

IN THE COURT OF THE MUNSIFF-MAGISTRATE, SULTHANBATHERY

Present: Smt. Gale Joy Chettupuzha, Munsiff-Magistrate

Wednesday, the 18th day of February, 2026

29th day of Magha – 1947

INTERLOCUTORY APPLICATION No.6/2024

ORIGINAL SUIT No.143/2024

Ashokan P., S/o.Raghavan V.V., aged 61 years,
Velluvalappil House, Mullakodi Post, Kairalam Village,
Mayyil, Kannur District.

} Petitioner/ 3rd
party

V/s.

1. Noufal P.R., aged 41 years, Puthanpurayil House,
Meenangadi Post, Purakkadi amsom, Sulthanbathery
Taluk, Wayanad District.
2. Jayaprakashan P., aged 54 years, S/o.Kelu, Ponnarath
Veedu, Kuttiyattoor, Kallar, Thaliparamaba,
Kannur District.

} Respondents/
Plaintiff and
Defendant

This Interlocutory Application is coming on this day for hearing before me in the presence of Smt.Vishnumaya C.P, Advocate for the petitioner and Sri.U.K.Priya, Advocate for R1 and Sri.Sumesh P.M., Advocate for R2 and the Court on the same day passed the following:-

ORDER

This is a petition filed under Order I Rule 3 read with Section 151 of the Code of Civil Procedure seeking to implead the petitioner as a supplemental defendant in the suit.

2. **Petition averments are as follows:-** The petitioner contends that he is a third party to the proceedings and is the real owner of the plaint schedule property by virtue of a Sale Certificate dated 15.03.2024 issued by Indian Overseas Bank, Kalpetta, pursuant to proceedings under Section 13 read with Rules 8 and 9 of the SARFAESI Act and Rules. According to him, the property was sold in a SARFAESI auction and he purchased the same for a consideration of ₹49,75,000/-. It is further contended that, in view of Section 34 of the SARFAESI Act, the Civil Court has no jurisdiction to entertain the suit insofar as it relates to the property. The petitioner alleges that the suit and the attachment before judgment were obtained in collusion between the plaintiff and the defendant with the intention of defeating the SARFAESI proceedings. He further submits that due to the subsisting order of attachment, he is unable to remit land tax and enjoy the property. On these grounds, he seeks impleadment, contending that he is the most affected person and that his presence is necessary for proper adjudication.

3. The respondent/plaintiff filed a counter opposing the petition. It is contended that the suit is one for recovery of money based on a promissory note executed by the first defendant, Jayaprakash. The plaintiff submits that attachment before judgment was ordered on credible information that the defendant was attempting to alienate the property to defeat the decree that may be passed. It is further contended that the petitioner has no right, title, or possession over the property and that proceedings are pending before the Debts Recovery Appellate Tribunal, Ernakulam, in S.A. No. 362/2024 challenging the sale certificate relied upon by the petitioner. It is also stated that proceedings are pending before the Chief Judicial Magistrate Court, Kalpetta, in connection with taking possession of the property. According to the respondent/plaintiff, the

petitioner has suppressed material facts and is neither a necessary nor a proper party to the present suit.

4. Heard both sides and perused records.

5. The suit in O.S. No. 143/2024 is one for recovery of money based on a promissory note. The primary issue to be adjudicated in the suit is whether the defendant is liable to pay the amount claimed by the plaintiff. The attachment before judgment has been ordered as a protective measure under Order XXXVIII Rule 5 CPC. The principles governing impleadment are well settled. A party is necessary if no effective decree can be passed in its absence; a party is proper if its presence is required for complete and final adjudication of the issues involved in the suit. The relief claimed in the suit is confined to recovery of money. No declaration of title or adjudication of rights over the property has been sought.

6. The petitioner bases his claim on a sale certificate issued under the SARFAESI Act. It is evident from the pleadings that the validity of the SARFAESI proceedings and the sale certificate are already under challenge before the competent Tribunal. The questions relating to title, validity of the sale certificate, and possession are matters falling within the domain of the Tribunal under the special statute. This Court, in the present money suit, is not called upon to adjudicate those issues.

7. The contention regarding bar of jurisdiction under Section 34 of the SARFAESI Act is also misconceived in the context of the present suit. The suit is not one challenging any SARFAESI measure nor does it seek to restrain action

under the Act. It is a simple suit for recovery of money. The incidental attachment before judgment does not convert the suit into one relating to enforcement of security interest. Even if the petitioner claims independent rights over the property, such rights can be agitated before the appropriate forum in accordance with law. His presence is not necessary for deciding the liability of the defendant under the promissory note. An effective decree can be passed in his absence, and his impleadment would unnecessarily enlarge the scope of the suit and introduce questions extraneous to the controversy involved.

In the above circumstances, this Court is of the view that the petitioner is neither a necessary nor a proper party to the suit.

Accordingly, this I.A. is dismissed. No order as to costs.

(Dictated to the Confidential Assistant, transcribed and typed by her, corrected and Pronounced in open Court on this the 18th day of February, 2026.)

MUNSIFF-MAGISTRATE

Appendix: Nil.

MUNSIFF-MAGISTRATE

Typed by : Haseena K.A
Compared by : Girija T.N