

**IN THE COURT OF THE MUNSIFF, IRINJALAKUDA**  
**Present: Sri..Eldos Mathew Principal Munsiff.**  
**Saturday, 4<sup>th</sup> day of April 2026/14<sup>th</sup> Chaithra, 1948**

**E.A. 1346/2025 in EP 69/2024 in OS 3092/2016**

**Claim Petitioner:-**

Canara Bank, Main Branch, Thrissur- 680001. Rep. by  
Senior Manager Mrs. Tina P. Saju, 37 years,  
D/o Saju P. T.  
By Adv. K. R. Suman

**Respondent/Decree Holder & Judgment Debtors:-**

1. Sambushta Kuries (P) Ltd., Kundukavu Shopping Complex, Amballur Village, Desom, P.O. Alagappa Nagar, Mukundapuram Taluk.
2. Sulabha, 50 years, W/o Krishnakumar, Kalarikkal House, Amballur village, Desom, P.O. Alagappa Nagar, Mukundapuram Taluk.
3. Krishnakumar, 61 years, S/o Vasudevakuruppu, Kalarikkal House, Amballur village, Desom, P.O. Alagappa Nagar, Mukundapuram Taluk.  
R1 By Adv. Jain K. V  
R2 & R3 No appearance

This petition coming on for hearing and the court delivered the following:-

**ORDER**

This petition is filed by the bank under Order 38 Rule 8, Order 21 Rule 58 and Section 151 CPC.

2. The petitioner, Senior Manager of Canara Bank, asserts that the

2nd respondent/1st judgment debtor created an equitable mortgage on 22.02.2013 by deposit of title deeds (Settlement Deed No.4785/2008, SRO Nellore, covering 6.5 cents and 1.5 cents in Sy. No.442/2, Amballur Village), along with a confirmation letter, thereby creating a charge over the property.

3. The 2nd respondent availed a term loan of Rs.7,50,000 and a cash credit facility of Rs.7,50,000. To secure the term loan, he executed a hypothecation agreement on 23.03.2013, agreeing to repay in 60 monthly instalments from April 2013.

4. The borrower acknowledged his liability in both loan accounts on 11.02.2016 and 07.02.2019. However, the cash credit account became irregular and was classified as NPA on 30.06.2014. Despite repeated demands, the dues remained unpaid.

5. The bank initiated recovery proceedings by filing OA No.488/2019 before the Debts Recovery Tribunal, Ernakulam, seeking recovery of dues and sale of the mortgaged property. The matter is pending for final hearing.

6. As per the bank's statements of account maintained in the ordinary course of business, a sum of Rs.54,32,168.15 (cash credit) and

Rs.21,76,515.35 (term loan) is due, totalling Rs.76,08,683.50 with further interest and costs.

7. In the meanwhile, in the execution proceedings initiated by the decree holder, the same property has been attached and is proposed to be sold. The bank contends that, by virtue of the prior mortgage, it has a superior charge and the property cannot be proceeded against in execution.

8. Notice was served. The 2nd respondent was set ex parte. The 1st respondent/decreed holder entered appearance and filed a counter contending that the petition is not maintainable and discloses no cause of action. According to him, the bank was only summoned under Order 21 Rule 66(4) CPC to furnish particulars for settlement of sale proclamation and cannot maintain a claim petition.

9. It is further contended that the bank has not established any exclusive or first charge overriding other creditors. Even assuming a valid mortgage, it does not preclude attachment or sale of the equity of redemption in execution.

10. The 1st respondent submits that unsecured creditors are entitled to proceed against the equity of redemption until the mortgage is

enforced, and the present petition seeking to lift attachment or stay execution is premature. It is alleged that the petition is filed only to delay execution and defeat the decree holder's lawful rights.

11. The points for consideration are:

1. Whether petition filed under O.38 R.8 and O. 21 R. 58 and S.151 of CPC is allowable?
2. What is the order as to costs?

12. The claim petitioner filed proof affidavit and marked Ext.A1 to A22.

13. Heard both sides.

14. **Point Nos.1-2:-** The petitioner was examined as PW1. She filed proof affidavit in support of her contention and also produced Ext.A1 to A22 in which, Ext.A1 to A6 documents are in respect of the loan availed by 2<sup>nd</sup> respondent. The Ext.A6 is the memorandum evidencing deposit of title deed dated 23.03.2013. Exts.A7 and A8 are the copies of the title deeds. The acknowledgement of debts produced are marked as Ext.A9 to A12. Ext.A19 and A20 are the account statements in respect of the loan transaction. Thus, it is evident from Ext.A6 that the claim schedule properties are already mortgaged in the claim petitioner bank on 23.03.2013 to secure the cash credit facility loan of

Rs.7,50,000/- and term loan of Rs.7,50,000/- by the 2<sup>nd</sup> respondent. She has created a mortgage of above property by deposit of original title deed and other related document on 23.03.2013. Thus the claim petitioner bank has 1<sup>st</sup> charge over the claim petition schedule property from 23.03.2013 onwards. As part of proceedings taken in OS 3092/2016, this property was attached by the 1<sup>st</sup> respondent.

