

IN THE COURT OF THE MUNSIFF, ATTINGAL
PRESENT: SMT. SWATHI.R.KRISHNAN, MUNSIFF
WEDNESDAY 19th NOVEMBER, 2025 / 03rd AGRAHAYANA, 1947

IA 1/2025 in OS No.411/2025

Petitioner (Plaintiff):-

Biju, aged 42 years, S/o Sivanandan, residing at Devamrutham,
Thonnakkal P O, Melthonnakkal Village, Thiruvananthapuram Taluk
and District.

By Advocate:- Sri.Madavoor.G.Sureshkumar

Counter Petitioners (Defendants):-

1. Sainaba Beevi, aged 75 years, W/o Abdul Azees, residing at Shibi
Manzil, Kolichira, Azhoor Village, Chirayinkeezhu Taluk,
Thiruvananthapuram District.
2. Shaheer, aged about 45 years, S/o Abdul Azeez, residing at Shibi Manzil,
Kolichira, Azhoor Village, Chirayinkeezhu Taluk, Thiruvananthapuram
District.
3. Sibimol, aged 50 years, D/o Abdul Azees, residing at Kunnil Veedu,
Palamkonam, Pullampara Village, Nedumangadu Taluk, from Shibi
Manzil, Kolichira, Azhoor Village, Chirayinkeezhu Taluk,
Thiruvananthapuram District.

By Advocate: Sri.A.Sabeer

This petition having been finally heard on 19.11.2025 and the court on
the same day passed the following:

ORDER

This is a petition filed under Order XXXVIII Rule 5 r/w Section 151 of CPC.

2. **The petition averments are as follows:** The petitioner is the plaintiff in the suit. The suit is for recovery of Rs.6,35,000/- covered by the agreement executed by the defendants in favour of the plaint schedule item No.1 property that belonged to husband of 1st defendant, who is the father of other defendants by virtue of Sale deed No.1181/1982 of Chirayinkeezhu Sub Registrar Office and after his death the defendants become the joint owners in possession of the property. Plaint schedule item No.2 property exclusively belongs to 2nd defendant by virtue of Sale deed No.2221/2012. The defendants jointly decided to sell the properties and approached the plaintiffs and expressed their willingness to sell the property and it was agreed to purchase the plaint schedule properties for consideration of Rs.1,00,000/- per cent. On 17.08.2022, an agreement for sale was executed by the defendants in favour of plaintiff and they received an amount of Rs.5,00,000/- by way of advance to be adjusted to total sale consideration and it was also agreed to execute the sale deed within 11 months from the date of the agreement. The defendants also agreed to convert plaint schedule properties from wet land to dry land before executing the sale deed. Plaintiff was ready and willing to perform his part but the defendants deviated from the same. On 20.07.2024, the defendants requested more time to perform their part. But the defendants purposefully failed to do so. The defendants also did not return the advance amount and defendant is holding the plaintiff's hard earned money. Since the said amount was advance amount, there is a charge over the plaint schedule properties. The plaintiff received information that the defendants are trying to sell

away the plaint schedule properties and it will cause irreparable loss and injury to the plaintiff. Hence this petition to direct the defendants to furnish security and on failure to do so, attach the plaint schedule property.

3. **The defendants filed an objection contending as follows:** The petition is not maintainable either under law or on facts. The plaintiff has no right to institute the suit as it is barred by limitation. The plaintiff is relying on agreement for sale dated 17.08.2022. It was the plaintiff who purposefully evaded from performing his contract. Plaintiff should have filed the suit within 3 years from 17.08.2022. But the suit was instituted on 25.08.2025. Hence it is barred by limitation. These defendants only have fractional share over plaint schedule property and Mr. Shafeek, one of the legal heirs of Abdul Azeez is not a party to agreement. After the agreement for sale, the first defendant filed an application for conversion of land and spent more than Rs.3,00,000/- to convert the nature of the land. It was after the actual conversion that the plaintiff approached the defendant and requested to return the advance amount. The plaintiff requested for a document for security from the 2nd defendant. It was hence cheque bearing No.035951 drawn on Gramin Bank, Perumkuzhi branch for Rs.5,00,000/- was handed over to the plaintiff. The RC particulars of tipper lorry bearing No.KL 45 G 5095, insurance, permit, T.O form, tax receipt etc were also handed over as security for the payment. On 26.07.2024, the 2nd defendant's brother paid Rs.4,78,000/- in cash, Rs.7,000/- through G pay and remaining Rs.15,000/- in cash directly by 2nd defendant at plaintiff's petrol pump as instructed by the plaintiff.

