

**IN THE COURT OF THE MUNSIF, ATTINGAL
PRESENT: SMT. SWATHI.R.KRISHNAN, MUNSIF
THURSDAY 10th JULY, 2025 / 19th ASHADA, 1947**

EA 01/2025 in EP 22/2010 IN OS No.474/2000

Petitioner/Legal heir of 6th Judgment debtor:

Sudina, D/o Natarajan Chettiar, aged 56 years, Palavila Veedu, Karette,
Karuvalliyad, Vamanapuram P.O, Pulimath Village

By Advocate: Sri.N Smart

Respondents/Decree holders 2nd and 3rd and Judgment debtors 1 to 5 and 8 to 10:

1. Vijayan, S/o Late Sukumaran Nair, Kunnumpurathu, Polimel Puthenveedu, Karette, Karvalliyyad, Pulimath Village
2. Mohanakumari, D/o Rugmini, Kunnumpurathu, Polimel Puthenveedu, Karette, Karvalliyyad, Pulimath Village
3. The State of Kerala, represented by Chief Secretary, Government Secretariat, Thiruvananthapuram
4. The Superintendent of Re-Survey, Office of the Superintendent of Re-survey, Neyyattinkara, Thiruvananthapuram
5. The Pulimath Grama Panchayath, represented by its Secretary, Pulimath Grama Panchayath Office, Pulimath
6. G.Divakaran Pillai, S/o Gangadharan Pillai, Ganga Sadanam, Vamanapuram Desom, Pulimath Village, Vamanapuram P.O
7. Ayyappan Chettiar, S/o Chellakkannu, Palavila Veedu, Pulimath Village, Vamanapuram P.O
8. Rajendra Pillai, S/o Ramakrishnan Pillai, Nellikkunnil Veedu, Pulimath Village, Vamanapuram P.O
9. Gopinathan Pillai, S/o Anantha Krishna Pillai, Nellikkunnilveedu, Pulimath Village, Vamanapuram P.O
10. Anilkumar, S/o Anantha Krishna Pillai, Nellikkunnilveedu, Pulimath Village, Vamanapuram P.O

By Advocate: Sri.K S Vinod

This petition is having been finally heard on 02/07/2025 and the court on 10/07/2025 passed the following:

ORDER

This is a petition filed under Sections 50 and 151 of CPC to implead the petitioner as 12th judgment debtor in the capacity of legal representative of 6th judgment debtor.

2. **The petition averments are as follows:** The petitioner is one among the daughters of deceased 6th judgment debtor. The decree holder instituted this suit for

declaration of title and possession and for putting up granite boundary walls on eastern and western boundaries of plaint schedule properties. During the trial stage this court deputed an advocate commissioner and surveyor and they filed Ext.C2 and C2(a) report and plan. A decree was passed by this court declaring plaintiffs title and possession over the properties. The plaintiffs were allowed to put boundary walls on eastern and western boundaries of decree schedule properties but no plan was appended to the decree. The said decree was confirmed in appeal. The decree holders filed this EP whereas judgment debtors 6,7 and 11 expired living behind their representative heirs. Even though decree holders were fully aware of the death they have not taken any steps for bringing the legal representatives into the party array through impleadment. Apart from judgment debtors 6,7 and 11, 1st decree holder who is the title holder of decree A schedule property also expired subsequent to the above EP. Apart from decree holders 2 and 3, 1st decree holder have two other children. But decree holders 2 and 3 have not taken any steps to implead them. Hence decree holders 2 and 3 are prosecuting the EP without bringing the rightful persons to the party array. The petitioner is one of the legal representatives of the 6th judgment debtor and hence is entitled to contest this EP by filing an objection and for just and fair disposal of this EP. Hence it is highly essential to implead the petitioner as additional 12th judgment debtor.