15. The learned counsel for claim petitioner bank submitted that both the loan availed by the 2<sup>nd</sup> respondent fell due from 2013 onwards and now the amount due to the bank with interest amounting to Rs.76,00,000/-. In order to realise the said amount, they have approached the DRT and the sale proceedings are underway. In the meantime, the claim petitioner bank came to know about the attachment over this property issued by this court. According to the learned counsel unless that attachment is lifted, the bank cannot proceed with the sale proceedings. On the other hand, the learned decree holder contended that even admitting the 1<sup>st</sup> charge over the petition schedule property, the decree holder has right to claim equity of redemption. That right of the decree holder cannot be denied by the claim petitioner. So, the decree holder may be permitted to continue

the sale proceedings subject to the 1<sup>st</sup> charge of the claim petitioner bank.

16. Having heard the rival contentions, I have perused the records and found that the 1<sup>st</sup> charge of the claim petitioner bank is admitted by parties as it existed with the deposit of title deed from 2013 onwards. The attachment in the above suit is subsequent to this charge ie., in the year 2016. The Petition schedule property extends to 3.23 Ares (8 cent). The fair value fixed for this property is 79,200/- per Ares. The estimated value shown by the DH/2<sup>nd</sup> respondent in the DSP is Rs.4 lakh. The decree debt is only Rs.1,57,354/- where as liability to the claim Petitioner bank is Rs.76,00,000/-.

17. The right of a person to file a petition for removing attachment ordered before judgment and the procedure thereon have been delineated by a Full Bench of High Court of Kerala in **Verizon Builders and Developers Ltd. v. Jyothi Susan John, (2019 (1) KLT 100)**. The Full Bench held that a petition for removing attachment can be filed only before a sale takes place. Once a decree is passed and an execution is in contemplation, such a petition has to be filed before the execution court and not before the trial court.

18. The question whether secured creditors have absolute right to sell secured assets irrespective of other debts or encumbrances created after the mortgage was considered in **Fathima v. Canara Bank (2025 KHC 512)** and held that secured creditors have every right to bring secured assets for sale irrespective of other debts due from secured debtor to any person including Government or any other encumbrance created after the mortgage in favor of secured creditor.

19. Even assuming that the property is brought to sale subject to the prior charge of the Bank, what can be sold in execution is only the equity of redemption. Though the auction purchaser would be entitled to redeem the mortgage by discharging the liability due to the secured creditor, the facts of the present case reveal that the decretal amount due to the attaching creditor is only Rs.1,57,354/-, whereas the outstanding liability to the secured creditor is approximately Rs.76,00,000/-.

20. In such circumstances, no prudent purchaser would be willing to participate in the sale, and even if conducted, the sale would not fetch any meaningful value so as to satisfy the decree. Therefore, proceeding with the sale would be wholly illusory and futile.

Accordingly, this Court finds that no useful purpose would be served by proceeding with the sale. Thus all points are decided in favour of the Claim Petitioner.

21. Hence, claim petition EA 1346/2025 allowed and attachment ordered in I.A 8131/2016 is lifted to the extend of claim petition property. Issue intimation to the SRO and Village Office concerned. No costs.

(Dictated to the Confidential Assistant, transcribed and typed by him, corrected and revised by me and pronounced in open court on this the 4<sup>th</sup> day of April, 2026)

Sd/-  
**Eldos Mathew,**  
**Principal Munsiff**

**APPENDIX:-**

**Claim Petitioners Witness:-**

PW1 27.02.2026 Tina P. Saju

**Claim Petitioners Exhibits:-**

A1	22.03.2013	Certified copy of Sanction Memorandum.
A2	23.03.2013	Certified copy of Hypothication Deed
A3	23.03.2013	Certified copy of Agreement
A4	23.03.2013	Certified copy of Pronote
A5	23.03.2013	Copy of request for Overdraft Facilities
A6	23.03.2013	Copy of letter evidencing deposit of Title Deeds

A7	24.02.1995	Certified copy of Partition Deed No. 1479/1995
A8	09.07.2008	Certified copy of Settlement deed No. 4785/2008
A9	11.02.2016	Certified copy of Acknowledgment of Debt and Security.
A10	07.02.2019	Certified copy of Acknowledgment of Debt and Security.
A11	11.02.2016	Certified copy of Acknowledgment of Debt and Security.
A12	07.02.2019	Certified copy of Acknowledgment of Debt and Security.
A13	29.03.2019	Certified copy of Recall Notice
A14		Certified copy of Postal Acknowledgment card.
A15	23.03.2013 to 08.07.2024	Certified copy of Statement of the OCC Loan Account.
A16	23.03.2013 to 08.07.2024	Certified copy of Statement of the Term Loan Account.
A17	24.07.2019	Certified copy of Original Application No. 488/2019
A18	19.02.2025	Certified copy of Order in EA 1196/2024 in EP 1882/2019 in OS 4737/2014 of Addl. Munsiff Court, Irinjalakuda.
A19	10.10.2024 to 09.10.2025	True copy of Statement of the OCC Loan Account.

A20 25.03.2013 to True copy of Statement of the Term Loan  
09.10.2025 Account.  
A21 19.01.2015 True copy of Power of Attorney  
A22 21.02.2026 Statement of the OCC Loan Account.

Sd/-

**Principal Munsiff**

**//True copy//**

**Principal Munsiff**

Copied by: rh  
Com. by:

Order in EA 1346.2025  
in EP 69/2024  
in OS 3092/2016  
Dated 04.04.2026