He promised that all documents will be returned after payment. It was on believing the words of plaintiff that the first defendant repaid the amount and demanded back the documents. But the plaintiff changed his attitude and withheld the document and demanded huge interest. On 30.07.2024, first defendant filed complaint before SHO, Chirayinkeezhu. All the transactions were recorded in the CCTV camera of plaintiff's petrol pump. It was informed to the police. The plaintiff was not ready to hand over the same. Hence on 31.07.2024, the first plaintiff sent an advocate notice to plaintiff to return the documents. On 02.08.2024, the defendants filed caveat petition numbered as 196/2024 before this court and thereafter filed a complaint before RTO, Attingal stating that vehicle bearing No.KL 45 G 5059 was sold by 2nd defendant to him and demanded not to receive taxes. Thereafter, the application was rejected. The defendants already returned the advance amount through G pay and as cash. The plaintiff has no cause of action. It is impossible to attach the plaint schedule property since the plaintiff itself admitted that the plaint schedule property has a value of Rs.1,00,000/- per cent. The plaintiff approached the court with unclean hands. Hence the petition may be dismissed with costs.

4. The points that arose for consideration are:

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

5. From the side of plaintiff, Exts.A1 was marked. From the side of defendants Ext.B1 to B4 were marked.

6. Heard both sides in detail.

7. **Point No.(1):** This is a petition filed by the plaintiff under Order XXXVIII Rule 5 of CPC to direct the defendants to furnish security for an amount of Rs.6,35,000/- contending that the defendants entered into an agreement for sale with the plaintiff and they received advance amount of Rs.5,00,000/-. Since caveat No.203/2025 was filed by the 2nd defendant, notice was issued and the defendants entered appearance on 16.09.2025 and filed an objection.

8. The defendants contended that it was the plaintiff who was not ready and willing to execute the sale deed and the defendants already gave back the advance amount to the plaintiff. The defendants contended that Rs.4,78,000/- was paid in cash and Rs.7,000/- through G pay and the remaining Rs.15,000/- in cash directly by the 2nd defendant at plaintiff's patrol pump. It was prior to this that the defendants handed over RC particulars of the tipper lorry and cheque bearing No. 035951 drawn on Gramin Bank, Perumkuzhi branch in the name of plaintiff since 2nd defendant requested some time to return the advance amount.

9. The defendants contended that in fact they ought not have given back the advance amount since money was spent by the defendants to convert the wet land into dry land. Even being so, the defendants agreed to pay the advance amount and it was subsequently paid to the plaintiff. To substantiate their case, the defendants produced copy of complaint filed before Chirayinkeezhu Sub Registrar Office and the copy of

advocate notice sent by the 2nd defendant to the plaintiff and the postal receipt which are marked as Exts.B1 to B3. The defendants further produced copy of caveat No.162/2024 filed before Hon'ble Sub Court, Attingal. Defendants contended that in Ext.B1 the defendants clearly mentioned about the agreement for sale dated 17.08.2022 and that the plaintiff requested to return back the advance amount of Rs.5,00,000/-. The plaintiff demanded security for Rs.5,00,000/- and hence the 2nd defendant handed over a cheque for an amount of Rs.5,00,000/- and RC book of the tipper lorry bearing No. KL 45 G 5059. It is further stated in Ext.B1 that 2nd defendant's agent, one Mr.Riyas handed over Rs.4,78,000/- as cash and Rs.7,000/- through G pay at the petrol pump to the plaintiff. It was further agreed that Rs.15,000/- will be subsequently given and that the plaintiff will give back the cheque and RC book. In Ext.B1, it is further stated that the plaintiff denied to give back the cheque and RC book. Ext.B2 is the advocate notice sent by 2nd defendant dated 31.07.2024 and in the same also it is mentioned that the cheque and RC particulars were handed over to the plaintiff by the 2nd defendant. Ext.B3 postal receipt shows that the same was sent on 31.07.2024. Defendants also produced photocopy of caveat No.162/2024 in which it is mentioned that cheque was handed over to plaintiff by the 2nd defendant.

10. Relying on the aforesaid documents, the defendants contended that they are having a consistent case regarding the agreement for sale and the plaintiff filed the suit with unclean hands. To further their arguments the learned counsel for defendants

contended that the plaintiff filed O.S.451/2025 before this court since attachment was not allowed in this petition due to the existence of caveat. Hence the plaintiff practiced fraud on the court by filing O.S.451/2025 producing a different sale agreement fraudulently executed suppressing the material facts and the existence of caveat. The vehicle sale agreement produced in O.S.451/2025 is a forged one and this is clear from the documents produced by the defendants.

