at the time of executing the sale deed. It is asserted that the sale deed in favor of the petitioner was intended to defeat the creditors and amounts to a sham transaction. The 1st respondent also contends that the possession of the property was never transferred pursuant to the execution of the sale deed, and that title to the property has not passed to the petitioner. It is further submitted that the petitioner has omitted the precise date on which he became aware of the attachment over the petition schedule property. According to the 1st respondent, the petition is barred by limitation, and its real purpose is to prevent the 1st respondent from enjoying the fruits of the decree. It is further noted that the suit in which the attachment was effected had been filed as early as 2013, and that the petition schedule property was subject to prior claims and liabilities of respondent Nos. 2 and 3.

4. The learned trial court raised the following point for consideration

1. Whether the attachment over the petition schedule property is liable to be lifted?
2. What shall be the order ?

5. Before the trial Court, from the side of the petitioner, PW1 was examined. Exts.A1 to A3 marked and from the side of the

respondents, Exts.B1 and B2 marked. The learned trial court after considering the pleadings, documents and the evidence and the arguments of both sides dismissed the petition. Aggrieved by the order of the trial court the petitioner filed this appeal.

6. The appellant contends that the order of the trial court is contrary to law and facts. It is submitted that the trial court dismissed the petition without properly considering the documents filed by the petitioner and without giving due weight to the evidence adduced by the petitioner. The appellant submits that the trial court erred in holding that, although the attachment of the property was ordered in 2017, the second respondent had prior liabilities and pending cases, and therefore Ext.A1 was created to defraud the creditors. The finding of the trial court that Ext.A1 is a sham document is wholly erroneous. The appellant asserts that he is a bona fide purchaser for value. The Ext.A1 sale deed was executed for valuable consideration, and at the time of the attachment, the second respondent had no valid title or interest in the property. The appellant purchased the property prior to the attachment, and this fact was not considered by the trial court. The trial court's finding that the documents produced by the appellant were insufficient to establish that he is a bona fide purchaser is therefore incorrect and unsustainable. In view of the above, the appellant prays that the order of the trial court in IA 4/2022 in OS 4016/2013 be set aside.

7. Heard both sides. The following points raised for consideration.

1. Whether the appellant is a bonafide purchaser and whether he is entitled for lifting the attachment of the petition schedule properties?
2. Whether there is any ground to set aside the order of the trial court?
3. What shall be the order?

8. Point No.1 and 2:- In order to prove the case from the side of the plaintiff, PW1 was examined and Exts.A1 to A3 were marked. Ext.A1 is the certified copy of Sale Deed No.2598/2014. Ext.A2 is the encumbrance certificate and Ext.A3 is the tax receipt. Exts.A1 and A3 were produced to show that the petitioner purchased the property and subsequently remitted land tax. The property was also mutated in the name of the claim petitioner.

9. From the side of the respondents, Exts.B1 and B2 were marked. Ext.B1 is the certified copy of a judgment and Ext.B2 is the statement filed in W.P.(C) Nos.1232/2014 and 20167/2014. Exts.B1 and B2 were produced to show that several cases were pending against respondents 2 and 3 and that they were indebted to many persons.

10. PW1 filed a proof affidavit reiterating the averments contained in the petition. During cross-examination, PW1 stated that he had purchased the property from the managing trustees of an institution named LIS. When questioned whether the said firm and its

managing partners were having several liabilities, cases and creditors, he stated that he had no knowledge about the same. He also stated that he did not know whether the said institution had been closed many years prior to 2014. PW1 denied the suggestion that Ext.A1 sale deed was executed without consideration and with the intention to defraud creditors. He deposed that the sale consideration was paid through bank transactions. He further denied the suggestion that the managing partners were his friends. According to PW1, about 90% of the sale consideration was paid through bank transactions and the remaining 10% was paid in cash. He stated that the property was purchased for the prevailing market price. He also admitted that he did not enquire whether the firm LIS and its managing partners were indebted to several persons at the time of execution of the sale deed and that he had not come across any such information in newspapers.

11. The petitioner relied upon Exts.A1 to A3 to establish that the transaction is genuine. Ext.A1, the title deed, reveals that the property was conveyed by the managing trustee and other trustees to the appellant for a total sale consideration of ₹1,20,05,000/-. The document further shows that the vendors executed the deed in their capacity as trustees of M/s LIS. The recitals indicate that ₹1,20,050/- was paid towards TDS, ₹40,00,000/- was transferred from SBT, Ollur Branch, ₹17,62,950/- from Dhanalakshmi Bank, Ollur Branch, ₹2,20,000/- from Catholic Syrian Bank, and ₹48,00,000/- was transferred to the account of M/s LIS maintained at South Indian Bank, Ernakulam. It is also stated that ₹48,00,000/- was paid through

cheque and ₹11,00,000/- was paid in cash. Thus, as per the recitals, a total consideration of ₹1,20,05,000/- is shown to have been paid.

12. The learned counsel for the appellant contended that the consideration reflected in Ext.A1 and the detailed mode of payment establish the genuineness of the transaction. However, it is well settled that a mere recital in a document is not sufficient to conclusively prove the passing of consideration when the transaction is specifically challenged as being fraudulent.

