

**IN THE COURT OF THE SUB JUDGE, NEDUMANGAD**

**Present: Smt. Rajasree. C.R, Civil Judge (Senior Division)**

*On Thursday 12<sup>th</sup> March 2026*

*21<sup>st</sup> Phalguna 1947*

**IA 04/2025 in OS 38/2025**

**Petitioner/Defendant:-**

Anitha Kumari, Aged 58 years,  
W/o. Babu, Vijayalayam, Kallar P.O,  
Vithura Village, Nedumangad,  
Pin 695551.

Rep by Adv. V.S Sunikumar.

**Respondents/Plaintiffs 1 & 2:-**

1. A. Biju, Aged 48 years, S/o. Appukuttan,  
Adithya Bhavan, Irumba, Aruvikkara Village,  
Nedumangad Taluk, Pin 695564.
2. K. Sobhanachandran Nair, Aged 68 years,  
S/o. Kochukrishna Pillai, Ummathu Veedu,  
Anadu P.O, Anadu Village,  
Nedumangad Taluk, Pin 695541.

Rep by Adv. Nija S.L.

This Petition having been finally heard on 12/03/2026 and court on the same day passed the following.

**ORDER**

This application is filed by the defendants challenging the maintainability of

the suit and to return the plaint under Order VII Rule 10 of the Code of Civil Procedure, 1908 for want of territorial jurisdiction.

2. **Petition averments, in brief, are stated as follows:** The petitioner is the defendant in the suit. The petitioner is well aware of the facts of this case. The first prayer in the suit is to pass a decree allowing the plaintiffs to recover an amount of ₹ 1,62,50,000/- together with interest at the rate of 12% per annum from the defendant charged on the plaint schedule property. The second prayer in the suit is to realise interest on the amount claimed. The prayer in the suit is to create a charge over the immovable property, which is the subject matter of the suit. The present suit is instituted claiming relief with respect to an immovable property that situates within the jurisdiction of Attipra Village that falls within Thiruvananthapuram Taluk under Kazhakuttom Sub Registration Sub District. Therefore, this suit is not maintainable before this Court for want of territorial jurisdiction. The plaintiffs have claimed amount allegedly due to him under an infrastructure work. The plaintiffs are real estate brokers and are facilitators of the sale of properties. This fact is pleaded in paragraph number 6 of the plaint. This would clearly go to show that the matter in dispute is a commercial dispute that falls under the Commercial Court Act of 2015. Since this Court lacks territorial jurisdiction to entertain the suit and as the dispute involved is a commercial dispute, that falls within the Commercial Courts Act, 2015, the suit has to be returned for presenting the same before the proper court.

3. **The respondent/ plaintiff filed written objection contending as follows:-**

The petition is not maintainable either in law or on facts. The suit is perfectly maintainable both territorially and pecuniary. The suit is only for realisation of money based on an agreement for sale that does not itself create charge as stated under section 54 of the Transfer of Property Act. The charge stated under section 55(6)(b) cannot be claimed this stage and not with respect to return of advance money. So, the subject matter of the suit is not based on a charged property. The transaction involved is not a commercial transaction. Even if it involves any commercial aspect, it has to be proved by adducing evidence and presently the case has not reached at that stage. The maintainability of the suit can be decided only after taking evidence when it is a mixed question of law and facts, it cannot be decided at the earlier stage. This application is filed only to prolong the matter and to take advantage. So, it is only to be dismissed with costs.

**4. Points that arose for consideration are:**

1) Whether this court has got the territorial jurisdiction to entertain this suit?

2) Whether the plaint has to be returned to the plaintiff for presenting the same before the proper court?

3) What is the order as to costs?

5. Heard both sides.

6. **Point nos.1 and 2:** To avoid repetition and for brevity, these points are considered together. The specific case put forth by the petitioner/defendant is that the

present suit is barred for territorial jurisdiction. According to the petitioner, the suit is for realisation of money and there is a prayer to impose charge over the property of the defendant which is covered by the agreement for sale. Further, it is averred that the transaction involved is a commercial transaction. On the contrary, the respondent opposed the application stating that this court has got jurisdiction to entertain the suit and the objection raised regarding the fact that the dispute involved in this case is a commercial dispute or not cannot be ascertained at this juncture without adducing evidence. Apart from this, charge framed is a statutory charge and so this court has the territorial jurisdiction to entertain this suit.