11. Learned counsel for plaintiff contended that two agreements are completely different and existence of the other petition and the suit on a different cause of action shall not be interlinked with this transaction. Rebutting the same, learned counsel for defendants contended that Ext.B1 is dated 30.07.2024 and Ext.B2 is dated 31.07.2024. Ext.B3 postal receipt further fortifies this date. Hence a prudent man can reasonably ascertain that a party filing complaint before police and issuing advocate notice on 30.07.2024 and 31.07.2024 will not execute such an agreement on 30.07.2024 as alleged in O.S.451/2025. Hence O.S.451/2025 was filed based on a forged document. Filing another suit, more particularly O.S.451/2025 raising a different cause of action does not at a primary analysis assumes relevance. Whereas, the defendants clearly detailed the case advanced by them and the anomaly in the plaintiff's case. The defendants further argued that the plaintiff approached this court with unclean hands and by suppressing material facts. It was hence contended that existence of O.S.451/2025 and the averments in that case clearly defeats the case advanced by plaintiff and clarifies the actual state of things. This argument should be

considered and this court is of the view that it forms a material aspect while considering whether the court is satisfied by the circumstances warranting interference under Order XXXVIII Rule 5 of CPC.

12. In ***Raman Tech and Process Engg Co Ltd and Anr v. Solanki Traders*** (2008) 2 SCC 302, the Hon'ble Apex Court held as follows:

"4. The object of supplemental proceedings (applications for arrest or attachment before judgment, grant of temporary injunctions and appointment of receivers) is to prevent the ends of justice being defeated. The object of O.38 R.5 CPC in particular, is to prevent any defendant from defeating the realisation 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 movables. The scheme of O.38 and the use of the words "to obstruct or delay the execution of any decree that may be passed against him" in R.5 make it clear that before exercising the power under the said Rule, the court should be satisfied that there is a reasonable chance of a decree being passed in the suit against the defendant. This would mean that the court should be satisfied the plaintiff has a prima facie case. If the averments in the plaint and the documents produced in support of it, do not satisfy the court about the existence of a prima facie case, the court will not go to the next stage of examining whether the interest of the plaintiff should be protected by exercising power under O.38 R.5 CPC.

It is well - settled that merely having a just or valid claim or a prima facie case, will not entitle the plaintiff to an order of attachment before judgment, unless he also establishes that the defendant is attempting to remove or dispose of his assets with the intention of defeating the decree that may be passed. Equally well settled is the position that even where the defendant is removing or disposing his assets, an attachment before judgment will not be issued, if the plaintiff is not able to satisfy that he has a prima facie case.

5. The power under O.38 R.5 CPC is drastic and extraordinary power. Such power should not be exercised mechanically or merely for the asking. It Should be used sparingly and strictly in accordance with the Rule. The purpose of O.38 R.5 is not to convert an unsecured debt into a secured debt. Any attempt by a plaintiff to utilize the provisions of O.38 R.5 as a leverage for coercing the defendant to settle the suit claim should be discouraged. Instances are not wanting where bloated and doubtful claims are realised by unscrupulous plaintiffs by obtaining orders of attachment before judgment and forcing the defendants for out - of - court settlements under threat of attachment."

13. Hence this court has a duty to ascertain that the plaintiff has made out a prima facie case. The learned counsel for plaintiff contended that the argument raised by the defendants that the amount was handed over in cash is not believable since the defendants ought have sought for a receipt for the money. The aforesaid contention

with regard to whether there was discharge of debt or not is a matter of evidence. What this court has to consider at this stage is whether the party has successfully satisfied the grounds mentioned in Order XXXVIII Rule 5 of CPC.

14. The contents of Exts.B1 to B4 documents clearly aligns with the case made out by the defendants in their objection. Hence it cannot be prima facie found that plaintiff has a consistent case. The averments in O.S.451/2025 is clearly detrimental to the prima facie case of plaintiff wherein there is probable strength in the case made out by the defendants. The plaintiff hence failed to make out a prima facie case and also failed to satisfy the conditions in Order XXXVIII Rule 5 of CPC. The property cannot be attached nor defendant can be forced to provide security on the mere ground of existence of Ext.A1 document. Hence this court is of the view that there are no sufficient grounds to allow this petition.

15. **Point No.(2):** In view of the discussion above, this petition is dismissed with costs.

Dictated to the Confidential Assistant, transcribed and typed by her corrected and pronounced by me in open Court on this the 19th day of November, 2025.

Sd/-
SWATHI. R. KRISHNAN
MUNSIFF

Appendix:-**Exhibits marked for the Petitioner (Plaintiff):-**

A1	17.08.2022	Agreement of Sale
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Exhibits marked for the Defendant (Counter Petitioner):

B1	30.07.2024	Copy of Complaint
B2	31.07.2024	Copy of Advocate Notice
B3	—	Postal Article
B4	—	Copy of Caveat No.162/2024

Court Exhibits: Nil**Witness Examined for both sides** Nil

Id/-
MUNSIFF

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