13. In the present case, though it is asserted that major portions of the consideration were paid through bank transactions, no independent evidence has been adduced to substantiate the same. No bank statements or supporting records have been produced to prove the actual transfer of amounts as recited in Ext.A1. Further, with respect to the alleged cash payment of ₹11,00,000/-, no material has been placed on record to show withdrawal of such amount from the account of the petitioner or its actual payment to the vendors.

14. Another aspect which assumes significance is that, in the ordinary course of transactions, parties tend to show only the fair value of the property in the document. However, in the present case, the full market value is shown as the sale consideration. Though this circumstance alone is not decisive, in the absence of satisfactory proof regarding actual payment, it raises a reasonable doubt regarding the genuineness of the transaction.

15. Ext.A2 is the encumbrance certificate dated 15.02.2022 and Ext.A3 is the tax receipt. These documents do not relate to the period at the time of execution of the sale deed. Though Ext.A3 shows that the property was mutated and land tax was remitted in the name of the appellant, it is settled law that mutation entries and payment of tax do not confer title nor do they conclusively establish possession. In the present case, apart from the tax receipt, no independent evidence has been adduced to prove actual physical possession of the property by the petitioner.

16. The appellant contended that prior to purchasing the property, he verified the encumbrance certificate and, being satisfied that there were no attachments or encumbrances, proceeded with the purchase. Reliance was placed on the decision in *Naduvatheyyath Sulochana v. Syndicate Bank Branch Manager, Thalassery* (2022 (2) KHC 253), wherein it was held that the burden of proving that a transaction is sham lies on the person who alleges it. It was further observed that the intention of the parties is the decisive factor in determining whether a transaction is sham.

17. However, in the present case, it is to be noted that Ext.A1 was executed after the institution of the suit in the year 2013. The materials on record, particularly Exts.B1 and B2, reveal that respondents 2 and 3 were indebted to many person and were facing multiple proceedings even at the relevant time. These circumstances probalilise the case of the respondent that the transfer was effected with the intention of defeating the claims of creditors.

18. The learned counsel for the respondent relied on the decision reported in 2016 (3) KHC 145 to contend that when a transfer is effected by a debtor with knowledge of pending proceedings and with the intention to defeat the rights of creditors, such a transfer can be treated as fraudulent. The said principle is applicable to the facts of the present case. It is true that the sale in favour of the petitioner was executed on 06.06.2014, whereas the attachment was ordered subsequently. Ordinarily, a prior transfer would prevail over a subsequent attachment. However, such protection is not available where the transaction is found to be not bona fide or is intended to defeat creditors.

19. In the present case, the petitioner claims to have purchased the property for substantial consideration. However, during cross-examination, PW1 admitted that he had not conducted any enquiry regarding the financial status or liabilities of the vendors. He further stated that he had no knowledge regarding the closure of the firm, its debts, or the pendency of cases against it. To most of the material questions, PW1 answered that he had no knowledge.

20. In a transaction involving immovable property of such high value, a prudent purchaser is expected to conduct reasonable enquiries regarding the title and financial status of the vendor. The complete absence of such enquiry, coupled with the surrounding circumstances, renders the claim of the petitioner as a bona fide purchaser doubtful.

21. Further, though the sale deed recites payment through bank transactions, no independent evidence has been produced to substantiate the same. This omission assumes significance in a case where the transaction is alleged to be fraudulent. The absence of proof of actual payment, along with the lack of due diligence, creates serious doubt regarding the genuineness of the transaction. On the other hand, Exts.B1 and B2 produced by the respondents establish that respondent Nos.2 and 3 were facing multiple proceedings and were indebted to other creditors also even prior to the execution of Ext.A1. These materials support the contention that the transfer was effected in order to defeat the claims of creditors. The Ext B2 also shows that crime was registered against the 2nd and 3rd respondents and it shows that they are closed for long time.

22. The respondent raised the contention that the sale is fraudulent to defeat the creditors. A transfer made with intent to defeat or delay creditors is voidable at the option of such creditors. Though the burden initially lies on the person alleging fraud, the surrounding circumstances and conduct of the parties can be taken into account to infer such intention.

23. In the present case, the cumulative effect of the financial distress of the vendors, pendency of multiple proceedings, lack of due diligence on the part of the purchaser, and absence of convincing proof of consideration leads to a reasonable inference that the transaction is not a bona fide one. In the above circumstances, this Court finds that the petitioner has failed to establish that he is a

bona fide purchaser for value without notice. The findings of the trial court are based on a proper appreciation of evidence and do not call for interference. Accordingly, the contentions raised by the appellant are devoid of merit. The points are answered against the appellant.

24. Point No.3:- In the result, the appeal is dismissed. The order in IA No.4/2022 in OS No.4016/2013 of the Munsiff court, Irinjalakuda is confirmed. No order as to costs.

(Dictated to confidential assistant, typed by her, corrected and pronounced by me in open court on this the 11th day of March, 2026.)

Sd/-

Lekshmi K. Thampi
Additional Sub Judge

Appendix:- Nil

Id/-

Additional Sub Judge

copied by:vdm
compared by:

// True copy//

B/o.

Sheristadar.