7. I have gone through the pleadings in the suit and the prayer sought for which is pending before the court. The suit is filed by the plaintiff/ respondent seeking a prayer for realisation of money covered by an agreement for sale together with interest. There is a prayer to impose charge over the property shown as the plaint schedule property. The description of the plaint schedule property would clearly go to show that the property falls in Attipra Village, which is in Kazhakuttom Sub District of Thiruvananthapuram District. The objection raised is that the charge which is mentioned is a statutory charge and therefore the suit is very well maintainable before this court as it is filed seeking realisation of money from the petitioner /defendant.

8. At this juncture, let me consider section 16 of the Code of Civil Procedure, 1908. As per section 16, a suit has to be instituted where subject matter situates and it

reads as follows: "*Subject to the pecuniary or other limitations prescribed by any law, suits --*

*(a) for the recovery of immovable property with or without rent or profits,*

*(b) for the partition of immovable property,*

*(c) for foreclosure, sale or redemption in the case of a mortgage of or charge upon immovable property,*

*(d) for the determination of any other right to or interest in immovable property,*

*(e) for compensation for wrong to immovable property,*

*(f) for the recovery of movable property actually under distraint or attachment, shall be instituted in the Court within the local limits of whose jurisdiction the property is situate:*

*Provided that a suit to obtain relief respecting, or compensation for wrong to, immovable property held by or on behalf of the defendant may, where the relief sought can be entirely obtained through his personal obedience, be instituted either in the Court within the local limits of whose jurisdiction the property is situate, or in the Court within the local limits of whose jurisdiction the defendant actually and voluntarily resides, or carries on business, or personally works for gain.*

*Explanation.- In this section "property" means property situate in India."*

9. From Section 16 (c) it is evident that when a suit is filed for foreclosure, sale or redemption in the case of mortgage or of a charge upon immovable property, then the suit has to be filed within the jurisdiction where the subject matter situates. In the present case, even though it is evident that the charge claimed is under section 55 (6) (b) of the Transfer of Property Act, there is no distinction provided in section 16(c) of

the Code of Civil Procedure, 1908 that excludes the statutory charge provided under the Transfer of Property Act. From the schedule which is appended in the plaint, it is evident that the immovable property lies outside the territorial jurisdiction of the court. As the subject matter of the suit lies outside the territorial jurisdiction of this court, this court cannot declare charge on the property which is wholly outside its jurisdiction. If it does, a purchaser under such a decree would be in no better position than a purchaser under a money decree. Since there is no distinction which is provided under section 16 (c) with respect to the immovable property where charge is a statutory charge and with respect to the charge under section 100 of the Transfer of Property Act, it can only be said that the present suit filed by the plaintiff in this court for realisation of money and for creating a charge with respect to the plaint schedule property cannot be instituted in this court.

10. As per Order VII Rule 10 of the Code of Civil Procedure, when the court lacks subject matter jurisdiction, then the remedy which is available is to return the plaint to the plaintiff for presenting the same before the proper court. As this court is not having territorial jurisdiction over the plaint schedule property that lies in Attipra village with respect of which a charge is sought to be created, I am of the view that the plaint has to be returned under Order VII Rule 10 of the Code of Civil Procedure for presenting the same before the proper court.

11. Another objection raised by the counsel for the petitioner challenging the suit is that the dispute involved in this case is a commercial dispute. The question

whether a dispute involved is a commercial dispute or not has to be agitated before the court which has got the territorial jurisdiction to entertain such an objection. As this court lacks territorial jurisdiction to entertain the suit, I am not inclined to make a finding regarding whether the subject matter of this suit is a commercial dispute or not. For this reason, the said averment mentioned in the petition is not entertained. In the light of these discussions, these points are found in favour of the petitioner/defendant.

**12. Point no. 3:** There is no order as to costs.

**In the result,** IA is allowed. The plaint is returned to the plaintiff for presenting the same before the proper court.

*(Prepared through Adalath AI, corrected by me and pronounced in Open Court on this, the 12<sup>th</sup> day of March, 2026).*

**Rajasree.C.R**  
**Civil Judge (Senior Division)**

**Appendix:- Nil**

**Civil Judge (Senior Division)**

*Typed by:RPN*  
*Compd by:BR*