3. **The 3rd decree holder filed an objection contending as follows:** The petition is not maintainable either under law or on facts. The petition is of the year 2010. Challenging the decree and judgment, judgment debtors 4,6,8,9 and 10 preferred a regular appeal before Sub Court, Attingal and the same was made over

to Additional District Court - III, Thiruvananthapuram and it was decided on 06.01.2018. On enquiry, it is understood that Natarajan Chettiyar passed away during 2013. His death was not reported before the execution court or appellate court. Since he was appellant No.2, the appeal abated with regard to 6th judgment debtor. As such the present petitioner has no right to file the present impleadment petition. The petitioner has not disclosed the date of death of 6th judgment debtor. Once the correct date of death is disclosed, the same will virtually put an end to the present petition. The present petition is not maintainable and hence may be dismissed with costs.

4. The following points arose for consideration:

1. Can the petition be allowed ?
2. Reliefs and costs ?

5. Heard both sides.

6. **Point No.(1):** The petitioner filed this petition to implead him as additional 12th judgment debtor contending that he is the legal representative of deceased 6th judgment debtor. He hence filed this petition under section 50 and Section 151 of CPC. ***Section 50 of CPC*** is as follows:

‘50. Legal representative. - (1) Where a judgment-debtor dies before the decree has been fully satisfied, the holder of the decree may apply to the Court which passed it to execute the same against the legal representative of the deceased.

(2) Where the decree is executed against such legal representative, he shall be liable only to the extent of the property of the deceased which has come to his hands and has not been duly disposed of; and, for the purpose of ascertaining such

liability, the Court executing the decree may, of its own motion or on the application of the decree-holder, compel such legal representative to produce such accounts as it thinks fit'.

7. The 3rd decree holder objected to the same contending that the judgment debtor No.6 was the 2nd appellant in the appeal filed and since his death was not reported, the appeal was abated with regard to him. Hence there occurred a merger of the decree in appeal with the decree passed by this court. Consequent to the abatement of the appeal filed by the judgment debtor 6, the petitioner herein has no right to take part in the proceedings. Section 50 allows the decree holder to implead the legal representatives of the deceased judgment debtors. Whereas, the interesting part with regard to this petition is that the legal representative of judgment debtor is interested to take part in the proceedings whereas the decree holder is objecting the same on the ground that appeal was abated as far as judgment debtor No.6 is concerned.

8. In the instant case, the deceased judgment debtor was the 2nd appellant in the appeal. The petitioner herein has not stated the exact date of death of deceased judgment debtor. The objection raised by petitioner that the appeal was abated and due to the merger of the decree in appeal the legal representatives of the deceased judgment debtor is not competent to contest is not tenable. The decree holder has not stated the exact date of death of deceased judgment debtor. Without ascertaining the same this court cannot come to a conclusion that the appeal was abated. The decree against the 6th judgment debtor is still in existence. Hence Section 50 allows the decree holder to execute the decree against the legal

representatives if the judgment debtor expires before full satisfaction of the decree. Section 50(2) allows the decree holder to file application and the execution court also has power to compel the legal representatives to produce accounts with respect to the extent of property. In the instant case, the decree holder is objecting the impleadment. Whereas the petitioner herein seeks to implead himself. This court is of the view that there is no impediment in allowing the petitioner to take part in the execution proceedings. But the participants should not be permitted to delay the execution of decree and from obstructing the decree holder from enjoying the fruits of the decree. Hence, in view of the discussion above, this court is of the view that the petitioners shall be afforded an opportunity to take part in proceedings, without protracting the same.

9. **Point No.(2):** In view of the above discussion, the petition is allowed.

Dictated to the Confidential Assistant, transcribed and typed by her corrected and pronounced by me in open Court on this the 10th day of July 2025.

Sd/-
SWATHI.R.KRISHNAN
MUNSIFF

Appendix: Nil

Id/-
MUNSIFF

//True Copy//

Typed by: Shilpa.K.S
Compared by: Sheena K

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